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Hearing Date and Time: December 17, 2013 at 10:00 a.m. (Prevailing Eastern Time)
Response Date and Time: November 4, 2013 at 4:00 p.m. (Prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	Chapter 11
Debtors.	Jointly Administered
ALFREDIA PRUITT,	Adv. Case No. 13-01350 (MG)
Plaintiff,	
v.	
RESIDENTIAL CAPITAL, LLC, *et al.*,	
Defendants.	

NOTICE OF DEBTOR DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S ADVERSARY COMPLAINT

PLEASE TAKE NOTICE that the undersigned have filed the attached *Debtor Defendants' Motion to Dismiss Plaintiff's Adversary Complaint* (the "**Motion**") with the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") in the above-captioned adversary proceeding. A hearing to consider the Motion is scheduled for

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December 17, 2013 at 10:00 a.m. (prevailing Eastern Time) before the Honorable Martin Glenn, United States Bankruptcy Judge, in Courtroom 501 at the Bankruptcy Court, One Bowling Green, New York, New York 10004.

PLEASE TAKE FURTHER NOTICE that any objection to the Motion must be in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court's electronic case filing system, and be served, so as to be received no later than **November 4, 2013 at 4:00 p.m. (prevailing Eastern Time)**, upon (a) counsel for the Debtors, Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attn: Gary S. Lee, Norman S. Rosenbaum and Erica J. Richards); (b) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Suite 1006, New York, NY 10014 (Attn: Tracy Hope Davis, Linda A. Riffkin, and Brian S. Masumoto); (c) the Office of the United States Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001 (Attn: US Attorney General, Eric H. Holder, Jr.); (d) Office of the New York State Attorney General, The Capitol, Albany, NY 12224-0341 (Attn: Nancy Lord, Esq. and Neal Mann, Esq.); (e) Office of the U.S. Attorney for the Southern District of New York, One St. Andrews Plaza, New York, NY 10007 (Attn: Joseph N. Cordaro, Esq.); (f) counsel for Ally Financial Inc., Kirkland & Ellis LLP, 153 East 53rd Street, New York, NY 10022 (Attn: Ray Schrock and Richard M. Cieri); (g) counsel to Barclays Bank PLC, as administrative agent for the DIP lenders, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036 (Attn: Ken Ziman & Jonathan H. Hofer); (h) counsel for the committee of unsecured creditors, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue

of the Americas, New York, NY 10036 (Attn: Kenneth Eckstein & Greg Horowitz); (i) counsel for Ocwen Loan Servicing, LLC, Clifford Chance US LLP, 31 West 52nd Street, New York, NY 10019 (Attn: Jennifer C. DeMarco and Adam Lesman); (j) Internal Revenue Service, P.O. Box 7346, Philadelphia, PA 19101-7346 (if by overnight mail, to 2970 Market Street, Mail Stop 5-Q30.133, Philadelphia, PA 19104-5016); and (k) Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281-1022 (Attn: George S. Canellos, Regional Director).

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written objection to the relief requested in the Motion, the Bankruptcy Court may deem any opposition waived, treat the motion as conceded, and enter an order granting the relief requested in the Motion without further notice or hearing.

Dated: October 4, 2013
New York, New York

/s/ Norman S. Rosenbaum
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UNITED STATES BANKRUPTCY COURT
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In re:	)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	)	Chapter 11
Debtors.	)	Jointly Administered
ALFREDIA PRUITT,	)	Adv. Case No. 13-01350 (MG)
Plaintiff,	)	
v.	)	
RESIDENTIAL CAPITAL, LLC, *et al.,*	)	
Defendants.	)	

DEBTOR DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S ADVERSARY COMPLAINT

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Residential Capital, LLC ("ResCap") and GMAC Mortgage, LLC ("GMAC Mortgage"), (collectively the "Debtor Defendants" or "Defendants"), debtors, and debtors, in possession in the above-captioned chapter 11 cases (collectively with all affiliated non-defendant debtors and debtors in possession, (the "Debtors"), hereby submit this motion (the "Motion") to dismiss the above-referenced adversary proceeding (the "Adversary Proceeding")[1] commenced by Plaintiff Alfredia Pruitt ("Plaintiff"). Plaintiff has already litigated and lost the exact claims at issue in this adversary proceeding at least four times. Thus, Plaintiff's claims are barred by *res judicata* and the complaint should be dismissed.

I. PRELIMINARY STATEMENT

Prior to filing this lawsuit, Plaintiff filed at least four earlier actions in the Superior Court of Gwinnett County, State of Georgia (the "State Court") bringing claims in connection with the allegedly wrongful foreclosure of Plaintiff's property—the exact same claims asserted in the Adversary Proceeding. All of the Plaintiffs' State Court actions were adjudicated and dismissed, ultimately leading to the State Court's issuance of a Bill of Peace that forbids Plaintiff from filing or serving any pleadings or suit ***in any court*** related to the property located at 2360 Hickory Station Circle, Snellville, Georgia 30078 (the "Property") without prior order of the State Court. Having exhausted all recourse in the State Court, Plaintiff asked this court for relief from the automatic stay to pursue another identical lawsuit—that request was denied.

Despite the repeated dismissals of her claims, Plaintiff disregarded the State Court order prohibiting her from filing any pleadings related to the Property and filed this adversary proceeding asserting, once again, identical claims and allegations. Plaintiffs' claims, however, are barred by *res judicata*.

[1] As used herein, "AP Docket" refers to documents filed in the Adversary Proceeding under Case Number 13-01309.

II. JURISDICTION AND VENUE

1. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 (a) and 1334(b). Venue is proper under 28 U.S.C. § 1409. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2). Pursuant to Local Bankruptcy Rule 7012-1, the Debtor Defendants consent to entry of a final order or judgment by this Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

III. BACKGROUND

A. General Bankruptcy Case Background

2. On May 14, 2012 (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code").

3. The Debtors are managing and operating their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. Their chapter 11 cases (collectively, the "Chapter 11 Cases")[2] are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). No trustee has been appointed in the Chapter 11 Cases.

4. On May 16, 2012, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed a nine member official committee of unsecured creditors (the "Creditors' Committee").

5. On June 20, 2012, the Court directed that an examiner be appointed (the "Examiner"), and on July 3, 2012, the Court approved Arthur J. Gonzalez as the Examiner

[2] As used herein, "Docket" refers to documents filed in the jointly administered Chapter 11 Cases under Case Number 12-12020.

[Docket Nos. 454, 674]. On May 13, 2013, the Examiner filed his report under seal [Docket Nos. 3677, 3697]. On June 26, 2013, the report was unsealed and made available to the public [Docket No. 4099].

6. On July 3, 2013, the Debtors filed the Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors [Docket No. 4153] (the "Plan") and the Disclosure Statement for the Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors [Docket No. 4157] (the "Disclosure Statement"). On August 16, 2013, the Debtors filed a revised Disclosure Statement, which includes a revised copy of the Plan [Docket No. 4733]. On August 23, 2013, the Court entered an order approving, inter alia, the Disclosure Statement, as amended [Docket No. 4809].

B. Events Giving Rise to the Adversary Proceeding

1. The Property and the Foreclosure

7. On September 7, 2010, the Property was sold at foreclosure.[3] On that same day, Plaintiff filed a petition for relief under chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia (the "Georgia Bankruptcy Court").[4] That bankruptcy filing was her third in a year. Exhibit 1-D.

8. On September 21, 2010, GMAC Mortgage filed a motion in Plaintiff's bankruptcy case asking the court to confirm that due to dismissal of the two prior bankruptcy cases filed by Plaintiff in the preceding year, the automatic stay did not arise upon the September 7, 2010 filing of Plaintiff's third bankruptcy case. Exhibit 1-C. On September 22, 2010, the

[3] See Order Denying and Dismissing the Above Styled Action for Failure to State a Claim upon which Relief May be Granted and Entry of Bill of Peace at 1, Case No. 12-A-01388-3 (Sup. Ct. Gwinnett Cty, State of Georgia Mar. 12, 2012), attached hereto as Exhibit 1-A.

[4] *See* Voluntary Petition, Case No. 10-86533 (MGD) (Bankr. N.D. Ga. Sept. 7, 2010), attached hereto as Exhibit 1-B.

Georgia Bankruptcy Court issued an order confirming that "the automatic stay under §362(a) did not go into effect upon or since the filing of [the] case and, as of the date [t]hereof, no order has been entered imposing a stay to the extent provided in 11 U.S.C. § 362(c)(3)(A)." Exhibit 1-D. Plaintiff's chapter 13 case was dismissed on November 17, 2010. Exhibit 1-E.

2. Plaintiff's Numerous Prior Lawsuits Related to the Foreclosure of the Property

9. On December 6, 2010, Plaintiff filed an action, captioned Pruitt v. Federal National Mortgage Association et. al., Case No. 10-A-10972-3, in State Court, naming, among others, "GMAC" as a defendant, and appealing the outcome of a December 1, 2010 dispossessory proceeding, seeking to enjoin the enforcement of the dispossessory order, and filing an "Original Complaint & Application For Temporary Restraining Order" (the "First Action"). Exhibit 1-R, December 6, 2010 Complaint. In this First Action, Plaintiff asserted that the foreclosure of the Property was unlawful and requested a preliminary injunction preventing GMAC Mortgage from proceeding with eviction despite the dispossessory order that GMAC Mortgage obtained on December 1, 2010. Exhibit 1-F, December 6, 2010 Notice of Appeal and Motion for Preliminary Injunction, at 2-4. On January 31, 2011, the State Court denied Plaintiff's request for a restraining order and injunctive relief, affirmed the dispossessory order, and granted final judgment in favor of the Defendants, including GMAC Mortgage. Exhibit 1-G.

10. On September 21, 2011, Plaintiff filed her second action in State Court, seeking a temporary restraining order and to set aside the foreclosure sale (the "Second Action").[5] That action, captioned Pruitt v. Federal National Mortgage Association et. al., Case No. 11-A-10084-3, asserted that the foreclosure of the Property was unlawful because GMAC

[5] Movant's initiating document in the Second Action was titled "Motion to Set Aside Foreclosure Sale and Temporary Restraining Order," but contained a cause of action for unlawful foreclosure, and resembled a complaint. "GMAC" was named as a defendant.

Mortgage was not the holder of Plaintiff's mortgage note. Exhibit 1-H. On September 22, 2011, the State Court denied Plaintiff's requests for a temporary restraining order and to set aside the foreclosure sale for failure to state a claim upon which relief could be granted. Exhibit 1-I.

11. On October 7, 2011, Plaintiff commenced her third action in State Court (the "Third Action"), captioned Pruitt v. Federal National Mortgage Association, et. al., Case No. 11-A-10675-3.[6] In the Third Action, Plaintiff asserted a cause of action for "wrongful foreclosure, fraudulent conveyance of property," and asked the State Court to issue a restraining order preventing her eviction, deem the mortgage on the Property void, and quiet title in Plaintiff's favor. Exhibit 1-J. On October 10, 2011, the State Court denied Plaintiff's request for a temporary restraining order and dismissed the Third Action for failure to state a claim upon which relief could be granted. Exhibit 1-K. Additionally, on January 26, 2012, the State Court directed the clerk of the court to cancel two lis pendens previously recorded by Plaintiff in connection with the Property. Exhibit 1-L.

12. On February 15, 2012, Plaintiff filed a fourth action in State Court (the "Fourth Action," and together with the First Action, the Second Action, and the Third Action, the "State Court Actions"),[7] captioned Pruitt v. MERS/GMAC et. al., Case No. 12-A-01388-3. See Exhibit 1-O. In the Fourth Action, Plaintiff once again asserted that the foreclosure of the Property was wrongful, sought to quiet title, and requested compensatory and punitive damages against the defendants, including GMAC Mortgage and Fannie Mae. See Exhibit 1-O.

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[6] GMAC Mortgage was once again named as a defendant.

[7] In addition to the State Court Actions, Plaintiff also filed an adversary proceeding, Adv. Proc. No. 11-05116 (MGD), in the fourth of her bankruptcy cases, Case No. 11-52442 (MGD) making substantially identical allegations and requesting substantially identical relief. See Exhibit 1-M. This matter as well, was subsequently dismissed as a result of the dismissal of Plaintiff's bankruptcy case. See Exhibit 1-N

13. On March 12, 2012, the State Court entered an order dismissing the Fourth Action. See Exhibit 1-A. Additionally, having presided over three prior lawsuits involving identical allegations in connection with the foreclosure of the Property, the State Court issued a Bill of Peace enjoining plaintiff from continuing her attempts to relitigate the same issues:

> [A]s this is the fourth suit in addition to an appeal from Magistrate Court that Plaintiff has filed with respect to the property located at 2360 Hickory Station Circle, Snellville, Georgia 30078 and the claims having been previously adjudicated in the three prior actions between the same parties, Plaintiff Alfredia Pruitt is hereby permanently enjoined from filing or serving in the above-styled case or filing or serving in any other case in any court any pleadings or suits related to the property located at 2360 Hickory Station Circle, Snellville, Georgia 30078 without further Order of this Court, with the exception of notices of appeal from this Order. *See* O.C.G.A. § 23-3-110 (a)(2).

Exhibit 1-A at 3.

3. Plaintiff's Actions Before This Court

14. On September 27, 2012, Plaintiff filed a proof of claim [Claim No. 835] in the Debtors' chapter 11 cases. See Exhibit 1-P. Thereafter, on October 9, 2012, Plaintiff withdrew her proof of claim. See Exhibit 1-Q.

15. On March 14, 2013, Plaintiff filed a Motion seeking relief from the automatic stay, apparently for the purposes of initiating another action arising out of the same facts and circumstances as each of the State Court Actions. On March 15, 2013, Plaintiff filed an amended Motion, seemingly requesting the same relief, but attaching additional documentation.

16. On April 12, 2013, this Court denied Plaintiff's motion for relief from the automatic stay ("Order Denying Relief from Stay") [Docket 3433]. The Order Denying Relief from Stay states: "stay relief would not result in a complete resolution of the issues, since the claims raised in Pruitt's Motion have already been dismissed at least five times. Allowing stay relief will not help resolve issues that are already effectively settled by multiple judicial orders." Order Denying Relief from Stay at 7. The Order further states that "any future action may be

barred by the Superior Court's Bill of Peace order [and] . . . judicial economy also does not favor allowing Pruitt to proceed with claims that have been dismissed." Id.

17. On May 24, 2013, Plaintiff filed a complaint initiating this Adversary Proceeding (the "Complaint") [AP Docket No. 1]. This Adversary Proceeding represents the seventh attempt by Plaintiff to assert the same claims that have been repeatedly dismissed in Georgia.[8]

IV. ARGUMENT

A. Plaintiff's Adversary Suit is Barred by the Doctrine of *Res Judicata*

18. The doctrine of *res judicata* bars relitigation of the same claims between the same parties or their privies after the matter has once been resolved by a court of competent jurisdiction. See Nally v. Bartow Cnty. Grand Jurors, 280 Ga. 790, 791 (2006); Stone v. Williams, 970 F.2d 1043, 1054 (2d Cir. 1992), cert. denied, 508 U.S. 906 (1993). *Res judicata* also precludes litigation of all claims that could have been raised in the earlier proceeding, whether or not they were actually raised and litigated. See Swinney v. Reeves, 224 Ga. 274, 275 (1968); Greenberg v. Bd. of Governors of Fed. Reserve Sys., 968 F.2d 164, 168 (2d Cir. 1992); Harborside Refrigerator Servs., Inc. v. Vogel, 959 F.2d 368, 372 (2d Cir. 1992).

19. Federal courts are required to give preclusive effect to state court judgments. Allen v. McCurry, 449 U.S. 90, 96 (1980); 28 U.S.C. § 1738 (Full Faith and Credit Act); see also Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 375 (1996); Parsons Steel, Inc. v. First Ala. Bank, 474 U.S. 518, 523 (1986) ("under the Full Faith and Credit Act a federal court must give the same preclusive effect to a state-court judgment as another court of that state would give"). The Bankrutpcy Code creates no exception to that requirement. See In re

[8] Plaintiff also asserted the same claims in two of her bankruptcy actions—though these never reached a decision on the merits.

Genesys Data Techs., Inc., 204 F.3d 124, 127-129 (4th Cir. 2000). Moreover, it is settled law that "when all relevant facts are shown by the court's own records, of which the court takes notice," Day v. Moscow, 955 F.2d 807, 811 (2d Cir. 1992), principles of *res judicata* may support a motion to dismiss. See also Dove v. Ty Cobb Healthcare Sys., Inc., 316 Ga. App. 7 (2012).

20. Dismissal of the Adversary Proceeding on *res judicata* grounds is appropriate here.

1. Each Element of *Res Judicata* Has Been Met.

21. A federal court must look to state law to determine the preclusive effect of a state court judgment. See Marrese v. Am. Acad. of Orthopaedic Surgeons, 470 U.S. 373, 381 (citing Kremer v. Chem. Constr. Corp., 456 U.S. 461, 466–468 (1982)). In Georgia, claims are precluded by *res judicata* when three perquisites are satisfied: (1) identity of the parties or their privies; (2) previous adjudication on the merits by a court of competent jurisdiction; (3) identity of the cause of action. Brown & Williamson Tobacco Corp. v. Gault, 280 Ga. 420 (2006). Each element of *res judicata* is satisfied here.

2. The Identity of the Parties or Their Privies Element is Satisfied

22. Plaintiff's adversary proceeding involves the same parties as her earlier lawsuits. GMAC Mortgage was named as a defendant in each of the State Court Actions—thus, the privity element of *res judicata* is satisfied. McGrue v. Saxon Mortg. Servs., No. 1:10–cv–1678–WSD , 2010 WL 2838403 at *2 (N.D. Ga. July 19, 2010); Jones v. Deutsche Bank Nat'l Trust Co. (In re Jones), Bankr. No. 09-91932-MHM, 2011 WL 2972130, at *2 (Bankr. N.D. Ga. June 3, 2011); Harris v. Jacksonville Paper Co., 67 Ga. App. 759 (1942) ("'[r]es judicata' and 'estoppel by judgment' can only be set up in a subsequent suit between ***the same parties*** or their privies") (emphasis added).

3. Four of Plaintiff's Prior Suits Were Adjudicated On the Merits By a Court of Competent Jurisdiction

23. Plaintiff's prior actions consist of appealing, and losing, the outcome of a dispossessory proceeding, and bringing multiple actions asserting wrongful foreclosure. (See Compl. ¶¶ 14-16; See Exhibit 1-G January 31, 2011 Order at 1; Exhibit 1-R December 6, 2010 Complaint; Exhibit 1-S December 6, 2010 Notice of Appeal and Motion for Preliminary Injunction ("Cause of Action (UNLAWFUL FORECLOSURE)"); Exhibit 1-H, September 21, 2011 Complaint ("Cause of Action (UNLAWFUL FORECLOSURE")); Exhibit 1-J October 7, 2011 Complaint at 2 ("wrongful foreclosure, fraudulent conveyance of property"); Exhibit 1-O February 15, 2012 Complaint ¶ 1 ("[w]rongful foreclosure, declaratory relief and judgment, title fraud/slander of title[.]"). These are state law claims. Thus, the earlier judgments issued by the State Court were rendered by a court of competent jurisdiction. See In re Jones, 2011 WL 2972130 at *2 (dismissing complaint due to *res judicata*, and implicitly holding that state courts are competent to decide issues pertaining to wrongful foreclosure and improper assignment of a mortgage note).

24. Moreover, each adjudication was on the merits. An earlier dismissal for "failure to state a claim" constitutes a final judgment on the merits. See Henry v. Aurora Loan Servs. LLC, No. 1:11-cv-0949, 2011 WL 1674834, at *1 (N.D. Ga. May 2, 2011) (*res judicata* applied to bar later action when first action was dismissed for failure to state a plausible claim for relief); see also Dillingham v. Doctors Clinic, P.A., 236 Ga. 302 (1976); Piedmont Cotton Mills, Inc. v. Woelper, 269 Ga. 109 (1998). On this basis alone, each of the State Court's orders constitutes a final judgment on the merits for purposes of *res judicata.* Plaintiff's four State Court Actions were "dismissed for failure to state a claim upon which relief may be granted," and for failing "to present[ ] any law or facts that would support" her position. See Exhibit 1-G,

January 31, 2011 Order at 1 ("having read and considered the entire record, including . . . [Plaintiff's] motion for a preliminary injunction and temporary restraining order, and her Complaint, the Court finds that Plaintiff has failed to proffer any evidence or authority to suggest [that foreclosure was unlawful]"; Exhibit 1-I, September 22, 2011 Order at 3 ("DENIES AND DISMISSES [Plaintiff's] Motion to Set Aside Foreclosure Sale and the above-styled action for failure to state a claim upon which relief may be granted"); Exhibit 1-K, October 10, 2011 Order at 3 ("DISMISSES the above-styled action for failure to state a claim upon which relief may be granted"); Exhibit 1-A, March 12, 2012 Order at 4 ("DISMISSES the above-styled action for failure to state a claim upon which relief may be granted").

25. Referencing the First Action, Plaintiff suggests that she appealed the adverse ruling in the "dispossessory proceeding," but that the case "wasn't heard" because she "was unable to pay [the] required amount[.]" (See Compl. at 4-5). Plaintiff misstates the outcome of her First Action. Although the Superior Court stated that Plaintiff failed to tender past due amounts "undisputedly owed under [ ] mortgage loan" and "failed to pay $5,100.00 in the registry of the court," it nevertheless decided the merits. Exhibit 1-G, January 31, 2011 Order at 1-2. The Georgia Superior Court's January 31, 2011 Order states:

> Plaintiff filed this action on December 6, 2010, seeking to appeal the December 1, 2010 Order pursuant to O.C.G.A. § 15-10-41(b)(1). At the same time Plaintiff filed a proposed Complaint and application [ ] for a temporary restraining order[.]
>
> . . .
>
> After hearing argument from the parties on January 24, 2011 and having read and considered the entire record, including all submissions with respect to Plaintiff's appeal of the December 1, 2010 Order, her motion for a preliminary injunction and temporary restraining order, and her Complaint, the Court finds that Plaintiff has failed to proffer any evidence or authority to suggest that the December 1, 2010 Order is in error in any respect, nor has she presented any law or facts that would support entry of a restraining order or injunction against any Defendant.
>
> . . .

> ORDERED (i) that the December 1, 2010 Order is AFFIRMED; (ii) that a Writ of Possession shall immediately issue to Defendant Federal National Mortgage Association; (iii) that Plaintiff's motions for a restraining order and injunctive relief are DENIED, and (iv) that FINAL JUDGMENT be and is hereby entered in favor of all DEFENDANTS as to all claims asserted by Plaintiff in this proceeding.

(Ex 1-G at 1-2.)

26. The finality of the January 31, 2011 Order further demonstrates that it constitutes a judgment on the merits. Expressly titled "Final Order and Judgment," it states that "FINAL JUDGMENT be and is hereby entered in favor of all DEFENDANTS as to all claims asserted by Plaintiff in this proceeding"). (Id.) Thus, the Order left no issues to be decided—orders such as these constitute a "judgment on the merits" under Georgia law. See In re Jones, 2011 WL 2972130 (holding that dismissal with prejudice constitutes final judgment on the merits); Standridge v. Spillers, 263 Ga. App. 401, 403 (2003) (order that "leaves no issues remaining to be resolved, constitutes the court's final ruling on the merits of the action"); see also Ruth v. Herrman, 291 Ga.App. 399, 400-401 (2008) (collateral estoppel warranted because denial of motion to remove a lien in an earlier divorce proceeding constituted final judgment on the merits for purposes of later action brought to remove the same lien). Moreover, the March 12, 2012 Order dismissing the Fourth Action goes even further to demonstrate its finality on the merits. That Order explicitly bars plaintiff from "filing or serving in any other case in any court any pleadings or suits related to [the Property][.]" Exhibit 1-A, at 3. Despite that bar, Plaintiff asserts the same claims here.

27. Not one of the State Court's orders leave doubt as to its finality.

4. The Identity of the Cause of Action Element is Satisfied Because Plaintiff Asserts the Same Claims and Allegations As Her Previous Complaints

28. Identity of the cause of action exists "when there is commonality in the nucleus of operative facts of the actions." McGrue v. Saxon Mortg. Servs., 2010 WL 2838403 at

*1-2. "The causes of action are not required to be identical in both cases, so long as there is the same 'nucleus of operative facts.'" Id. at 2 (citing Adams v. S. Farm Bureau Life Ins. Co., 493 F.3d 1276, 1290 (11th Cir. 2007); Hill v. Wooten, 247 Ga. 737 (1981) (state court action barred by *res judicata* because it and the original federal court action concerned a "common nucleus of operative fact"); Mobley v. Sewell, 226 Ga. App. 866, 868 (1997) (action to set aside deed on grounds of fraud, conspiracy and breach of contract was barred by *res judicata* where there was a previous superior court order denying claim of fraudulent conveyance and ordering property to be sold at public auction). So long as the same set of operative facts is at issue, it makes no difference whether the plaintiff purports to assert his or her claims under a different legal theory. ChoicePoint Servs., Inc. v. Hiers, 284 Ga. App. 640, 641 (2007) (holding that *res judicata* bars subsequent actions "'as to all matters put in issue or which under the rules of law might have been put in issue' in the original action") (internal citations omitted).

29. To determine whether the same nucleus of operative facts exists, "the Court lines up the former and current cases side-by-side to assess their factual similarities." McGrue v. Saxon Mortg. Servs., 2010 WL 2838403 at *1 (internal citations omitted). Here, plaintiff premises each of her causes of action on the same allegation: that the mortgage note was never properly assigned to GMAC Mortgage, thus GMAC Mortgage lacks any interest in her property. (See Compl. at ¶¶ 21-22; 23-24, 26, 28-30; 32-33; 36-37; 41-42; 49-50; 53-55; 58.)[9] And each of Plaintiff's earlier actions can be boiled down to this same allegation.[10] Thus, the

[9] Plaintiff phrases this allegation slightly differently throughout her complaint (e.g. "GMAC was not the lender nor Holder of the note," "there was no assignment," and that GMAC Mortgage failed to "verify[ ] the assignment" when it foreclosed), but each of these amounts to the same allegation: that GMAC Mortgage lacked authority to foreclose.

[10] (See E.g. Exhibit 1-R December 6, 2010 Complaint at ¶¶ 10, 17 ("GMAC . . . purchased Plaintiff's property at a sale in which GMAC was not the beneficiary or holder of the note," "GMAC is not the beneficiary of the note and had no right to foreclose on the note"); Exhibit 1-H ¶¶ 10, 17 ("GMAC . . . purchased Plaintiff's property at a sale in which GMAC was not the beneficiary or holder of the note," "GMAC is not the beneficiary of the note and had no right to foreclose on the note"); Exhibit 1-J ¶¶ 10, 27-32 ("there are several fraudulent problems with the note,

identity of the cause of action element is easily satisfied. See McGrue v. Saxon Mortg. Servs., 2010 WL 2838403 at *1-2 (identity of the cause of action element satisfied where Plaintiff asserted different claims from an earlier action, but premised them on the same allegation "that Defendant did not have a legal interest in [Plaintiff's] property").

30. In addition to basing her claims on identical factual allegations—each of Plaintiff's complaints assert the same causes of action. The Complaint in this Adversary Proceeding asserts causes of action for "unlawful foreclosure," "bad faith by not verifying the assignment," and "Violation of the Doctrine of Privity, GMAC did not have a contractual right to collect payments, nor the right to sue to enforce the right." Compl. at 5, 8, and 10. Plaintiff's Complaint in the First Action asserts a single cause of action for "unlawful foreclosure" on the basis that "GMAC is not the beneficiary of the note and had no right to foreclose." Exhibit 1-R December 6, 2010 Complaint at Part D.; see also ¶ 17. Plaintiff's Second Action asserts an identical claim. Exhibit 1-H, September 21, 2011 Complaint at Part D.; see also ¶ 17. Although Plaintiff re-worded the Complaint in her Third Action—it still asserts an identical claim. Exhibit 1-J October 7, 2011 Complaint at Part C. ("Wrongful Foreclosure); see also ¶ 28 ("Defendant's failure to produce the original note and show that MERS and Defendants were holders of the instrument bring Plaintiff's claim of wrongful foreclosure."); Part F. ("Request for Quiet Title Hearing and Issuance of Temporary Restraining Order"). Plaintiff's Fourth Action is largely the same as the first three actions (and the Complaint in this Adversary Proceeding). The Complaint in her Fourth Action asserts causes of action premised on "wrongful foreclosure," "doctrine of

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including but not limited to notarial, signatures and unlawful assignments," "Defendants have not produced the original note or shown that MERS was a holder that had a right to assign/enforce," "MERS . . . assignment of the deed of trust to GMAC . . . had no []force," "the rights bestowed upon MERS . . . are insufficient . . . to effectuate a valid assignment of mortgage to GMAC"); Exhibit 1-O ¶¶ 17, 18, 19 ("none of the defendants had recorded any assignment of title," "only the documented secured creditor/Holder In Due Course can foreclose on subject property").

privity of contract," "Improper Mortgage Securitization," and "Quiet Title." Exhibit 1-O, February 15, 2012 Complaint at 4-5; 9-10. This Fourth Action also rested on the allegation that an improper assignment took place and that GMAC Mortgage lacked authority to foreclose.

31. Each of Plaintiff's complaints asserts the same causes of actions and the same core allegation. This satisfies the identity of the cause of action element. *See* Henry v. Aurora Loan Servs. LLC, 2011 WL 1674834 at *1 (second action "to set aside the same foreclosure proceeding" barred by *res judicata*); Jones v. Deutsche Bank National Trust Co., 2011 WL 2972130 at *1-2 (adversary proceeding challenging foreclosure sale and alleging fraudulent assignment of mortgage note dismissed on *res judicata* grounds because of adjudication of earlier petition to set aside the foreclosure sale); see also McGrue v. Saxon Mortg. Servs., 2010 WL 2838403 at *1-2.

32. For these reasons, *res judicata* forecloses Plaintiff's attempt to assert the same claims in this Adversary Proceeding that she previously asserted in four other actions.

B. Plaintiff Inaccurately Asserts that the Foreclosure on the Property Took Place in Violation of the Automatic Stay.

33. Plaintiffs' unlawful foreclosure cause of action asserts that Defendant foreclosed on the Property on September 7, 2010, approximately 1.5 hours after she filed for bankruptcy. (Compl. at 2, 5.) Based on this, she implies that Defendant violated the automatic stay—and therefore the foreclosure was unlawful. (Id. at 5.) This argument fails for three reasons.

34. First, Plaintiff's September 7, 2010 bankruptcy filing was preceded by two earlier bankruptcy cases that year. See Exhibit 1-D. Both were dismissed. Id. For that reason, the automatic stay never went into effect. The Georgia Bankruptcy Court confirmed as much, stating: "the automatic stay under §362(a) did not go into effect upon or since the filing of [the]

case and, as of the date [t]hereof, no order has been entered imposing a stay to the extent provided in 11 U.S.C. § 362(c)(3)(A)." Id. at 2. Thus, the foreclosure on the Property did not violate the automatic stay.

35. Second, if Plaintiff disagreed with the Georgia Bankruptcy Court's decision, she could have appealed. She did not—instead she seeks to circumvent the Georgia Bankruptcy Court by filing this Adversary Proceeding.

36. Third, even if Plaintiff's inaccurate characterization of the Georgia bankruptcy proceeding were correct—her claims here would still be barred by *res judicata*. After the Georgia Bankruptcy court issued the above-referenced order, Plaintiff filed four actions in State Court seeking to set aside the foreclosure. In not one of these actions did Plaintiff assert that the foreclosure was unlawful because it took place in violation of the automatic stay. She was free to do so—and because that argument arises from the same nucleus of operative facts as her other claims and allegations regarding unlawful foreclosure, she is barred from doing so here. *Res judicata* bars a party from asserting her claims piecemeal in separate actions when all the claims concern the same set of facts. Flagg Energy Dev. Corp. v. Gen. Motors Corp., 235 Ga. App. 540, 542 (1998) (holding that "[r]es judicata prevents plaintiffs from splitting up claims arising from the same transaction and prosecuting them piecemeal or presenting only a portion of the grounds on which relief is sought and leaving the rest for a second suit if the first fails") (citations omitted).

V. CONCLUSION

37. Accordingly, for the reasons set forth herein, the Debtor Defendants respectfully request that the Court dismiss the Adversary Proceeding with prejudice and grant such other and further relief as it deems just and proper.

Dated: October 4, 2013
New York, New York

/s/ Norman S. Rosenbaum

Gary S. Lee
Norman S. Rosenbaum
Paul Galante
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

Counsel for the Debtors and Debtors in Possession

Exhibit 1-A

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

2012 MAR 12 PM 2:27

[illegible] ALEXANDER, CLERK

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ALFREDIA PRUITT, Plaintiff, v. MERS/GMAC, USAA FEDERAL SAVINGS BANK, FEDERAL NATIONAL MORTGAGE ASSOCIATION, FANNIE MAE, Defendants.	*	Civil Action File No. 12-A-01388-3 Plaintiff's *pro se* Complaint for Wrongful Foreclosure, Declaratory Relief and Judgement, Assignment and Title Fraud/Slander of Title, Violation of Duty of Good Faith and Fair Dealing; Claim for Litigation Fees and Costs and Punitive Damages filed 2/15/2012

ORDER DENYING AND DISMISSING
THE ABOVE-STYLED ACTION FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED
AND
ENTRY OF BILL OF PEACE

Whereas on February 15, 2012, the Plaintiff filed the above-styled action, Civil Action File no. 12-A-01388-3, asserting claims for wrongful foreclosure, declaratory relief and judgment, title fraud/slander of title, violation of duty of good faith and fair dealing, litigation fees and costs, and punitive damages in connection with the foreclosure of a home located at 2360 Hickory Station Circle, Snellville, Georgia 30078 (*see* Plaintiff's Complaint at ¶ 1);

Whereas the home was sold at foreclosure on September 7, 2010 (*see* Plaintiff's Complaint at ¶ 2);

Whereas the Plaintiff previously filed Civil Action File No. 10-A-10972-3, an appeal from Magistrate Court, which addressed the same issues involved and the same parties in the above-styled Civil Action File No. 12-A-01388-3;

Whereas in Civil Action File No. 10-A-10972-3, the Court entered a Final Order and Judgment filed on January 31, 2011 and issued a Writ of Possession filed on January 31, 2011; on February 1, 2011, the Court filed an Order Terminating Action

Pending Bankruptcy and Order Staying Previously Entered Writ of Possession filed on January 31, 2011; on September 12, 2011, the Court filed an Order Reopening Case and Lifting Stay and Order Reinstating Writ of Possession filed on January 31, 2011;

Whereas in Civil Action File No. 10-A-10972-3, following a show cause hearing, the Court entered an Order Dismissing Alfredia Pruitt's Notice of Appeal and Amended Notices of Appeal pursuant to O.C.G.A. § 5-6-48(c) for failure to pay costs (*see* Order filed January 26, 2012);

Whereas on September 21, 2011, Plaintiff filed Civil Action File No. 11-A-10084-3, which addressed the same issues involved and the same parties in Civil Action File No. 10-A-10972-3 and the above-styled Civil Action File No. 12-A-01388-3;

Whereas in Civil Action File No. 11-A-10084-3, the Court entered an Order dismissing the action for failure to state a claim upon which relief may be granted (*see* Order filed September 22, 2011);

Whereas in Civil Action File No. 11-A-10084-3, following a show cause hearing, the Court entered an Order Dismissing Alfredia Pruitt's Notice of Appeal and Amended Notices of Appeal pursuant to O.C.G.A. § 5-6-48(c) for failure to pay costs (*see* Order filed January 26, 2012);

Whereas on October 7, 2011, Plaintiff filed Civil Action File No. 11-A-10675-3, which addressed the same issues involved and the same parties in Civil Action File Nos. 10-A-10972-3 and 11-A-10084-3 and the above-styled Civil Action File No. 12-A-01388-3;

Whereas in Civil Action File No. 11-A-10675-3, the Court entered an Order dismissing the action for failure to state a claim upon which relief may be granted (*see* Order filed on October 10, 2011);

Whereas in Civil Action File No. 11-A-10675-3, following a show cause hearing, the Court entered an Order Dismissing Alfredia Pruitt's Notice of Appeal pursuant to O.C.G.A. § 5-6-48(c) for failure to pay costs (*see* Order filed January 26, 2012);

Wherefore the Court, having read and considered the Complaint in Civil Action 12-A-01388-3, as well as the entire record, hereby **DISMISSES** the above-styled action for failure to state a claim upon which relief may be granted, as the same has been previously adjudicated by Final Orders Civil Action File Nos. 10-A-10972-3, 11-A-10084-3, and 11-A-10675-3.

Additionally, as this is the fourth suit in addition to an appeal from Magistrate Court that Plaintiff has filed with respect to the property located at 2360 Hickory Station Circle, Snellville, Georgia 30078 and the claims having been previously adjudicated in the three prior actions between the same parties, Plaintiff Alfredia Pruitt is hereby permanently enjoined from filing or serving in the above-styled case or filing or serving in any other case in any court any pleadings or suits related to the property located at 2360 Hickory Station Circle, Snellville, Georgia 30078 without further Order of this Court, with the exception of notices of appeal from this Order. *See* O.C.G.A. § 23-3-110 (a)(2).

The Court notes that the Georgia Court of Appeals denied an emergency motion that Plaintiff filed in connection with one of her previously filed actions, finding the Plaintiff was not entitled to maintain possession of the premises pending appeal and that said appeal was not timely filed. *See* Court of Appeals No. MD-12-04, October 6, 2011.

SO ORDERED, this 9th day of March, 2012.

DAWSON JACKSON, Judge
Gwinnett Superior Court

Copies to:

Alfredia Pruitt, *pro se*
P.O. Box 1312
Norcross, GA 30071

A.William Loeffler, Esq.
Teah N. Glenn, Esq.
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree St., NE
Suite 5200
Atlanta, GA 30308-2216

Exhibit 1-B

B1 (Official Form 1) (4/10)

UNITED STATES BANKRUPTCY COURT

FILED IN CLERK'S OFFICE
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT
OF GEORGIA

2010 SEP -7 AM 8:32

M. REGINA THOMAS
CLERK
BY _____
DEPUTY CLERK

Name of Debtor (if individual, enter Last, First, Middle): Ruth Alford	Name of Joint Debtor (Spouse) (Last, First, Middle): Jackie Dukes
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all): 3328	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): 2368 Hickory Station Cr. Snellville GA 30078 ZIP CODE	Street Address of Joint Debtor (No. and Street, City, and State): ZIP CODE
County of Residence or of the Principal Place of Business: Gwinnett	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): ZIP CODE	Mailing Address of Joint Debtor (if different from street address): 10-86533 ZIP CODE
Location of Principal Assets of Business Debtor (if different from street address above): ZIP CODE	

Type of Debtor (Form of Organization) (Check one box.)

- [x] Individual (includes Joint Debtors) *See Exhibit D on page 2 of this form.*
- [ ] Corporation (includes LLC and LLP)
- [ ] Partnership
- [ ] Other (If debtor is not one of the above entities, check this box and state type of entity below.)

Nature of Business (Check one box.)

- [ ] Health Care Business
- [ ] Single Asset Real Estate as defined in 11 U.S.C. § 101(51B)
- [ ] Railroad
- [ ] Stockbroker
- [ ] Commodity Broker
- [ ] Clearing Bank
- [ ] Other

Tax-Exempt Entity (Check box, if applicable.)

- [ ] Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).

Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box.)

- [ ] Chapter 7
- [ ] Chapter 9
- [ ] Chapter 11
- [ ] Chapter 12
- [x] Chapter 13
- [ ] Chapter 15 Petition for Recognition of a Foreign Main Proceeding
- [ ] Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

Nature of Debts (Check one box.)

- [x] Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
- [ ] Debts are primarily business debts.

Filing Fee (Check one box.)

- [x] Full Filing Fee attached.
- [ ] Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.
- [ ] Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.

Chapter 11 Debtors

Check one box:
- [ ] Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).
- [ ] Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).

Check if:
- [ ] Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,343,300 (*amount subject to adjustment on 4/01/13 and every three years thereafter*).

Check all applicable boxes:
- [ ] A plan is being filed with this petition.
- [ ] Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

Statistical/Administrative Information — THIS SPACE IS FOR COURT USE ONLY

- [ ] Debtor estimates that funds will be available for distribution to unsecured creditors.
- [ ] Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors

1-49	50-99	100-199	200-999	1,000-5,000	5,001-10,000	10,001-25,000	25,001-50,000	50,001-100,000	Over 100,000
[x]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

Estimated Assets

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	$100,000,001 to $500 million	$500,000,001 to $1 billion	More than $1 billion
[ ]	[ ]	[x]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

Estimated Liabilities

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	$100,000,001 to $500 million	$500,000,001 to $1 billion	More than $1 billion
[ ]	[ ]	[x]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

B1 (Official Form 1) (4/10)

Voluntary Petition *(This page must be completed and filed in every case.)*	Name of Debtor(s): Afredia Pruitt	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)		
Location Where Filed: Northern	Case Number: 10-18992	Date Filed:
Location Where Filed:	Case Number:	Date Filed:
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)		
Name of Debtor:	Case Number:	Date Filed:
District:	Relationship:	Judge:

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).

X _____
Signature of Attorney for Debtor(s) (Date)

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

☒ No.

Exhibit D

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☑ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

Information Regarding the Debtor - Venue
(Check any applicable box.)

☑ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Certification by a Debtor Who Resides as a Tenant of Residential Property
(Check all applicable boxes.)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

_____
(Name of landlord that obtained judgment)

_____
(Address of landlord)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

Voluntary Petition
(This page must be completed and filed in every case.)

Name of Debtor(s):

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

Telephone Number (if not represented by attorney)

Date 9-7-10

Signature of Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. *Certified copies of the documents required by 11 U.S.C. § 1515 are attached.*

☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
(Signature of Foreign Representative)

_____
(Printed Name of Foreign Representative)

_____
Date

Signature of Attorney*

X _____
Signature of Attorney for Debtor(s)

_____
Printed Name of Attorney for Debtor(s)

_____
Firm Name

_____

_____
Address

_____
Telephone Number

_____
Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

_____
Printed Name and title, if any, of Bankruptcy Petition Preparer

_____
Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

_____

_____
Address

X _____

_____
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

_____
Printed Name of Authorized Individual

_____
Title of Authorized Individual

_____
Date

B 1D (Official Form 1, Exhibit D) (12/09)

UNITED STATES BANKRUPTCY COURT

Northern District of Georgia

In re Alfreda Pruitt
Debtor

Case No. _____ (if known)

EXHIBIT D - INDIVIDUAL DEBTOR'S STATEMENT OF COMPLIANCE WITH CREDIT COUNSELING REQUIREMENT

Warning: You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors' collection activities.

Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.

☐ 1. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.*

☒ 2. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 14 days after your bankruptcy case is filed.*

3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the seven days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now. *[Summarize exigent circumstances here.]*

Consumer Credit Counseling

If your certification is satisfactory to the court, you must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy petition and promptly file a certificate from the agency that provided the counseling, together with a copy of any debt management plan developed through the agency. Failure to fulfill these requirements may result in dismissal of your case. Any extension of the 30-day deadline can be granted only for cause and is limited to a maximum of 15 days. Your case may also be dismissed if the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing.

☐ 4. I am not required to receive a credit counseling briefing because of: *[Check the applicable statement.] [Must be accompanied by a motion for determination by the court.]*

☐ Incapacity. (Defined in 11 U.S.C. § 109(h)(4) as impaired by reason of mental illness or mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities.);

☐ Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing in person, by telephone, or through the Internet.);

☐ Active military duty in a military combat zone.

☐ 5. The United States trustee or bankruptcy administrator has determined that the credit counseling requirement of 11 U.S.C. § 109(h) does not apply in this district.

I certify under penalty of perjury that the information provided above is true and correct.

Signature of Debtor: Alyshedia Pruitt

Date: 9/7/10

WARNING: Effective December 1, 2009, the 15-[illegible]

Bankruptcy Rule 1007(c) is shortened to 14 days. For further information, see note at bottom of page 2

UNITED STATES BANKRUPTCY COURT

NOTICE TO CONSUMER DEBTOR(S) UNDER §342(b) OF THE BANKRUPTCY CODE

In accordance with § 342(b) of the Bankruptcy Code, this notice to individuals with primarily consumer debts: (1) Describes briefly the services available from credit counseling services; (2) Describes briefly the purposes, benefits and costs of the four types of bankruptcy proceedings you may commence; and (3) Informs you about bankruptcy crimes and notifies you that the Attorney General may examine all information you supply in connection with a bankruptcy case.

You are cautioned that bankruptcy law is complicated and not easily described. Thus, you may wish to seek the advice of an attorney to learn of your rights and responsibilities should you decide to file a petition. Court employees cannot give you legal advice.

Notices from the bankruptcy court are sent to the mailing address you list on your bankruptcy petition. In order to ensure that you receive information about events concerning your case, Bankruptcy Rule 4002 requires that you notify the court of any changes in your address. If you are filing a **joint case** (a single bankruptcy case for two individuals married to each other), and each spouse lists the same mailing address on the bankruptcy petition, you and your spouse will generally receive a single copy of each notice mailed from the bankruptcy court in a jointly-addressed envelope, unless you file a statement with the court requesting that each spouse receive a separate copy of all notices.

1. Services Available from Credit Counseling Agencies

With limited exceptions, § 109(h) of the Bankruptcy Code requires that all individual debtors who file for bankruptcy relief on or after October 17, 2005, receive a briefing that outlines the available opportunities for credit counseling and provides assistance in performing a budget analysis. The briefing must be given within 180 days before the bankruptcy filing. The briefing may be provided individually or in a group (including briefings conducted by telephone or on the Internet) and must be provided by a nonprofit budget and credit counseling agency approved by the United States trustee or bankruptcy administrator. The clerk of the bankruptcy court has a list that you may consult of the approved budget and credit counseling agencies. Each debtor in a joint case must complete the briefing.

In addition, after filing a bankruptcy case, an individual debtor generally must complete a financial management instructional course before he or she can receive a discharge. The clerk also has a list of approved financial management instructional courses. Each debtor in a joint case must complete the course.

2. The Four Chapters of the Bankruptcy Code Available to Individual Consumer Debtors

Chapter 7: Liquidation ($245 filing fee, $39 administrative fee, $15 trustee surcharge: Total fee $299)

Chapter 7 is designed for debtors in financial difficulty who do not have the ability to pay their existing debts. Debtors whose debts are primarily consumer debts are subject to a "means test" designed to determine whether the case should be permitted to proceed under chapter 7. If your income is greater than the median income for your state of residence and family size, in some cases, the United States trustee (or bankruptcy administrator), the trustee, or creditors have the right to file a motion requesting that the court dismiss your case under § 707(b) of the Code. It is up to the court to decide whether the case should be dismissed.

Under chapter 7, you may claim certain of your property as exempt under governing law. A trustee may have the right to take possession of and sell the remaining property that is not exempt and use the sale proceeds to pay your creditors.

The purpose of filing a chapter 7 case is to obtain a discharge of your existing debts. If, however, you are

found to have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge and, if it does, the purpose for which you filed the bankruptcy petition will be defeated.

Even if you receive a general discharge, some particular debts are not discharged under the law. Therefore, you may still be responsible for most taxes and student loans; debts incurred to pay nondischargeable taxes; domestic support and property settlement obligations; most fines, penalties, forfeitures, and criminal restitution obligations; certain debts which are not properly listed in your bankruptcy papers; and debts for death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs. Also, if a creditor can prove that a debt arose from fraud, breach of fiduciary duty, or theft, or from a willful and malicious injury, the bankruptcy court may determine that the debt is not discharged.

Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income ($235 filing fee, $39 administrative fee: Total fee $274)

Chapter 13 is designed for individuals with regular income who would like to pay all or part of their debts in installments over a period of time. You are only eligible for chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.

Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, using your future earnings. The period allowed by the court to repay your debts may be three years or five years, depending upon your income and other factors. The court must approve your plan before it can take effect.

After completing the payments under your plan, your debts are generally discharged except for domestic support obligations; most student loans; certain taxes; most criminal fines and restitution obligations; certain debts which are not properly listed in your bankruptcy papers; certain debts for acts that caused death or personal injury; and certain long term secured obligations.

Chapter 11: Reorganization ($1000 filing fee, $39 administrative fee: Total fee $1039)

Chapter 11 is designed for the reorganization of a business but is also available to consumer debtors. Its provisions are quite complicated, and any decision by an individual to file a chapter 11 petition should be reviewed with an attorney.

Chapter 12: Family Farmer or Fisherman ($200 filing fee, $39 administrative fee: Total fee $239)

Chapter 12 is designed to permit family farmers and fishermen to repay their debts over a period of time from future earnings and is similar to chapter 13. The eligibility requirements are restrictive, limiting its use to those whose income arises primarily from a family-owned farm or commercial fishing operation.

3. Bankruptcy Crimes and Availability of Bankruptcy Papers to Law Enforcement Officials

A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury, either orally or in writing, in connection with a bankruptcy case is subject to a fine, imprisonment, or both. All information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the United States Trustee, the Office of the United States Attorney, and other components and employees of the Department of Justice.

WARNING: Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information regarding your creditors, assets, liabilities, income, expenses and general financial condition. Your bankruptcy case may be dismissed if this information is not filed with the court within the time deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court. The documents and the deadlines for filing them are listed on Form B200, which is posted at http://www.uscourts.gov/bkforms/bankruptcy_forms.html#procedure.

Many filing deadlines change on December 1, 2009. Of special note, 12 rules that set 15 days to act are amended to require action within 14 days, including Rule 1007(c), filing the initial case papers; Rule 3015(b), filing a chapter 13 plan; Rule 8009(a), filing appellate briefs; and Rules 1019, 1020, 2015, 2015.1, 2016, 4001, 4002, 6004, and 6007.

United States Bankruptcy Court
12-12020-mg53 Doc 3354-1 Filed 04/04/13 Entered 04/04/13 15:08:50 01 Appendix
Exhibits 1-A through 1-C Pg 17 of 40

In re Alfredia Pruitt
Debtor

Case No. _____

Chapter _____

CERTIFICATION OF NOTICE TO CONSUMER DEBTOR(S) UNDER § 342(b) OF THE BANKRUPTCY CODE

Certification of [Non-Attorney] Bankruptcy Petition Preparer

I, the [non-attorney] bankruptcy petition preparer signing the debtor's petition, hereby certify that I delivered to the debtor the attached notice, as required by § 342(b) of the Bankruptcy Code.

Printed name and title, if any, of Bankruptcy Petition Preparer

Address:

Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

X _____

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Certification of the Debtor

I (We), the debtor(s), affirm that I (we) have received and read the attached notice, as required by § 342(b) of the Bankruptcy Code.

Alfredia Pruitt

Printed Name(s) of Debtor(s)

X Alfredia Pruitt 9/9/10

Signature of Debtor Date

Case No. (if known) _____

X _____

Signature of Joint Debtor (if any)

Date

Instructions: Attach a copy of Form B 201A, Notice to Consumer Debtor(s) Under § 342(b) of the Bankruptcy Code.

Use this form to certify that the debtor has received the notice required by 11 U.S.C. § 342(b) **only** if the certification has **NOT** been made on the Voluntary Petition, Official Form B1. Exhibit B on page 2 of Form B1 contains a certification by the debtor's attorney that the attorney has given the notice to the debtor. The Declarations made by debtors and bankruptcy petition preparers on page 3 of Form B1 also include this certification.

McCurdy + Candler Six Piedmont Road NE Atlanta GA 30305	

U. S. BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

01145839 - JD
September 7, 2010

Code	Case No	Qty	Amount	By
13I	10-86533	1	$0.00	CA
Judge - Not Assigned []				
Debtor - A. PRUITT				
TOTAL:			$0.00	

FROM: Alfredia Pruitt
2360 Hickory Station Circle
Snellville, GA 30078

CASE NUMBER: 10-86533 MJD CHAPTER: 13

(✓) Paid $ 0
( ) IFP filed (Ch.7 Individuals Only)

(✓) Non-Business
( ) Business

( ) Complete
(✓) Incomplete

Orders on Fee Application (✓) **Order Issued** ( ) **Application NOT filed**

Chapter 7 (Individuals Only)
( ) 02g - Chapter 7 Order Granting

Chapter 13 (Individuals Only)
( ) 02g - Chapter 13 Order Granting: 2 Installments of $_____ each
( ) 03g - Chapter 13 Order Granting - 10 day (3 Installments of $75.00, $99.50 & $99.50)
(✓) 02d - Chapter 13 Order Denying $ 274.00 due

Chapter 11 (Individuals Only)
( ) 02g - Chapter 11 Order Granting: 2 Installments of $_____ each
( ) 03g - Chapter 11 Order Granting - 10 day (3 Installments of $339.00, $350.00 & $350.00)
( ) 02d - Chapter 11 Order Denying $ _____ due

Missing Documents:
( ) Matrix - **Requires separate Order**
( ) Pro se Affidavit
( ) Form B21

( ) Voluntary Petition not on Official Form One (4/10)
( ) Exhibit D - Individuals only (12/09)
(✓) Statement of Financial Affairs (4/10)
(✓) Schedules: A B D F G H I J (12/07) C E (4/10)
(✓) Summary of Schedules (12/07)
(✓) Statistical Summary (12/07)
(✓) Declaration Page for Summary & Schedules (12/07)
( ) Statement of Intent - Ch. 7 individual only (12/08)
( ) Attorney Disclosure Statement (12/94)
( ) Petition Preparer Disclosure Statement Fm280 (10/05)
( ) Declaration & Notice: Non-Atty Pet. Preparer B19 (12/07)
( ) Certification of Notice 342- Form 201B (12/09)
(✓) Statement of Current Monthly Income/Means Test
Ch.7/13 (4/10); Ch.11 (1/08)
(✓) Chapter 13 Plan, complete with signatures (4/08)
(✓) Certificate of Credit Counseling
(✓) Pay Advices
( ) Corporate Resolution (Business Ch. 7 & 11)

Ch.11 Business
( ) 20 Largest Unsecured Creditors
( ) List of Equity Security Holders
( ) Small Business - Balance Sheet
( ) Small Business - Statement of Operations
( ) Small Business - Cash Flow Statement
( ) Small Business - Federal Tax Returns

Petition Deficiencies:
( ) Name
( ) Last 4 digits of SSN
( ) Address ( ) County
( ) Type of Debtor
( ) Chapter
( ) Nature of Debts
( ) Statistical Estimates
( ) Signatures
( ) Attorney Bar Number

Case filed via:
(✓) Intake Counter by:
( ) Attorney
(✓) Debtor - verified ID
( ) Other - verified ID of: _____
( ) Mailed by:
( ) Attorney
( ) Debtor
( ) Other: _____

History of Case Association
Prior cases within 2 years: 10-66283 jem, 10-78992 mgd
Related case within years: _____

Intake Clerk: Jackie Dukes Date: 9/7/10
Case Opener: _____ Date: _____

Exhibit 1-C

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
ALFREDIA PRUITT,	)	CASE NO. 10-86533-MGD
	)	
Debtor.	)	
GMAC MORTGAGE, LLC,	)	
	)	
Movant,	)	
	)	CONTESTED MATTER
vs.	)	
	)	
ALFREDIA PRUITT, Debtor, MARY IDA TOWNSON, Trustee,	)	
	)	
Respondents.	)	

MOTION FOR ORDER UNDER § 362(c)(4)(A)(ii) CONFIRMING NO AUTOMATIC STAY IS IN EFFECT

COMES NOW GMAC Mortgage, LLC (hereinafter referred to as "Movant"), and files this Motion under 11 U.S.C. § 362(c)(4)(A)(ii), for an order confirming that no automatic stay is in effect, showing the Court as follows:

1. Movant holds a security interest on property of Debtor commonly known as 2360 Hickory Station Circle, Snellville, Gwinnett County, Georgia.

2. This Chapter 13 case was filed on September 7, 2010. During the one-year period preceding the filing of this case, Debtor was in two prior cases that were pending but were dismissed. Case No. 10-66283-MGD was filed on March 2, 2010, immediately prior to Movant's scheduled March 2, 2010 foreclosure sale, and was dismissed on March 18, 2010. Debtor's second case within the past year, Case No. 10-78992-MGD, was filed on July 1, 2010, immediately prior to Movant's scheduled July 6, 2010 foreclosure sale, and was dismissed on July 20, 2010. Neither of the prior cases was a Chapter 7 case dismissed pursuant to 11 U.S.C. §707(b). Therefore, this current case is not a case refiled under a

chapter other than Chapter 7 following a prior case that was dismissed pursuant to 11 U.S.C. § 707(b). See 11 U.S.C. § 362(c)(3).

3. No order has been issued under 11 U.S.C. § 362(c)(4)(B) imposing the stay.

4. Movant therefore shows that upon and since the filing of this case, the automatic stay did not go into effect.

WHEREFORE, Movant respectfully requests that the Court enter an Order confirming that the automatic stay is not in effect.

McCURDY & CANDLER, L.L.C.

BY: __/s/ Anthony Maselli
Anthony Maselli
Attorney for GMAC Mortgage, LLC
GA. State Bar No. 558670

3525 Piedmont Road, NE
Building 6, Suite 700
Atlanta, GA 30305
(404) 373-1612

RE: ALFREDIA PRUITT,

CASE NO. 10-86533-MGD
CHAPTER 13

CERTIFICATE OF SERVICE

That on the 21st day of September, 2010, I served a copy of the **"MOTION FOR ORDER UNDER § 362(c)(4)(A)(ii) CONFIRMING NO AUTOMATIC STAY IS IN EFFECT"** to be filed in this bankruptcy matter by depositing a copy of the same in the United States Mail in a properly addressed envelope with adequate postage thereon to the said parties at:

Alfredia Pruitt
2360 Hickory Station Circle
Snellville, GA 30078

Mary Ida Townson
Chapter 13 Trustee
100 Peachtree Street, N.W.
Suite 2700 Equitable Bldg.
Atlanta, GA 30303

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on 9/21/2010

By: /s/Anthony Maselli
Anthony Maselli

Exhibit 1-D

IT IS ORDERED as set forth below:

Date: September 21, 2010

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CHAPTER 13
ALFREDIA PRUITT,	CASE NO. 10-86533-MGD
Debtor.	
GMAC MORTGAGE, LLC,	
Movant,	CONTESTED MATTER
vs.	
ALFREDIA PRUITT, Debtor, MARY IDA TOWNSON, Trustee,	
Respondents.	

ORDER UNDER § 362(c)(4)(A)(ii) CONFIRMING THE AUTOMATIC STAY IS NOT IN EFFECT

Movant seeks an order under11 U.S.C. §362(c)(4)(A)(ii) confirming that the automatic stay is not in effect.

M&C File No. 08-00987

The Debtor was a debtor in two prior cases that were both dismissed within the one-year period preceding the filing of this case. Neither of the prior cases was a Chapter 7 case dismissed pursuant to 11 U.S.C. §707(b), and no order has been entered pursuant to 11 U.S.C. § 362(c)(4)(B) imposing the stay. Accordingly, the automatic stay under §362(a) did not go into effect upon or since the filing of this case and, as of the date hereof, no order has been entered imposing a stay to the extent provided in 11 U.S.C. § 362(c)(3)(A).

[END OF DOCUMENT]

Prepared and Submitted by:

/s/ Anthony Maselli

Anthony Maselli
Georgia Bar No.: 558670
McCurdy & Candler, L.L.C.
3525 Piedmont Road, NE
Building 6, Suite 700
Atlanta, GA 30305
(404) 373-1612 Telephone
(404) 370-7237 Facsimile
amaselli@mccurdycandler.com

DISTRIBUTION LIST

Alfredia Pruitt
2360 Hickory Station Circle
Snellville, GA 30078

Mary Ida Townson
Chapter 13 Trustee
100 Peachtree Street, N.W.
Suite 2700 Equitable Bldg.
Atlanta, GA 30303

Anthony Maselli
McCurdy & Candler, LLC
3525 Piedmont Road, NE
Building 6, Suite 700
Atlanta, GA 30305

Exhibit 1-E

UNITED STATES BANKRUPTCY COURT

Northern District of Georgia

In Re: Debtor(s)
Alfredia Pruitt
2360 Hickory Station Circle
Snellville, GA 30078

xxx–xx–3328

Case No.: **10–86533–mgd**
Chapter: **13**
Judge: **Mary Grace Diehl**

ORDER OF DISMISSAL

The Chapter 13 Trustee's objection(s) to confirmation came before the Court and

After hearing and for good cause shown, confirmation is denied, and

IT IS ORDERED THAT THIS CASE IS DISMISSED.

Any unpaid filing fees must be paid by the Debtor(s) to the Clerk of the United States Bankruptcy Court within fourteen (14) days of the date of the entry of this Order.

The Clerk is directed to serve a copy of this Order on the Debtor(s), the Attorney for the Debtor(s), the Chapter 13 Trustee, all creditors and other parties in interest. The Attorney for the Debtor(s) shall serve a copy of this Order upon any employer of the Debtor(s) who is subject to an employer deduction order.

Mary Grace Diehl

Mary Grace Diehl
United States Bankruptcy Judge

Dated: November 17, 2010

Form 155

Exhibit 1-F

20400-C

Federal National Mortgage Association
GMAC, Fannie Mae, USAA Federal Savings Bank
3525 Piedmont Rd NE Bldg. 6 Ste 300
Atlanta GA 30305
(Plaintiff(s) Name, Address and Daytime Phone No.)

VS.

Alfredia Pruitt
2360 Hickory Station Circle
Snellville, GA 30078

(Defendant(s) Name, Address and Daytime Phone No.)

GWINNETT MAGISTRATE COURT

NOTICE OF APPEAL

CASE NO. 10M 40065

INFO & FORMS ON THE INTERNET
http://www.gwinnettcourts.com
E-mail: mag@gwinnettcounty.com

DEC 2010

(Check applicable sections.) Notice is hereby given that the [ ] Plaintiff(s) [X] Defendant(s), hereby appeal(s) a judgment entered in the Magistrate Court of Gwinnett County to the [ ] State Court; [X] Superior Court; of Gwinnett County.

[ ] CIVIL CASES

The judgment of the civil case appealed herein was entered on the _____ day of _____ 200____. (This appeal **MUST BE** filed within **thirty (30) days** of the foregoing date of judgment.)

[X] DISPOSSESSORY CASES

The judgment of the dispossessory case appealed herein was entered on the 6 day of December, 2010. (This appeal **MUST BE** filed within seven (7) days of the date of judgment set forth above.

FILED IN OFFICE
2010 DEC -6 PM 2:00
MAGISTRATE COURT
GWINNETT COUNTY, GA

APPEALS BY TENANTS – PAST DUE & FUTURE RENT REQUIRED TO BE PAID INTO THE REGISTRY OF THE COURT(S) IN ORDER TO REMAIN IN POSSESSION OF PREMISES:

I/We [ ] have; [ ] have not; paid into the registry of the Magistrate Court the sum(s) found by the Magistrate Court to be due as past due rent, to-wit, the sum of $_____. *(See section J of judgment form.)* This sum of past due rent MUST be paid into the registry of the trial court in order for a tenant who is appealing a dispossessory judgment to remain in possession of the property. Furthermore, after the case is appealed, the tenant is required to pay all future rent as it becomes due into the registry of the trial court, which, on appeal, will then be either the State or Superior Court depending on which court the appealing party selected the appeal to be filed. Failure to abide by these provisions shall cause a writ of possession to be issued instanter by a court of competent jurisdiction. *(See O.C.G.A. 44-7-56.)*

General Information

Computing times for appeal: O.C.G.A. 1-3-1(d)(3): The day the judgment was entered shall not be counted, but the last day shall be counted. If the last day falls on a Saturday, Sunday or public and legal holiday, the appeal shall be considered timely filed if filed on the next business day.

It is hereby certified that the above judgment is **not** a default judgment for which no appeal can be made. Appellate review of a default judgment shall be by certiorari to the State Court of Gwinnett County or to the Superior Court of Gwinnett County. (See O.C.G.A. 15-10-41.)

This 6 day of December, 2010.

Alfredia Pruitt
[ ] Plaintiff(s) [X] Defendant(s)

CERTIFICATE OF SERVICE

A copy of this Notice of Appeal shall be served on all parties. If an opposing party is represented by an attorney, the service shall be made upon the attorney. I hereby certify that I have served the opposing party with a copy of this appeal by mailing a copy of this document to the opposing party at the address set forth above.
This 6 day of December, 2010.

Alfredia Pruitt
[ ] Plaintiff(s) [X] Defendant(s)

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA
2010 DEC -8 PM 3:11
TOM LAWLER, CLERK

IN THE ~~MAGISTRATE~~ Superior COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ALFREDIA PRUITT,
Plaintiff,

VS.

FEDERAL NATIONAL
MORTGAGE ASSOCIATION,
GMAC,
FANNIE MAE,
USAA FEDERAL SERVICING BANK
Defendant

CASE NO. 10M40065

CIVIL CASE

10A 10972 3

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

A. Motion

COMES NOW ALFREDIA PRUITT, Plaintiff in the above-captioned matter, and respectfully files this motion against Defendants **FEDERAL NATIONAL MORTGAGE ASSOCIATION, GMAC, FANNIE MAE,** and **USAA FEDERAL SAVINGS BANK** as follows:

B.JURISDICTION AND VENUE

1. Plaintiff, Alfredia Pruitt, is an individual who resides in Gwinnett County, Georgia.

2. Defendant, Federal National Mortgage Association is a Georgia corporation, may be served with process at, c/o3525 Piedmont Road NE building 6 ste. 700, Atlanta, GA 30305.

3. Defendant GMAC a corporation doing business in Georgia and may be served with process at 3 Ravinia Drive Atlanta, GA 30346,

4. Defendant Fannie Mae a corporation doing business in Georgia and may be served with process at 950 E Paces Ferry Rd NE, Atlanta, GA, 30326

5. Defendant USAA Federal Savings Bank a corporation doing business in Georgia and may be served with process at Terminus 200 Building, 3333 Piedmont Rd, Ste 2050, Atlanta, GA 30305.

6. Jurisdiction is proper in this Court.

7. Venue is proper in this Court.

C.FACTUAL ALLEGATIONS

8. Plaintiff owned property located at 2360 Hickory Station Circle, Snellville, Georgia 30078.

9. The Plaintiff became indebted to USAA Federal Savings Bank. Plaintiff failed to pay the debt and started negotiating the payment with USAA Federal Savings Bank.

10. Defendant GMAC, Federal National Mortgage Association purchased Plaintiff's property at a sale in which GMAC was not the beneficiary or holder of the note. Federal National Mortgage Association filed a dispossessory proceeding complaint for eviction of Plaintiff from her property.

11. On December 1, 2010 the lower court ruled in favor of the Defendants to evict the plaintiff from her property.

12. Subsequently, the Plaintiff filed a lawsuit and appeal against the Defendants for unlawful foreclosure on December 6, 2010.

D. Cause of Action (UNLAWFUL FORECLOSURE)

13. Plaintiff's cause of action against FEDERAL NATIONAL MORTGAGE ASSOCIATION, GMAC, FANNIE MAE, USAA FEDERAL SERVICING BANK is because the Defendants illegally assisted GMAC, Federal National Mortgage Association with the unlawful foreclosure of the plaintiff's property.

14. Plaintiff requested information from Defendants to prove that the person signing all affidavits for foreclosure had personal knowledge of the information contained in the affidavit.

15. In addition, Plaintiff requested that the Defendants provide evidence of the true legal holder of the note

16. Defendants have yet to produce any documents requested.

17. Plaintiff filed suit against the Defendants seeking to set aside the sale of her property by GMAC and stop the eviction.

E. Motion for PRELIMINARY INJUNCTION

18. "A motion for interlocutory injunction or a TRO is an extraordinary motion, which is time sensitive, unlike other motions, because it seeks to preserve the status quo until a full hearing can be held to avoid irreparable harm." Focus Entertainment International, Inc., v. Partridge Greene, Inc. (253 Ga. App. 121) (558 SE2d 440) (2001).

19. Plaintiff is seeking an emergency preliminary injunction order to prevent the defendants from evicting the Plaintiff from the property which is the subject of the land and title lawsuit.

20. Defendant is not the owner of the mortgage and note.

21. The trustee is not properly authorized to post the sale notice and they did so illegally and with intention to deceive the borrower and the court causing the borrower and the court to reasonably rely upon the statements of facts and procedures used by the lender.

22. Allowing the sale and eviction will result in Plaintiff being possible a victim of predatory lending and unlawful foreclosure.

23. It is probable that the Plaintiff will prevail in this lawsuit.

24. Also, the Plaintiff's claim against the Defendants is filed to preserve the status quo of the parties until the issue of title is resolved.

25. In the event this Court does not grant the Plaintiff's Motion for preliminary injunction, she will suffer irreparable harm because the real estate which is the subject of this lawsuit is unique in character and cannot be replaced with money damages only. Applicant has no other adequate remedy at law.

26. In addition, allowing the Sale and eviction to be completed, would not only expose Plaintiff to potentially ruinous financial liability, but would also be a direct violation of The Due Process Clause, and numerous Constitutional guarantees concerning property.

F. Request for Preliminary Injunction

27. Plaintiff asks the court to set her preliminary injunction order for a hearing, and

after hearing the motion, issue a preliminary injunction order against Defendants and stop the eviction until or after the lawsuit has been resolved.

G. Prayer

28. For these reasons, Plaintiff asks the court to grant the preliminary injunction order stopping the eviction and enforcement of her rights.

Respectfully submitted,

Alfredia Pruitt
2360 Hickory Station Circle
Snellville, Georgia 30078
(770) 668-3915 Phone

VERIFICATION

I, Plaintiff Alfredia Pruitt, having been duly sworn, under penalty of perjury, deposes and says that I am over the age of eighteen (18) and mentally competent to testify in this matter. My person and my property are in danger of immediate and irreparable injury, and loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and I hereby Certify, that the facts set forth regarding all matters stated in the above paragraphs are true and correct, therefore since this is an Emergency Petition further notice should not be required. I have read the foregoing pleading, the facts stated therein are from firsthand knowledge and are true and correct to the best of my knowledge and belief.

This 8th day of December, 2010

Alfredia Pruitt
Subscribed and sworn to before me,
this 8th day of December, 210.
Seal

Notary Public
My Commission Expires:

Q BADWAN
NOTARY PUBLIC, GWINNETT COUNTY, GEORGIA
MY COMMISSION EXPIRES OCTOBER 7, 2011

IN THE ~~SUPERIOR~~ Magistrate COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ALFREDIA PRUITT,
Appellant

VS.

CASE NO. 10M40065

FEDERAL NATIONAL
MORTGAGE ASSOCIATION,
Appellee

FILED IN OFFICE
MAGISTRATE COURT
GWINNETT COUNTY, GA
2010 DEC -6 PM 1:49
TOM LAWLER, CLERK

APPELLANT'S DISPOSSESORY PROCEEDDING APPEAL

A.APPEAL

COMES NOW ALFREDIA PRUITT, Appellant in the above-captioned matter, and respectfully states her appeal against Appellee **FEDERAL NATIONAL MORTGAGE ASSOCIATION** as follows:

B.JURISDICTION AND VENUE

1. Appellant, Alfredia Pruitt, is an individual who resides in Gwinnett County, Georgia.

2. Appellee, Federal National Mortgage Association is a Georgia corporation, may be served with process at, c/o3525 Piedmont Road NE building 6 ste. 300, Atlanta, GA 30305.

3. Jurisdiction is proper in this Court.

4. Venue is proper is this Court.

C.FACTUAL ALLEGATIONS

5. Appellant owned property located at 2360 Hickory Station Circle, Snellville, Georgia 30078.

6. The Appellant became indebted to USAA Federal Savings Bank. Appellant failed to pay the debt and started negotiating the payment with USAA Federal Savings Bank.

7. Appellee Federal National Mortgage Association/GMAC purchased Appellant's property at a sale in which GMAC was not the beneficiary or holder of the note. Federal National Mortgage Association filed a dispossessory proceeding complaint for eviction of

Appellant from her property.

8. The lower court ruled in favor of Federal National Mortgage Association/GMAC on December 1, 2010.

D. Cause of Action Resulting in Appeal (UNLAWFUL FORECLOSURE)

9. Appellant's appeal is based on a cause of action against FEDERAL NATIONAL MORTGAGE ASSOCIATION/GMAC because the Appellee's unlawfully foreclosed on the Appellant's property. Appellant seeks to set aside the sale of her property by FEDERAL NATIONAL MORTGAGE ASSOCIATION/GMAC and stop the eviction.

E. Application for Temporary Restraining Order

10. Appellant sought a temporary restraining order preventing the Appellee from evicting the appellant from the property which is the subject of the land and title lawsuit.

11. It is probable that the Appellant will prevail in this lawsuit.

12. Also, the Appellant's claim against the Appellee is filed to preserve the status quo of the parties until the issue of title and foreclosure is resolved.

13. Appellant made all payments to USAA Federal Savings Bank.

14. Appellant was never required to make any payments to GMAC and never received any communication or notice from GMAC prior to GMAC foreclosing on the property.

15. GMAC is not the beneficiary of the note and had no right to foreclose on the note

16. Appellant has requested the original note.

17. Appellant was under the belief with USAA Federal Savings Bank that USAA Federal Savings Bank and no other defendant would foreclose on her home as long as she was negotiating the payment on her mortgage.

18. In the event this Court does not grant the Appellant's Appeal and reverse the decision of the lower court, she will suffer irreparable harm because the real estate which is the subject of this appeal/lawsuit is unique in character and cannot be replaced with money damages only. Applicant has no other adequate remedy at law.

F. Prayer

19. For these reasons, Appellant asks the court to grant the temporary restraining order stopping the eviction and enforcement of her rights.

Respectfully submitted,

Alfredia Pruitt
2360 Hickory Station Circle
Snellville, Georgia 30078
(770) 668-3915 Phone

Exhibit 1-G

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA
2011 JAN 31 AM 10: 13
TOM LAWLER, CLERK

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ALFREDIA PRUITT,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE
v.	)	
	)	NO. 10-A-10972-3
FEDERAL NATIONAL MORTGAGE ASSOCIATION, GMAC, FANNIE MAE, USAA FEDERAL SERVICING BANK,	)	
	)	
Defendants.	)	

FINAL ORDER AND JUDGMENT

On December 1, 2010, the Magistrate Court of Gwinnett County entered a dispossessory order in the action styled *Federal National Mortgage Association v. Alfredia Pruitt*, Case No. 10M40065 (the "December 1, 2010 Order") following the foreclosure sale of certain real property located at 2360 Hickory Station Circle, Snellville, Georgia. Plaintiff filed this action on December 6, 2010, seeking to appeal the December 1, 2010 Order pursuant to O.C.G.A § 15-10-41(b)(1). At the same time Plaintiff filed a proposed Complaint and application and for a temporary restraining order, adding additional Defendants USAA Federal Servicing Bank and GMAC Mortgage, LLC to the appellate action.

After hearing argument from the parties on January 24, 2011 and having read and considered the entire record, including all submissions with respect to Plaintiff's appeal of the December 1, 2010 Order, her motion for a preliminary injunction and temporary restraining order, and her Complaint, the Court finds that Plaintiff has failed to proffer any evidence or authority to suggest that the December 1, 2010 Order is in error in any respect, nor has she presented any law or facts that would support entry of a restraining order or injunction against

any Defendant. Further, Plaintiff has failed to tender to Defendants past due amounts undisputedly owed under her mortgage loan, and she has failed to pay $5,100.00 into the registry of the Court, as required by the December 1, 2010 Order. Accordingly, under established Georgia law, Plaintiff is not entitled to any equitable injunctive relief against any of the named defendants. *See R.R.R. Limited Partnership v. Recreational Services, Inc.*, 264 Ga. 494, 497 (1994); *Crockett v. Oliver*, 218 Ga. 620, 621 (1963). Therefore, it is hereby,

ORDERED (i) that the December 1, 2010 Order is AFFIRMED; (ii) that a Writ of Possession shall immediately issue to Defendant Federal National Mortgage Association; (iii) that Plaintiff's motions for a restraining order and injunctive relief are DENIED, and (iv) that FINAL JUDGMENT be and is hereby entered in favor of all DEFENDANTS as to all claims asserted by Plaintiff in this proceeding.

SO ORDERED this 28th day of JANUARY, 2011.

K. DAWSON JACKSON
CHIEF JUDGE
Superior Court Gwinnett County, Georgia

Submitted by:

Kelly L. Atkinson
kelly.atkinson@troutmansanders.com
Georgia Bar No. 431204
TROUTMAN SANDERS LLP
600 Peachtree Street, N.E., Suite 5200
Atlanta, Georgia 30308-2216
(404) 885-3000
Counsel for Defendants

Copies to:

Kelly L. Atkinson, Esq.
Troutman Sanders LLP
600 Peachtree Street, N.E., Suite 5200
Atlanta, GA 30308-2216

Alfredia Pruitt, *pro se*
2360 Hickory Station Circle
Snellville, GA 30078

Exhibit 1-H

GWINNETT COUNTY, GA

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

2011 SEP 21 AM 8:34

TOM LAWLER, CLERK

ALFREDIA PRUITT,
Plaintiff,

VS.

CIVIL ACTION FILE NO. [redacted]

11A 10084 -3

FEDERAL NATIONAL
MORTGAGE ASSOCIATION,
GMAC, / MERS
FANNIE MAE, Savings
USAA FEDERAL ~~SERVICING~~ BANK
Defendant

PLAINTIFF Motion TO SET ASIDE FORECLOSURE SALE AND TEMPORARY RESTRAINING ORDER

A.COMPLAINT

COMES NOW ALFREDIA PRUITT, Plaintiff in the above-captioned matter, and respectfully states her Complaint against Defendants **FEDERAL NATIONAL MORTGAGE ASSOCIATION, GMAC, FANNIE MAE,** and **USAA FEDERAL SAVINGS BANK** as follows:

B.JURISDICTION AND VENUE

1. Plaintiff, Alfredia Pruitt, is an individual who resides in Gwinnett County, Georgia.

2. Defendant, Federal National Mortgage Association is a Georgia corporation, may be served with process at, Troutman Sanders LLP, 5200 Bank of America Plaza, 600 Peachtree St., NE Suite 5200, Atlanta, GA 30308-2216.

3. Defendant GMAC a corporation doing business in Georgia and may be served with process at 3 Ravinia Drive Atlanta, GA 30346,

4. Defendant Fannie Mae a corporation doing business in Georgia and may be served with process at 950 E Paces Ferry Rd NE, Atlanta, GA, 30326

5. Defendant USAA Ferderal Savings Bank a corporation doing business in Georgia and may be served with process at Terminus 200 Building, 3333 Piedmont Rd, Ste 2050, Atlanta, GA 30305.

6. Mortgage Electronic Registration Systems 1901 E. Voorhees St. Suite C Danville, IL 61834

7. Jurisdiction is proper in this Court.

7. Venue is proper in the Gwinnett County Superior Court of Georgia. Specifically, venue is mandatory in this county because the real property complained of is located in this county.

C.FACTUAL ALLEGATIONS

8. Plaintiff owned property located at 2360 Hickory Station Circle, Snellville, Georgia 30078.

9. The Plaintiff became indebted to USAA Federal Savings Bank. Plaintiff failed to pay the debt and started negotiating the payment with USAA Federal Savings Bank.

10. Defendant GMAC, Federal National Mortgage Association purchased Plaintiff's property at a sale in which GMAC was not the beneficiary or holder of the note. Federal National Mortgage Association filed a dispossessory proceeding complaint for eviction of Plaintiff from her property.

D. Cause of Action (UNLAWFUL FORECLOSURE)

11. Plaintiff's cause of action against FEDERAL NATIONAL MORTGAGE ASSOCIATION, GMAC, FANNIE MAE, USAA FEDERAL SERVICING BANK is because the Defendants illegally assisted GMAC, Federal National Mortgage Association with the unlawful foreclosure of the plaintiff's property. Plaintiff seeks to set aside the sale of her property by GMAC and stop the eviction.

E. Application for Temporary Restraining Order

12. Applicant is seeking a temporary restraining order preventing the defendants from evicting the applicant from the property which is the subject of the land and title lawsuit.

13. It is probable that the Applicant will prevail in this lawsuit.

14. Also, the Plaintiff's claim against the Defendants is filed to preserve the status quo of the parties until the issue of title is resolved.

15. Applicant made all payments to USAA Federal Savings Bank.

16. Applicant was never required to make any payments to GMAC and never received any communication or notice from GMAC prior to GMAC foreclosing on the property.

17. GMAC is not the beneficiary of the note and had no right to foreclose on the note

18. Applicant has requested the original note.

19. Applicant was under the belief with USAA Federal Savings Bank that USAA Federal Savings Bank and no other defendant would foreclose on her home as long as he was negotiating the payment on her mortgage.

20. In the event this Court does not grant the Applicants' Application for a Temporary Restraining Order, she will suffer irreparable harm because the real estate which is the subject of this lawsuit is unique in character and cannot be replaced with money damages only. Applicant has no other adequate remedy at law.

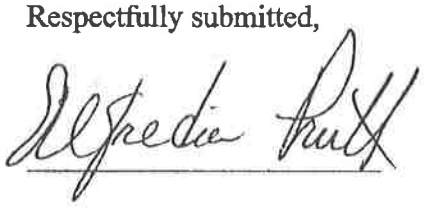
F. Request for Temporary Restraining Order

21. Plaintiff asks the court to set her application for temporary restraining order for a hearing, and after hearing the application, issue a temporary restraining order against Defendants.

G. Prayer

22. For these reasons, Plaintiff asks the court to grant the temporary restraining order stopping the eviction and enforcement of her rights.

Respectfully submitted,



Alfredia Pruitt
2360 Hickory Station Circle
Snellville, Georgia 30078
(770) 668-3915 Phone

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA
2011 SEP 21 AM 8:34
TOM LAWLER, CLERK

IN THE MAGISTRATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ALFREDIA PRUITT,
Plaintiff,

VS.

CIVIL ACTION FILE NO. [redacted]

11A 10084 -3

FEDERAL NATIONAL
MORTGAGE ASSOCIATION,
GMAC, MERS
FANNIE MAE,
USAA FEDERAL SAVINGS BANK
Defendant

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

A. Motion

COMES NOW ALFREDIA PRUITT, Plaintiff in the above-captioned matter, and respectfully files this motion against Defendants **FEDERAL NATIONAL MORTGAGE ASSOCIATION, GMAC, FANNIE MAE,** and **USAA FEDERAL SAVINGS BANK** as follows:

B JURISDICTION AND VENUE

1. Plaintiff, Alfredia Pruitt, is an individual who resides in Gwinnett County, Georgia.

2. Defendant, Federal National Mortgage Association is a Georgia corporation, may be served with process at, Troutman Sanders LLP, 5200 Bank of America Plaza, 600 Peachtree St, NE Suite 5200, Atlanta, GA 30308-2216.

3. Defendant GMAC a corporation doing business in Georgia and may be served with process at 3 Ravinia Drive Atlanta, GA 30346,

4. Defendant Fannie Mae a corporation doing business in Georgia and may be served with process at 950 E Paces Ferry Rd NE, Atlanta, GA, 30326

5. Defendant USAA Federal Savings Bank a corporation doing business in Georgia and may be served with process at Terminus 200 Building, 3333 Piedmont Rd, Ste 2050, Atlanta, GA 30305.

6. Mortgage Electronic Registration Systems 1901 E. Voorhees St. Suite C Danville IL 61832

7. Venue is proper in this Court.

C.FACTUAL ALLEGATIONS

8. Plaintiff owned property located at 2360 Hickory Station Circle, Snellville, Georgia 30078.

9. The Plaintiff became indebted to USAA Federal Savings Bank. Plaintiff failed to pay the debt and started negotiating the payment with USAA Federal Savings Bank.

MERS

10. Defendant GMAC, Federal National Mortgage Association purchased Plaintiff's property at a sale in which GMAC was not the beneficiary or holder of the note. Federal National Mortgage Association filed a dispossessory proceeding complaint for eviction of Plaintiff from her property.

11. On December 1, 2010 the lower court ruled in favor of the Defendants to evict the plaintiff from her property.

12. Subsequently, the Plaintiff filed a lawsuit and appeal against the Defendants for unlawful foreclosure on December 6, 2010.

D. Cause of Action (UNLAWFUL FORECLOSURE)

13. Plaintiff's cause of action against FEDERAL NATIONAL MORTGAGE MERS ASSOCIATION, GMAC, FANNIE MAE, USAA FEDERAL SERVICING BANK is because the Defendants illegally assisted GMAC, Federal National Mortgage Association with the unlawful foreclosure of the plaintiff's property.

14. Plaintiff requested information from Defendants to prove that the person signing all affidavits for foreclosure had personal knowledge of the information contained in the affidavit.

15. In addition, Plaintiff requested that the Defendants provide evidence of the true legal holder of the note

16. Defendants have yet to produce any documents requested.

17. Plaintiff filed suit against the Defendants seeking to set aside the sale of her property by GMAC and stop the eviction.

MERS

E. Motion for PRELIMINARY INJUNCTION

18. "A motion for interlocutory injunction or a TRO is an extraordinary motion, which is time sensitive, unlike other motions, because it seeks to preserve the status quo until a full hearing can be held to avoid irreparable harm." Focus Entertainment International, Inc., v. Partridge Greene, Inc. (253 Ga. App. 121) (558 SE2d 440) (2001).

19. Plaintiff is seeking an emergency preliminary injunction order to prevent the defendants from evicting the Plaintiff from the property which is the subject of the land and title lawsuit.

20. Defendant is not the owner of the mortgage and note.

21. The trustee is not properly authorized to post the sale notice and they did so illegally and with intention to deceive the borrower and the court causing the borrower and the court to reasonably rely upon upon the statements of facts and procedures used by the lender.

22. Allowing the sale and eviction will result in Plaintiff being possible a victim of predatory lending and unlawful foreclosure.

23. It is probable that the Plaintiff will prevail in this lawsuit.

24. Also, the Plaintiff's claim against the Defendants is filed to preserve the status quo of the parties until the issue of title is resolved.

25. In the event this Court does not grant the Plaintiff's Motion for preliminary injunction, she will suffer irreparable harm because the real estate which is the subject of this lawsuit is unique in character and cannot be replaced with money damages only. Applicant has no other adequate remedy at law.

26. In addition, allowing the Sale and eviction to be completed, would not only expose Plaintiff to potentially ruinous financial liability, but would also be a direct violation of The Due Process Clause, and numerous Constitutional guarantees concerning property.

F. Request for Preliminary Injunction

27. Plaintiff asks the court to set her preliminary injunction order for a hearing, and after hearing the motion, issue a preliminary injunction order against Defendants and stop the eviction until or after the lawsuit has been resolved.

G. Prayer

28. For these reasons, Plaintiff asks the court to grant the preliminary injunction order stopping the eviction and enforcement of her rights.

Respectfully submitted,

Alfredia Pruitt
2360 Hickory Station Circle
Snellville, Georgia 30078
(770) 668-3915 Phone

VERIFICATION

I, Plaintiff Alfredia Pruitt, having been duly sworn, under penalty of perjury, deposes and says that I am over the age of eighteen (18) and mentally competent to testify in this matter. My person and my property are in danger of immediate and irreparable injury, and loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and I hereby Certify, that the facts set forth regarding all matters stated in the above paragraphs are true and correct, therefore since this is an Emergency Petition further notice should not be required. I have read the foregoing pleading, the facts stated therein are from firsthand knowledge and are true and correct to the best of my knowledge and belief.

This 8th day of December, 2010

Alfredia Pruitt
Subscribed and sworn to before me,
this 20 day of September 2011
Seal

Notary Public
My Commission Expires:

ANTONIO PHILANTROPE
NOTARY PUBLIC, GWINNETT COUNTY, GEORGIA
MY COMMISSION EXPIRES APRIL 12, 2015

The Grantee of the deed is MERS acting solely as nominee for the lender and the lender's successors and assigns, and who have been sent notices of foreclosure on behalf of MERS who auctioned the property that secured the debt at a foreclosure auction. The Plaintiff shows herein that MERS' foreclosure on Plaintiff's property was not valid and was wrongful, as are those foreclosures by MERS on the property in the State of Georgia of all similarly situated persons to the Plaintiff wherein MERS sent the notice of foreclosure to the debtor and wherein MERS purports to have exercised the power of sale and auctioned the property. MERS does not have the authorized power to send a valid notice of foreclosure within the State of Georgia for those deeds where it is "solely a nominee" and does not have the authority or power under Georgia law to foreclose on a property or engage in an auction of sale on such property where is is "solely a nominee" on such deeds.

As a result of such uniform, wrongful conduct by MERS, the Court must, *inter alia*: 1) invalidate the foreclosure sale, 2) order as void the Foreclosure Deed (or Deed Under Power); and/or 3) restore equitable or legal title, if possible, as it existed just prior to the foreclosure sale and award compensation for any damages suffered as a result of MERS' actions. Alternatively, the Court should impose a constructive trust over the proceeds from, or the value of the property as determined by, any such foreclosure auction.

PARTIES

2.

The Plaintiff is Dustin Rollins. He is the rightful owner of property located on Memorial Drive in Atlanta, Georgia that was pledged, pursuant to the terms of a Security

Deed which is attached hereto as Exhibit B and incorporated herein by this specific reference, as security for the repayment of a residential mortgage loan, which is evidenced by a copy of the promissory note Plaintiff executed and which is attached hereto as Exhibit A and incorporated herein by this specific reference. Plaintiff is a resident and citizen of the State of Georgia.

3.

Defendant Mortgage Electronic Recording Systems, Inc. is a foreign corporation that does business in the State of Georgia. Mortgage Electronic Recording Systems, Inc. is not registered with the Georgia Secretary of State. Mortgage Electronic Recording Systems, Inc. is nevertheless subject to jurisdiction by the Courts of the State of Georgia.

4.

Defendant MERSCORP is a foreign corporation thatdoes business in the State of Georgia. MERSCORP not registered with the Georgia Secretary of State. MERSCORP is nevertheless subject to jurisdiction by the Courts of the State of Georgia. MERSCORP claims to be the sole shareholder in Mortgage Electronic Recording Systems, Inc.

5.

MERS is a national electronic registration and tracking system that supposedly tracks the beneficial ownership interests and servicing rights in mortgage loans.

6.

MERS is the party that foreclosed on via a non-judicial foreclosure process, and sold at a non-judicial public auction, the Plaintiff's home and property. At times MERS has claimed to own (or hold) the Plaintiff's mortgage loan debt and at times MERS

purported to be a mere nominee for the lender or the successors or assigns of the lender, whom MERS claimed was the owner (or holder) of the Plaintiff's mortgage loan debt.

JURISDICTION AND VENUE

7.

Jurisdiction and venue are proper in this Court pursuant to the Georgia Constitution and as the Plaintiff's property is located in Fulton County.

FACTUAL ALLEGATIONS

8.

At base, this lawsuit revolves around the actions taken by MERS when it foreclosed on the Plaintiff's above referenced property and the property of the putative plaintiffs. As a matter of routine policy and practice, MERS: a) purposely misrepresents its status in the foreclosure process; b) purposely misrepresents the true holder of the promissory note's status in the foreclosure process; c) knowingly records fraudulent real estate documents and official records; and d) willfully has wrongfully foreclosed on the Plaintiff's property and the property of the putative plaintiffs. MERS' actions that are discussed herein were intentional or taken without regard to the consequences and have caused severe damages to the Plaintiff and putative plaintiffs. Furthermore, MERS' actions constitute bad faith and stubborn litigiousness and were such that MERS is liable for the attorney's fees associated with bringing this action.

9.

As discussed below, MERS had no right to foreclose on the Plaintiff's property as a matter of contract and as a matter of Georgia Law.

10.

MERS has acted pursuant to a uniform policy, practice, custom or scheme against Plaintiff ~~and the putative class~~.

11.

MERS' website says this:

> MERS is an innovative process that simplifies the way mortgage ownership and servicing rights are originated, sold and tracked. Created by the real estate finance industry, MERS eliminates the need to prepare and record assignments when trading residential and commercial mortgage loans.

12.

William Hultman, Secretary of MERS, has testified in another case that loans are registered to a "MERS Member" who has entered into the MERS Membership Agreement.

13.

MERS Members enter into a contract with MERSCORP, the parent company to Defendant MERS to electronically register and track beneficial ownership interests and servicing rights in MERS-registered mortgage loans.

14.

MERS Members agree to appoint MERS, which is wholly owned by MERSCORP, to act as their "nominee" and to name MERS as the leinholder of record in a "nominee" capacity on all recorded security instruments relating to the loans registered on the MERS System.

15.

When a promissory note is sold by the original lender to others, the various sales of the notes supposedly are tracked on the MERS System.

16.

MERS claims that once MERS becomes the beneficiary of record as "nominee" regarding deeds of trust and becomes grantee of record as "nominee" with respect to security deeds, it remains the beneficiary/grantee when the beneficial ownership interests in the promissory note or servicing rights are transferred by one MERS Member to another and MERS tracks the transfers electronically on the MERS System. In other words, with "nominee" status only, MERS nonetheless claims to be something else entirely at the same time -- a "beneficiary" or "grantee" of a note or the servicing rights on that note, even though (1) it never held and does not hold an ownership interest in either the note or servicing rights at the time of the original loan transaction and even after such note or servicing rights were subsequently sold (and potentially re-sold) in the market, whether as a mortgage backed security or otherwise, and (2) it cannot be a trustee under Georgia law.

17.

MERS claims that so long as the subsequent sale of the note or servicing rights involves a member of MERS, MERS remains the "beneficiary" of record on the deed of trust or the "grantee" on the security deed and continues to act as a "nominee" for the new beneficial owner.

18.

Plaintiff obtained a residential mortgage loan to purchase a house and property located on Hickory Station Circle Snellville Georgia all or part of which was to be used as a dwelling place by the Plaintiff at the time the promissory note and security deed (attached hereto as Exhibits A&B respectively) were entered into.

19.

At the closing on the loan, Plaintiff executed a promissory note which evidenced the debt incurred by the Plaintiff and a security deed which purported to pledge the Plaintiff's' property located on Hickory Station Ci as security for the debt in the event that the Plaintiff defaulted on the repayment of the debt.

20.

The promissory note executed by the Plaintiff was executed in favor of the Lender who was identified as the note holder. (Plaintiff's promissory note attached hereto as Exhibit). MERS was not identified as the Lender or an owner of the promissory note.

21.

The Security Deed executed by the Plaintiff as Grantor purportedly named MERS, acting solely as a "nominee" for the Lender, as Grantee. (Plaintiff's Security Deed attached hereto as Exhibit).

22.

Pursuant to the Security Deed, the Plaintiff authorized the Lender to act as Attorney in Fact for purposes of the exercise of the Power of Sale provisions of the Security Deed.

23.

MERS is named as the Grantee, acting solely as "nominee" for the Lender, in hundreds or thousands for security deeds in the State or Georgia with respect to residential mortgage loans issued by MERS Members. All of these Security Deeds are identical or substantially similar as to their language and terms regarding MERS' powers and duties. MERS is the "nominee" for its members only.

24.24.

If a note has been transferred to a non-member, then MERS cannot act as the nominee. One cannot assume that just because MERS was named as the initial nominee in the deed of trust that it still retains that relationship with the actual holder of the note.

25.

MERS holds the security in a nominee capacity but without rights to the debt. MERS has no rights to the underlying debt repayment secured by the mortgage; MERS does not even act as the servicing agent to receive the payments and remit them to the lender. MERS' rights under the deed are pursuant to a nominee capacity. In its ordinary meaning, a nominee represents the principal in only a "nominal capacity" and does not receive any property or ownership rights of the person represented. See, *e.g.*, *Cisco v. Van Lew*, 60 Cal. App. 2d 575, 583-84, 141 P.2d 433 (1943); see also *Applebaum v. Avaya, Inc.*, 812 A.2d 880, 889 (Del. 2002) (referring to nominees "as agents of the beneficial owners").

26.

The deed says that MERS acts "solely as nominee for Lender." There is no express grant of any right to MERS to transfer or sell the mortgage or even to assign its duties as nominee. Nor does MERS obtain any right to the borrower's payments or even a role in receiving payments. (National Landmark Bank v. Kesler No. 98,489 IN THE COURT OF APPEALS OF THE STATE OF KANSAS (Sept. 2008)).

27.

MERS may not act on its own, independent of the direction of the specific Lender who holds the repayment interest in the security instrument at the time MERS purports to act. "An agent is authorized to do, and to do only, what is reasonable for him to infer that the principal desires him to do ***in light of the principal's manifestation*** and the facts as he knows or should know them at the time he acts. (*Hot Stuff, Inc. v. Kinko's Graphic Corp.,* 50 Ark. App. 56, 59, 901 S.W. 2d 854, 856 (1995) citing Restatement (Second) of Agency § 33 (1958)) and (*Mortgage Electronic Registration System, Inc. v. Southwest Homes of Arkansas*, NO. 08-1299 (Sup. St. Ark 2009)).

28.

The Plaintiff's Deed to Secure Debt (or "Security Deed") at issue in this case is a standard Georgia MERS Security Deed as it is a form Deed used as an instrument to secure real property to ensure the repayment of hundreds of thousands of loans in Georgia, including those of the putative plaintiffs. (Security Deed attached hereto as Exhibit "D").

29.

MERS standing alone is not the Grantee of the Security Deed signed by Plaintiff er, MERS acting solely as nominee for the lender and the lender's successors and assigns named as the Grantee of the Security Deed. MERS itself has no interest in, or authority to act under, the security deed. Pursuant to the Security Deed, the borrower "appoints Lender the agent and attorney-in-fact for the Borrower to exercise the power of sale." (Security Deed attached hereto Exhibit "B" @ p. 13). The security deed further provides that "MERS is a separate corporation that is acting solely as a nominee for lender and lender's successors and assigns." (Security Deed attached hereto as Exhibit "B" @ p. 1).

30.

The Security Deed does state that the Plaintiff "grants and conveys to MERS (solely as nominee for lender and lenders successors and assigns). . . with power of sale …" (Security Deed B p. 3). But the grant of power of sale is extremely limited. It can only be exercised in a nominee capacity and, even then, can only be exercised by MERS as nominee if necessary to comply with law or custom. The Security Deed provides: "MERS holds only legal title to the interest granted by borrower in this security instrument, but, *if necessary to comply with law and custom*, MERS (as nominee for lender and lender's successors and assigns) has a right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the property; and to take any action required of lender including, but not limited to, releasing and canceling the security instrument." (Security Deed attached hereto as Exhibit "B" @ p. 3)

(emphasis added). (As will be seen below, rather than complying with "law and custom," Georgia law actually *prevents* MERS from foreclosing on property because it is not the note owner or note holder, and Georgia law prevents MERS from acting in a fiduciary capacity relating to the loan.)

31.

Further, the Security Deed provides that if Lender invokes the power of sale:

> Lender shall give a copy of a notice of sale by public advertisement for the time and in the manner prescribed by applicable law. Lender, without further demand on borrower, shall sale the property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more partials and in any order lender determines. Lender or his designee may purchase the property at any sale. Lender shall convey to the purchaser, indefensible title to the property and borrower hereby appoints lender borrower's agent and attorney-in-fact to make such conveyance."

(Security Deed attached hereto as Exhibit "B")@ p. 10).

32.

The Plaintiff ~~and putative plaintiffs~~' Security Deeds do not purport to give MERS any greater rights than normally given a nominee. The Security Deed says that MERS acts "solely as nominee for Lender." There is no express grant of any right to MERS to transfer or sell the mortgage or even to assign its duties as nominee. Nor does MERS obtain any right to the borrower's payments or even a role in receiving payments made toward the repayment of the loan. (Security Deed attached as Exhibit B).

33.

MERS was not the owner and/or holder in due course of the Plaintiff and putative plaintiffs' Promissory Notes at the time of the foreclosure, or at any time, because MERS

"MERS is a private corporation that administers the MERS system, a national electronic registry that tracks the transfer of ownership interests and servicing rights in support of mortgage loan." citing *Mortgage Elec. Reg .Sys, Inc. v. Nebraska Department of Banking,* 270 Neb. 529, 704 N.W. 2d 784 (2005).

36.

MERS argued in another forum that it is *not* authorized to engage in the practices that would make it a party to either the enforcement of mortgages or the transfer of mortgages. In *Mortgage Elec. Reg .Sys, Inc. v. Nebraska Department of Banking,* 270 Neb. 529, 704 N.W. 2d 784 (2005), MERS challenged an administrative finding that it was a mortgage banker subject to license and registration requirements. The Nebraska Supreme Court found in favor of MERS, noting, "MERS has no independent right to collect on any debt because MERS itself has not extended any credit, and **none of the mortgage debtors owe MERS any money.**" 270 Neb. at 535.

35.

The Court in Nebraska further noted the following representation made by MERS:

> MERS argues that it *does not acquire mortgage loans* and is therefore not a mortgage banker under § 45-702(6) because *it only holds legal title* to members' mortgages in a nominee capacity and is contractually prohibited from exercising any rights with respect to the mortgages (i.e., foreclosure) without the authorization of the members. Further, MERS argues that it *does not own the promissory notes* secured by the mortgages and has no right to payments made on the notes. MERS explains that it merely "immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur."

704 N.W. 2d 784, 787 (citing brief for MERS) (emphasis added). According to the Court, counsel for MERS further explained:

> [T]hat MERS does not take applications, underwrite loans, make decisions on whether to extend credit, collect mortgage payments, hold escrows for taxes and insurance, or *provide any loan servicing functions whatsoever. MERS merely tracks the ownership of the lien* and is paid for its services through membership fees charged to its members.

Id. (emphasis added). In finding that MERS was not a "mortgage banker," the Court stated:

> In other words, through its services to its members as characterized by the district court, MERS does not acquire "any loan or extension of credit secured by a lien on real property." MERS does not itself extend credit or acquire rights to receive payments on mortgage loans. Rather, the *lenders retain the promissory notes* and servicing rights to the mortgage, while *MERS acquires legal title to the mortgage for recordation purposes.*
>
> MERS *serves as legal title holder in a nominee capacity*, permitting lenders to sell their interests in the notes and servicing rights to investors without recording each transaction. But, simply stated, *MERS has no independent right to collect on any debt* because MERS itself has not extended credit, and none of the mortgage debtors owe MERS any money.

Id. at 788. (emphasis added).

MERS' FORECLOSURES ARE INVALID IN GEORGIA BECAUSE MERS IS NOT A SECURDED CREDITOR AND THE NOTICE OF FORECLOSRE MERS' ATTORNEYS SENT TO PLAINTIFFS AND PUTATIVE PLAINTIFFS DOES NOT QUALIFY AS OCGA 44-14-162.2 NOTICE

37.

Under Georgia law, no sale of real estate under powers contained in security deeds are valid unless the sale is advertised and conducted at the time and place and in the usual manner of the sheriff's sales in the county in which such real estate or a part thereof is located and unless notice of the sale is given as required by Code Section 44-14-162.2.

38.

O.C.G.A. § 44-14-162.2 provides that notice of the initiation of proceedings to exercise a power of sale in a security deed is to be given to the debtor by the secured creditor no later than 30 days before the date of the proposed foreclosure.

39.

Pursuant to O.C.G.A. Sections 44-14-162[1] and 44-14-162.2[2] the Secured Creditor was required, in order for any non-judicial sale of the Plaintiff's property and the

[1] § 44-14-162. Sales Made On Foreclosure Under Power Of Sale -- Manner Of Advertisement And Conduct Necessary For Validity.
(a) No sale of real estate under powers contained in mortgages, deeds, or other lien contracts shall be valid unless the sale shall be advertised and conducted at the time and place and in the usual manner of the sheriff's sales in the county in which such real estate or a part thereof is located and unless notice of the sale shall have been given as required by Code Section 44-14-162.2. If the advertisement contains the street address, city, and ZIP Code of the property, such information shall be clearly set out in bold type. In addition to any other matter required to be included in the advertisement of the sale, if the property encumbered by the mortgage, security deed, or lien contract has been transferred or conveyed by the original debtor to a new owner and an assumption by the new owner of the debt secured by said mortgage, security deed, or lien contract has been approved in writing by the secured creditor, then the advertisement should also include a recital of the fact of such transfer or conveyance and the name of the new owner, as long as information regarding any such assumption is readily discernable by the foreclosing creditor. Failure to include such a recital in the advertisement, however, shall not invalidate an otherwise valid foreclosure sale.
(b) The security instrument ***or assignment thereof*** vesting the secured creditor with title to the security instrument ***shall be filed prior to the time of sale*** in the office of the clerk of the superior court of the county in which the real property is located.
History. Amended by 2008 Ga. Laws 576, § 1, eff. 5/13/2008. (emphasis added).

[2] § 44-14-162.2. Sales Made On Foreclosure Under Power Of Sale -- Mailing Of Notice To Debtor -- Procedure For Mailing Notice.
(a) Notice of the initiation of proceedings to exercise a power of sale in a mortgage, security deed, or other lien contract shall be given to the debtor ***by the secured creditor*** no later than 30 days before the date of the proposed foreclosure. Such notice shall be in writing, shall include the name, address, and telephone number of the individual or entity who shall have full authority to negotiate, amend, and modify all terms of the mortgage with the debtor, and shall be sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the property address or to such other address as the debtor may designate by written notice to the secured creditor. The notice required by this Code section shall be deemed given on the official postmark day or day on which it is received for delivery by a commercial delivery firm. Nothing in this subsection shall be construed to require a secured creditor to negotiate, amend, or modify the terms of a mortgage instrument.
(b) The notice required by subsection (a) of this Code section shall be given by mailing or delivering to the debtor a copy of the notice of sale to be submitted to the publisher.
History. Amended by 2008 Ga. Laws 576, § 2, eff. 5/13/2008. (emphasis added).

property of the putative plaintiffs to be valid, to send notification at least 30 days prior to any intended foreclosure on the property.

40.

Georgia law, at O.C.G.A. § 23-2-114 entitled Powers of sale -- To be construed strictly; manner of sale; who may exercise, provides that "Powers of sale in deeds of trust, mortgages, and other instruments shall be strictly construed and shall be fairly exercised."

41.

With respect to the named Plaintiff, ~~and the putative plaintiffs~~, 30 days or more before the Foreclosure sale of the Plaintiff's property ~~and the property of the putative plaintiffs,~~ MERS sent a knowingly false and defective notice of foreclosure letter that did not comply with O.C.G.A. 44-14-162.2 and which included knowingly false information that was intended to mislead the Plaintiff and putative plaintiffs into believing that the statutory notice requirements were being complied with and into believing that MERS had authority to foreclose on the Plaintiff's property. The notices sent to the Plaintiff ~~and the putative plaintiffs~~ failed to meet the requirements of O.C.G.A. 44-14-162.2 in that it was not sent "***by the secured creditor***."

42.

MERS was not a Secured Creditor in that it neither held the security for the property and it was not a creditor as it was not the holder of the promissory notes and was not the party to whom the Plaintiff and putative plaintiffs owed money for the repayment

of their respective debts. It also could not be the secured creditor, as it is prohibited under Georgia law from acting as a fiduciary in regard to the note.

43.

The foreclosure/non-judicial sales of the Plaintiff's property all took place without the issuance of a foreclosure notice that complied with the foreclosure statute. According to O.C.G.A. 44-14-162 the foreclosure sales of the Plaintiff's property property are not valid by operation of law and this Court must issue an order that declares that all Deeds under Power (i.e. foreclosure deeds) that were prepared as a result of the invalid non-judicial sales of the Plaintiff's property and the property of the putative plaintiffs and that were recorded on the land records of the Georgia counties wherein the land lies are VOID. Doing so would restore title as it existed just prior to the invalid foreclosure sale.

EVEN IF MERS COULD GET AROUND THE PROBLEM THAT THERE WAS NO PROPER OCGA 44-14-162.2 NOTICE, MERS STILL HAD NO AUTHORITY TO FORECLOSE BECAUSE THE SECURITY DEEDS NAMING MERS THE GRANTEE ACTUALLY CONVEYED NOTHING TO MERS AND ARE VOID

44.

MERS lacked power of sale authority to act as Attorney in Fact for the Plaintiff and could not legally proceed with a non-judicial sale of the Plaintiff's property or the property .

45.

MERS lacks the capacity to act as a Trust or Corporate Fiduciary in the State of Georgia, thereby rendering void the security deeds of the Plaintiff.

. . that named MERS, acting solely as "nominee" for the Lender and the Lender's successors and assigns.

46.

The term "nominee" in not defined in the security deed.

47.

Georgia law does not recognize the term "nominee" in a real estate transaction wherein the grantee holds legal title for the benefit of another.

48.

Black's Law Dictionary defines "nominee" as "[a] person designated to act in place of another, usually in a very limited way" and as "[a] party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others." Black's Law Dictionary 1076 (8th ed. 2004).

49.

A "beneficiary" is defined as "one designated to benefit from an appointment, disposition, or assignment . . . or to receive something as a result of a legal arrangement or instrument." BLACK'S LAW DICTIONARY 165 (8th ed. 2004).

50.

But it is obvious from the MERS' "Terms and Conditions" that MERS is not a beneficiary as it has no rights whatsoever to any payments, to any servicing rights, or to any of the properties secured by the loans.

51.

With respect to a corporation, such as MERS, acting as a fiduciary,O.C.G.A § 7-1-242 declares:

1. No corporation, partnership, or other business association may lawfully act as a fiduciary in this state except:

   (1) A financial institution authorized to act in such capacity pursuant to the provisions of Georgia law;
   (2) A trust company;
   (3) A national bank or a state bank lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(4) A savings bank or savings and loan association lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;
(5) Attorneys at law licensed to practice in this state, whether incorporated as a professional corporation or otherwise;
(6) An investment adviser registered pursuant to the provisions of 15 U.S.C. Section 80b-3 or Chapter 5 of Title 10, provided this exception shall not authorize an investment adviser to act in any fiduciary capacity subject to the provisions of Title 53, relating to wills, trusts, and the administration of estates; or
(7) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Chapter 5 of Title 10 acting in such fiduciary capacity incidental to and as a consequence of its broker or dealer activities.

2. Acting as a fiduciary for purposes of this Code section includes but is not limited to:

(1) *Accepting or executing trusts or otherwise acting as a trustee;*
(2) *Administering real or tangible personal property located in Georgia or elsewhere. For the purposes of this paragraph, "administer" means to possess, purchase, sell, lease, insure, safekeep, manage, or otherwise oversee;* and (emphasis supplied)
(3) Acting pursuant to a court order as personal representative, executor, or administrator of the estate of a deceased person or as guardian or conservator for a minor or incapacitated person.

(c) Nothing in this chapter shall be construed to repeal or to change Part 2 of Article 16 of Chapter 12 of Title 53, dealing with foreign trustees, or Part 3 of Article 16 of Chapter 12 of Title 53, dealing with certain foreign corporations acting as fiduciaries, or any other statutes or rules of law on such subjects.

52.

The penalty for a corporation, such as MERS, unlawfully acting as a fiduciary is found in O.C.G.A § 7-1-845:

Miscellaneous felonies; when punished as misdemeanors

(a) Any person or corporation, including any financial institution or its directors, officers, agents, or employees, who shall perform the following acts or deeds *shall be guilty of a felony*:

(3) Willfully engages in the business of:

(B) *A trust company in violation of Code Section 7-1-242...* (emphasis supplied)

53.

MERS is clearly acting as a Trust Company as its role with respect to the Deed to Secure Debt is to hold legal title to property for the benefit of another. The Supreme Court of Georgia has ruled:

> "No formal words are necessary to create a trust estate. *Whenever a manifest intention that another person shall have the benefit of the property is exhibited, the grantee shall be declared a trustee.*" (emphasis supplied).

Carmichael Tile Co. v. Yaarab Temple Bldg. Co., 182 Ga. 348 (Ga. 1936) (emphasis added).

54.

OCGA Sec. 53-12-24(a), states that a corporation that wishes to act as trustee "must have the power to act as a trustee in Georgia."

55.

OCGA Sec. 7-1-242 provides that only certain corporations or business entities may act as a fiduciary in Georgia. These are basically banks, trust companies, and other financial institutions.

56.

Unless a corporation receives approval to act as a bank or trust company, as set forth in OCGA Sec. 7-1-392 et. seq., it cannot lawfully act as a corporate fiduciary in the State of Georgia.

57.

MERS has never sought, nor has it been granted authority by the Georgia Department of Banking and Finance to act as a trustee or to operate as a Trust Company. It is therefore unlawful for MERS, solely as "nominee" for the lender and the lender's successors and assigns, to be the Grantee of a Security Deed wherein it is tasked with holding legal title to the property for the benefit of another.

58.

The Plaintiff's ~~and the putative class plaintiffs~~' security deed ("trust instrument")[3] clearly meets all the elements of an "express trust" [4] in Georgia.

59.

Plaintiff ~~and the putative class plaintiffs~~, as "settlor", [5] conveyed legal title to the "trust property" [6] to MERS as "trustee" [7] for the lender and its successors and assigns , the true trust "beneficiaries".[8]

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[3] O.C.G.A. § 53-12-2 (9) "Trust instrument" means the document or documents that manifest the elements and other details of a trust.

[4] O.C.G.A. § 53-12-2 (2) "Express trust" means a trust in which the settlor's intention to create the trust is expressly stated, and which meets the requirements of Code Section 53-12-20.

[5] O.C.G.A. § 53-12-2 (7) "Settlor" means the person who creates the trust. The terms "grantor" and "trustor" mean the same as "settlor."

[6] O.C.G.A. § 53-12-2 (10) "Trust property" means property placed in trust by the settlor or property otherwise transferred to or acquired or retained by the trustee for the trust. The terms "trust corpus" and "trust res" mean the same as "trust property."

[7] O.C.G.A. § 53-12-2 (11) "Trustee" means the person holding legal title to the property in trust.

60.

Further evidence MERS is acting as a corporate fiduciary can be found in the Exhibit "D" which is attached hereto and is incorporated herein by this specific reference. The Attorney General, Mr. Bowers, Esq., states at ¶ 4 "An examination of the specific persons or entities identified as fiduciaries in O.C.G.A. § 7-1-4(20) reveals that such persons or entities are similar in nature to one another in that the role of each one involves *taking possession of or title to the assets of another* or exercising control over such assets for the purpose of managing those assets on behalf of the other person." This is exactly what the Deeds to Secure Debt at issue in this Complaint attempt to require MERS to do – take bare legal title to the property for recordation purposes. As stated, however, MERS lacks the capacity to act as a Trustee, operate as a Trust Company or be a corporate fiduciary.

61.

Thus MERS is acting unlawfully as a corporate fiduciary in the State of Georgia and the term "nominee" is merely an artifice employed to obfuscate the true relationship between the Plaintiff, MERS and the trust beneficiaries.

62.

The security deeds at issue herein violate Georgia public policy because MERS is not a trust company or bank, thus is operating unlawfully as a corporate fiduciary by

[8] O.C.G.A. § 53-12-2 (1) "Beneficiary" means a person for whose benefit property is held in trust, regardless of the nature of the interest. A beneficiary must be definitely ascertainable at the time of the creation of the trust or definitely ascertainable within the period of the rule against perpetuities.

obtaining legal title to real property in the State of Georgia as a trust or trustee for the benefit of MERS members and non members.

63.

MERS has no authority to hold legal title to real property and promissory notes in the State of Georgia as a trust or trustee.

64.

MERS has no authority to sell real property and/or promissory notes as a trust or trustee for any entity.

65.

MERS is acting as a trust or trustee without appropriate approval from the Georgia Department of Banking and Finance.

66.

MERS cannot register to act as a trust or trustee in the State of Georgia because it does not now meet the registration requirements to be registered by the Georgia Department of Banking and Finance.

67.

In addition to being void because MERS cannot lawfully be a Grantee of a Security Deed acting solely as a nominee for a lender because MERS would be acting as a corporate fiduciary in Georgia when it lacks the capacity to act as a corporate fiduciary, the Security Deeds of the Plaintiff and the putative plaintiffs naming MERS, acting solely as nominee, and thereby conveying legal title to the property to MERS, acting solely as nominee, as opposed to conveying legal title to the Lender, also causes a problem with

the ability to foreclose on the property in the event of a default in repayment of the loan. The ability to foreclose on the property at issue is affected because the security deed has been separated or split from the note. Loans originated with MERS as the original Grantee purport to separate the borrower's promissory note, which is made payable to the originating lender, from the security deed, which contains borrower's conveyance of legal title to MERS as nominee.

68.

With the creation of MERS, the mortgage industry has created a system whereby the deeds or mortgages are required to be separated or split from the notes. The Mortgage Industry decided to commit to the MERS system despite the U.S. Supreme Court's holding that "the note and the mortgage are inseparable." Carpenter v. Longan, 83 U.S. 271, 274 (1872). *See also* Nagle v. Macy 9 Cal. 426, 1858 WL 818 (Cal. 1858) ("The debt and the mortgage are inseparable.") Indeed, it went on to state that a "mortgage can have no separate existence" from a promissory note. Carpenter, 83 U.S. at 274. As such, the MERS security agreement that purports to grant a deed independent of the promissory note attempts to convey something that cannot exist by law.

69.

Many courts have held that a document attempting to convey an interest in realty fails to convey that interest when an eligible grantee is not named. Disque v. Wright, 49 Iowa 538, 1878 WL 623 (Iowa 1878) ("It has been frequently held that slight omissions in the acknowledgment of a deed destroy the effect of the record as constructive notice. *A fortiori,* it seems to us, should so important and vital an omission as that of the name of

the grantee have that effect."); Chauncey v. Arnold, 24 N.Y. 330 (N.Y. 1862) ("No mortgagee or obligee was named in [a mortgage], and no right to maintain an action thereon, or to enforce the same, was given therein to the plaintiff or any other person. It was, *per se,* of no more legal force than a simple piece of blank paper."); Richey v. Sinclair, 47 N.E. 364 (Ill. 1897) ("The law is well settled that a deed without the name of a grantee is invalid. It is said there must be in every grant a grantor, a grantee, and a thing granted; and a deed wanting in either essential will be void."); Allen v. Allen, 51 N.W. 473, 474 (1892) (omission of name of grantee invalidated conveyance because "A legal title to real property cannot be established by parol."); 59 CJS MORTGAGES § 306 ("Notice may be deemed not present in cases of insufficient attestation or where the instrument itself is so defective as to be void as a matter of law, as where it wholly omits the name of the mortgagee.") (citations omitted).

70.

Courts around the country have long held: "there must be, in every grant, a grantor, a grantee and a thing granted, and a deed wanting in either essential is absolutely void." Whitaker v. Miller, 83 Ill. 381, 1876 WL 10353 (Ill. 1876); Trout v. Taylor, 32 P.2d 968 (Ca. 1934); Green v. MacAdam, 346 P.2d 474, 485 (Cal.App. 1959); Hulsether v. Peters, 167 N.W. 497, 498 (S.D. 1918); Allen v. Allen, 51 N.W. 473, 473 (Minn. 1892); Beard v. Griggs, 1 J.J.Marsh. 22, 1829 WL 1139 (Ky.App. 1829); Morris v. Stephens, 46 Pa. 200, 1863 WL 4942, 10 Wr.Pa. 200 (Pa., 1863). Indeed, this common sense rule dates back to Blackstone's Commentaries which state: "What are the requisites of a deed? … There must be persons able to contract and be contracted with, for purposes

intended by the deed; and also a thing, or subject matter, to be contracted for; all of which must be expressed by sufficient names." 2d Blackstone's Commentaries, 296. And more recently, Patton and Palomoar's treatise agrees that: "It is axiomatic that a deed will be inoperative as a conveyance unless it designates someone to whom the title passes. A grantee is as necessary to the validity of a grant as that there should be a grantor or a property granted." 2 PATTON AND PALOMAR ON LAND TITLES § 338 (3d ed. 2009).

71.

In *Chauncey v. Arnold, 24 N.Y. 330, 332 (N.Y. 1862)*, the trial court, intermediate appellate court and New York's highest court all agreed that the attempt to convey an "in blank" mortgage failed. The Court of Appeals explained, "No mortgagee or obligee was named in [the security agreement], and no right to maintain an action thereon, or to enforce the same, was given therein to the plaintiff or any other person. It was, *per se,* of no more legal force than a simple piece of blank paper." *Id.* at 335.

72.

The Supreme Court of California reached a similar result in a deed of trust state. In *Trout v. Taylor* 32 P.2d 968 (Cal. 1934), a shady finance company induced "an elderly woman, without business experience, and of very limited schooling and education" into signing a blank deed conveying her land. After execution and delivery of the deed, the finance company filled in the name of a company insider, took out a few loans against the land and sold them to investors. In analyzing whether the deed was enforceable the Court

pointed to the absence of a named grantee and held that "the deed in question was not voidable, but was void *in toto*; a nullity." *Id* .at 970.

THE MERS SYSTEM IS CONTRARY TO HUNDREDS OF YEARS OF BLACK LETTER PROPERTY LAW AND IT CRACKS THE PUBLIC RECORDING OF PROPERTY OWNERSHIP FOUNDATION UPON WHICH A PROPERLY FUNCTIONING NON-JUDICIAL FORECLOSURE SYSTEM RELIES

73.

As alluded to above, in the case of the Plaintiff ~~and putative plaintiffs~~, the functioning of the MERS system which requires that the deed be separated, i.e. split, from the note, if given the stamp of approval by this Court, will turn hundreds of years of black letter property law on its head.

74.

Since the founding of the American republic each county in the United States has maintained records of who owns the land within that county. PATTON AND PALOMAR ON LAND TITLES § 4 (3d ed. 2003).

75.

Most states have tracked changes in ownership of land, including mortgages and deeds of trust, by maintaining records indexed through the names of grantors and grantees. 14 POWELL ON REAL PROPERTY §82.03[2][b]. These grantor-grantee indexes allow individuals and businesses contemplating the purchase of land to investigate (or hire a title insurer to investigate) whether a seller or mortgagor actually owns the land they are offering for sale or mortgage.

76.

For centuries American mortgage lenders have recorded their mortgages loans with county recorders because of incentives created by state land title laws. For example, if a mortgagee fails to properly record its mortgage, and then someone subsequently buys or lends against the home, the subsequent purchaser can often take priority over the first mortgagee.

77.

Similarly, where a mortgagee assigns a mortgage to an investor, that investor would eagerly record documentation reflecting the assignment to protect herself from the possibility that the original mortgagee would assign the same mortgage to a different investor.

78.

In the mid-1990s mortgage bankers decided they did not want to pay recording fees for assigning mortgages anymore. Phyllis K. Slesinger & Daniel McLaughlin, *Mortgage Electronic Registration System*, 31 ID. L. REV. 805, 810-12 (1995) (describing an Ernst & Young study commissioned by mortgage banker to study how much money they could avoid paying to county governments through the MERS system). This decision was driven by securitization—a process of pooling many mortgages into a trust and selling income from the trust to investors on Wall Street. Securitization, also sometimes called structured finance, usually required several successive mortgage assignments to different companies. To avoid paying county recording fees, mortgage bankers formed a plan to create one shell company, MERS, that would pretend to own all

the mortgages in the country—that way, the mortgage bankers would never have to record assignments since the same company would always supposedly "own" all the mortgages. Peterson, *Foreclosure, supra* note 5, at 1368-73; Howard Schneider, *MERS Aids Electronic Mortgage Program*, MORTGAGE BANKING, January 1, 1997.

79.

MER was created even though not a single state legislature or appellate court had authorized this change in the real property recording.

80.

Currently about 60% of the nation's residential mortgages are recorded in the name of MERS, Inc. rather than the bank, trust, or company that actually has a meaningful economic interest in the repayment of the debt. For the first time in the nation's history, there is no longer an authoritative, public record of who owns land in each county.

81.

In boilerplate security agreements included in mortgages and deeds of trust of the Plaintiff and the putative class plaintiffs, lenders included this clause: "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is *acting solely as nominee for Lender* and Lender's successors and assigns. *MERS is the mortgagee* under this Security Instrument."

82.

On the one hand, MERS purports to be acting as a nominee—a fiduciary (which is prohibited to MERS under Georgia law). On the other hand, it also is claiming to be an

actual mortgagee, which is to say an owner of the real property right to foreclose upon the security interest.

83.

It is axiomatic that a company cannot be both an agent and a principal with respect to the same right.

84.

In litigation all across the country, attorneys representing MERS frequently take inconsistent positions on the legal status of the company, depending on the legal issue at hand.

85.

If MERS is merely an agent of the actual lender, it does not have the authority to list itself as a grantee with power of sale in the security deed, then while it may have authority to record mortgages in its own name, both MERS and financial institutions investing in MERS-recorded mortgages run afoul of longstanding precedent on the inseparability of promissory notes and mortgages.

86.

Since the 19th century a long and still vital line of cases has held that mortgages and deeds of trust may not be separated from the promissory notes that create the underlying obligation triggering foreclosure rights. *In* re Bird, 2007 WL 2684265, at ¶¶ 2-4 (Bkrtcy.D.MD. 2007) ("The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity. . . . It is equally absurd to assume that

such bifurcation was intended because such a bifurcation of the note from the deed of trust would render the debt unsecured.");

(stating that "[a] security interest cannot exist, much less be transferred, independent from the obligation which it secures" and that, "[i]f the debt is not transferred, neither is the security interest");

("An assignment of a mortgage without a transfer of the underlying note is a nullity. . . . It is axiomatic that any attempt to assign the mortgage without transfer of the debt will not pass the mortgagee's interest to the assignee."); Yoi-Lee Realty Corp. v. 177th Street Realty Associates, 208 A.D.2d 185, 626 N.Y.S.2d 61, 64 (N.Y.A.D. 1 Dept.,1995) ("The mortgage note is inseparable from the mortgage, to which the note expressly refers, and from which the note incorporates provisions for default."); In re _., 26 B.R. 358, 361 (Bkrtcy. Conn., 1982) (reaffirming that "[t]he note and mortgage are inseparable"); Barton v. Perryman, 577 S.W.2d 596, 600 (Ark., 1979) ("[A] note and mortgage are inseparable."); . v. Wortham, 428 S.W.2d 417, 419 (Tex. Civ. App. 1968) ("The note and mortgage are inseparable. . . ."); Kirby Lumber Corp. v. Williams, 230 F.2d 330, 333 (5th Cir. 1956) ("The rule is fully recognized in this state that a mortgage to secure a negotiable promissory note is merely an incident to the debt, and passes by assignment or transfer of the note. * * * The note and mortgage are inseparable. . . .");

("In any event, Kelley's purported assignment of the mortgage without an assignment of the debt which is secured was a legal nullity."); Hill v. Favour, 52 Ariz. 561, 84 P.2d 575 (Ariz. 1938) ("The note and mortgage are inseparable; the former as

essential, the latter as an incident.)"; Denniston v. C.I.R., 37 B.T.A. 834, 1938 WL 373 (B.T.A. 1938) ("All the authorities agree that the debt is the principal thing and the mortgage an accessory. . . The mortgage can have no separate existence."); West v. of Taft, 123 Tex. 388, 71 S.W.2d 1090, 1098 (Tex. 1934) ("The trial court's finding and conclusion ignore the settled principle that a mortgage securing a negotiable note is but an incident to the note and partakes of its negotiable character. . . . The note and mortgage are inseparable; the former as essential, the latter as an incident.") (citations omitted); First Nat. v. Vagg, 65 Mont. 34, 212 P. 509, 511 (Mont. 1922) ("A mortgage, as distinct from the debt it secures, is not a thing of value nor a fit subject of transfer; hence an assignment of the mortgage alone, without the debt, is nugatory, and confers no rights whatever upon the assignee. The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while the assignment of the latter alone is a nullity. The mortgage can have no separate existence.") (citations omitted); Southerin v. Mendum, 5 N.H. 420, 1831 WL 1104, at ¶ 7 (N.H. 1831) ("[T]he interest of the mortgagee is not in fact real estate, but a personal chattel, a mere security for the debt, an interest in the land inseparable from the debt, an incident to the debt, which cannot be detached from its principal.").

87.

The above cases do not merely hold that mortgages follow notes as a matter of default law, but that mortgages cannot legally be separated from notes. Thus, in Carpenter v. Longan 83 U.S. 271, 274, (1872) the United States Supreme Court announced the classic statement of this rule: "the note and mortgage are *inseparable*...,

the assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity."

88.

To date, every state Supreme Court that has looked at the issue has concluded that, despite its boilerplate language, MERS is not a mortgagee or deed of trust beneficiary. For example, in MERS, Inc. v. Southwest Homes of Arkansas, 2009 Ark. 152, 301 S.W.3d 1 (Ark. 2009) a first position lender named MERS as the beneficiary on its deed of trust. Later the family took out a second mortgage which did not use the MERS system. When the family fell behind on the second mortgage, the subsequent lender's assignee foreclosed without notifying either MERS or the real owner of the first mortgage. When MERS, acting through local counsel attempted to set aside the foreclosure, a unanimous Supreme Court of Arkansas, with its Chief Justice writing, held that MERS had no property rights with respect to the loan whatsoever. Even though MERS never had service of process, the court allowed the foreclosure to stand because MERS had lost nothing. In the Court's words, "MERS is not the beneficiary, even though it is so designated in the deed of trust."

89.

Similarly, the Kansas Supreme Court has also refused to allow MERS to set aside a first mortgagee's default judgment in a foreclosure action. Landmark Nat. Bank v. Kesler, 216 P.3d 158,169 (Kan. 2009). In its opinion, the Kansas Supreme Court diagnosed MERS' schizophrenic self characterization as a nominee, puzzling:

> What meaning is this court to attach to MERS's designation as nominee for Millennia? The parties appear to have defined the word in much the same way that the blind men of Indian legend described an elephant—their description depended on which part they were touching at any given time.

90.

Kansas followed Arkansas' skepticism regarding whether MERS actually owns anything: "MERS did not demonstrate, in fact, did not attempt to demonstrate, that it possessed any tangible interest in the mortgage beyond a nominal designation."

91.

Likewise, the Supreme Court of Maine reached similar results when MERS itself filed a foreclosure complaint. In MERS, Inc. v. Saunders, Slip op. 2010 ME 79, at ¶ 1 (August 12, 2010) MERS filed a foreclosure complaint, but during the pending case, Deutsche Bank attempted to substitute itself into the action instead of MERS.34 When the trial court awarded summary judgment to Deutsche Bank the family appealed arguing that MERS lacked standing and that this jurisdictional defect could not be cured by substitution of another party during the pending case. The appeal forced the Maine Supreme Court to look at the simple question of whether MERS has standing to bring a foreclosure action on behalf of the real economic loan owner. Despite contrary boilerplate language in the security agreement, the Court flatly rejected MERS' ownership claim stating: "MERS is not a mortgagee… because it has no enforceable right in the debt obligation securing the mortgage." Because MERS lacked standing, the court reversed summary judgment to give the family an opportunity to "appropriately defend the foreclosure action against the real party in interest."

92.

In Missouri, appellate courts have gone a step further in challenging MERS' ownership claims vis-à-vis mortgages tracked on its database. In Bellistri v. Ocwen Loan Servicing, 284 S.W.3d 619 (Mo.App. E.D.,2009) MERS' involvement in the loan effectively led to the stripping of deed of trust lien from the land. In this case, a debtor borrowed money from a mortgage lending company named BNC Mortgage and signed a deed of trust naming MERS as beneficiary of the trust. After the loan closed, no one paid property taxes on the residence for several years. Eventually the local government established a tax lien and sold the property at auction to Bellistri. Hoping to make his rights clear, Bellistri sued in state court to quiet title on the land he had purchased. Because the debt had still not been repaid Ocwen, a mortgage loan servicing company, attempted to argue that the tax sale did not transfer title to the land from the original debtor to Bellistri. Ocwen produced an assignment of the deed of trust from MERS to Ocwen that had been recorded by an employee of Ocwen pretending to be a Vice President of MERS. The Missouri Court of Appeals treated the recorded assignment as a legal nullity. Looking to the American Law Institute's Third Restatement of Property Law the court stated:

> Typically, the same person holds both the note and the deed of trust. In the event that the note and the deed of trust are split, the note, as a practical matter becomes unsecured. Restatement (Third) of Property (Mortgages) § 5.4. Comment. The practical effect of splitting the deed of trust from the promissory note is to make it impossible for the holder of the note to foreclose, unless the holder of the deed of trust is the agent of the holder of the note. Id. Without the agency relationship, the person holding only the note lacks the power to foreclose in the event of default. The person holding only the deed of trust will never experience default because only the holder of the note is entitled to payment of the underlying obligation. Id.

> The mortgage loan became ineffectual when the note holder did not also hold the deed of trust.

Ultimately, the Court held that "MERS never held the promissory note, thus its assignment of the deed of trust to Ocwen separate from the note had no force." The Court effectively quieted title in favor of Bellistri, stripping off the lien.

93.

The policy justifications behind recording statutes are as germane today as they were hundreds of years ago when the first American colonies began adopting the statutes. Society needs an authoritative, transparent source of information on who owns land in order to protect property rights, encourage commerce, expose fraud, and avoid disputes.

94.

The MERS database does not provide reliable, authoritative information on legally cognizable beneficial ownership of loans registered in its system. County real property records that hold only a reference to the MERS system now have a systemic break in chains of title. Perhaps this is what MERS means by its corporate slogan: "Process Loans, Not Paperwork." *See* Welcome to MERS,

95.

MERS, whose stated purpose is to track the true ownership of notes and servicing rights, knew at the time of the foreclosure on the Plaintiff's property and at the time of its foreclosure on the property of the putative plaintiffs that its statements in the notices of foreclosure were false and that it, acting on its own, had no authority to act as Attorney

in Fact for the Plaintiff or the putative plaintiffs or to accelerate the debt or exercise the power of sale.

MERS VIOLATED THE STATUTORILY REQUIRED OBLIGATION TO FAIRLEY EXERCISE THE POWER OF SALE

96.

In addition to conducting and invalid foreclosure sale as a matter of law, MERS also violated O.C.G.A. § 23-2-114 in that is violated its duty to fairly exercise the power of sale as concerns the Plaintiff's property and the property of the putative plaintiffs and is therefore liable in tort for any damages resulting from its actions.

97.

As a result of the above described actions of MERS the Plaintiff and putative plaintiffs have suffered tremendous injuries including, but not limited to severe emotional pain and suffering, anger, sadness, humiliation, embarrassment, etc.

98.

Based on the above undisputed facts, the Plaintiff and putative plaintiffs are therefore entitled to recover all of their damages that resulted from MERS action in proceeding with the foreclosure, including, damages for severe emotional pain and suffering, punitive damages and for attorney's fees.

CLASS ACTION ALLEGATIONS

99.

The class of persons sought to be represented by the named Plaintiff is so numerous that joinder of all members is impracticable, as Plaintiff believes there are

thousands of putative plaintiffs in Georgia who were subject to the same language in the deeds and the same policy and practices by MERS in the non-judicial foreclosure process and non-judicial foreclosure sale process.

100.

Questions of law and fact implicated in this action are common to the named Plaintiff and the class of persons they seek to represent. These include the validity of the form deed used and discussed herein with Plaintiff and the putative class plaintiffs; the power (or lack thereof) for MERS to act; whether MERS is properly a fiduciary (or not); and whether MERS was a security holder when it acted to foreclose.

108.

The claims of the named Plaintiff are typical of the claims of the class of persons he seeks to represent.

109.

The named representative Plaintiff will fairly and adequately represent the interests of the class of persons he seeks to represent and he has engaged capable counsel experienced in conducting class litigation.

110.

Defendants have acted on grounds ~~generally applicable to the class~~, thereby making appropriate final injunctive relief or corresponding declaratory relief

law or custom and there is nothing about Georgia law or custom that makes it necessary for MERS, acting as nominee for a lender, to exercise the power of sale which the deed expressly granted to the lender and the lenders successors and assigns, (4) the fact that MERS cannot legally act as a corporate fiduciary in Georgia, which is what (a) the operation of the deed requires and (b) exercise of the power of sale as attorney-in-fact for the Plaintiff and putative plaintiffs requires, thus making the Security Deeds and the Foreclosure Deeds relating to the Plaintiff and putative plaintiffs void, (5) the fact that the MERS system of registration requires the note and the deed separate or split, which causes the loan to become unsecured as the deed cannot be enforced apart from the note, and (6) the fact of MERS failure in many respects to fairly exercise the power of sale under OCGA 23-2-114, MERS, whether standing alone or together, MERS actions in foreclosing on, and selling at a non-judicial auction, the property of the Plaintiff and that of the putative plaintiffs, constitute the tort of wrongful foreclosure

123.

MERS chose to proceed with the non-judicial sale of the Plaintiff's ~~and putative class plaintiffs~~' property even though it knew or should have known it lacked authority to act as attorney in fact for the Plaintiffs and putative plaintiffs and exercise the power of sale. MERS actions were willful and wanton and exercised with a complete disregard for the consequences, such that the plaintiff and putative plaintiffs are entitled to an award of punitive damages.

124.

MERS above described actions constitute the tort of wrongful foreclosure under Georgia law entitling the Plaintiff to recover from MERS all damages that were caused by MERS tortuous conduct, including damages for severe emotional distress and for punitive damages and attorneys' fees.

COUNT III

EQUITABLE RELIEF

125.

The Plaintiff incorporates by this specific reference the preceding paragraphs of this Complaint as if stated fully herein.

126.

Because of any one of the reasons identified above, including but not limited to (1) the fact that no notice meeting the requirements of OCGA 44-14-162.2 was sent to the Plaintiff by the secured creditor becaus, (2) the fact that MERS was not a holder in due course of the promissory note, (3) the fact that the security deed only granted power of sale to MERS, acting solely as nominee for the lender, in the very limited and extraordinary circumstance that it becomes necessary to comply with local law or custom and there is nothing about Georgia law or custom that makes it necessary for MERS, acting as nominee for a lender, to exercise the power of sale which the deed expressly granted to the lender and the lenders successors and assigns, (4) the fact that MERS cannot legally act as a corporate fiduciary in Georgia, which is what (a) the operation of the deed requires and (b) exercise of the power of sale

As a direct and proximate result of MERS' flagrant disregard of the rights of the Plaintiff , as explained in detail above, Plaintiff should be awarded punitive damages pursuant to O.C.G.A. § 51-12-5.1 for MERS willful misconduct, malice, fraud and wantonness in an amount to be proved at trial.

as attorney-in-fact for the Plaintiff , thus making the Security Deeds and the Foreclosure Deeds relating to the Plaintiff void, (5) the fact that the MERS system of registration requires the note and the deed separate or split, which causes the loan to become unsecured as the deed cannot be enforced apart from the note, and (6) the fact of MERS failure in many respects to fairly exercise the power of sale under OCGA 23-2-114, MERS, whether standing alone or together, the Plaintiff are entitled to an Order that declares that the foreclosure actions that MERS took that make up the subject matter of this Complaint resulted in the wrongful foreclosure with respect to the Plaintiff~~s and putative plaintiffs~~' property and that declares that all deeds under power (i.e. foreclosure deeds) that were prepared as a result of the invalid non-judicial sales of the Plaintiff's property and that were recorded on the land records of the Georgia counties wherein the land lies are VOID and which restores title as it existed just prior to the invalid foreclosure sale, thus reversing said foreclosure sale and returning the parties to their respective positions and holding their respective interests in the Property as they existed prior to the foreclosure sale.

COUNT IV

PUNTITIVE DAMAGES

127.

The Plaintiff incorporates by this specific reference the preceding paragraphs of this Complaint as if stated fully herein.

128.

Exhibit A

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.
2008 DEC 11 PM 2:28
TOM LAWLER, CLERK

BK 49798 PG 0246

314383

Recorded just b4 the sale Date

Our File No.: 52607708-F11
Debtor: Alfredia Pruitt
Sale Date: 01/06/2009

Return to
Prommis Solutions, LLC
1544 Old Alabama Road
Roswell, GA 30076

ASSIGNMENT

STATE OF Pennsylvania

COUNTY OF Montgomery

For value received, Mortgage Electronic Registration Systems, Inc. has this day transferred, sold, assigned, conveyed and set over to GMAC Mortgage, LLC, whose address is 1100 Virginia Drive, Fort Washington, PA 19034, as Assignee, its successors, representatives and assigns, all its right, title and interest in and to a certain Security Deed (or Deed to Secure Debt) executed by Alfredia Pruitt to Mortgage Electronic Registration Systems, Inc., dated August 30, 2006, recorded in Deed Book 46975, Page 422, Gwinnett County, Georgia Records.

Property Address: 2360 Hickory Station Circle, Snellville, Georgia 30078

The Assignor herein specifically transfers, sells, conveys and assigns to the above Assignee, its successors, representatives and assigns, the aforesaid Security Deed, the property described therein, the indebtedness secured thereby together with all the powers, options, privileges and immunities therein contained.

The Assignor herein has this day sold and assigned to the Assignee herein the note secured by the aforesaid Security Deed and this transfer is made to secure the Assignee, its successors, representatives and assigns, in the payment of said note.

IN WITNESS WHEREOF, the Assignor has hereunto set its hand and seal this Nov. 25th, 2008.

Signed, sealed and delivered
in the presence of:

Laura Cobb
Unofficial Witness

Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Susan Turner, Notary Public
Upper Dublin Twp., Montgomery County
My Commission Expires Nov. 9, 2011
Member, Pennsylvania Association of Notaries

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: _____
Title: _____

By: Kristine Wilson
Title: _____
(Corporate Seal)

Jeffrey Stephan
Vice President

Kristine Wilson
Assistant Secretary

No co-operate Seal

0117739

Susan Turner

Exhibit C

NOTE

NOTE

August 30, 2006 (Date) | Norcross (City) | GEORGIA (State)

2360 Hickory Station Circle, Snellville, GA 30078

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 271,330.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is USAA Federal Savings Bank

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.750 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on October 01, 2006 . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on September 01, 2036 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at Attn: Payment Processing, P.O. Box 205, Waterloo, IA 50704-0205 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 1,759.84 .

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. APPLICABLE LAW

Lender is a federally chartered savings bank governed, in part, by the Home Owner's Loan Act of 1933 and the rules and regulations promulgated pursuant thereto (the "Act"). To the extent permitted by the Act, this Note will be governed by applicable federal law and by the interest rate and usury provisions of the state of Texas.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Alfredia Pruitt _____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

Pay to the Order of

_____

without recourse

USAA Federal Savings Bank

By

Name Heather Garida

Title Processing Supervisor

_____ (Seal) -Borrower

_____ (Seal) -Borrower

[Sign Original Only]

Exhibit B

Consor & Associates
Reporting and Transcription Inc

Exhibit B

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50 2008 CA 040805XXXX MB

GMAC MORTGAGE, LLC,

Plaintiff,

-vs-

[redacted]

UNKNOWN TENANT (S) IN
POSSESSION OF THE SUBJECT
PROPERTY,

Defendants.

DEPOSITION OF JEFFREY STEPHAN

Thursday, December 10, 2009
1:00 p.m. - 2:30 p.m.

Consor & Associates
1655 Palm Beach Lakes Blvd., Ste. 500
West Palm Beach, Florida 33401

Reported By:
Jamie Reynolds Bentley, Court Reporter
Notary Public, State of Florida
Consor & Associates
1655 Palm Beach Lakes Blvd., Suite 500
West Palm Beach, Florida 33401
(561)682-0905

Orsor & Associates
Reporting and Transcription Inc

APPEARANCES:

On behalf of the Plaintiff:

ALEJANDRA ARROYAVE, ESQ.
Lapin & Leichtling
225 Alahamra Circle
Suite 800
Coral Gables, Florida 33134
(305) 569-4100

On behalf of the Defendant:

CHRISTOPHER IMMEL, ESQ.
Ice Legal, P.A.
1975 Sansbury's Way
Suite 104
West Palm Beach, Florida 33411
(561) 798-5658

Orson & Associates
Reporting and Transcription, Inc

- - -

I N D E X

- - -

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
JEFFREY STEPHAN				
BY MR. IMMEL	4			54
JEFFREY STEPHAN				
BY MS. ARROYAVE		51		

- - -

E X H I B I T S

- - -

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Onsor & Associates
Reporting and Transcription Inc

PROCEEDINGS

- - -

Deposition taken before Jamie Reynolds Bentley, Court Reporter and Notary Public in and for the State of Florida at Large, in the above cause.

- - -

THE COURT REPORTER: Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

Thereupon,

(JEFFREY STEPHAN)

having been first duly sworn or affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. IMMEL:

Q. All right. We are here on GMAC Mortgage, LLC versus [redacted]. This is the deposition of Jeffrey Stephan. I'm sure your attorney has gone over things with you a little bit. But if you could just keep one thing in mind, to answer, not to simply nod your head or anything like that. We need for your answers to be clear for the court reporter that way.

A. Yes.

Q. Could you please state your name for the

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record.

A. My name is Jeffrey Stephan.

Q. Okay. And who do you work for?

A. GMAC, LLC.

Q. And is there a difference between GMAC, LLC and GMAC Mortgage, LLC?

A. GMAC, LLC -- I'm trying to think of the word to use -- the most recent name.

Q. Okay.

A. It's GMCA Mortgage Corporation.

Q. Okay.

A. I'm not sure how you would word that.

Q. Okay. So are they -- does GMAC, LLC -- now has that basically taken over these other entities --

A. Yes.

Q. -- that formerly existed?

A. Yes.

Q. So these entities no longer currently exist?

A. Right.

Q. Okay. And how long then have you been employed by GMAC, LLC?

A. Five years.

Q. Okay. And prior to that, it was GMAC Mortgage and GMAC Corporation?

A. That was as the whole five years.

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Q. Oh, okay.
A. Yes.
Q. As the whole five years. And what is your title?
A. I'm a team leader in the foreclosure department.
Q. Okay. And what are your responsibilities?
A. I am the team lead of the document execution unit.
Q. Okay.
A. And also the service transfer unit.
Q. And so what type of documents do you ordinarily execute?
A. I execute on a daily basis assignments of mortgage, affidavits of any type that might be needed, deeds. Any type of the document that would need a signature of an officer of GMAC.
Q. Okay. And who do you report to?
A. I report to Margie Kwiatanowski.
Q. Could you spell that?
A. Yes. It's K-W-I-A-T-A-N-O-W-S-K-I.
Q. Okay. And approximately how many employees does GMAC Mortgage, LLC have?
A. I couldn't guess. I don't know.
Q. Sure. Okay. And as part of your

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responsibilities, you execute assignments as a vice president of MERS?

A. Yes, that's correct.

Q. And in executing affidavits as a vice president, do you receive any compensation from MERS?

A. No.

Q. Have you had any training from MERS?

A. No.

Q. Okay. How many documents would you say you sign on an average week as far as executing affidavits and things of that nature?

A. It's very tough to estimate that to be honest with you.

Q. In a given month, would that be easier to say --

A. I would say --

Q. -- one hundred, 500?

A. -- in a month, my team brings to me approximately, I'd say a round number of 10,000. That's just an estimate, of course.

Q. Okay. And so, 10,000 your team brings to you. How many people do you oversee?

A. A team of 13 people.

Q. Okay. Now, would these people be given the duties of actually preparing the documents that you

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ultimately sign and execute?

A. They would review the document that is given to them through our computer systems.

Q. Okay.

A. So they don't actually prepare it per se. They review it for the accuracy of what type of entity I'm signing as.

Q. Okay. How many different entities do you sign as?

MS. ARROYAVE: Objection: Form.

BY MR. IMMEL:

Q. Can you name what entities you sign --

A. I sign presently as MERS.

Q. Okay.

A. And under MERS as vice president or an assistant secretary. Also, I sign for GMAC Mortgage. And to be honest with you, it's too many entities for me to actually quote under GMAC. But it is as a limited signing officer.

Q. Okay. And earlier you stated that right now it's GMAC, LLC.

A. Uh-huh.

Q. You do still currently sign documents as GMAC Mortgage, LLC?

A. Yes, I do.

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Q. Okay. And also as a corporation --

A. Yes.

Q. -- and some of the others that we've seen your signature on?

A. Yes, I do.

Q. Okay. Where then does the information that goes into the system that your team reviews --

A. Yes.

Q. -- where does that information come from?

A. The process that we use is -- and this is to my knowledge -- a file is referred to a foreclosure attorney stating exactly what entity would be needed through the referral unit. And at that point, the attorney receives the file to proceed with the foreclosure. That foreclosure name is generated upon GMAC supplying it on the referral. I'm not 100 percent sure of what that process is.

Q. Okay.

A. The documentation, as you stated, that you're asking about, is given to us after the attorney has been instructed on what name to foreclose in.

Q. And who instructs the attorney as to what name to foreclose it in?

A. It comes to our referral unit. Which is another process to my knowledge.

Q. Okay. Approximately, if 10,000 are signed in a given month, you know, on an average, how long would you say you spend executing each one and actually signing?

A. It's tough to say.

Q. Okay. Would it be accurate to say that when these documents have been presented to you by your team --

A. Uh-huh.

Q. -- you take the face value that they are -- they have been checked by your team?

A. That would be a correct statement, yes.

Q. So these documents wouldn't be actually executed on your own personal knowledge?

A. Right.

Q. It would be based on knowledge that came through --

A. Right.

Q. -- the chain --

A. I'm sorry.

MS. ARROYAVE: Can I interrupt just for a second? I just want to make sure that he finishes his question before you answer.

THE WITNESS: Sure. Sorry.

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BY MR. IMMEL:

Q. Yes, yes, that's true, too.

So the information that your team obtains isn't based on their personal knowledge either, it's located within the computer networks?

MS. ARROYAVE: Objection: Form.

BY MR. IMMEL:

Q. The information on the documents that you execute is stored within your data base?

A. No, somewhere else.

Q. No. Okay. The information then is that -- your team, they get that from a computer network that you have, correct?

A. No.

Q. Where does your team get that information?

A. That information is first given to the attorney to foreclose under which name as needed. If we are stating some type of assignment, for example, the attorney, to my knowledge, and I'm not 100 percent sure of their process because I don't work for the attorney, they would do a title check to verify what name the lien is presently in.

Q. Okay.

A. At that point is when it would initial if an assignment would be needed or not.

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Q. So at the direction of the attorney, your team creates these documents and then you execute them?

MS. ARROYAVE: Objection: Form.

BY MR. IMMEL:

Q. So your team executes documents at the request of attorneys?

MS. ARROYAVE: Objecting: Form. You can still answer it if you understand the question.

BY MR. IMMEL:

Q. Do you understand what I'm asking?

A. Yes, I understand what you're asking. My team does not create any documents.

Q. These documents are then sent from the attorney?

A. Yes.

Q. Okay. And you're -- so then the team that you oversee --

A. Uh-huh.

Q. -- simply reviews them for accuracy?

A. That's correct.

Q. Okay. And how do they verify the information is accurate?

A. They do not go into the system and verify the information as accurate. We are relying on our attorney network to ensure that they are asking for the correct

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information.

Q. So the attorney creates these documents and you are relying that the attorney is correct?

A. Yes.

MS. ARROYAVE: Objection: Form.

BY MR. IMMEL:

Q. Okay. And then they are required to be notarized. Are they notarized in your office?

A. Yes.

Q. Is the notary present with you or is it down the hall?

A. The notary is in the same department.

Q. Same department. Okay. Are they physically present when you (sic) notarize this -- or when they notarize and then you execute it?

A. No, they are not physically present. But I will -- I do deliver them to the notary.

Q. All right.

A. And I wait for them to notarize it to hand them back to my team.

Q. Okay. All right. What department then? You said your department?

A. Right.

Q. And as part of their job responsibilities, would notarizing be their sole responsibility, or do

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they have other responsibilities?

A. They have other responsibilities.

Q. Are any of the members of your team, people that also notarize documents that you execute?

A. Yes.

Q. Yes. Okay. Is there a job requirement that certain employees become notaries?

A. I don't know.

Q. Okay. And what type of -- what level of a type of employee would it typically be that is a notary?

A. I don't know that either.

Q. All right. Does the company pay for the process of becoming a notary or the renewal fees?

A. Yes.

Q. Okay. If a notary feels that they are being asked to notarize something that's done improperly, is there a process which they can, you know, raise that to anybody's attention?

A. I honestly don't know.

Q. You are not sure. Do you notarize any assignments of mortgage or other documents yourself?

A. No.

Q. Are you a notary?

A. No.

Q. How are witnesses ordinarily chosen?

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MS. ARROYAVE: Object: Form.

Chosen for what?

BY MR. IMMEL:

Q. The witnesses to, say, the assignments of the mortgage, and the witnesses of things that you execute.

A. They are just chosen randomly.

Q. Chosen randomly. Okay. Approximately how many days a week do you spend executing assignments, affidavits, and the various documents that you execute?

A. Five.

Q. Five. Okay. Are there any specific days where it's one day these types of documents, this type of documents, or can it be just a mix?

A. It's a mix.

Q. Okay. Approximately how many documents would you say are presented to you by your team at a given time? Is it one at a time, or ten at a time?

A. It is done in bulk.

Q. Done in bulk.

A. I could not quote you the exact number.

Q. Okay. Going back to the signing officer as Mortgage Electronic Registration Systems, you said that you are -- you sign as both vice president and as an assistant secretary?

A. That is correct.

Q. Is there any basis for one -- you sign as one versus the other?

A. The majority of the time I sign as a vice president. Most times we do not need an assistant secretary, unless they are asking for a second signature on any type of an affidavit or assignment.

Q. Okay. And, again, you are not paid by MERS. Do you hold any other responsibilities with MERS that would be consistent with having the title of a vice president?

A. No.

Q. No. Okay. So you don't attend any board meetings for MERS?

A. No.

Q. You don't report to the secretary of MERS or any other people at MERS?

A. No.

Q. How did you become a MERS representative? Did you request to be a vice president of MERS?

A. I received the responsibility as being the team lead for document executing. It was assigned to me by our legal area.

Q. Okay. All right. So your responsibilities as a vice president of MERS to execute the assignments is really your job perspective, or an aspect of your job at

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GMAC Mortgage, LLC or GMAC, LLC?

A. That is correct.

Q. Okay. And you've never been to any MERS offices or their headquarters?

A. No.

Q. Are you aware of why you were given the title of vice president versus assistant secretary or...

A. No, I'm not aware of that.

Q. Okay. All right. I have here the assignment of mortgage which you executed in this case.

A. Okay.

MR. IMMEL: I'll enter that as Exhibit A.

(Defendant's Exhibit Letter A was marked for identification.)

MR. IMMEL: I have a copy for you, as well.

THE WITNESS: Thank you.

BY MR. IMMEL:

Q. In the top left-hand corner it says, Record and return to offices of Marshall C. Watson.

Based on your earlier statements, it's accurate to say that attorneys at Marshall C. Watson created the information on this document?

MS. ARROYAVE: Objection: Form.

THE WITNESS: That would be correct.

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BY MR. IMMEL:

Q. Okay. And who -- so an attorney chose the date of the 4th day of March, 2009.

Can you tell me the date actually. Whether that's the 3rd or the 5th of March.

A. To me it seems to be the 5th.

Q. Okay.

A. Actually, excuse me, let me change that. It would have to be the 3rd, because the notary did it on the 4th.

Q. Okay. And that is your signature on this document?

A. That is correct.

Q. Okay. Is it commonplace then for the notary to notarize a document the day after you've apparently executed it?

MS. ARROYAVE: Objection: Form.

THE WITNESS: I would say, yes, it would be common.

BY MR. IMMEL:

Q. Okay. So typically when you hand these off to the notary, and then they kind of catch up?

A. Uh-huh. Yes.

Q. Okay. The witnesses, Heather Reinhart, do you know her personally?

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A. Yes, she is one of my employees.
Q. Is she on your team?
A. Yes.
Q. Is it possible that she would have been one of the people who reviewed this for accuracy?
A. That is possible.
Q. And the other person appears to be Tyra Wilks --
A. Wilson.
Q. Tyra Wilson. Okay. Is she also a member of your team?
A. Yes.
Q. And you know her personally, as well?
A. Yes.
Q. The notary, Susan Turner, is she a member of your team?
A. No, she is not.
Q. Do you know her personally?
A. Yes.
Q. It says here that you personally appeared before her on the 4th day of March. Is it possible that you executed then on the 3rd, and handed it to her and then you weren't personally in front of her at the time she notarized this?
A. I don't know. I can't recollect.

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Q. All right. And how did you determine on this to execute it to GMAC Mortgage, LLC?

MS. ARROYAVE: Objection: Form.

THE WITNESS: I'm not sure if I understand the question.

BY MR. IMMEL:

Q. Okay. Did you have any say in the creation of who MERS would assign this to?

A. No.

Q. No. Your attorney, the Law Office of Marshall C. Watson, determined that?

A. No.

Q. No.

A. That is, as I stated earlier, when the foreclosure referral goes out, the referral unit determines what entity they should be foreclosing on.

Q. Okay. And the foreclosure referral unit that you speak of, is that part of your department?

A. Yes.

Q. Okay. So would they have records that they are able to refer to to determine who the new mortgagee should be according to these assignments?

A. Yes.

Q. And who -- do you have a name of any person that keeps those documents?

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A. The team lead for that would be Brenda.
Q. Brenda?
A. Her last name is Staehle, S-T-A-E-H-L-E.
Q. Okay.
A. I think that's the way it's spelled.
Q. Can you tell me -- you really don't have any knowledge or information as to who should be the mortgagee? According to this document, you take it for face value; is that correct?
MS. ARROYAVE: Objection: Form.
THE WITNESS: Can you explain that further?
BY MR. IMMEL:
Q. You take it for face value that GMAC Mortgage, LLC is expected to be the mortgagee?
MS. ARROYAVE: Objection: Form.
BY MR. IMMEL:
Q. Who would have information who -- who MERS should assign this to? Would it be you or Brenda Staehle?
A. Brenda Staehle would be the individual or her team to refer the files, and they determine what name should be foreclosing in.
Q. Okay. So everything from that point on is based on the presumption that her team has ascertained those things to be correct?

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A. That is correct.

MS. ARROYAVE: Objection: Form.

BY MR. IMMEL:

Q. All right. Okay. So on March 5th, 2009, you're not aware --

A. I believe it's the 3rd.

Q. March 3rd. I'm sorry. March 3rd, 2009, you're not aware of any physical transfer of the mortgage?

A. Can you rephrase that? I'm not following.

Q. Are you aware of any reason why the assignment of mortgage had to be executed on March 5th, 2009 -- or the 3rd, 2009? I'm sorry.

A. We have a process that's set up with our attorney network. And Marshall Watson is in that attorney network. The file is referred to them with a certain name to proceed with the foreclosure in. They will pull title. And whatever they see title is in, in order to proceed in the proper name, they need to get an assignment. In this instance it's MERS to GMAC.

Q. Okay. Are the assignments supposed to be completed prior to the filing of the foreclosure lawsuit?

MS. ARROYAVE: Objection: Form.

BY MR. IMMEL:

Q. Are you aware if it's a company policy at least?

A. I don't know.

Q. Okay. So as this assignment of mortgage, on the face of it, transfers from Mortgage Electronic Registration Systems as nominee for Mortgage Investors Corporation to GMAC Mortgage, LLC on March 3rd, 2009, would it be accurate to say that prior to that, this assignment, Mortgage Electronic Registration Systems was the mortgagee?

A. No.

Q. No. Okay. Why would that not be accurate to say?

A. Mortgage Electronic Registration, to my knowledge, is an origination entity to allow the passing of assignments through performing loans to make it more easier, I guess you would say, to transfer amongst different companies. MERS does not own loans.

Q. They wouldn't own the loan. But they would own the mortgage; is that correct?

MS. ARROYAVE: Objection: Form.

THE WITNESS: It's not correct, no.

BY MR. IMMEL:

Q. No. So they are the named mortgagee, so that

when the note is passed from entity to entity it doesn't have to be rerecorded?

A. That is to my knowledge, yes.

Q. All right. On this it also says that MERS is assigning the mortgage together with the note. I don't know if you see that line there. It's right there (indicating).

As you just stated, MERS has no interest in the note ever; is that correct?

A. I honestly don't know.

Q. Oh, okay. As far as you're aware --

A. Yes.

Q. -- MERS doesn't --

A. As far as I'm aware. (Witness nods head.)

Q. Okay. Are you aware of whether that's common language to exist in the assignments that you execute?

A. I honestly don't know.

Q. You're not sure. Okay. All right.

MR. IMMEL: And I have a copy of the first page of the mortgage here. Which I'll enter as ExhibitB.

(Defendant's Exhibit Letter B was marked for identification.)

BY MR. IMMEL:

Q. If you will notice it says that the mortgagee

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according to the mortgage is Mortgage Electronic Registration Systems.

I believe it's right down there (indicating).

A. I disagree with that interpretation.

MS. ARROYAVE: Was there a question?

MR. IMMEL: Yes.

MS. ARROYAVE: What was the question?

BY MR. IMMEL:

Q. According to the mortgage, it says that MERS is the mortgagee?

A. My interpretation, it says right in the same paragraph, it says they are a nominee for the lender or the lender successors.

Q. Right. Okay. They are the mortgagee as nominee --

A. Uh-huh.

Q. -- for the lenders?

A. Yes.

Q. Okay. But they are a different entity from the lender and lender successors and things?

A. Yes.

Q. Okay. What does nominee in that regards mean?

A. I don't know.

Q. Okay. We can move on from there.

I have here -- which I'll enter as Exhibit

C -- some discovery that we received from MERS.

(Defendant's Exhibit Letter C was marked for identification.)

BY MR. IMMEL:

Q. And if you will turn to the second page. It is the document entitled, Min Summary.

And have you ever seen these records before?

A. No, I have not.

Q. So in executing the assignments of mortgage on behalf of MERS, do you consult any of MERS' records?

A. No.

Q. And you are not able to tell me what any of these entries would then mean? This is the first time you have seen this type of information?

A. In this format, yes.

Q. Okay. Have you seen this type of information in other formats?

A. Some of it. I understand what they mean as far as the acronyms in there.

Q. Okay. Based on your understanding, the investor says -- the investor is identified as Government National Mortgage Association - Ginnie Mae. What does the word "investor" mean in MERS' acronym? Are you aware?

A. I'm not sure how I can explain it. GMAC would

be the holder and the owner of the mortgage. GMAC would be the investor who is in the organization that contributed the fund. That's really the only way I can explain the relationship of an investor and servicer.

Q. Okay.

A. But that's only to my knowledge. I mean, I don't work in that fashion.

Q. Okay. So the servicer is supposed to take on the day-to-day activities of administering the mortgage of loan and collecting payments and so forth?

A. That would be correct.

Q. And they do that on behalf of the investor who loaned the monies?

A. Yes.

Q. Okay. And any monies that are received from the servicers, would they really be for the investor then to pay him back the loan?

A. I don't know.

Q. Okay. And as custodian, also, that would mean that they are in possession of the mortgage file, essentially, the note and any other applicable documents?

A. That's correct.

Q. Okay. All right. Where it has the pool number and it is blacked out. Do you know what the pool

number refers to?

A. No, I don't.

Q. No. Okay. And what about the investor loan number?

A. Yes, I understand what that is.

Q. And what would that relate to?

A. Every investor would have their own loan number. The same as GMAC would have their own loan number to classify the different files.

Q. Okay. And are you aware of how a mortgage that has been securitized, a mortgage note that's been securitized, would be reflected on something like this, on this summary?

A. I am not familiar.

Q. You are not familiar. Okay. Are you aware of anyone at GMAC Mortgage, LLC that has access to these MERS documents and records?

A. No, I'm not.

Q. You are not aware. Okay. Are you aware of anybody at GMAC that would have a responsibility to update the MERS documentation?

A. No.

Q. Okay. So the various individuals at GMAC that execute assignments on behalf of MERS have no responsibility to update the MERS' system that they had

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actually done those assignments or anything like that?

A. That would be correct.

Q. Okay. Are you aware then of how the MERS' system is updated?

A. No.

Q. Okay. As a vice president, do you owe a fiduciary duty to the original lender to ensure that the mortgage is assigned to the proper entity?

MS. ARROYAVE: Objection: Form.

THE WITNESS: I actually don't understand your question.

BY MR. IMMEL:

Q. Do you own any duty to the -- when you assign these mortgages, you execute them as -- for MERS as nominee for a particular entity, correct?

A. That would be correct.

Q. Do you owe any responsibility then to that particular entity that MERS is nominee for to ensure that the mortgage is transferred to the new correct entity?

A. I don't know.

Q. Okay. All right.

MR. IMMEL: I have the corporate resolution here. Which I'll enter it as Exhibit D.

(Defendant's Exhibit Letter D was marked for identification.)

BY MR. IMMEL:

Q. Have you seen this document before?

A. Yes, I have.

Q. When was the first time you saw it?

A. I'm sorry, I can't say. I don't recollect.

Q. You're not sure. Is it fair to say it was quite a while ago?

A. Yes.

Q. Did you have any role in creating it or negotiating it?

A. No, I did not.

Q. No. Okay. The first paragraph says that you are authorized to assign a lien of any mortgage loan registered on the MERS register to the member.

Who would be the member according to this? Would that be GMAC Mortgage, LLC?

A. I don't know.

Q. Okay. Assign the lien, in paragraph 2, of any mortgage loan naming MERS as the mortgagee when the member is also the current promissory note-holder, or if the mortgage loan is registered on the MERS system, is shown to be registered to the member.

When you are assigning liens, you already

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stated that you don't consult with any of the MERS records to determine whether or not it's registered to who -- whoever?

MS. ARROYAVE: Objection: Form. Asked and answered. Mischaracterization of prior testimony.

BY MR. IMMEL:

Q. Okay. You don't consult MERS system when assigned these liens?

A. Yes.

MS. ARROYAVE: Asked and answered.

BY MR. IMMEL:

Q. All right. Okay. But is it fair to say that you don't ascertain whether the member is the current promissory note-holder when you assign the lien?

A. That would be correct.

Q. And you also don't know if the mortgage loan is registered on the MERS system?

A. We are relying on our attorney network when they check the title --

Q. Okay.

A. -- to verify what title it is presently in. If it is MERS, we would sign for MERS.

Q. Okay.

MR. IMMEL: Exhibit E.

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(Defendant's Exhibit Letter E was marked for identification.)

BY MR. IMMEL:

Q. Here is the GMAC Mortgage, LLC certificate of assistant secretary. Here you go.

And you are considered a limited signing officer giving you basically the same responsibility as a junior officer?

MS. ARROYAVE: Objection: Form.

THE WITNESS: I don't know if that's a correct statement.

BY MR. IMMEL:

Q. Okay. Are you familiar with this document?

A. I have a copy of this document. Which to my recollection means that next to my name it gives me the authority to sign for GMAC and its entities as a limited signing officer.

Q. Okay. In this case, you also filed an affidavit of lost original document?

MS. ARROYAVE: Objection: Form.

BY MR. IMMEL:

Q. Okay. And you executed this document. Is this your signature? Here is a copy of it.

MR. IMMEL: I'll enter this as Exhibit F, I believe.

(Defendant's Exhibit Letter F was marked for identification.)

THE WITNESS: Yes, that is my signature.

BY MR. IMMEL:

Q. Okay. And you signed this affidavit claiming that at the time plaintiff was not presently in custody or control of plaintiff or any of plaintiff's agents, and that would be the note that was not in your -- their custody or control?

A. Yes. Once again, we have a process in place where if our attorney needs an original document, they open up a request in our system. At that time, we have another unit -- which is not located in Pennsylvania where I am located -- contact custodians, contact their own records, go to different investors. They do not do an affidavit of this fashion unless they've exhausted all efforts.

Q. Okay. Would it be fair to say that you're not involved in any of those efforts?

A. That is fair to say.

Q. Okay. Why then do they ask you to execute the affidavit of lost document -- lost original document?

A. They asked me to execute this for the foreclosure department. Because after conversations between the attorney and this other department, they

determine that it is not available. I am the foreclosure team lead that handles document execution.

Q. Okay. So would it be accurate to say that the department that actually searches for the lost note would have a better understanding of why it's lost and where the search occurred?

A. That is a fair statement.

Q. Okay. It says that the copy of said note attached to the complaint is a true and correct and substantial copy of the lost or destroyed note.

Do you review any documents before executing the affidavits of lost original documents?

A. No, I do not. I review this. Let me change this. Excuse me. I do review this. However, I do not review any documents. I rely, once again, on my attorney network who is requesting the document, and communications between the departments to determine if it's -- if a lost affidavit is needed.

Q. Okay. So the portion that sets claims in paragraph 1: Affiant has custody and personal knowledge of the account pertaining the original mortgage loan instruments. Affiant has actual and personal knowledge of the facts stated herein and is authorized to make this affidavit. Would that be accurate?

A. Yes, that is accurate.

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Q. You being the affiant have custody and personal knowledge of the account pertaining to the original mortgage loan instruments?

MS. ARROYAVE: Object to the form. Go ahead.

THE WITNESS: I do not have the specific knowledge to this one account. But I understand what the other department does in general to try to locate these documents.

BY MR. IMMEL:

Q. Okay. All right. And so in this particular case, the -- there was no note attached to the complaint. You would have no way of ascertaining that because you don't actually review?

A. That, once again, is determined by our attorneys' office.

Q. Okay. I'm going to just -- I have a substantial copy of the complaint. And just to show that there is no note attached to it, that was the original filing of the complaint.

You have never reviewed that, nor do you review any other note to determine whether it is, in fact, a true, correct and substantial copy of the lost or destroyed note?

MS. ARROYAVE: Objection: Form.

THE WITNESS: Can you rephrase that for me? I

don't completely follow what you are saying.

BY MR. IMMEL:

Q. When you execute the affidavit of lost original document, and make the claim that you've seen a copy of the note that is attached and that's a substantial copy, you really have no basis for making that claim.

THE WITNESS: I'm still not following.

MS. ARROYAVE: Objection: Form.

BY MR. IMMEL:

Q. When the complaint in this case was filed, there was no note attached to the complaint, correct?

A. From what you have just handed to me, there is no note.

Q. Okay. Based on what I've provided you.

A. Yes.

Q. Do you normally review notes to make sure that they are a true copy of the lost note?

MS. ARROYAVE: Objection: Form.

THE WITNESS: That is -- no, I do not. It is not in my position.

BY MR. IMMEL:

Q. It's not in your position.

MR. IMMEL: All right. I guess I can enter this a Exhibit G.

(Defendant's Exhibit Letter G was marked for identification.)

BY MR. IMMEL:

Q. And going back, just for a second, to the lost note affidavit. That is your signature?

A. Yes, that's correct.

Q. And your understanding is that the attorney representing -- from your network drafts this?

A. That is correct.

Q. Okay.

MR. IMMEL: This is going to be Exhibit H.

(Defendant's Exhibit Letter H was marked for identification.)

BY MR. IMMEL:

Q. This is a copy of the note filed after the complaint in this case. I don't have the notice of filing page.

Have you ever seen this document before?

A. I have seen these documents. I have not seen this document.

Q. Okay. And this wouldn't have been the document that you reviewed in executing the lost note affidavit?

A. No. We do not -- once again, we do not review the note. Our attorney determines that the note is not

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available through our processes.

Q. Okay.

MR. IMMEL: This would be Exhibit I.

(Defendant's Exhibit Letter I was marked for identification.)

BY MR. IMMEL:

Q. This is the newly found note. Here. And as you can see, if you could compare the two notes, one has a couple of additional endorsements. Whereas, the previous one did not. Is that correct?

A. That is what I observe here, yes.

Q. Okay. In the review of the two notes and the endorsements that are on them, have you seen this type of situation before where one note that's been filed in the case is partially endorsed and the other is a more complete record of endorsements?

A. No, I have not.

Q. In following along the endorsements, can you determine who was the last owner of the note prior to your companies?

A. I'm sorry. Can you rephrase that for me?

Q. Can you determine who GMAC Mortgage, LLC has acquired the mortgage note from?

A. The first endorsement I see here has a date. It says, Mortgage Investor Corporation. It's signed on

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February 27th, I believe, that's 2002.

Q. All right. And they were the original lender. And then, as you can see, there is another endorsement there to, I believe, GMAC Mortgage Corporation. And there is also one GMAC Bank. Correct?

A. That is correct according to the observation that I see on this document.

Q. So would you need an assignment from -- why do you assign the MERS -- as a vice president of MERS, why do you assign the MERS -- I'm sorry. Let me start over there.

Why do you execute the assignment of mortgage on behalf of MERS as nominee for the original lender and not the last lender?

MS. ARROYAVE: Objection: Form.

THE WITNESS: Because as you stated, it's an assignment of mortgage. It's not an assignment of note.

BY MR. IMMEL:

Q. Right.

A. That's the only way I can answer that. The mortgage itself, which we've both reviewed, states that it's MERS as a nominee for Mortgage Investor Corporation.

Q. Okay. So would you agree then that as the

note was transferred through these endorsements to new note-holders and owners that MERS remained the mortgagee?

MS. ARROYAVE: Objection: Form.

THE WITNESS: I wouldn't have that knowledge.

BY MR. IMMEL:

Q. Okay. It's your understanding that MERS does not assign the mortgage every time the note is transferred; is that correct?

MS. ARROYAVE: Objection: Form.

THE WITNESS: I wouldn't have that knowledge either.

BY MR. IMMEL:

Q. Okay. All right. Do you know who would have that knowledge?

A. No, I do not.

Q. Okay. All right.

MR. IMMEL: And we have here defendant's request for production regarding the Jeffrey Stephan documents. That will be Exhibit J.

(Defendant's Exhibit Letter J was marked for identification.)

BY MR. IMMEL:

Q. Have you seen that document before?

A. I have not seen this document until recently

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when I found out that I was coming here.

Q. Okay. And also we have the response to the request for production regarding the Jeffrey Stephan document.

MR. IMMEL: That will be marked as Exhibit K.

(Defendant's Exhibit Letter K was marked for identification.)

BY MR. IMMEL:

Q. I'm going to direct you to paragraph 5 where there has been an objection based on our request for all MERS system documents, records, computer data, or other MERS information reviewed by Jeffrey Stephan prior to executing the assignment of mortgage filed in this case to determine the proper SNE.

It's been objected to as vague and ambiguous and improperly presumes that plaintiff has custody or control over any MERS system documents.

As a MERS vice president, you don't have access to any MERS system documents?

A. No, I do not.

Q. Okay.

A. I do not work for MERS.

Q. Okay. And so you don't actually review any documents prior to executing the assignment of mortgage?

MS. ARROYAVE: Asked and answered.

BY MR. IMMEL:

Q. Okay. And are there any -- do you receive any letters, e-mails, or other correspondence from other departments that have given you any instruction on any of the documents which you execute?

A. No.

Q. No. And in paragraphs -- request No. 7, as far as the search for the lost note, you didn't actually partake in that search. So you are not aware of any of the locations searched, other than by other people?

A. That's correct.

Q. Do you know who those people would be that searched for the note?

A. There is a team that's in our Minnesota office. I am not familiar with who would actually search for the said document.

Q. What is the name of that team? Do you know the name of that team?

A. I don't have a formal name for them. I call them document control. But that's my own name for them.

Q. Okay. All right. You said that the attorneys representing you prior in this case only ask you to execute the lost note affidavit after a substantial effort has occurred?

MS. ARROYAVE: Objection. That goes into the

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attorney-client privilege.

BY MR. IMMEL:

Q. As far as you understand, a substantial search for the lost note has already occurred by various people within your team, other teams within GMAC at the request of the attorneys?

A. Within GMAC the lost note affidavit or lost instrument affidavit would not be executed until everything has been exhausted.

Q. Okay. Is it common for a lost note affidavit to be executed and then later the note to be found?

A. I don't know.

Q. You're not sure. Okay. Earlier you were mentioning that now you work for GMAC, LLC; is that correct?

A. That is correct.

Q. And you still execute documents as GMAC Mortgage, LLC limited signing officers, as well?

A. That's the same thing you just stated.

Q. Right. One they dropped the name -- the mortgage from the name, and one they haven't; is that correct?

A. No.

Q. No.

A. One they dropped corporation and changed it to

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LLC.

Q. Oh, okay.

A. They became a limited liability company. That's what LLC stands for.

Q. Okay. You said that there was an -- initially there was a referral from the referral department to the attorneys?

A. That would be correct.

Q. Do you ever review any of those documents in your duties as executing these other documents?

A. No.

Q. So I'm going to turn to the -- this is the note of authenticity ownership interrogatories limited answers. Here you are.

MR. IMMEL: That will be Exhibit L.

(Defendant's Exhibit Letter L was marked for identification.)

BY MR. IMMEL:

Q. Do you know, I think, it is Juan A. Aquirre?

A. I do not know him. But I am familiar with his name.

Q. Okay. Are you familiar with his duties? He's a senior litigation analyst.

A. Yes.

Q. Do you know if he's a senior litigation

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analyst for GMAC Mortgage, LLC, or are there other entities that he works for?

A. I honestly do not know.

Q. Okay. Would he be part of the document team in Minnesota that may find a note?

A. No.

Q. No. Okay. Would he be somebody, do you know, if in his duties he's somebody that searches for lost documents?

A. No.

Q. Okay.

MS. ARROYAVE: Is that, no, you don't know?

THE WITNESS: No. He does not do that.

BY MR. IMMEL:

Q. He doesn't do that. Do you know what his duties are?

A. As it states here, he is a senior litigation analyst. I'm not sure of what his exact responsibilities would be.

Q. Okay. But searching for lost documents wouldn't be one of his responsibilities, more than likely?

A. No, it would not be.

Q. Okay. And here are plaintiff's amended answers. Okay.

MR. IMMEL: I'll mark it as Exhibit M.

(Defendant's Exhibit Letter M was marked for identification.)

BY MR. IMMEL:

Q. It asks to identify all persons and/or entities who are the current beneficial owners of, or who have a beneficial or equitable interest in the promissory note. And Federal National Mortgage Association has been identified, Fannie Mae.

Are you aware -- and then if you look at No. 3, it says, Please identify all person and/or entities who are current legal owners of, or who have legal interest in the promissory note.

A. I don't have the same affidavit you have.

Q. Okay. Defendant's note. Do you have the mortgage loan?

A. That's the mortgage loan.

Q. Okay.

MS. ARROYAVE: What has been introduced? Has this set of interrogatory been --

MR. IMMEL: Yes.

MS. ARROYAVE: But not the other?

MR. IMMEL: No. This was also entered, correct?

THE COURT REPORTER: I think it was the last

one.

BY MR. IMMEL:

Q. So if you look at paragraphs 2 and 3, can you explain to me why Fannie Mae would have the beneficial or equitable interest in the promissory note, based on your understanding?

MS. ARROYAVE: Objection. It calls for a legal conclusion.

THE WITNESS: No, I can't.

BY MR. IMMEL:

Q. And earlier when we discussed the MERS documentation where Ginnie Mae was identified as the investor, would it be fair to say that the beneficial or equitable interest would actually lie with the person who made the loan?

MS. ARROYAVE: Objection. It calls for a legal conclusion.

THE WITNESS: I don't have that knowledge.

BY MR. IMMEL:

Q. Okay. And based on the MERS documentation that I presented to you earlier, where the investor was identified as Ginnie Mae. In paragraph 5 here, they are identifying Fannie Mae as the investor.

Do you have any understanding of -- as to why those two things would --

A. No, I don't.

Q. -- there would be a discrepancy there? Okay. All right.

And going back to the mortgage loan ownership and the interrogatories one more time. Can you explain why one entity would have the beneficial interest and another entity would have a legal interest --

MS. ARROYAVE: Objection. It calls for a legal conclusion.

BY MR. IMMEL:

Q. -- based on your company's protocols?

A. I don't have that knowledge.

Q. Okay. GMAC Mortgage owns some loans and services other; is that correct?

A. To my knowledge that would be a correct statement.

Q. Okay. Do they -- and then in other instances, they both own loan and service the loan?

A. That would be a fair statement.

Q. Okay. Is it possible that GMAC Mortgage is the servicer for this loan and another entity -- whether it be Fannie Mae, Ginnie Mae, or any other entity -- perhaps is the owner and GMAC is just the servicer?

A. That's possible. But I'm not familiar enough to say yes or no.

Q. Okay. All right. I'm just going to go over the notice of taking the deposition duces tecum.

(Defendant's Exhibit Letter N was marked for identification.)

BY MR. IMMEL:

Q. All right. This is -- and just for the record, Exhibit A, if you would turn to that. This is a list of the documents that we requested that you bring. A request for production. And you provided some of them earlier.

I just wanted to go over it and see if you brought any of these documents today, or if you were just relying on what was produced in the request for production. Okay?

The deponent's most recent curriculum vitae?

A. I didn't feel I needed to bring that. That's personal.

Q. Okay. You actually provided the corporate resolution for MERS and for GMAC. You presented the list of certifying officers. And the MERS system documents records, you already stated that you don't have any access.

Your team brings you the documents. And you don't receive any direct communication from the attorneys that draft them?

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A. The only type of communication I would receive from an attorney is if a document is late in being returned.

Q. Okay. All right. And it would be fair to say that your primary responsibility is to create and execute these documents, not to actually do any of the underlying duties of ascertaining specific knowledge or information about them, correct?

MS. ARROYAVE: Objection: Form. Asked and answered.

THE WITNESS: And the answer to that would be, no.

MR. IMMEL: All right. I think that's most of it. Just let me have on second to review, but I think that's most of it. All right. I think that should do it for today.

Thank you very much for traveling here.

MS. ARROYAVE: I have a few questions.

MR. IMMEL: Yeah. I'm sorry about that.

MS. ARROYAVE: You can't have all of the fun. Can I look at the exhibits?

CROSS (JEFFREY STEPHAN)

BY MS. ARROYAVE:

Q. I'm going to show you what has been previously marked as Defendant's Exhibit C to your deposition.

Do you have any knowledge of how this document is created?

A. No.

Q. Do you have any knowledge as to whether the information in this document is accurate?

A. No.

Q. Do you know how this is prepared?

A. No.

Q. Okay. Let me show you what has been previously marked as Defendant's Exhibit A to your deposition. It is the assignment of mortgage.

The information that is used to prepare this mortgage is kept in GMAC Mortgages' business records; is that correct?

A. Yes.

Q. And these business records from where this information came from were created by persons in GMAC Mortgage, employees of GMAC Mortgage, right?

A. Yes.

Q. And the information was entered into the computer system by these GMAC Mortgage employees at the time that they became aware of the information?

A. Yes.

Q. And they had a business duty to enter the information into the computer system; is that correct?

A. Yes.

Q. And this information, these business records are kept within the course and scope of GMAC's regularly conducted business activities; is that correct?

A. I'm going to say yes.

Q. Okay. I'm going to show you what has been previously marked as Defendant's Exhibit F to your deposition. And it's the affidavit of lost original document.

Is the information you used to prepare this lost original document kept in GMAC Mortgages' business records?

A. I don't understand the question.

Q. Okay. The information in the lost original document, is that -- GMAC Mortgage is the owner and holder of the note, correct?

A. Yes.

Q. Is that information kept within the course and scope of GMAC's business records?

A. Yes.

Q. And the information in GMAC's business records are entered by persons with knowledge of the information that GMAC is the owner of the note?

MR. IMMEL: Objection: Leading.

THE WITNESS: Can you rephrase it? I'm not

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sure if I follow what you are saying.

BY MS. ARROYAVE:

Q. The business records that GMAC has regarding whether it is the original -- whether it is the owner of the note, was entered by persons that have personal knowledge of whether GMAC is the owner of the note; is that correct?

A. I honestly don't know. I do not work in those departments.

Q. Okay.

MS. ARROYAVE: I have nothing further.

REDIRECT (JEFFREY STEPHAN)

BY MR. IMMEL:

Q. I would just ask: The assignment of the mortgage and the information on it, this is not created by anyone at -- this specific document isn't actually created by a member or a worker for GMAC Mortgage, it is actually created by the attorney?

A. Yes.

Q. Okay. So the attorney would have to be relying on business records of GMAC Mortgage in forming this?

A. That would be correct.

Q. Okay. And as to the lost note, this too is created by the attorney, correct?

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Reporting and Transcription Inc

A. That is correct.

Q. Okay.

MR. IMMEL: All right. That does it.

MS. ARROYAVE: That's it.

MR. IMMEL: All right. Thank you.

MS. ARROYAVE: We will read.

THE COURT REPORTER: Okay.

(Witness excused.)

(Deposition was concluded.)

CERTIFICATE OF OATH

THE STATE OF FLORIDA

COUNTY OF PALM BEACH

I, the undersigned authority, certify that Jeffrey Stephan personally appeared before me and was duly sworn. Dated the 10th day of December, 2009.

Dated this 22nd day of December, 2009.

Jamie Reynolds Bentley

Jamie Reynolds Bentley, Court Reporter
Notary Public - State of Florida
My Commission Expires: 7/20/2013
My Commission No.: DD 453053

C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Jamie Reynolds Bentley, Court Reporter and Notary Public in and for the State of Florida at large, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

Dated this 22nd day of December, 2009.

Jamie Reynolds Bentley

Jamie Reynolds Bentley, Court Reporter

Exhibit 1-I

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

2011 SEP 22 AM 11:42

TOM LAWLER, CLERK

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ALFREDIA PRUITT, Plaintiff, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION, GMAC/MERS, FANNIE MAE, USAA FEDERAL SAVINGS BANK, Defendant.	*	Civil Action File No. 11-A-10084-3 Plaintiff's *pro se* Motion to Set Aside Foreclosure Sale and Temporary Restraining Order filed 9/21/2011

ORDER DENYING PLAINTIFF'S *PRO SE* APPLICATION AND REQUEST FOR TEMPORARY RESTRAINING ORDER
AND
ORDER DENYING AND DISMISSING PLAINTIFF'S *PRO SE* MOTION TO SET ASIDE FORECLOSURE SALE AND THE ABOVE-STYLED ACTION FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Whereas the Court entered a Final Order and Judgment filed on January 31, 2011 and issued a Writ of Possession filed on January 31, 2011 in Civil Action File No. 10-A-10972-3, which addressed the same issues involved and the same parties in the above-styled Civil Action File No. 11-A-10084-3;

Whereas on February 1, 2011, the Court filed an Order Terminating Action Pending Bankruptcy and Order Staying Previously Entered Writ of Possession filed on 1/31/2011 in Civil Action File No. 10-A-10972-3;

Whereas on September 12, 2011, the Court filed an Order Reopening Case and Lifting Stay and Order Reinstating Writ of Possession filed on 1/31/2011 in Civil Action File No. 10-A-10972-3;

Whereas on September 16, 2011, Plaintiff Alfredia Pruitt filed an Emergency Motion to Stay Writ of Possession in Civil Action File No. 10-A-10972-3, and the Court filed an Order Denying said Motion to Stay Writ of Possession on September 16, 2011;

Whereas on September 19, 2011, Plaintiff Alfredia Pruitt filed an Emergency Motion for Reconsideration in Civil Action File No. 10-A-10972-3, and the Court filed an

Order Denying said Motion for Reconsideration on September 19, 2011;

Whereas the Plaintiff, filed *pro se* the above-styled Motion to Set Aside Foreclosure Sale and Temporary Restraining Order as a new action (Civil Action File No. 11-A-10084-3) on September 21, 2011, asserting the same arguments as set forth in Civil Action File No. 10-A-10972-3, which addressed the same issues involved and the same parties in the above-styled Civil Action File No. 11-A-10084-3;

Wherefore the Court, having read and considered the afore-referenced Motion, as well as the entire record, hereby **DENIES** Plaintiff's Application and Request for a Temporary Restraining Order and **DENIES AND DISMISSES** the Defendant's Motion to Set Aside Foreclosure Sale and the above-styled action for failure to state a claim upon which relief may be granted.

SO ORDERED, this 20th day of September, 2011.

DAWSON JACKSON, Judge
Gwinnett Superior Court

Copies to:

Alfredia Pruitt, *pro se*
2360 Hickory Station Circle
Snellville, GA 30078

A.William Loeffler, Esq.
Teah N. Glenn, Esq.
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree St., NE
Suite 5200
Atlanta, GA 30308-2216

Gwinnett County Sheriff's Department

Exhibit 1-J

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.
2011 OCT -7 PM 2:08
TOM LAWLER, CLERK

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

ALFREDIA PRUITT,

Plaintiff,

VS.

CIVIL ACTION FILE NO.

FEDERAL NATIONAL 11A 10675 3

MORTGAGE ASSOCIATION,

MERS,

GMAC,

FANNIE MAE,

USAA FEDERAL SERVICING BANK

Defendant

A.COMPLAINT

COMES NOW ALFREDIA PRUITT, Plaintiff in the above-captioned matter, and respectfully states her Complaint against Defendants **FEDERAL NATIONAL MORTGAGE ASSOCIATION, MERS, GMAC, FANNIE MAE,** and **USAA FEDERAL SAVINGS BANK** as follows:

B.JURISDICTION AND VENUE

1. Plaintiff, Alfredia Pruitt, is an individual who resides in Gwinnett County, Georgia.

2. Defendant, Federal National Mortgage Association is a Georgia corporation, may be served with process at, c/o3525 Piedmont Road NE building 6 ste. 300, Atlanta, GA 30305.

3. Defendant GMAC a corporation doing business in Georgia and may be served with process at 3 Ravinia Drive Atlanta, GA 30346,

4. Defendant Fannie Mae a corporation doing business in Georgia and may be served with process at 950 E Paces Ferry Rd NE, Atlanta, GA, 30326

5. Defendant USAA Savings Bank a corporation doing business in Georgia and may be served with process at Terminus 200 Building, 3333 Piedmont Rd, Ste 2050, Atlanta, GA 30305.

6. Defendants are individual corporations doing business in Georgia and can be served with process by their Attorney at William Loeffler, esq., Teah N. Glenn, esq. Troutman Sanders LLP., 5200 Bank of America Plaza, 600 Peachtree Street NE, Suite 5200 Atlanta, GA 30308-3218.

7. Jurisdiction is proper in this Court.

8. Venue is proper in the Gwinnett County Superior Court of Georgia. Specifically, venue is mandatory in this county because the real property complained of is located in this county.

C. Cause of Action (WRONGFUL FORECLOSURE, FRAUDULENT CONVEYANCE OF PROPERTY)

9. Plaintiff's cause of action against FEDERAL NATIONAL MORTGAGE ASSOCIATION, MERS, GMAC, FANNIE MAE, USAA FEDERAL SERVICING BANK is under wrongful foreclosure because the Defendants illegally assisted GMAC, Federal National Mortgage Association with the unlawful foreclosure of the plaintiff's property. Plaintiff seeks to set aside the sale of her property by GMAC and stop the eviction under *O.C.G.A. §§ 44-14-162 et seq.*

10. Plaintiff asserts that there are several fraudulent problems with the note, including but not limited to notarial, signatures, and unlawful assignments.

D.FACTUAL ALLEGATIONS

11. Plaintiff owned property located at 2360 Hickory Station Circle, Snellville, Georgia 30078.

12. The Plaintiff became indebted to USAA Federal Savings Bank.

13. Plaintiff failed to pay the debt and started negotiating the payment with USAA Federal Savings Bank.

25. Here, Plaintiff has asked the Defendants to produce to the original note and all authentic signatures.

26. Defendant's failed to comply with Plaintiff's request.

27. To date, Defendants have not produced the original note or shown that MERS was a holder that had a right to assign/enforce.

28. Defendant's failure to produce the original note and show that MERS and Defendants were holders of the instrument brings Plaintiff's claim of wrongful foreclosure.

29. Courts have held that if Mers is the only mortgagee, without ownership of the mortgage instrument it does not have an enforceable right."); Bellistri v. Ocwen Loan Servicing, LLC, 284 S.W.3d 619, 624 (Mo. Ct. App. 2009).

30. Plaintiff asserts that MERS was never a holder of the note and was simply a nominee. Therefore, MERS had no right to enforce or execute foreclosure proceedings regarding plaintiff's property.

31. In essence, if "MERS never held the promissory note, thus its assignment of the deed of trust to GMAC or any other Defendant separate from the note had no force."); In re Agard, No. 810-77338, 2011 WL 499959, at *16.

32. Plaintiff argues that MERS's 'nominee' status and the rights bestowed upon MERS within the Mortgage itself, are insufficient to empower MERS to effectuate a valid assignment of mortgage to GMAC or any other Defendant. Thus, resulting in wrongful foreclosure proceedings against Plaintiff's home.

F. REQUEST FOR QUIET TITLE HEARING AND ISSUANCE OF TEMPORARY RESTRAINING ORDER

33. Plaintiff asks the court to set her complaint for quiet title for a hearing, and pending hearing and outcome of the case, issue a temporary restraining order/stay against Defendants.

34. In the event this Court does not grant the Plaintiff's quite title hearing request and Application for a Temporary Restraining Order, she will suffer irreparable harm because the real estate which is the subject of this lawsuit is unique in character and cannot be replaced with money damages only. Applicant has no other adequate remedy at law.

G. Prayer

35. For these reasons, Plaintiff respectfully asks the court to, set complaint for quite title for a hearing, grant remedies clearing title, issue a temporary restraining order preventing the Defendants from evicting Plaintiff from her property and enforcement of Plaintiff's rights.

Respectfully submitted,

Alfredia Pruitt

2360 Hickory Station Circle

Snellville, Georgia 30078

(770) 668-3915 Phone

VERIFICATION

I, Plaintiff Alfredia Pruitt, having been duly sworn, under penalty of perjury, deposes and says that I am over the age of eighteen (18) and mentally competent to testify in this matter. My person and my property are in danger of immediate and irreparable injury, and loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and I hereby Certify, that the facts set forth regarding all matters stated in the above paragraphs are true and correct, therefore since this is an Emergency Petition further notice should not be required. I have read the foregoing pleading, the facts stated therein are from firsthand knowledge and are true and correct to the best of my knowledge and belief.

This 7th day of October, 2011

Alfredia Pruitt

Subscribed and sworn to before me,

this 7th day of October, 2011.

Seal

Julie A Mason Notary Public

JULIE A. MASON
NOTARY PUBLIC
EXPIRES
JULY 24, 2012
GWINNETT COUNTY, GA

My Commission Expires:

7/24/2012

Exhibit 1-K

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ALFREDIA PRUITT, Plaintiff, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION, MERS, GMAC, FANNIE MAE, USAA FEDERAL SAVINGS BANK, Defendants.	*	Civil Action File No. 11-A-10675-3 Plaintiff's *pro se* Motion/Application for Temporary Restraining Order filed 10/7/2010

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA
2011 OCT 10 PM 3:06
LAWLER, CLERK

ORDER DENYING PLAINTIFF'S *PRO SE* MOTION/APPLICATION FOR TEMPORARY RESTRAINING ORDER
AND
ORDER DENYING AND DISMISSING THE ABOVE-STYLED ACTION FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Whereas the Court entered a Final Order and Judgment filed on January 31, 2011 and issued a Writ of Possession filed on January 31, 2011 in Civil Action File No. 10-A-10972-3, which addressed the same issues involved and the same parties in the above-styled Civil Action File No. 11-A-10675-3;

Whereas on February 1, 2011, the Court filed an Order Terminating Action Pending Bankruptcy and Order Staying Previously Entered Writ of Possession filed on 1/31/2011 in Civil Action File No. 10-A-10972-3;

Whereas on September 12, 2011, the Court filed an Order Reopening Case and Lifting Stay and Order Reinstating Writ of Possession filed on 1/31/2011 in Civil Action File No. 10-A-10972-3;

Whereas on September 16, 2011, Plaintiff Alfredia Pruitt filed an Emergency Motion to Stay Writ of Possession in Civil Action File No. 10-A-10972-3, and the Court filed an Order Denying said Motion to Stay Writ of Possession on September 16, 2011;

Whereas on September 19, 2011, Plaintiff Alfredia Pruitt filed an Emergency Motion for Reconsideration in Civil Action File No. 10-A-10972-3, and the Court filed an

Order Denying said Motion for Reconsideration on September 19, 2011;

Whereas the Plaintiff filed *pro se* a Motion to Set Aside Foreclosure Sale and Temporary Restraining Order as a new action (Civil Action File No. 11-A-10084-3) on September 21, 2011, asserting the same arguments as set forth in Civil Action File No. 10-A-10972-3, which addressed the same issues involved and the same parties in the above-styled Civil Action File No. 11-A-10084-3, and the Court entered an Order Denying Plaintiff's Pro Se Application and Request for Temporary Restraining Order and Order Denying and Dismissing Plaintiff's Pro Se Motion to Set Aside Foreclosure Sale and the Action for Failure to State a Claim Upon Which Relief May be Granted on September 22, 2011;

Whereas the Plaintiff filed a *pro se* Motion to Get Bond Requirement Waived on September 22, 2011 and an Emergency Motion to Amend and Reconsider Request for Temporary Restraining Order on September 26, 2011 in Civil Action File No. 11-A-10084-3, and the Court entered an Order denying said Motions on September 28, 2011;

Whereas the Plaintiff has filed Notices of Appeal in both Civil Action File No. 10-A-10972-3 and Civil Action File No. 11-A-10084-3;

Whereas on October 7, 2011, the Plaintiff, filed *pro se* the above-styled action as a new action (Civil Action File No. 11-A-10675-3) and filed the foregoing Motion/Application for Temporary Restraining Order in said new action on October 7, 2011, asserting the same arguments as set forth in Civil Action File Nos. 10-A-10972-3 and 11-A-10084-3, which addressed the same issues involved and the same parties in the above-styled Civil Action File No. 11-A-10675-3;

Wherefore the Court, having read and considered the afore-referenced Motion, as well as the entire record, hereby **DENIES** Plaintiff's Motion/Application for Temporary

Restraining Order and **DISMISSES** the above-styled action for failure to state a claim upon which relief may be granted, as the same has been previously adjudicated by Final Order and Judgment in Civil Action File No. 10-A-10972-3. The Court notes that the Georgia Court of Appeals denied the Plaintiff's emergency motion, finding the Plaintiff was not entitled to maintain possession of the premises pending appeal and that said appeal was not timely filed. *See* Court of Appeals No. MD-12-04, October 6, 2011 and Civil Action File Nos. 10-A-10972-3 and 11-A-10084-3.

SO ORDERED, this 10th day of October, 2011.

DAWSON JACKSON, Judge
Gwinnett Superior Court

Copies to:

Alfredia Pruitt, *pro se*
2360 Hickory Station Circle
Snellville, GA 30078

A.William Loeffler, Esq.
Teah N. Glenn, Esq.
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree St., NE
Suite 5200
Atlanta, GA 30308-2216

Gwinnett County Sheriff's Department

Exhibit 1-L

ORIGINAL

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

2012 JAN 26 AM 11:54

RICHARD ALEXANDER, CLERK

ALFREDIA PRUITT,

Plaintiff,

vs.

FEDERAL NATIONAL MORTGAGE ASSOCIATION, MERS, GMAC, FANNIE MAE, USAA FEDERAL SAVINGS BANK

Defendants.

CIVIL ACTION FILE

NO. 11-A-10675-3

ORDER DIRECTING CLERK TO CANCEL TWO (2) LIS PENDENS

This matter comes before the Court on Defendants Federal National Mortgage Association, MERS, GMAC, Fannie Mae, and USAA Federal Savings Bank 's Motion to Cancel Two (2) Lis Pendens. The Court having read and considered the entire record, and all submissions with respect to the motion, including any supporting and opposing briefs, and for other good cause shown, it is hereby ORDERED that Defendant's Motion is GRANTED.

The Clerk of Court is hereby directed to file and record the attached Cancellation of Two (2) Lis Pendens, to cancel and remove from the record that certain Lis Pendens recorded in Lien Book 3261, Page 7, which was previously filed and recorded on March 18, 2011, and to cancel and remove from the record that certain Lis Pendens recorded in Lien Book 3449, Page 161, which was previously filed and recorded on October 7, 2011

SO ORDERED this 25th day of JANUARY, 2012

DAWSON JACKSON
Judge, Superior Court of Gwinnett County, Georgia

Becky Pearrow
Court Reporter

Copies to:

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Norcross, GA 30071

Daniel K. Barbagelata, Esq.
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600 Peachtree St., NE
Suite 5200
Atlanta, GA 30308-2216

Exhibit 1-M

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only) 11-5118
PLAINTIFFS Alfredia Pruitt - Pro SE	DEFENDANTS Federal National Mortgage Associa MERS / GMAC, Fannie Mae, USAA Federal Savings Bank
ATTORNEYS (Firm Name, Address, and Telephone No.)	ATTORNEYS (If Known)
PARTY (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☑ Creditor ☐ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Unlawful foreclosure, Predatory Lending Tila RESPA violation
Carpenter V Longan 83 U.S. 16 Wall 271, 271, 1872

NATURE OF SUIT
(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☑ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☑ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☑ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

FILED
IN CLERK'S OFFICE
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT
OF GEORGIA
M. REGINA THOMAS
CLERK
DEPUTY CLERK

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $
Other Relief Sought	

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Alfredia Pruitt	BANKRUPTCY CASE NO. 11-52442	
DISTRICT IN WHICH CASE IS PENDING Northern	DIVISION OFFICE	NAME OF JUDGE Diehl
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) Alfredia Pruitt		
DATE 2/28/11	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Alfredia Pruitt	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

FILED
IN CLERK'S OFFICE
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT
OF GEORGIA
MAR 02 2011 AM 08:12
M. REGINA THOMAS
CLERK
Jackie J. Dukes
DEPUTY CLERK

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

ALFREDIA PRUITT,
Debtor,

VS.

FEDERAL NATIONAL
MORTGAGE ASSOCIATION, MERS/
GMAC,
FANNIE MAE, SAVINGS
USAA FEDERAL ~~SERVICING~~ BANK
Creditor

CASE NO. 11-52442

11-5116

DEBTOR'S/PLAINTIFF'S ADVERSARY PROCEEDING

A. Motion

COMES NOW ALFREDIA PRUITT, Plaintiff in the above-captioned matter, and respectfully files this adversary proceeding against Defendants **FEDERAL NATIONAL MORTGAGE ASSOCIATION,** MERS **GMAC, FANNIE MAE,** and **USAA FEDERAL SAVINGS BANK** as follows:

B.JURISDICTION AND VENUE

1. Plaintiff, Alfredia Pruitt, is an individual who resides in Gwinnett County, Georgia.

2. Defendant, Federal National Mortgage Association is a Georgia corporation, may be served with process at, c/o3525 Piedmont Road NE building 6 ste. 300, Atlanta, GA 30305.

3. Defendant GMAC a corporation doing business in Georgia and may be served with process at 3 Ravinia Drive Atlanta, GA 30346,

4. Defendant Fannie Mae a corporation doing business in Georgia and may be served with process at 950 E Paces Ferry Rd NE, Atlanta, GA, 30326

5. Defendant USAA Federal Savings Bank a corporation doing business in Georgia and may be served with process at Terminus 200 Building, 3333 Piedmont Rd, Ste 2050, Atlanta, GA 30305.

6. Jurisdiction is proper in this Court.

7. Venue is proper in this Court.

C.FACTUAL ALLEGATIONS

8. Plaintiff owned property located at 2360 Hickory Station Circle, Snellville, Georgia 30078.

9. The Plaintiff became indebted to USAA Federal Savings Bank. Plaintiff failed to pay the debt and started negotiating the payment with USAA Federal Savings Bank.

10. Defendant GMAC, Federal National Mortgage Association purchased Plaintiff's property at a sale in which GMAC was not the beneficiary or holder of the note. Federal National Mortgage Association filed a dispossessory proceeding complaint for eviction of Plaintiff from her property.

11. On December 1, 2010 the lower court ruled in favor of the Defendants to evict the plaintiff from her property.

12. Subsequently, the Plaintiff filed a lawsuit and appeal against the Defendants for unlawful foreclosure on December 6, 2010.

D. Cause of Action (UNLAWFUL FORECLOSURE/PREDATORY LENDING)

13. Plaintiff's cause of action against FEDERAL NATIONAL MORTGAGE ASSOCIATION, GMAC, FANNIE MAE, USAA FEDERAL SERVICING BANK is because the Defendants illegally assisted GMAC, Federal National Mortgage Association with the unlawful foreclosure of the plaintiff's property.

14. Plaintiff requested information from Defendants to prove that the person signing all affidavits for foreclosure had personal knowledge of the information contained in the affidavit.

15. In addition, Plaintiff requested that the Defendants provide evidence that they are the true legal holder of the loan/note, to validate the debt, and to prove that they are a valid and legitimate creditor.

16. Defendants have yet to prove any of these allegations or produce any documents requested.

17. Plaintiff filed suit against the Defendants seeking to set aside the sale of her property by GMAC and stop the eviction.

E. ADVERSARY PROCEEDING

18. Plaintiff is seeking an emergency adversary proceeding order to prevent the defendants from lifting the automatic stay and evicting the Plaintiff from the property which is the subject of the land and title lawsuit during the automatic stay.

19. Defendant is not the owner of the mortgage and note.

20. The trustee is not properly authorized to post the sale notice and they did so illegally and with intention to deceive the borrower and the court causing the borrower and the court to reasonably rely upon upon the statements of facts and procedures used by the lender.

21. Allowing the sale/ eviction and lifting the automatic stay will result in Plaintiff being possible a victim of predatory lending and unlawful foreclosure.

22. It is probable that the Plaintiff will prevail in this lawsuit.

23. Also, the Plaintiff's claim against the Defendants is filed to preserve the status quo of the parties until the issue of title is resolved.

24. In the event this Court does not grant the Plaintiff's Adversary proceeding, she will suffer irreparable harm because the real estate which is the subject of this lawsuit is unique in character and cannot be replaced with money damages only. Applicant has no other adequate remedy at law.

25. In addition, allowing the Sale and eviction to be completed, would not only expose Plaintiff to potentially ruinous financial liability, but would also be a direct violation of The Due Process Clause, and numerous Constitutional guarantees concerning property.

F. Request for Adversary Proceeding

26. Plaintiff asks the court to set her adversary proceeding for a hearing, and after hearing the complaint, issue a continued automatic stay order against Defendants and stop the eviction until or after the lawsuit has been resolved.

G. Prayer

27. For these reasons, Plaintiff asks the court to grant the adversary proceeding order to prevent lifting the automatic stay and to stop the eviction and enforcement of her rights.

Respectfully submitted,

Alfredia Pruitt
2360 Hickory Station Circle
Snellville, Georgia 30078
(770) 668-3915 Phone

Note: Your honor the Deed of Trust was Signed by Jeffrey Stephan who has earned the name Robo-signer, who is not an employee of MERS, Stephan has admitted under oath, he signed foreclosure documents without verifying the information.

MERS has no standing to assign my note to GMAC it has no interest in my property.

There is evidence of bifurcation. The note has been separated from The Deed. There is no Secured Instrument, it has been lost or destroyed.

CERTIFICATE OF SERVICE

This is to certify that the undersigned served a copy of the **Adversary Proceeding** through the electronic case filing system (ECF) or by placing a copy of the same in the United States Mail, with sufficient postage thereon to ensure delivery upon all parties listed on this 28th day of February 2011.

Respectfully submitted,

Alfredia Pruitt
2360 Hickory Station Circle
Snellville, Georgia 30078
(770) 668-3915 Phone

VERIFICATION

I, Plaintiff Alfredia Pruitt, having been duly sworn, under penalty of perjury, deposes and says that I am over the age of eighteen (18) and mentally competent to testify in this matter. My person and my property are in danger of immediate and irreparable injury, and loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and I hereby Certify, that the facts set forth regarding all matters stated in the above paragraphs are true and correct, therefore since this is an Emergency Petition further notice should not be required. I have read the foregoing pleading, the facts stated therein are from firsthand knowledge and are true and correct to the best of my knowledge and belief.
This 28th day of February, 2011

Alfredia Pruitt
Subscribed and sworn to before me,
this 28th day of February, 2011.
Seal

Notary Public
My Commission Expires:

Q BADWAN
NOTARY PUBLIC, GWINNETT COUNTY, GEORGIA
MY COMMISSION EXPIRES OCTOBER 7, 2011

11-5116

When a promissory note is sold by the original lender to others, the various sales of the notes supposedly are tracked on the MERS System.

16.

MERS claims that once MERS becomes the beneficiary of record as "nominee" regarding deeds of trust and becomes grantee of record as "nominee" with respect to security deeds, it remains the beneficiary/grantee when the beneficial ownership interests in the promissory note or servicing rights are transferred by one MERS Member to another and MERS tracks the transfers electronically on the MERS System. In other words, with "nominee" status only, MERS nonetheless claims to be something else entirely at the same time -- a "beneficiary" or "grantee" of a note or the servicing rights on that note, even though (1) it never held and does not hold an ownership interest in either the note or servicing rights at the time of the original loan transaction and even after such note or servicing rights were subsequently sold (and potentially re-sold) in the market, whether as a mortgage backed security or otherwise, and (2) it cannot be a trustee under Georgia law.

17.

MERS claims that so long as the subsequent sale of the note or servicing rights involves a member of MERS, MERS remains the "beneficiary" of record on the deed of trust or the "grantee" on the security deed and continues to act as a "nominee" for the new beneficial owner.

11-5116

such bifurcation was intended because such a bifurcation of the note from the deed of trust would render the debt unsecured."); *In re Leisure Time Sports, Inc.* 194 B.R. 859, 861 (9th Cir.1996) (stating that "[a] security interest cannot exist, much less be transferred, independent from the obligation which it secures" and that, "[i]f the debt is not transferred, neither is the security interest"); In re BNT Terminals, Inc., 125 B.R. 963 (Bankr. N.D. Ill. 1990) ("An assignment of a mortgage without a transfer of the underlying note is a nullity. . . . It is axiomatic that any attempt to assign the mortgage without transfer of the debt will not pass the mortgagee's interest to the assignee."); Yoi-Lee Realty Corp. v. 177th Street Realty Associates, 208 A.D.2d 185, 626 N.Y.S.2d 61, 64 (N.Y.A.D. 1 Dept.,1995) ("The mortgage note is inseparable from the mortgage, to which the note expressly refers, and from which the note incorporates provisions for default."); In re AMSCO, Inc., 26 B.R. 358, 361 (Bkrtcy. Conn., 1982) (reaffirming that "[t]he note and mortgage are inseparable"); Barton v. Perryman, 577 S.W.2d 596, 600 (Ark., 1979) ("[A] note and mortgage are inseparable."); Trane Co. v. Wortham, 428 S.W.2d 417, 419 (Tex. Civ. App. 1968) ("The note and mortgage are inseparable. . . ."); Kirby Lumber Corp. v. Williams, 230 F.2d 330, 333 (5th Cir. 1956) ("The rule is fully recognized in this state that a mortgage to secure a negotiable promissory note is merely an incident to the debt, and passes by assignment or transfer of the note. * * * The note and mortgage are inseparable. . . ."); *Kelley v. Upshaw*, 39 Cal.2d 179, 192, 246 P.2d 23 (1952) ("In any event, Kelley's purported assignment of the mortgage without an assignment of the debt which is secured was a legal nullity."); Hill v. Favour, 52 Ariz. 561, 84 P.2d 575 (Ariz. 1938) ("The note and mortgage are inseparable; the former as

obtaining legal title to real property in the State of Georgia as a trust or trustee for the benefit of MERS members and non members.

P.

MERS has no authority to hold legal title to real property and promissory notes in the State of Georgia as a trust or trustee.

Q.

MERS has no authority to sell real property and/or promissory notes as a trust or trustee for any entity.

R.

MERS is acting as a trust or trustee without appropriate approval from the Georgia Department of Banking and Finance.

S.

MERS cannot register to act as a trust or trustee in the State of Georgia because it does not now meet the registration requirements to be registered by the Georgia Department of Banking and Finance.

T.

In addition to being void because MERS cannot lawfully be a Grantee of a Security Deed acting solely as a nominee for a lender because MERS would be acting as a corporate fiduciary in Georgia when it lacks the capacity to act as a corporate fiduciary, the Security Deeds of the Plaintiff and the putative plaintiffs naming MERS, acting solely as nominee, and thereby conveying legal title to the property to MERS, acting solely as nominee, as opposed to conveying legal title to the Lender, also causes a problem with

U.

8.

Black's Law Dictionary defines "nominee" as "[a] person designated to act in place of another, usually in a very limited way" and as "[a] party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others." Black's Law Dictionary 1076 (8th ed. 2004).

9.

A "beneficiary" is defined as "one designated to benefit from an appointment, disposition, or assignment . . . or to receive something as a result of a legal arrangement or instrument." BLACK'S LAW DICTIONARY 165 (8th ed. 2004).

10.

But it is obvious from the MERS' "Terms and Conditions" that MERS is not a beneficiary as it has no rights whatsoever to any payments, to any servicing rights, or to any of the properties secured by the loans.

11.

With respect to a corporation, such as MERS, acting as a fiduciary,O.C.G.A § 7-1-242 declares:

1. No corporation, partnership, or other business association may lawfully act as a fiduciary in this state except:

   (1) A financial institution authorized to act in such capacity pursuant to the provisions of Georgia law;
   (2) A trust company;
   (3) A national bank or a state bank lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

Exhibit M 11-51116

(B) *A trust company in violation of Code Section 7-1-242...* (emphasis supplied)

MERS is clearly acting as a Trust Company as its role with respect to the Deed to Secure Debt is to hold legal title to property for the benefit of another. The Supreme Court of Georgia has ruled:

> "No formal words are necessary to create a trust estate. *Whenever a manifest intention that another person shall have the benefit of the property is exhibited, the grantee shall be declared a trustee.*" (emphasis supplied).

Carmichael Tile Co. v. Yaarab Temple Bldg. Co., 182 Ga. 348 (Ga. 1936) (emphasis added).

OCGA Sec. 53-12-24(a), states that a corporation that wishes to act as trustee "must have the power to act as a trustee in Georgia."

OCGA Sec. 7-1-242 provides that only certain corporations or business entities may act as a fiduciary in Georgia. These are basically banks, trust companies, and other financial institutions.

issue an order that declares that all deeds under power (i.e. foreclosure deeds) that were prepared as a result of the invalid non-judicial sales of the Plaintiff's property and the property of the putative plaintiffs and that were recorded on the land records of the Georgia counties wherein the land lies are VOID and which restores title as it existed just prior to the invalid foreclosure sale.

COUNT II

WRONGFUL FORECLOSURE AS A TORT

The Plaintiff incorporates by this specific reference the preceding paragraphs of this Complaint as if stated fully herein.

In Georgia there exists a statutory duty upon a mortgagee to exercise fairly and in good faith the power of sale in a deed to secure debt. Although arising from a contractual right, breach of this duty is a tort compensable at law. Clark v. West, 196 Ga. App. 456, 395 S.E.2d 884 (1990)

Because of any one of the reasons identified above, including but not limited to (1) the fact that no notice meeting the requirements of OCGA 44-14-162.2 was sent to the Plaintiff or the putative plaintiffs by the secured creditor becaus, (2) the fact that MERS was not a holder in due course of the promissory note, (3) the fact that the security deed only granted power of sale to MERS, acting solely as nominee for the lender, in the very limited and extraordinary circumstance that it becomes necessary to comply with local

Exhibit 1-N

IT IS ORDERED as set forth below:

Date: August 26, 2011

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	Chapter 7
ALFREDIA PRUITT,	:	Case Number: **11-52442-MGD**
Debtor,	:	Judge Mary Grace Diehl
ALFREDIA PRUITT,	:	
Plaintiff,	:	
v.	:	Adversary Proceeding: **11-5116**
MERS/GMAC, FANNIE MAE, USAA FEDERAL SAVINGS BANK and FEDERAL NATIONAL MORTGAGE,	:	
Defendants.	:	

ORDER DISMISSING ADVERSARY PROCEEDING

Alfredia Pruitt ("Debtor") initiated the above-styled adversary proceeding on March 2, 2011, by filing a multiple count complaint against the above named Defendants. Debtor's underlying

Chapter 7 was dismissed on August 25, 2011 based on Debtor's motion to voluntarily dismiss her case.[1] (Case No. 11-52442; Docket No. 49). Debtor has also filed a motion to dismiss the above-styled adversary proceeding. However, because this adversary proceeding was on appeal, this Court no longer had jurisdiction to enter a dismissal order. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 402, 74 L. Ed. 2d 225 (1982); *Thompson v. RelationServe Media, Inc.*, 610 F.3d 628, 638 (11th Cir. 2010). On August 24, 2011, Debtor's appeal was dismissed. (Docket Nos. 24 & 25). Based on the dismissal of the appeal, Debtor's motion to dismiss this adversary action, and the dismissal of Debtor's underlying Chapter 7 case, it is

ORDERED that the above-styled adversary proceeding is hereby **DISMISSED**.

The Clerk is directed to serve a copy of this Order on Plaintiff, Defendants, and counsel for Defendants.

END OF DOCUMENT

[1] Debtor's Chapter 7 case was dismissed pursuant to an order under 11 U.S.C. §§ 109(g) and 349(a), and Debtor is barred from filing another bankruptcy case, under any chapter, through and including August 17, 2012.

Exhibit 1-O

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA
2012 FEB 15 AM 10:47
RICHARD ALEXANDER, CLERK

IN THE SUPERIOR COURT FOR THE COUNTY OF GWINNETT
STATE OF GEORGIA

CIVIL ACTION FILE#
12A 01388

ALFREDIA PRUITT *pro se,*
Plaintiff

JURY TRIAL DEMANDED

v.

MERS/GMAC, USAA FEDERAL SAVINGS BANK, FEDERAL NATIONAL MORTGAGE ASSOCIATION, FANNIE MAE,

COMPLAINT

FOR WRONGFUL FORECLOSURE, DECLARATORY RELIEF AND JUDGEMENT, ASSIGNMENT AND TITLE FRAUD/SLANDER OF TITLE, VIOLATION OF DUTY OF GOOD FAITH AND FAIR DEALING. CLAIM FOR LITIGATION FEES AND COSTS AND PUNITIVE DAMAGES

1. Plaintiff Alfredia Pruitt brings this action against the above-named Defendants for Wrongful foreclosure, declaratory relief and judgment, title fraud/slander of title, violation of duty of good faith and fair dealing and makes claims for litigation fees and cost, as well as punitive damages.
2. The above-named Defendants have unlawfully and wrongfully foreclosed on Plaintiff home Located at 2360 Hickory Station Circle, Snellville, Georgia 30078. This property was Owned by Alfredia Pruitt(plaintiff). It was her primary residence since 2006. It was auctioned on the Gwinnett County Court house steps on September 7, 2010.

INTRODUCTORY STATEMENT

3. The plaintiff signed a Security deed with USAA Federal Savings Bank on August 6, 2006, which was recorded in the office of the clerk of superior court of Gwinnett County.

4. The Plaintiff assumed over the years of changing servicers, mortgage lenders, etc., that proper title and recording procedures had been followed.

5. Plaintiff spoke with HUD Counselor on June 2010 and January 2011, Counselor told Plaintiff according to her financial Summary she was eligible for the making home affordable plan, and they would fax documents in to USAA Federal Savings, Plaintiff did a Follow up and was told by the HOPE advisor(Annie Williams) the modification documents was submitted to the lender.

After faxing paper work for a loan modification to USAA Federal Savings loan litigation department, the true lender (secured creditor) in June 2010 by USAA Federal Housing counseling(Ability) and myself, I

was told on August 6, 2010 a complete package had been received, HUD advised me As long as the lender receive paper work 2 least 15days in advance, that is the time required. Plaintiff was in review for a loan modification when her home was foreclosed on.

Plaintiff was told in August 2010, a complete package had been received only to be told on 9/17/2010, insufficient time to review, 10/1/10, investor group did not give them enough time to modify under program requested, HAMPP program denied account is in review for another workout, on 1/13/2011, plaintiff was told not given

authority by the investor to modify her loan, home gone into FCI sale,

Told not enough time to be reviewed and not qualified, seeking additional ways to

Aide.

6. Therefore, Plaintiff started a documented exchange sending QWR(Qualified Written Request) to the Defendants asking them via Certified letters to clarify their standing as secured creditors, servicers, agents, related to subject property.

7. On September 7, 2010, Plaintiff home was foreclosed on, Plaintiff filed a chapter 13, on September 7, 2010 @ 8:30 a.m. it was dismissed on November 17, 2010, on January 28, 2011 Plaintiff filed a chapter 7 it was dismissed on August 26, 2011. The foreclosure was not re-advertised; also Plaintiff was protected under OCGA 9-11-65 covers injunctions and restraining orders.

8. Over 14 months-from September 2010-August 2011, the Plaintiff repeatedly asked The Defendants to validate their standing as required by Georgia law.

9. On August 6, 2010 Defendant Anthony Demerol and McCurdy Candler mailed to the Plaintiff A NOTICE OF FORECLOSURE SALE, representing GMAC as creditor. All letters Came from USAA Federal Savings bank, not one from GMAC.

10. Foreclosure deed, dated Feb, 14, 2011 state GMAC was the highest bidder for cash at and for the sum of 285,000,576.74. Letter dated November 4, 2010 Fannie Mae own my loan and USAA is the servicer.

11. The plaintiff opposed the foreclosure/eviction action and filed an appeal for a temporary restraining order and preliminary injunction, in the Superior court of

Gwinnett County to force the defendants to cease foreclosure activity and to clarify their standing to collect monies, and or to foreclose Plaintiff's home at 2360 Hickory Station Circle, Snellville, Georgia, 30078. Under the contract of the Deed of Trust and Civil Code Statues, only the lender or the Holder may initiate a foreclosing proceeding, who is entitled to the payment.

12. The appeal was not heard because plaintiff had not paid the required rent into the court registry.

13.. The Defendants was granted a dismissal of the Plaintiffs motion, all suits, because plaintiff had not paid money for the appeal into the court registry.

14. In this current foreclosure/eviction action, Plaintiff Alfredia Pruitt alleges that Georgia Laws were violated, and that such violation has caused undue pain and suffering.

FIRST CAUSE OF ACTION

WRONGFUL FORECLOSURE

15. The contents of the paragraphs set forth above are incorporated here as if fully set Forth herein.

16. The Plaintiff alleges that the Defendants are not the "Secured Creditors" and have Violated O.C.G.A. 44-14-162(a-c)by commencing foreclosing on 2360 Hickory Station Circle, Snellville, GA 30047 on September 7, 2010

17. While Defendants August 6, 2010 NOTICE OF FORECLOSURE listed Defendant GMAC as the creditor, Please note:

A. Examination of the Gwinnett County Real Estate Records on September

2010, prior months and months thereafter, revealed that none of the defendants had recorded any assignments of title as required by Georgia Law.

Doctrine of Privity of contract
Requires that only parties to a contract may bring suit to enforce it(A) A party may assign to another a contractual Right to collect payment, including the right to sue to enforce the right, but an assignment must be in writing in order for the contractual right to be enforceable by the assignee, further the writing must identify the assignor and assignee., [Cit]Scott v. Cushman & Wakefield of Ga.Inc. App. 264, 265 9547 SE 2d 794) (2001); OCGA 9-2-10.

18. According to O.C.G.A. 44-14-64(a-c) only the documented secured creditor/Holder In Due Course can foreclose on subject property.

19. **United States District Court Judge** (for Northern District of Georgia) Amy **Totenburg** in Morgen vs. Ocwen Loan Servicing LLC. Not only concurs, but makes it clear the Georgia Supreme Court view on this matter:
District court judge Amy Totenberg ruled the Georgia law means what its words say- that is only the Secured Creditor(the rightful note Holder) can foreclose without going to court. The key part of Georgia Law is 44-14-162 which governs non-judicial foreclosures must receive notice before the foreclosure can happen, and not

just any notice will do, specifically, the notice of the initiation of proceedings to exercise a power of sale in a mortgage, security deed, or other lien contract shall be given to the debtor by the secured creditor no later than 30 days before the date of the proposed foreclosure.

20. The Plaintiff's allegation of fraudulent assignments and bad faith stem from the assignment executed on November 25th 2008, from MERS(Mortgage Electronic Registration.

21. Plaintiff specifically avers that a frequently created Assignment confers no right At all let alone the right to foreclose.

22. Plaintiff received a letter from USAA Federal Savings Bank the note paid in full On September 16, 2010.

23. The August 25, Assignment from MERS to GMAC the Note and Security Deed filed by Defendants featured the signature of known robo-signer- Jeffrey Stephan.

24. The Defendants have acted in bad faith by initiating foreclosures on the Plaintiff home with the full knowledge that the purported assignment was signed by Jeffrey Stephan, who had admitted in a Florida deposition that he signed thousands of affidavit's a month without personal knowledge, and has made false statements to courts under oath in hundred of cases.

25. Ohio judge, Margarett Russo, ordered GMAC to appear before her to provide "**proof of integrity of all documents submitted" in the foreclosure case US Bank, National Association as Trustee vs. James W. Renfro. Russo made this**

Requirement for US Bank and its servicer--GMACC(GMAC mortgage Corporation)discovered that"....verification irregularities may have occurred in connection with the execution of certain affidavits used in the judicial foreclosure process. GMACM requests that the order of sale be withdrawn until GMACM can confirm the accuracy of the affidavit supporting judgement in this matter..."

26. **On January 19, 2011, the Washington Post reported:**

    A. **Ally Financial, one of the nation's largest lenders, said Tuesday that It is withdrawing all of its foreclosures in Maryland that were approved By employee Jeffrey Stephan, the "robo-signer" who admitted he signed Off on thousands of files every month with little or no review. The company, formerly known as GMAC, said about 250 active cases signed by Stephan, will be dismissed..."**

27. The Defendants operated in bad faith by not verifying and instead submitting into The Gwinnett County Real Estate Record a document signed by Jeffrey Stephan.

28. Though not binding in Georgia, the Defendants, aforementioned pattern of using Stephan's fraudulently signed documents to establish title ownership where none exists, combined with the defendants' early refusal to validate their standing to the plaintiff. And their decision to execute and file an after-the-fact assignment which is fraudulent on its face, leads the plaintiff to the conclusions and Plaintiff alleges:

A. That Jeffrey Stephan-signed ASSIGNMENT OF NOTE AND SECURITY DEED is consistent with the thousands of other fraudulent documents he has signed, there Is no co-operate seal affixed on the assignment.

B. Knowing this is in bad faith, the Defendants recorded it in the Gwinnett County Real Estate Record to fraudulently vest title in the Defendant-GMAC, in order to justify the Defendants wrongfully foreclosing on Plaintiff Alfredia Pruitt home and property at 2360 Hickory Station Circle, Snellville, Georgia 30078.

C. Where a grantor conveys land in which he has no interest and later acquires title after the after acquired title will vest in the first grantee against subsequent purchasers, "Roy Brinson v Clara B Thornton, et al.220Ga 234, 138 SE 2d 268, 270(1964). Citing JL Dillard v. Christine Crane Brannan, et al. 217 GA.179, 122 SE 2d 768, 771 (1961). [2]. To foreclose mortgage lenders must be in possession of the original mortgage note.

29. **Jeffrey Stephan has signed many assignments, all are different signatures, even the one on Plaintiff assignment from MERS to GMAC.**

MERS Assignment to GMAC on November 25, 2008 is the only assignment in the Gwinnett county records, at the very least it will take Discovery, depositions and a trial to clarify these abnormalities.

The Security Deed further provides: "MERS" is a separate co-corporation that is acting solely as a nominee for lender and lenders' successors and assigns. The security deed does state the plaintiff grants and conveys to

MERS (solely as nominee for lender and lenders successors and assigns. The Security deed provides "MERS hold only legal title to the interest granted by borrower in this security. The Security deed further provides: The Security deed does state the plaintiff grants and conveys to MERS(solely as nominee for lender and lenders successors and assigns. The Security deed provides "MERS hold only legal title to the interest granted by borrower in this security.

Improper Mortgage Securitization

30. *A specific rule of UCC(Uniform Commercial Code) implies that a Holder of a mortgage note must be a Holder in Due Course, Holder in Due Course is the original subsequent transfers are referred to as holders, Holders who take with no notice, of defect or default are called "Holders in Due Course3-305(b).*

Bifurcation

31. Plaintiff note has been bifurcated; the note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity, Carpenter v. Longan 83 U.S. 271, 274, 211., ED. 313(1873).

On July 7, 2011, the U.S. District Court for the Northern District of Georgia held that a non-judicial foreclosure may be wrongful where The foreclosing party does not hold both the security Deed and the note at the time of foreclosure.

Under US Supreme Court ruling, it is stated that the promissory note is the object

and the Deed of Trust is the attachment, where the Promissory note goes, the Deed of Trust must follow.

QUIET TITLE /SLANDER TITLE

32. The Defendants' frequently assignments create both patently and latently defective deeds, which slanders the title of any property foreclosed upon that relied upon an assignment with the fraudulent attestation causing the Plaintiff damages.

33. While Purporting to have standings, the Defendants by initiating multiple foreclosures proceedings, actually slandered the Plaintiff's title, and in violation of O.C.G.A. 44-14-162.2(A-C), the Defendants routinely refused and failed to proffer evidence to show any one of them has the capacity, standing, and authority to:

    A. accelerate Plaintiff Alfredia Note;

    B. Exercise a valid Power of Attorney to conduct a non-judicial Foreclosure sale of the property;

    C. Advertise and notice a non-judicial foreclosure action;

    D. Modify any terms or conditions of the Plaintiff's Note.

    E. Collect any fees owed to the note's defined "Note Holder,"

    F. Foreclose on subject property.

34. Uniform Commercial Code 3-309 states a person seeking to enforce a missing instrument must be a person entitled to enforce the instrument, and that person must prove the instrument's terms and that person's right to enforce the instrument 3-309(a)(1)&(b).

35. Federal rule of Civil Procedure 17(a)(1) requires that "[a]n action must be pursued in

Exhibit 1-P

B 10 Modified (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK | **PROOF OF CLAIM**

Name of Debtor: Residential Capital LLC | Case Number: 12-12020

NOTE: *This form should not be used to make a claim for an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) arising after the commencement of the case. A "request" for payment of an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) may be filed pursuant to 11 U.S.C § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):

Pro Se - Alfredia Pruitt

Name and address where notices should be sent: NameID: 10854962

Pro Se - Alfredia Pruitt
ALFREDIA PRUITT VS. MERS, GMACM, USAA FEDERAL SAVINGS BANK, FEDERAL NATIONAL MORTGAGE ASSOCIATION, FANNIE MAE, DEFENDANT.
P.O. Box 1312
Norcross, GA 30091-1312
Telephone number: 770-668-3915 email: alfrediabostic@yahoo

Name and address where payment should be sent (if different from above):
4574 Creek Forest Ct
Lilburn GA 30047
Telephone number: email: alfrediabostic@yahoo.com

☐ Check this box if this claim amends a previously filed claim.

Court Claim Number: _____ *(If known)*

Filed on: _____

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

1. Amount of Claim as of Date Case Filed: $ 271,330.00

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☐ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: Mortgage Note
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:	**3a. Debtor may have scheduled account as:**	**3b. Uniform Claim Identifier (optional):**
2020	(See instruction #3a)	(See instruction #3b)

4. Secured Claim (See instruction #4)

Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☑ Real Estate ☐ Motor Vehicle ☐ Other

Describe:

Value of Property: $ 271,330.00 **Annual Interest Rate** 6.75 % ☐ Fixed ☐ Variable
(when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim,

If any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. Claim Pursuant to 11 U.S.C. § 503(b)(9):

Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before May 14, 2012, the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$ 271,330.00 (See instruction #6)

7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)

8. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a se *definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE

If the documents are not available, please explain:

☑ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return

9. Signature: (See instruction #9) Check the appropriate box.

☑ I am the creditor. ☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Alfredia Pruitt
Title: _____
Company: _____
Address and telephone number (if different from notice address above):
4574 Creek Forest Ct
Lilburn, GA 30047
Telephone number: 770-668-3915 Email: alfrediabostic@yahoo.com

Alfredia Pruitt (Signature) 9/24/2012 (Date)

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

** Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

RECEIVED
SEP 27 2012
KURTZMAN CARSON CONSULTANTS
COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

NOTE

August 30, 2006 [Date] | Norcross [City] | GEORGIA [State]

2360 Hickory Station Circle, Snellville, GA 30078 [Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 271,330.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is USAA Federal Savings Bank

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.750 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on October 01, 2006 . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on September 01, 2036 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at Attn: Payment Processing, P.O. Box 205, Waterloo, IA 50704-0205 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 1,759.84 .

4. BORROWER'S RIGHT TO PREPAY.

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

intifier:0702113416 Doc Type:NOTE

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. APPLICABLE LAW

Lender is a federally chartered savings bank governed, in part, by the Home Owner's Loan Act of 1933 and the rules and regulations promulgated pursuant thereto (the "Act"). To the extent permitted by the Act, this Note will be governed by applicable federal law and by the interest rate and usury provisions of the state of Texas.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Alfredia Pruitt _____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

Pay to the Order of

_____

without recourse

USAA Federal Savings Bank

By _____

Name Heather Garcia

Title Processing Supervisor

[Sign Original Only]

BK46975 PG0421

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

2006 SEP -5 PM 2:00

TOM LAWLER, CLERK

PT-61 #047-2006-034785
GWINNETT CO. GEORGIA
REAL ESTATE TRANSFER TAX
$ 271.40
TOM LAWLER CLERK OF
SUPERIOR COURT

Return to: S. Alan Cohn
Hudnall, Cohn & Abrams, P.C
3550 Engineering Drive, Suite 100
Norcross, Georgia 30092

File #06A-7371/Pratt

WARRANTY DEED

State of Georgia
County of Gwinnett

This Indenture made this 30th day of August, in the year Two Thousand Six, between

Lowell Pratt Residential, LLC

of the State of Georgia, as party or parties of the first part, hereinafter called Grantor, and

Alfredia Pratt

of the County of Gwinnett, and State of GA, as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors, and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveys and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee:

All that tract or parcel of land lying and being in Land Lot 59 of the 5th District, Gwinnett County, Georgia, being Lot 158, Olde Hickory Village, Phase 2C, as per plat recorded in Plat Book 115, Pages 115 and 116, Gwinnett County, Georgia Records; which plat is incorporated herein by reference and made a part hereof.

Subject to all easements and restrictions of record.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has signed and sealed this deed, the day and year first above written.

Signed, sealed and delivered
in presence of:

Unofficial Witness

Notary Public
my commission expires:

NOTARY PUBLIC
DEKALB COUNTY
GEORGIA

Lowell Pratt Residential, LLC

By: _____(SEAL)
Kenneth Biggerstaff, Manager

0146480

10

00246

(Exhibit B)

BK49198PG0246

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.
2008 DEC 11 PM 2:28
TOM LAWLER, CLERK

314383

Our File No.: 52607708-FT1
Debtor: Alfredia Pruitt
Sale Date: 01/06/2009

Return to
Prommis Solutions, LLC
1544 Old Alabama Road
Roswell, GA 30076

ASSIGNMENT

STATE OF Pennsylvania

COUNTY OF Montgomery

For value received, Mortgage Electronic Registration Systems, Inc. has this day transferred, sold, assigned, conveyed and set over to GMAC Mortgage, LLC, whose address is 1100 Virginia Drive, Fort Washington, PA 19034, as Assignee, its successors, representatives and assigns, all its right, title and interest in and to a certain Security Deed (or Deed to Secure Debt) executed by Alfredia Pruitt to Mortgage Electronic Registration Systems, Inc., dated August 30, 2006, recorded in Deed Book 46975, Page 422, Gwinnett County, Georgia Records.

Property Address: 2360 Hickory Station Circle, Snellville, Georgia 30078

The Assignor herein specifically transfers, sells, conveys and assigns to the above Assignee, its successors, representatives and assigns, the aforesaid Security Deed, the property described therein, the indebtedness secured thereby together with all the powers, options, privileges and immunities therein contained.

The Assignor herein has this day sold and assigned to the Assignee herein the note secured by the aforesaid Security Deed and this transfer is made to secure the Assignee, its successors, representatives and assigns, in the payment of said note.

IN WITNESS WHEREOF, the Assignor has hereunto set its hand and seal this Nov. 25th, 2008.

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Susan Barone, Notary Public
Upper Dublin Twp., Montgomery County
My Commission Expires Nov. 9, 2011
Member, Pennsylvania Association of Notaries

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.

By:
Title:

By:
Title:
(Corporate Seal)

Jeffrey Stephan
Vice President

Kristine Wilson
Assistant Secretary

0117739

TOM LAWLER, CLERK

Prepared By:

Thomas Goode
10750 McDermott Freeway
San Antonio, TX 78288

GEORGIA INTANGIBLE TAX PAID
$ 814.50
TOM LAWLER
SUPERIOR COURT GWINNETT
COUNTY, GEORGIA

Return to: S. Alan Cohn
Hudnall Cohn & Abrams, PC
3550 Engineering Drive Suite 100
Norcross, GA 30092

[Space Above This Line For Recording Data]

SECURITY DEED

MIN 100105600020422779

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated August 30, 2006 together with all Riders to this document.
(B) "Borrower" is Alfredia Pruitt, a single person

Borrower is the grantor under this Security Instrument.
(C) "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 grantee 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.

0146481

44

Lender is a Federally Chartered Savings Bank organized and existing under the laws of the United States of America
Lender's address is 30750 Rancho Viejo, San Antonio, TX 78258

(B) "Note" means the promissory note signed by Borrower and dated August 30, 2006
The Note states that Borrower owes Lender Two Hundred Seventy One Thousand Three Hundred Thirty And Zero/100
(U.S. $271,330.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than September 01, 2036 Dollars
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☒ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(L) "Escrow Items" means those items that are described in Section 3.
(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used

is this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS, with power of sale, the following described property located in the County of Gwinnett :

[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

See Exhibit 'A' Legal Description attached hereto and made a part hereof.

Parcel ID Number: which currently has the address of

2360 Hickory Station Circle [Street]

Snellville [City] , Georgia 30078 [Zip Code]

("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, making repairs, replacing doors and windows, draining water from pipes, and eliminating building or other code violations or dangerous conditions. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

Exhibit 6

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

BORROWER ACCEPTS AND AGREES to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

IN WITNESS WHEREOF, Borrower has signed and sealed this Security Instrument.

Alfredia Pruitt _____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

STATE OF GEORGIA, County ss:

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public, State of Georgia

SUSAN F SMEGAL NOTARY PUBLIC GEORGIA DEKALB COUNTY

702113416

GA(GA) [illegible]

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_____ _____

All that tract or parcel of land lying and being in Land Lot 59 of the 5th District, Gwinnett County, Georgia, being Lot 158, Olde Hickory Village, Phase 2C, as per plat recorded in Plat Book 115, Pages 115 and 116, Gwinnett County, Georgia Records; which plat is incorporated herein by reference and made a part hereof.

HP

requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 30th day of August, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to USAA Federal Savings Bank

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 2360 Hickory Station Circle, Snellville, GA 30078

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in The Deed, The Declaration of Covenants, Conditions and Restrictions.

(the "Declaration"). The Property is a part of a planned unit development known as OLDE HICKORY VILLAGE

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

BK46975 PG0434

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale granted by Borrower and any other remedies permitted by Applicable Law. Borrower appoints Lender the agent and attorney-in-fact for Borrower to exercise the power of sale. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give a copy of a notice of sale by public advertisement for the time and in the manner prescribed by Applicable Law. Lender, without further demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Lender determines. Lender or its designee may purchase the Property at any sale.

Lender shall convey to the purchaser indefeasible title to the Property, and Borrower hereby appoints Lender Borrower's agent and attorney-in-fact to make such conveyance. The recitals in the Lender's deed shall be prima facie evidence of the truth of the statements made therein. Borrower covenants and agrees that Lender shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The power and agency granted are coupled with an interest, are irrevocable by death or otherwise and are cumulative to the remedies for collection of debt as provided by Applicable Law.

If the Property is sold pursuant to this Section 22, Borrower, or any person holding possession of the Property through Borrower, shall immediately surrender possession of the Property to the purchaser at the sale. If possession is not surrendered, Borrower or such person shall be a tenant holding over and may be dispossessed in accordance with Applicable Law.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall cancel this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waiver of Homestead. Borrower waives all rights of homestead exemption in the Property.

25. Assumption Not a Novation. Lender's acceptance of an assumption of the obligations of this Security Instrument and the Note, and any release of Borrower in connection therewith, shall not constitute a novation.

26. Security Deed. This conveyance is to be construed under the existing laws of the State of Georgia as a deed passing title, and not as a mortgage, and is intended to secure the payment of all sums secured hereby.

U.S. DE

ttlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-0265

B. Type of Loan			
1.☐ FHA 2.☐ RHS 3.☒ Conv. Unins. 4.☐ VA 5.☐ Conv. Ins.	6. File Number 06A-7371	7. Loan Number 702113416	8. Mortgage Insurance Case Number

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.

D. Name and Address of Borrower	E. Name and Address of Seller	F. Name and Address of Lender
Alfredia Pruitt 2360 Hickory Station Circle Snellville, GA 30078	Lowell Pratt Residential, LLC 3850 Holcomb Bridge Road, Suite 215 Norcross, GA 30092	USAA Federal Savings Bank 10750 McDermott Freeway San Antonio, Tx. 78288

G. Property Location	H. Settlement Agent	
2360 Hickory Station Circle Snellville, GA 30078 Land Lot 59, 5th District, Gwinnett Lot 158, Olde Hickory Village	Hudnall, Cohn and Abrams, P.C. Place of Settlement 3550 Engineering Drive Suite 100 Norcross, Georgia 30092	I. Settlement Date 03/05/12 DO: 03/05/12

J. SUMMARY OF BORROWER'S TRANSACTION:		K. SUMMARY OF SELLER'S TRANSACTION:	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price	271,330.00	401. Contract sales price	271,330.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	4,503.27	403.	
104. Prorated HOA Dues ($1000/yr)	336.99	404.	
105. HOA Initiation Fee	500.00	405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes 08/30 to 12/31	428.40	407. County taxes 08/30 to 12/31	428.40
108. Assessments to		408. Assessments to	
109.		409.	
110. HOA Preparation Fee	30.00	410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	277,128.66	420. GROSS AMOUNT DUE TO SELLER	271,758.40
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT TO SELLER	
201. Deposit or earnest money	4,130.00	501. Excess Deposit (see instructions)	
202. Principal amount of new loan(s)	271,330.00	502. Settlement charges to seller (line 1400)	12,491.25
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	169,834.19
		Branch Banking and Trust Company	
205. Good Faith Deposit Fee	350.00	505. Payoff of second mortgage loan	
206.		506. Payoff Delivery Fee	25.00
207.		507. Earnest Money Held	4,130.00
208.		508. Bonded Builder Warranty	529.09
209.		509. 2006 Gwinnett County Taxes	1,271.27
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.			

Alfredia Pratt	Lowell Pratt Residential, LLC	USAA Federal Savings Bank
2360 Hickory Station Circle Snellville, GA 30078	3550 Holcomb Bridge Road, Suite 215 Norcross, GA 30092	10750 McDermott Freeway San Antonio, Tx. 78288

12-12020-mg Doc 33545 Filed 04/04/13 Entered 04/04/13 13:11:30 Appendix
Exhibits 1-P through 1-Q Pg 23 of 27

G. Property Location	H. Settlement Agent	
2360 Hickory Station Circle Snellville, GA 30078 Land Lot 59, 5th District, Gwinnett Lot 158, Olde Hickory Village	Hudnall, Cohn and Abrams, P.C. Place of Settlement 3550 Engineering Drive Suite 100 Norcross, Georgia 30092	I. Settlement Date 03/05/12 DO: 03/05/12

J. SUMMARY OF BORROWER'S TRANSACTION:		K. SUMMARY OF SELLER'S TRANSACTION:	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price	271,330.00	401. Contract sales price	271,330.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	4,503.27	403.	
104. Prorated HOA Dues ($1000/yr)	336.99	404.	
105. HOA Initiation Fee	500.00	405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes 08/30 to 12/31	428.40	407. County taxes 08/30 to 12/31	428.40
108. Assessments to		408. Assessments to	
109.		409.	
110. HOA Preparation Fee	30.00	410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	277,128.66	420. GROSS AMOUNT DUE TO SELLER	271,758.40
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT TO SELLER	
201. Deposit or earnest money	4,130.00	501. Excess Deposit (see instructions)	
202. Principal amount of new loan(s)	271,330.00	502. Settlement charges to seller (line 1400)	12,491.25
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	169,834.19
		Branch Banking and Trust Company	
205. Good Faith Deposit Fee	350.00	505. Payoff of second mortgage loan	
206.		506. Payoff Delivery Fee	25.00
207.		507. Earnest Money Held	4,130.00
208.		508. Bonded Builder Warranty	529.09
209.		509. 2006 Gwinnett County Taxes	1,271.27
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY / FOR BORROWER	275,810.00	520. TOTAL REDUCTION AMOUNT DUE SELLER	188,280.80
300. CASH AT SETTLEMENT FROM OR TO BORROWER		600. CASH AT SETTLEMENT TO OR FROM SELLER	
301. Gross amount due from borrower (line 120)	277,128.66	601. Gross amount due to seller (line 420)	271,758.40
302. Less amounts paid by/for borrower (line 220)	275,810.00	602. Less reduction amount due to seller (line 520)	188,280.80
303. CASH FROM BORROWER	1,318.66	603. CASH TO SELLER	83,477.60

In the event a re-proration of the taxes is necessary when the tax bills for the current year are rendered, the parties agree to handle said re-proration between themselves.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT — SETTLEMENT STATEMENT — PAGE 2

File Number: 06A-7371

L. SETTLEMENT CHARGES:				PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL SALES/BROKER'S COMMISSION based on price $	271,330.00 @	4.50 =	12,209.85		
Division of commission (line 700) as follows:					
701. $ 12,209.85 to LPR Realty, Inc.					
702. $ to					
703. Commission paid at Settlement					12,209.85
704.					
800. ITEMS PAYABLE IN CONNECTION WITH LOAN			P.O.C.		
801. Loan Origination Fee	%	USAA Federal Savings Bank		339.16	
802. Loan Discount	%				
803. Appraisal Fee	to	USAA Federal Savings Bank		275.00	
804. Credit Report	to	USAA Federal Savings Bank		12.00	
805. Lender's Inspection Fee	to	USAA Federal Savings Bank		100.00	
806. Mtg. Ins. Application Fee	to				
807. Assumption Fee	to				
808. Good Faith Deposit Fee		USAA Federal Savings Bank	350.00B		
809. Tax Related Service Fee		USAA Federal Savings Bank		85.00	
810. Processing/Flat Fee		USAA Federal Savings Bank		400.00	
811. Flood Certification Fee		USAA Federal Savings Bank		8.00	
812. GA Residential Mortgage Loan F		USAA Federal Savings Bank		6.50	
813.					
814.					
815.					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest from 08/30/06 to 09/01/06	@$	50.8744 /day	2 day(s)	101.75	
902. Mortgage Insurance Premium	to				
903. Hazard Insurance Premium	1 yrs. to	Teachers Insurance Company		382.00	
904. Flood Insurance		Fiedlity National Property & Casualty		317.00	
905.					
1000. RESERVES DEPOSITED WITH LENDER FOR					
1001. Hazard Insurance	mo. @$		/ mo.		
1002. Mortgage Insurance	0 mo. @$	189.93	/ mo.		
1003. City property taxes	mo. @$		/ mo.		
1004. County property taxes	2 mo. @$	105.94	/ mo.	211.88	
1005. Annual Assessments	3 mo. @$	26.42	/ mo.	79.26	
1006.	mo. @$		/ mo.		
1007.	mo. @$		/ mo.		
1008. Aggregate Credit for Hazard/Flood Ins, City/County Prop Taxes, Mortgage Ins & Annual Assessments				-211.78	
1100. TITLE CHARGES					
1101. Settlement or closing fee	to				
1102. Abstract or title search	to				
1103. Title examination	to	Hudnall, Cohn and Abrams, P.C.		150.00	
1104. Title insurance binder	to	Hudnall, Cohn and Abrams, P.C.		75.00	
1105. Document preparation	to				
1106. Notary fees	to				
1107. Attorney's fees	to	Hudnall, Cohn and Abrams, P.C.		400.00	
(includes above item No: 1101-1105-1106)					
1108. Title insurance	to	Fidelity National		810.00	
(includes above item No: 1104)					
1109. Lender's coverage 271,330.00 — 578.00					
1110. Owner's coverage 271,330.00 — 232.00					
1111. Tax Search Delivery & Handling		Hudnall, Cohn and Abrams, P.C.		25.00	
1112. Courier Delivery & Handling		Hudnall, Cohn and Abrams, P.C.		30.00	
1113. Post Closing Service Fee		Hudnall, Cohn and Abrams, P.C.		35.00	10.00
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201. Recording fees	Deed $ 10.00	; Mortgage $ 48.00	; Releases $	58.00	
1202. City/county/stamps	Deed $	; Mortgage $			
1203. State tax/stamps	Deed $ 271.40	; Mortgage $ 814.50		814.50	271.40
1204.					
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301. Survey	to	($375 if FHA-pay to Lowell Pratt)			

12-12020-mg Doc 3354-3 Filed 04/04/13 Entered 04/04/13 15:11:50 Appendix
Exhibits 1 Through 1-Q Pg 25 of 27

808.	Good Faith Deposit Fee			USAA Federal Savings Bank		350.00B		
809.	Tax Related Service Fee			USAA Federal Savings Bank			85.00	
810.	Processing/Flat Fee			USAA Federal Savings Bank			400.00	
811.	Flood Certification Fee			USAA Federal Savings Bank			8.00	
812.	GA Residential Mortgage Loan F			USAA Federal Savings Bank			6.50	
813.								
814.								
815.								
900.	**ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE**							
901.	Interest from	08/30/06	to	09/01/06	@$ 50.8744 /day	2 day(s)	101.75	
902.	Mortgage Insurance Premium			to				
903.	Hazard Insurance Premium		1 yrs.	to	Teachers Insurance Company		382.00	
904.	Flood Insurance				Fiedlity National Property & Casualty		317.00	
905.								
1000.	**RESERVES DEPOSITED WITH LENDER FOR**							
1001.	Hazard Insurance			mo. @$		/ mo.		
1002.	Mortgage Insurance		0	mo. @$	189.93	/ mo.		
1003.	City property taxes			mo. @$		/ mo.		
1004.	County property taxes		2	mo. @$	105.94	/ mo.	211.88	
1005.	Annual Assessments		3	mo. @$	26.42	/ mo.	79.26	
1006.				mo. @$		/ mo.		
1007.				mo. @$		/ mo.		
1008.	Aggregate Credit for Hazard/Flood Ins, City/County Prop Taxes, Mortgage Ins & Annual Assessments						-211.78	
1100.	**TITLE CHARGES**							
1101.	Settlement or closing fee		to					
1102.	Abstract or title search		to					
1103.	Title examination		to	Hudnall, Cohn and Abrams, P.C.			150.00	
1104.	Title insurance binder		to	Hudnall, Cohn and Abrams, P.C.			75.00	
1105.	Document preparation		to					
1106.	Notary fees		to					
1107.	Attorney's fees		to	Hudnall, Cohn and Abrams, P.C.			400.00	
	(includes above Item No:	1101-1105-1106				)		
1108.	Title insurance		to	Fidelity National			810.00	
	(Includes above item No:	1104				)		
1109.	Lender's coverage	271,330.00	---	578.00				
1110.	Owner's coverage	271,330.00	—	232.00				
1111.	Tax Search Delivery & Handling			Hudnall, Cohn and Abrams, P.C.			25.00	
1112.	Courier Delivery & Handling			Hudnall, Cohn and Abrams, P.C.			30.00	
1113.	Post Closing Service Fee			Hudnall, Cohn and Abrams, P.C.			35.00	10.00
1200.	**GOVERNMENT RECORDING AND TRANSFER CHARGES**							
1201.	Recording fees	Deed $	10.00	; Mortgage $	48.00	; Releases $	58.00	
1202.	City/county/stamps	Deed $		; Mortgage $				
1203.	State tax/stamps	Deed $	271.40	; Mortgage $	814.50		814.50	271.40
1204.								
1205.								
1300.	**ADDITIONAL SETTLEMENT CHARGES**							
1301.	Survey		to	($375 if FHA-pay to Lowell Pratt)				
1302.	Pest inspection		to					
1303.								
1304.								
1305.								
1306.								
1307.								
1308.	*NFLP="Net Funded from Loan Proceeds"							
1400.	**TOTAL SETTLEMENT CHARGES**	(enter on lines 103 and 502, Sections J and K)					4,503.27	12,491.25

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Alfredia Pruitt

Lowell Pratt Residential, LLC

Kenneth Biggerstaff, Manager

Hudnall, Cohn and Abrams, P.C.

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement. 08/30/06

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

Exhibit 1-Q

Date Filed: 10/9/2012

October 2, 2012

RE: **REQUEST TO WITHDRAW PROOF OF CLAIM**
Case No. **12-12020(MG)**

To Whom It May Concern:

I Alfredia Pruitt, is requesting to **WITHDRAW** the **PROOF of CLAIM** mailed to your office on September 26, 2012 in the above case, in reference to **RESIDENTIAL CAPITAL, LLC.**

I am providing a self stamped envelope. I've tried reaching your office by phone and left several voice mails and no response, however the courts advised me to send you a letter.

Thank you,

Alfredia Pruitt

Cc: Lorraine Mills

☒ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return

RECEIVED
OCT 0 9 2012
KURTZMAN CARSON CONSULTANTS

12120201210090000000000034

Exhibit 1-R

IN THE ~~SUPERIOR~~ Magistrate COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ALFREDIA PRUITT,
Plaintiff,

VS.

CASE NO. 10M40065

FEDERAL NATIONAL
MORTGAGE ASSOCIATION,
GMAC,
FANNIE MAE,
USAA FEDERAL SERVICING BANK
Defendant

FILED IN THE CLERK'S OFFICE
CLERK MAGISTRATE COURT
GWINNETT COUNTY, GA
2010 DEC -6 PM 1:49
TOM LAWLER, CLERK

PLAINTIFF'S ORIGINAL COMPLAINT & APPLICATION FOR TEMPORARY RESTRAINING ORDER

A.COMPLAINT

COMES NOW ALFREDIA PRUITT, Plaintiff in the above-captioned matter, and respectfully states her Complaint against Defendants **FEDERAL NATIONAL MORTGAGE ASSOCIATION, GMAC, FANNIE MAE,** and **USAA FEDERAL SAVINGS BANK** as follows:

B.JURISDICTION AND VENUE

1. Plaintiff, Alfredia Pruitt, is an individual who resides in Gwinnett County, Georgia.

2. Defendant, Federal National Mortgage Association is a Georgia corporation, may be served with process at, c/o3525 Piedmont Road NE building 6 ste. 300, Atlanta, GA 30305.

3. Defendant GMAC a corporation doing business in Georgia and may be served with process at 3 Ravinia Drive Atlanta, GA 30346,

4. Defendant Fannie Mae a corporation doing business in Georgia and may be served with process at 950 E Paces Ferry Rd NE, Atlanta, GA, 30326

5. Defendant USAA Federal Savings Bank a corporation doing business in Georgia and may be served with process at Terminus 200 Building, 3333 Piedmont Rd, Ste 2050, Atlanta, GA 30305. also, P.O. Box 205, Waterloo, IA 50704-0205

6. Jurisdiction is proper in this Court.

7. Venue is proper in the Gwinnett County Superior Court of Georgia. Specifically, venue is mandatory in this county because the real property complained of is located in this county.

C.FACTUAL ALLEGATIONS

8. Plaintiff owned property located at 2360 Hickory Station Circle, Snellville, Georgia 30078.

9. The Plaintiff became indebted to USAA Federal Savings Bank. Plaintiff failed to pay the debt and started negotiating the payment with USAA Federal Savings Bank.

10. Defendant GMAC, Federal National Mortgage Association purchased Plaintiff's property at a sale in which GMAC was not the beneficiary or holder of the note. Federal National Mortgage Association filed a dispossessory proceeding complaint for eviction of Plaintiff from her property.

D. Cause of Action (UNLAWFUL FORECLOSURE)

11. Plaintiff's cause of action against FEDERAL NATIONAL MORTGAGE ASSOCIATION, GMAC, FANNIE MAE, USAA FEDERAL SERVICING BANK is because the Defendants illegally assisted GMAC, Federal National Mortgage Association with the unlawful foreclosure of the plaintiff's property. Plaintiff seeks to set aside the sale of her property by GMAC and stop the eviction.

E. Application for Temporary Restraining Order

12. Applicant is seeking a temporary restraining order preventing the defendants from evicting the applicant from the property which is the subject of the land and title lawsuit.

13. It is probable that the Applicant will prevail in this lawsuit.

14. Also, the Plaintiff's claim against the Defendants is filed to preserve the status quo of the parties until the issue of title is resolved.

15. Applicant made all payments to USAA Federal Savings Bank.

16. Applicant was never required to make any payments to GMAC and never received any communication or notice from GMAC prior to GMAC foreclosing on the property.

17. GMAC is not the beneficiary of the note and had no right to foreclose on the note

18. Applicant has requested the original note.

19. Applicant was under the belief with USAA Federal Savings Bank that USAA

Federal Savings Bank and no other defendant would foreclose on her home as long as she was negotiating the payment on her mortgage.

20. In the event this Court does not grant the Applicants' Application for a Temporary Restraining Order, she will suffer irreparable harm because the real estate which is the subject of this lawsuit is unique in character and cannot be replaced with money damages only. Applicant has no other adequate remedy at law.

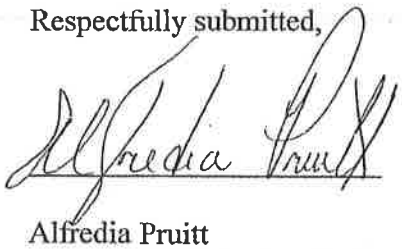
F. Request for Temporary Restraining Order

21. Plaintiff asks the court to set her application for temporary restraining order for a hearing, and after hearing the application, issue a temporary restraining order against Defendants.

G. Prayer

22. For these reasons, Plaintiff asks the court to grant the temporary restraining order stopping the eviction and enforcement of her rights.

Respectfully submitted,



Alfredia Pruitt
2360 Hickory Station Circle
Snellville, Georgia 30078
(770) 668-3915 Phone

MAGISTRATE COURT OF GWINNETT COUNTY, GEORGIA

Alfredia Pruitt
PLAINTIFF(s)

CIVIL ACTION FILE NO. 10M 4 0065

VS

GMAC
DEFENDANT(s)

(All answers and counterclaims MUST BE FILED WITH THE CLERK within 7 days of the date of service.)

DISPOSSESSORY ANSWER

(Please note and then use another sheet(s) for additional space, as needed.)

FILED IN OFFICE
CLERK MAGISTRATE COURT
GWINNETT COUNTY, GA
2010 NOV 18 PM 1:20
TOM LAWLER, CLERK

✓ I am the Defendant. I am filing an Answer I state the following in response to Plaintiff's claim in this lawsuit:

____ I do not have a landlord tenant relationship with the plaintiff.

____ My landlord did not give me the proper notice that my lease or rental agreement was terminated in accordance with the terms of our lease. The landlord did not properly demand that I move before filing the lawsuit.

____ My landlord terminated my lease without a valid reason.

____ I do not owe any rent to my landlord.

____ I offered and had the money to pay my rent on or before the date I usually pay, but my landlord refused to accept it.

____ My landlord would not accept my rent, correct late fees and the court costs. I had all the money to pay.

____ My landlord failed to repair the property. This failure has lowered its value or resulted in other damages more than the rent claimed.

____ I am a residential tenant. This is my first dispossessory action. I am paying all my rent, late fees and court costs to the clerk.

____ My landlord is not entitled to evict me or secure a money judgment for the following additional reasons: (attach if necessary)

COUNTERCLAIM - (Please note and then use another sheet(s) for additional space, as needed.)

____ My landlord owes me $_____ for the following reason(s):

____ My landlord failed to repair my property. Due to this failure, its value has been reduced $_____ each month for_____ months.

____ Since my landlord failed to make requested repairs, I made these repairs. I made these repairs that cost $_____. I have all my receipts. I will bring the receipts and all documents concerning these payments to my trial.

____ My landlord's failure to repair resulted in damages of $_____ to my person and/or property.

WHEREFORE, I ask this Court to:
(a) Dismiss Plaintiff's lawsuit with all costs assessed against Plaintiff.
(b) Enter a judgment in my favor and against Plaintiff; and
(c) Grant such other and further relief as the Court deems just and proper.

Alfredia Pruitt
(Print name of Defendant filing answer & address)
3360 Hickory Station Ct
Snellville, GA 30078

Alfredia Pruitt
Signature of Defendant filing answer/ Attorney

Bar # _____

EACH DEFENDANT MUST FILE THEIR OWN ANSWER. Attorneys may file answers for more than one defendant, pro se litigants cannot.

Commercial LL – A– L, 9:00 AM, 1C Or Plaintiffs who use a filing service	Commercial LL – M - Z, 9:00 AM, 1D Or Plaintiffs who use a filing service	All other LL's, 1:00 PM, 1D

NOTICE OF TRIAL DATE

The Plaintiff(s) and Defendant(s) are required to appear for trial in Courtroom 1 C on the 1ST day of DECEMBER 20 10 at 900 o'clock A. M. Courtroom 1 C, Gwinnett Justice & Administration Building, 75 Langley Drive, Lawrenceville, GA. 30046-6900. If you have an attorney, please notify your attorney to be present with you.

This 18 day of Nov 20 10.

Alfredia Pruitt
DEFENDANT

DEPUTY CLERK

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