



**Service of Process
Transmittal**

11/03/2011

CT Log Number 519427098

TO: Karina Buitrago CHL ONLY
Bank of America
CA6-915-01-17, 30870 Russell Ranch Road
Westlake Village, CA 91362

RE: **Process Served in District of Columbia**

FOR: BAC Home Loans Servicing, L.P. (Domestic State: N/A)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Vivian McCarter, Pltf. vs. Bank of New York, et al. including Bank of America, Home Loans Servicing LP, Dfts.
Name discrepancy noted.

DOCUMENT(S) SERVED: Summons, Document in Foreign Language, Initial Order, Addendum, Verified Complaint, Verification

COURT/AGENCY: Superior Court of the District of Columbia, DC
Case # 000862611

NATURE OF ACTION: Quiet Title - Washington, DC - Seeking declaratory and injunctive relief

ON WHOM PROCESS WAS SERVED: C T Corporation System, Washington, DC

DATE AND HOUR OF SERVICE: By Process Server on 11/03/2011 at 13:00

JURISDICTION SERVED : District of Columbia

APPEARANCE OR ANSWER DUE: Within 20 days after service, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Christine AxSmith
P.O. Box 2280
Imperial Beach, CA 91932
202-285-5415

REMARKS: Even though the documents are addressed to Bank of America Home Loans Servicing, LP, the Department of Consumer and Regulatory Affairs in Washington, DC shows the only company registered by this name is BAC Home Loans Servicing, LP. Papers taken for the above company

ACTION ITEMS: CT has retained the current log, Retain Date: 11/03/2011, Expected Purge Date: 11/08/2011
Image SOP
Email Notification, Valeria Leiva CHL ONLY valeria.leiva@bankofamerica.com
Email Notification, Brenda Taormina CHL ONLY
brenda.taormina@bankofamerica.com
Email Notification, Karina Buitrago CHL ONLY karina.buitrago@bankofamerica.com

SIGNED: C T Corporation System
PER: Mark Dffenbaugh
ADDRESS: 1015 15th Street, N.W.
Suite 1000
Washington, DC 20005
TELEPHONE: 202-572-3133

EXHIBIT B

Page 1 of 1 / VC

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.



500 Indiana Avenue, N.W., Suite 5000
Washington, D.C. 20001 Telephone: (202) 879-1133

VIVIAN McCARTER

Plaintiff

0008626-11

vs.

Case Number

BANK OF AMERICA, HOME LOANS SERVICING, LP

Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

CHRISTINE A. SMITH

Name of Plaintiff's Attorney

PO Box 2880

Address

IMPERIAL BEACH, CA 91932

202-285-5415

Telephone

如需翻译, 请打电话 (202) 879-4828

Veuillez appeler au (202) 879-4828 pour une traduction

Đề có một bài dịch, hãy gọi (202) 879-4828

번역을 원하시면, (202) 879-4828 로 전화하십시오 የአማርኛ ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

Clerk of the Court

By

Deputy Clerk

Date

IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-682-2700) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation

Vea al dorso la traducción al español



500 Indiana Avenue, N.W., Suite 5000
Washington, D.C. 20001 Teléfono: (202) 879-1133

11-0208000

Demandante

contra

Número de Caso: _____

Demandado

CITATORIO

Al susodicho Demandado:

Por la presente se le cita a comparecer y se le requiere entregar una Contestación a la Demanda adjunta, sea en persona o por medio de un abogado, en el plazo de veinte (20) días contados después que usted haya recibido este citatorio, excluyendo el día mismo de la entrega del citatorio. Si usted está siendo demandado en calidad de oficial o agente del Gobierno de los Estados Unidos de Norteamérica o del Gobierno del Distrito de Columbia, tiene usted sesenta (60) días contados después que usted haya recibido este citatorio, para entregar su Contestación. Tiene que enviarle por correo una copia de su Contestación al abogado de la parte demandante. El nombre y dirección del abogado aparecen al final de este documento. Si el demandado no tiene abogado, tiene que enviarle al demandante una copia de la Contestación por correo a la dirección que aparece en este Citatorio.

A usted también se le requiere presentar la Contestación original al Tribunal en la Oficina 5000, sito en 500 Indiana Avenue, N.W., entre las 8:30 a.m. y 5:00 p.m., de lunes a viernes o entre las 9:00 a.m. y las 12:00 del mediodía los sábados. Usted puede presentar la Contestación original ante el Juez ya sea antes que Usted le entregue al demandante una copia de la Contestación o en el plazo de cinco (5) días de haberle hecho la entrega al demandante. Si usted incumple con presentar una Contestación, podría dictarse un fallo en rebeldía contra usted para que se haga efectivo el desagravio que se busca en la demanda.

SECRETARIO DEL TRIBUNAL

Nombre del abogado del Demandante

Por: _____

Dirección

Subsecretario

Fecha _____

Teléfono

如需翻译, 请打电话 (202) 879-4828

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번역을 원하시면, (202) 879-4828 로 전화하십시오

የአግርኛ ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

IMPORTANTE: SI USTED INCUMPLE CON PRESENTAR UNA CONTESTACIÓN EN EL PLAZO ANTES MENCIONADO, O, SI LUEGO DE CONTESTAR, USTED NO COMPARECE CUANDO LE AVISE EL JUZGADO, PODRÍA DICTARSE UN FALLO EN REBELDÍA CONTRA USTED PARA QUE SE LE COBRE LOS DAÑOS Y PERJUICIOS U OTRO DESAGRAVIO QUE SE BUSQUE EN LA DEMANDA. SI ESTO OCURRE, PODRÍAN RETENERLE SUS INGRESOS, O PODRÍAN TOMAR SUS BIENES PERSONALES O RAÍCES Y VENDERLOS PARA PAGAR EL FALLO. SI USTED PRETENDE Oponerse a esta acción, NO DEJE DE CONTESTAR LA DEMANDA DENTRO DEL PLAZO EXIGIDO.

Si desea conversar con un abogado y le parece que no puede afrontar el costo de uno, llame pronto a una de nuestras oficinas del Legal Aid Society (202-628-1161) o el Neighborhood Legal Services (202-682-2700) para pedir ayuda o venga a la Oficina 5000 del 500 Indiana Avenue, N.W., para informarse de otros lugares donde puede pedir ayuda al respecto.

Vea al dorso el original en inglés
See reverse side for English original



**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

VIVIAN MCCARTER
Vs.
BANK OF NEW YORK

C.A. No. 2011 CA 008626 R(RP)

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("SCR Civ") 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the Summons, the Complaint, and this Initial Order. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in SCR Civ 4(m).

(3) Within 20 days of service as described above, except as otherwise noted in SCR Civ 12, each defendant must respond to the Complaint by filing an Answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in SCR Civ 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an Initial Scheduling and Settlement Conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than six business days before the scheduling conference date. No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each Judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website <http://www.dccourts.gov/>.

Chief Judge Lee F. Satterfield

Case Assigned to: Judge JUDITH N MACALUSO

Date: November 1, 2011

Initial Conference: 9:30 am, Friday, February 03, 2012

Location: Courtroom 415

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

Caio.doc

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 105, 515 5th Street, N.W. (enter at Police Memorial Plaza entrance). Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Clerk's Office. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Lee F. Satterfield

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

(ACTION INVOLVING REAL PROPERTY)

VIVIAN MCCARTER
1805 A Street, SE
Washington, DC 20003

Plaintiff,

v.

BANK OF NEW YORK
c/o BIERMAN, GEESING,
WARD & WOOD, LLC
4520 East West Hwy, Suite 200
Bethesda, MD 20814

BIERMAN, GEESING,
WARD & WOOD, LLC
4520 East West Hwy, Suite 200
Bethesda, MD 20814

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.
1818 Library Street
Suite 300
Reston, VA 20190

FANNIE MAE
3900 Wisconsin Avenue, NW
Washington, DC 20016-2892

BANK OF AMERICA, HOME
LOANS SERVICING, LP
c/o CT Corporation
1015 15th Street NW Suite 1000
Washington, DC 20005

Defendants.

Civil Action No.:

0008626-11

2011 CA _____

Judge _____

Next Court Date _____

Event _____

COMPLAINT AND
JURY DEMAND

RECEIVED
Civil Clerk's Office
NOV - 1 2011
Superior Court of the
District of Columbia
Washington, D.C.

VERIFIED COMPLAINT

PROPERTY ADDRESS: 1805 A Street, SE, Washington, DC 20003

COMPLAINT FOR EQUITABLE AND LEGAL RELIEF
ACTION INVOLVING REAL PROPERTY

PRELIMINARY STATEMENT

1. This action arises out of Defendants' fraudulent sale of a mortgage to Plaintiff VIVIAN MCCARTER, the fraudulent foreclosure of that mortgage, and the fraudulent denial of a HAMP agreement. Defendants made numerous material misrepresentations and omissions regarding the processes outlined in the Deed of Trust, TILA disclosures, RESPA disclosures, possession of the note, procedures used in foreclosures and information on the status of Plaintiff's account.

2. The essence of this lawsuit is that the profit center of the mortgage bond business for BANK OF AMERICA drove the granting of this mortgage in violation of state and federal law. More money was to be made in granting a mortgage – irrespective of the ability to repay – and then repackaging that mortgage to develop AAA-rated bonds through fraudulent and deceptive misrepresentations, and selling those bonds, than would ever be made on the mortgage itself. In essence, more bonds meant more money for BANK OF AMERICA, regardless of whether they would ever collect on those mortgages.

JURISDICTION AND VENUE

3. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as several causes of action arise under the following laws of the United States:

- a. Truth in Lending Act (TILA), 15 U.S.C. §1601 *et seq*;

- b. Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. §§
2601-2617;
- c. Racketeer Influenced and Corrupt Organizations Act (RICO), 18
U.S.C. §§ 1961-1968; and
- d. Home Ownership and Equity Protection Act (HOEPA).

4. This court has supplemental jurisdiction over the claims arising under the laws of the District of Columbia, pursuant to 28 U.S.C. § 1367, as these claims are so related to the claims giving rise to original jurisdiction as to form the same case or controversy.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial portion of the events or omissions giving rise to the claims took place in this district and because the Defendants MERS, BIERMAN GEESING, BANK OF NEW YORK and BANK OF AMERICA are licensed to conduct business in the District of Columbia. Furthermore, the subject property is located in the District of Columbia.

PARTIES

6. Plaintiff VIVIAN MCCARTER, a resident of Washington, D.C., took out a home mortgage loan from Countrywide Home Loans. The mortgage was secured by real property located at 1805 A Street, SE, Washington, DC 20003. Plaintiff alleges that this mortgage was in fact a predatory loan which she would never be able to pay back. After not being able to pay back the predatory loan, the property securing the mortgage loan was foreclosed upon. Plaintiff is seeking declaratory and injunctive relief, as well as damages as a result of a wrongful foreclosure and unfair and deceptive trade practices, in

violation of several federal and District of Columbia laws. At all times relevant herein, Plaintiff is over the age of eighteen (18) and resided in Washington, D.C.

7. Defendants BANK OF AMERICA and MORTGAGE ELECTRONIC SYSTEMS, INC. (MERS), had offices in, and were authorized to conduct business in, Washington, D.C.

8. Defendant BIERMAN GEESING is being sued for fraud and gross negligence.

9. Defendant BANK OF AMERICA, is being sued for conversion, aiding and abetting, conspiracy, joint venture, and are further believed to be acting at the request of one or more of the Defendants in foreclosing on the Subject Property, and asserting on their behalf albeit defective: legal or equitable right, title estate, lien, or interest in the property described in this Complaint adverse to Plaintiff's title thereto. This Defendant and his clients are claiming some right, title, estate, lien, or interest in the Subject Property, his claims are adverse to Plaintiff's title and his claims and each claim constitutes a cloud on Plaintiff's title to the Subject Property.

10. Defendant BIERMAN GEESING is being sued for fraud.

11. Defendant MERS is being sued for fraud and violations of the laws of the District of Columbia.

12. Defendant BANK OF NEW YORK, holder of the bond that contains the MCCARTER mortgage, is being sued for fraud and negligence.

JURY TRIAL DEMANDED

13. Plaintiff hereby demands a trial by jury on each and every claim to which they are entitled.

FACTUAL ALLEGATIONS

A. Background

14. This action arises out of Defendants' fraudulent sale of a mortgage to Plaintiff VIVIAN MCCARTER, the fraudulent foreclosure of that mortgage, the fraudulent denial of a HAMP agreement. Defendants made numerous material misrepresentations and omissions regarding the processes outlined in the Deed of Trust, TILA disclosures, RESPA disclosures, possession of the note, procedures used in foreclosures, and information on the status of Plaintiff's account.

15. The essence of this lawsuit is that *the profit center of the mortgage bond business for BANK OF AMERICA drove the granting of this mortgage in violation of state and federal law*. More money was to be made in granting a mortgage – irrespective of the ability to repay – and then transforming that mortgage into fodder for AAA bonds through the Fraud Formula (as explained below) and selling those bonds, than would ever be made on the mortgage itself. “Trillions of dollars in risky mortgages had become embedded throughout the financial system, as mortgage-related securities were packaged, repackaged, and sold to investors around the world.” *See* Financial Crisis Inquiry Commission, Financial Crisis Inquiry Report at xvi (2011) (hereinafter “FCIC Report”).

16. This system of profiteering was driven by a constant influx of new mortgages, regardless of the likelihood of repayment. The key to continued high profits for BANK OF AMERICA was the introduction of a large volume of new mortgage notes. “What is now clear is that the risk of non-payment was transferred to investors, and the only remaining incentive for originators, underwriters, and others in the securitization chain

was to pump out as many loans as possible.” FCIC Report at xvi. The underlying credit-worthiness of those mortgage applicants was irrelevant because the Fraud Formula (explained below) allowed money to be made off of them as if they were the most solid loans ever made.

17. This system, and its need for new mortgage notes, became the real business of BANK OF AMERICA. As such, lending requirements for individual mortgages were loosened to the point of entrapment for the consumer to feed the system with more bonds to sell. “Originators were willing to abandon sound underwriting practices because they routinely offloaded the risk to investors.” FCIC Report at xvi. Sabeth Seddique, then head of credit risk at the Federal Reserve Board’s Division of Banking Supervision and Regulation, testified to the FCIC that a large percentage of bank loans issued, including BANK OF AMERICA, were subprime and Alt-A mortgages, and the underwriting standards for these products had deteriorated. *See* FCIC Report at 172.

18. In this case, BANK OF AMERICA issued a mortgage loan to MCCARTER. During that process, MCCARTER reasonably expected that all federal and state laws would be followed in granting the mortgage and following the mortgage agreement, even in terms of its foreclosure. There was no notice that application of these laws would in any way be altered because more money was being made elsewhere in the business model.

19. Due to the business pressure to feed the mortgage bond profit machine, the loan to MCCARTER was granted fraudulently, in violation of the Real Estate Settlement Procedures Act (RESPA), Truth In Lending Act (TILA), Racketeer Influenced and

Corrupt Organizations Act (RICO), Home Ownership and Equity Protection Act (HOEPA), the Consumer Protection Procedures Act (CPPA), and also resulted in a breach of contract, fraud, fraud in the inducement, fraudulent concealment, fraudulent misrepresentation, civil conspiracy to commit mortgage fraud, negligent misrepresentation, gross negligence, and lack of standing to pursue a foreclosure action.

20.BANK OF AMERICA and Fannie Mae was not immune to the short-sighted greed in the mortgage industry. The FCIC Report states,

These government-sponsored enterprises [Freddie Mac and Fannie Mae] had a deeply flawed business model as publicly-traded corporations with the implicit backing of and subsidies from the Federal government and with a public mission. In 2005 and 2006, they decided to ramp up their purchase and guarantee of risky mortgages, just as the housing market was peaking . . . They suffered from many of the same failures of corporate governance discovered as the Commission discovered in other firms.

FCIC Report at xxvi. In fact, David Andrukonis, Freddie Mac's longtime Chief Risk Officer was fired because he expressed concern about relaxing underwriting standards to meet mission goals. *See* FCIC Report at 179.

B. The Fraud Formula

21. There has been much ado about the complexity of the equities that were created based on mortgages. In reality, it is easy to understand. So easy, in fact, Mel Brooks wrote a movie about the same idea called "The Producers."

22. In the movie, a producer created a Broadway show and sold multiple pieces of the show, multiple times. He did it by dividing the profits of the show into pieces, and calling each piece 100%. So if you were buying 35% of the show, you were really buying 35% of one piece of the show. This is standard practice in producing a Broadway

show. What is not standard practice is selling more than 100% of your share, which is what happened in the Mel Brooks movie.

23. In the securitization of mortgages, the loans were divided into "tranches," similar to the 35% of a show the producer is selling. There were tranches with secure loans in them, and they got a higher credit rating. The tranches with lower credit scores, i.e. lower security mortgages in them, got lower credit ratings. Enter The Fraud Formula.

24. Banks took a lower-credit tranche and divided it into pieces as well, so that part of the lower-security tranche would get a AAA credit rating, and the bad mortgage risks would be siphoned off into another piece to get a lower credit rating. This practice would be analogous to being at the top of the bottom fifth of your law school class. Yes, you are at the top. You are AAA compared to everyone else in your tranche. But you are still in the bottom fifth overall. This reasoning is how these securities were sold as AAA credit-worthy.

25. Both the banks and the characters in the Mel Brooks movie banked on the same belief: the underlying marketplace would not change. In "The Producers" the bet was that most Broadway shows fail. In the mortgage industry, the bet was that demand for housing and mortgages would climb forever. On the whole, the characters in a Mel Brooks movie were more realistic than the best and brightest in our banking industry.

26. In The Producers, the characters sold more than 100 percent of his share of the show. BANK OF AMERICA created more than 100 percent of AAA credit-rated mortgages using The Fraud Formula.

27. The profit pressure to create more AAA mortgage securities required an influx of new mortgage-holders. Lending standards were reduced to meet the demand. It didn't matter that the likelihood of repayment of the mortgage loan was reduced. The Fraud Formula ensured that a good portion of the mortgages would be rated AAA and sold at a premium price. The only requirement was that more mortgages come in the door. Many more mortgages.

28. That practice resulted in people being given loans when historical indications were that borrowers with similar credit histories and income would not be able to meet that level of mortgage obligation. The loans were given to homeowners with an eye towards the securities markets, and not towards impact on the consumer, the ability to repay, or the law.

29. Higher credit risk mortgages were being created, but it didn't matter to BANK OF AMERICA and Fannie Mae and Freddie Mac. All that mattered was volume. So mortgages were given to people whom the banks had reason to know would default, endangering the consumer and engaging in unfair trade practices. Their only priority was volume of mortgages given to consumers. Ignoring the default risk of the consumer was part of the business model, in violation of the Truth In Lending Act.

30. The Fraud Formula allowed more AAA-rated bonds to be sold than actually existed, resulting in tremendous profits for BANK OF AMERICA if the law protecting consumers were ignored to increase volume. And they were.

31. The mortgage-note bonds were the most profit-intensive for BANK OF AMERICA. Rather than recognizing the bond sales to be a secondary, dependent

business process to granting mortgages, BANK OF AMERICA allowed their process to morph into the bond business as the central business process. The result of that bad business decision was systemic negligence in ignoring laws in order to feed what had become the primary process in the business model: bonds based on mortgages.

32. The result of needing to find borrowers to feed the now-primary business model of BANK OF AMERICA resulted in MCCARTER being given a loan illegally, and being foreclosed on illegally. Non-possession of the note by BANK OF AMERICA led to the denial of her HAMP modification and to the hasty, and illegal, foreclosure of her home.

C. **Systemic Violation of Underwriting and Appraisal Standards in the Mortgage Industry**

33. While both originators and Wall Street banks, through the 1990s, played by the rules and complied with their obligations to underwrite loans responsibly and provide accurate information, practices changed the following decade. The history of this market collapse was investigated by the FCIC, which reviewed “millions of pages of documents, interviewed more than 700 witnesses, and held 19 days of public hearings in New York, Washington, D.C., and communities across the country.” The FCIC issued a report in January 2011 which described the crisis:

“[I]t was the collapse of the housing bubble – fueled by low interest rates, easy and available credit, scant regulation, and toxic mortgages – that was the spark that ignited a string of events, which led to a full-blown crisis in the Fall of 2008. Trillions of dollars in risky mortgages had become embedded throughout the financial system, as mortgage-related securities were packaged, repackaged, and sold to investors around the world.”

FCIC Report at xvi.

34. What is now clear is that the risk of non-payment was transferred to investors, and the only remaining incentive for originators, underwriters, and others in the securitization chain was to pump out as many loans as possible. Originators were willing to abandon sound underwriting practices because they routinely offloaded the risk onto investors.

35. The shift from the mortgage-giving business to the bond-creation business shifted focus from the proper servicing of mortgage loans as well. Laws regarding the recordation of mortgage notes were changed by corporate practice by BANK OF AMERICA using MERS to record mortgages instead of taking the trouble to record them locally. Federal program requirements were ignored and state foreclosure procedures were as well. BANK OF AMERICA no longer had possession of the note, as required by law. The note was kept in a central repository at MERS so that it could be transferred and sold without the inconvenience of following current Washington, D.C. law. In practice, MERS and the mortgage companies effectively amended Washington, D.C. law on the recording of deeds, without input from the District's legislature.

36. Foreclosures were conducted illegally, using robo-signers, ignoring notice requirements, and disobeying Federal HAMP Guidelines. Again, this resulted from the business decision to make mortgage-backed bonds the primary business, and not granting mortgages. That business decision led to ignoring TILA, RESPA, FDSCA, and HOEPA, all in the pursuit of greater profits for BANK OF AMERICA. MCCARTER directly lost ownership of her home illegally because of lax corporate adherence to these laws.

The Loan Transaction

37. The real estate that is the subject of this litigation is: 1805 A Street SE, Washington, DC 20003 (hereinafter "Subject Property"), with the following legal description: SSL: 1111 0085.

38. Plaintiff entered into a loan refinance transaction which was reduced in form to a Deed of Trust, Promissory Note, and a Mortgage Agreement on or about, December 23, 2005 with Countrywide Home Loans, LLC, which was later bought by BANK OF AMERICA.

39. The Deed of Trust was assigned to MERS thus creating a bifurcation of the security interest. The loan was a 30 year fixed rate loan product at 6.125% interest rate for 360 months. This loan was a purchase loan, and property appraised at that time for \$400,000.

40. This loan was not approved in the Plaintiff's best interest.

41. The loan was to be secured by the Subject Property. Plaintiff paid \$9,787.50 in discount points to obtain rate of 6.125%. These fees are high by industry standards.

42. The loan was originally designed to start at \$1,640.55 monthly, plus taxes and insurance. This rate is high, considering market rates were well below 6.00% at that time.

43. This brought the loan to 74.81% Debt-to-Income ratio, which is beyond underwriting standards and is a predatory loan.

44. Plaintiff applied for a loan modification and was ultimately denied based on underwriting standards of BANK OF NEW YORK, and BANK OF AMERICA proceeded to foreclose on the property.

45. BANK OF AMERICA representatives verbally assured MCCARTER that she was enrolled in the HAMP program and would not have her home foreclosed on.

46. BANK OF AMERICA continued to send letters to MCCARTER during this time threatening to foreclose on her home despite her application for enrollment in the HAMP program.

47. Plaintiff was informed that her modification was denied.

48. BANK OF AMERICA foreclosed on Plaintiff's property.

49. Plaintiff monthly income qualified her for a modification or a forbearance agreement.

50. The loan modification was not granted because BANK OF NEW YORK and BANK OF AMERICA did not have possession of the note and/or could not locate the note. If a modification of the mortgage loan was made without possession of the note, it would be a violation of Federal law. The loss of possession of the note appears to be the reason Plaintiff had her loan modification denied, and the factors required to be considered for a loan modification were ignored to cover BANK OF AMERICA's loss of possession of the note.

51. Plaintiff should not have been approved on this type of loan product at 67.5% LTV. It was a "toxic" loan from its creation because in order to confirm the Plaintiff's ability to make the monthly payments over the lifetime of the loan, the

Originator created a fictional income figure to obtain the Plaintiff's approval for the loan product.

52. In addition, the Plaintiff was never notified about this higher rate to qualify. The loan was approved based on the pre-sale of the loan, and the appraised value of the collateral, rather than the Plaintiff's ability to repay the loan.

53. This loan was predatory in that the lender loaned more to Plaintiff than she could ever afford to repay.

54. Plaintiff was qualified for this loan based on a "30 year rate" which was subject to no equity build up in the first ten years. The payment based on a 30-year term insures very little principal in the monthly payment. Plaintiff entered into a loan transaction which had very little principal reduction in the first 15 years.

The Loan Processing and Deceptive Underwriting

55. During the processing and sale of this loan to Plaintiff, Defendants were aware that "repayment shock" would occur because very little principal was accumulating, and because Plaintiff had fully disclosed her debts and income.

56. The Plaintiff was given a "stated income" loan, which should have qualified her for a lower rate. However, she was given a rate which was well above the prevailing market rates. The lender was manipulating the numbers to get the loan through.

57. The responsibility is upon the lender and/or broker to verify that a Borrower has the ability to repay the credit extended.

58. A departure from the fundamental principles of loan underwriting will form the basis of abusive lending.

59. Lending without a determination that a Borrower can reasonably be expected to repay the loan from resources other than the collateral securing the loan, and relying instead on the foreclosure value of the Borrower's collateral to recover principal, interest and fees is improper.

60. The underwriting on this loan was severely flawed. There was no determination of the Borrower's ability to repay the loan. This shows a complete disregard for the Guidance Letters issued by federal agencies and even federal and District of Columbia Law.

61. This loan was underwritten without proper due diligence, as evidenced by the failure to verify Borrower's income and utilizing a signed IRS Income Tax Disclosure Form 4506T, which would have provided past Borrowers tax returns.

62. This loan did not require verification of employment or assets.

63. The loan was amortized over thirty years, but the loan was structured upon a higher rate. As such, any subsequent refinance was destined to fail due to lack of equity caused by the loan terms.

64. In order to approve such a program, as previously stated, and as is center to the Lender's deception, the Lender had a responsibility to verify the Borrower had the assets to make payments as the loan adjusted upward with each interest rate change. This was a huge risk for the Borrowers, which explains the need to confirm the financial ability to make the adjustable rate mortgage payments.

65. The Lender did not require income verification, which put the Borrower in jeopardy from the outset of the transaction, and did not provide a proper underwriting standard to lend to this Borrower.

66. Countrywide Home Loans, now BANK OF AMERICA, illegally, deceptively, and/or otherwise unjustly, qualified Plaintiff for a loan which Countrywide Home Loans knew or should have known that Plaintiff would not otherwise qualify for, and could not afford.

67. The underwriter approved this loan based upon credit scores and the Stated Income, a fiction created by the Lender's agent.

68. If the Lender had used a more accurate and appropriate factor, such as the pertinent IRS Forms, and a more determinative level of scrutiny in determining the debt to income ratio, Plaintiff would not have qualified for the loan in the first place. Accordingly, Plaintiff was issued a loan product that Defendants knew or should have known, would never be able to be fully paid back by Plaintiff.

69. BANK OF AMERICA ignored long-standing economic principals of underwriting and instead, knowingly, liberally, deceptively, and without any regard for Plaintiff's rights, sold Plaintiff a deceptive loan product.

70. No determination of the ability of the Borrower to repay the loan was actually made in the underwriting phase.

71. As a result of their mortgage underwriting activities, Defendants are and were subject to and must comply with District of Columbia statutes, including but not

limited to Net Tangible Benefit to a Borrower, Unfair and Deceptive Acts or Practices, and the Washington Consumer Mortgage Protection Act.

72. For years, mortgage brokers and lenders have been selling loan products that they knew or should have known would never be able to be repaid by the Borrower, and would prevent Borrowers from ever actually owning the home. Borrowers have been offered a 30-year loan and/or other subprime loan products that amounted to no more than a short-term lease until the payments became so unaffordable that the Borrowers would eventually face either bankruptcy or foreclosure.

73. The housing bubble of the past decade was created by predatory lending practices, such as charging excessive fees, incorporating prepayment penalties, negative amortization payments, or other abusive terms in the agreements, providing kickbacks to brokers, loan discount fees, flipping loans, using 40 & 50 year amortizations, using interest-only payment schedules, using balloon payments to conceal the true burden of the financing, requiring unnecessary insurance and other products, including mandatory arbitration clauses, steering Borrowers to subprime loans with higher interest rates when they qualify for conventional loans, and using bait and switch tactics. These irresponsible business decisions and tactics have created major financial crises in the United States during the last 5 years, of which this mortgage loan is only a part.

74. The loan product in this case, which was sold to Plaintiff, is an "equity stripping" loan scheme, the Defendants were aware of this abusive tactic used on Borrowers.

75. This type of loan, with little or no equity buildup, is particularly likely to strain the Borrower, and cause unavoidable financial ruin if the economy, or the job market were to fail.

76. The Defendants possessed the foresight to adequately advise Plaintiff of this risk. They intentionally concealed the negative implications of the loan they were offering, and as a result, Plaintiff has lost her home to the very entities that placed her in this position.

The Closing

77. On or about December 23, 2005 (hereinafter referred to as "Closing Date") Plaintiff entered into a consumer credit transaction with BANK OF AMERICA, obtaining an \$270,000 first mortgage loan secured by principal residence, the Subject Property.

78. The note was secured by a security deed on the Property in favor of Countrywide Home Mortgage as an assignee of Deed of Trust and MERS, as the Lender or holder of the note.

79. Servicing rights are now with BANK OF AMERICA HOME LOANS SERVICING LP, but no proof of assignment or original documents have been tendered.

80. Plaintiff questions the Countrywide Home Mortgage assignment as being a "robo-signed" document – which invalidates the entire foreclosure sale.

81. BANK OF AMERICA, purchaser of Countrywide Home Mortgage, lacks standing to foreclose due to a break in the chain of title.

82. This loan also had a binding arbitration agreement. This agreement has been violated as a result of the foreclosure sale.

83. Each Defendant who has been assigned or been transferred rights, or holds a position or interest under this loan transaction, BANK OF AMERICA, N.A., et al, and each unknown defendant (hereinafter referred to collectively as "Defendants") failed to perform their due diligence in investigating the legal requirements that this loan should have complied with, and as such the loan transaction is faulty and has been handled improperly from its inception. It is therefore *void ab initio*.

84. Plaintiff would not be able to refinance out of the high rate, or consolidate the loans into one loan, due to lack of equity caused by the lender's loan terms.

85. Plaintiff was given a loan that was more expensive in terms of fees, charges, and interest rates, than alternative financing for which Plaintiff could have qualified.

86. Terms of the loan given to Plaintiff are such that she can never realistically repay the loan.

87. The Origination Fee and the Discount Fees totaled nearly \$13,162.50.

88. Further, the debt to income ratio was above standard 28/36 Guidelines. That is because the underwriter used fraudulent debt ratios to qualify Plaintiff for the debt to income ratio. It is a rate that favors getting a loan, and thereafter no equity accrues to the point the Plaintiff would not be able to afford to either refinance due to lack of equity, or the payment schedule.

89. These deceptive acts violate federal and District of Columbia law, and in essence, create an illegal loan. The statutes violated include, but are not limited to, the Truth in Lending Act, Home Ownership Equity Protection Act, and the Consumer Protection Procedures Act.

90. Defendants failed to explain the workings of the entire mortgage loan transaction, the high rates, how the adjustable rate mortgage actually worked, the applicable finance charges, how costs and fees were computed, and the inherent volatility of the loan product provided by Defendant.

91. The Defendant's utilized excessive closing costs and fees that are actionable for damages. Those fees include, but are not limited to: the mortgage broker's loan origination fee and closing costs.

92. The purpose of entering into the above-described mortgage loan transaction was for Plaintiff to eventually own the Subject Property. That purpose was knowingly and intentionally thwarted and indeed made impossible by Defendants' actions alleged herein.

93. The other purpose of entering into the above-described mortgage transaction was for Defendant to sell mortgage-backed bonds, which, using the Fraud Formula, turned the high-risk loan into fodder for a very profitable securities business.

94. An expert, certified, forensic audit of the Plaintiff's loan documents reveal the following legal violations which were incurred during the handling and processing of Plaintiff's loan:

- a. Mortgage Broker and Correspondent lender were involved in making the transaction through a subsequent Buyer (true Buyer);
- b. Interest Rate on 1st was 6.125% on an fixed rate, thus creating an artificial rate to permit the Borrower to be approved for the “stated” income loan.

95. No evidence of the following documents were given to the Borrower:

- a. Discount Points were improperly disclosed;
- b. Good Faith Estimate was not duplicated on the HUD-1, was not signed and dated, estimated fees were unreasonable;
- c. No Affiliated Business Disclosure in the file;
- d. Finance charges were outside of the proper limits;

96. Plaintiff alleges that the underwriter approved this loan based only upon a “stated” income (a fiction created by the lender’s agent), a credit score, and a belief that the property would continue to increase in value. Plaintiff would not logically be able to support the home payment over an extended period.

97. Plaintiff maintains Defendants breached their obligation to treat the Plaintiff fairly by not disclosing the true risks they faced with this loan, with particularity the interest rate that would adjust dramatically, no equity build up, and consequently they breached their duty to Plaintiff because Defendants knew, or should have known, that the Plaintiff would, or had a strong likelihood of defaulting on this loan.

98. Defendants have a specific duty to the Plaintiff to exercise fairly the “power of sale” in the deed of trust, which was the legal instrument Defendant was offering to the Plaintiff to finance this home in this transaction;

99. After the deed of trust was acquired under the deceptive conditions by BANK OF AMERICA, the Plaintiff has faced financial hardships and wrongful foreclosure.

100. Plaintiff believes there is a direct causal connection between the improper actions of the Defendants and the Plaintiff’s default on the home mortgage.

101. This loan program led to a maximization of profits for the Defendants, there was no concern for the Plaintiff’s financial position, or likelihood of re-payment of the mortgage.

102. Plaintiff maintains that as a result of the business practices of Defendants throughout the handling of this loan, that such practices are consistent with the definition of predatory lending, and encompass telltale characteristics of a predatory lending scheme.

103. Plaintiff maintain Defendants provided inadequate disclosure of the true costs, risks and, where necessary, appropriateness to the Borrower of a loan transaction in violation of the Federal Trade Commission Act.

104. Plaintiff maintain that Defendants engaged in unlawful, unfair or fraudulent business acts or practices, and unfair, deceptive, untrue or misleading advertising, rising to the level of unfair and deceptive business practices, in violation of the District of Columbia Unfair and Deceptive Acts and Practices statute.

FIRST CAUSE OF ACTION

**Declaratory Relief
(Against All Defendants)**

105. The foregoing allegations are repeated and incorporated as if fully set forth herein.

106. An actual controversy exists between Plaintiff and Defendants regarding Plaintiff's rights and duties, in that Plaintiff contends that Defendants did not have the right to initiate foreclosure proceedings on the Subject Property because Defendants' security interest in the Subject Property has been rendered void by operation of law, pursuant to this loan being a "flip" and prohibited under federal and District of Columbia law.

107. Plaintiff has revoked the purported power of sale by Defendants.

108. Plaintiff further contends that Defendants did not have the right to initiate foreclosure proceedings on the Subject Property because Defendants did not properly comply with applicable statutes regarding filing of all transfer documents prior to foreclosure.

109. Plaintiff further contends that the Defendants perpetrated a fraudulent loan transaction.

110. Further, Defendants' actions have been willful, knowing and malicious.

111. Plaintiff requests that this Court make a finding that the purported Power of Sale contained in the Loan is of no force and effect at this time, because Defendants actions in the processing, handling and attempted foreclosure of this loan has contained numerous violations of federal and District of Columbia laws designed to protect

Borrowers, which has directly caused Plaintiff to be at an equitable disadvantage to Defendants.

112. As a result of the Defendants' actions, Plaintiff have suffered damages, and seek declaratory relief that Defendants' purported Power of Sale is void and has no force or effect against the Subject Property. Further, Defendants' actions have been willful, knowing and malicious.

SECOND CAUSE OF ACTION

**Injunctive Relief
(Against All Defendants)**

113. The foregoing allegations are repeated and incorporated as if fully set forth herein.

114. Defendants have proceeded with a non-judicial foreclosure without obtaining the original Promissory Note, without verifying the existence of the original Promissory Note, without obtaining the original Security Deed or Mortgage through proper assignment, and without verifying that the Lender has as right to foreclose. Thus, the Lender has no reasonable claim to proper standing to pursue foreclosure and their claims.

115. Defendants conduct is an attempt to illegally convert the subject property to their own property, if they are permitted to pursue claims that they have failed to verify as based upon the original Promissory Note.

116. Thus, Defendants are attempting defraud the Plaintiff with their non-judicial foreclosure without proof of the true Promissory Note's existence, or having the Security Deed properly Assigned or retained by Defendant, and thus Defendant does not know who retains possession at this time.

117. Defendants have specifically failed to prove the following “status” as it relates to the owner of the Promissory Note and, or the “Holder” of the Note:

- a. To prove status of holder of the instrument; or
- b. To prove status of non-holder in possession of the instrument who has the rights of a holder; or
- c. To prove status of being entitled to enforce the instrument as a person not in possession of the instrument.

118. Defendants have commenced a foreclosure action under the Promissory Note and Security Deed and have held a non-judicial foreclosure sale.

119. The eviction arising out of this sale will cause Plaintiff great and irreparable injury in that real property is unique, and Defendants have acquired the Security Deed under questionable lending procedures and predatory lending practices.

120. The wrongful conduct of Defendants, unless restrained and enjoined by an order of the Court, will cause great and irreparable harm to Plaintiff.

121. Plaintiff will not have the beneficial use and enjoyment of the property and has lost ownership of her home.

122. Plaintiff has no other plain, speedy or adequate remedy and the injunctive relief prayed for below is necessary and appropriate at this time to prevent irreparable loss to Plaintiff. Plaintiff has suffered and will continue to suffer in the future unless Defendants’ wrongful conduct is restrained and enjoined because real property is inherently unique and it is and will be impossible for Plaintiff to determine the precise amount of damage Plaintiff will suffer.

THIRD CAUSE OF ACTION

**Common law fraud
(Against all Defendants)**

123. The foregoing allegations are repeated and incorporated as if fully set forth herein.

124. Fannie Mae did not follow its own underwriting standards and BANK OF AMERICA had knowledge that these underwriting standards were not being followed.

125. Defendant BANK OF AMERICA assured Plaintiff that she was in the HAMP program and would not be foreclosed upon while in HAMP.

126. Plaintiff's Deed of Trust is a binding contract to which all Defendants are a party.

127. Defendant BANK OF AMERICA failed to provide the Pre-Acceleration Notice under the Deed of Trust.

128. Defendants failed to send any and all acceleration, default, and foreclosure notices to Plaintiff in the manner required by the Deed of Trust.

129. These failures constitute breaches of the Deed of Trust.

130. The foreclosure and sale of Plaintiff's property at 1805 A Street SE, Washington, DC 20003 proximately resulted from these breaches.

131. BANK OF AMERICA misled McCarter as to how she could redeem her property from the foreclosure process, in fact giving advice that was not only incorrect, but guaranteed to induce her from taking actions maintaining the ownership of her home.

132. BANK OF AMERICA gave inconsistent information on the status of Plaintiff's foreclosure case. By definition, at least some of the information had to be a

false representation of a material fact. BANK OF AMERICA provided information to her that Plaintiff can request a postponement of the foreclosure sale immediately, and that a request for a postponement of a foreclosure sale cannot be made, were in direct contradiction with one another, and if any one of them is true then the others must be false representations of fact.

133. Additionally, BANK OF AMERICA made reckless statements without knowledge of the truth, shown by the various and conflicting assertions made to Plaintiff about the status of the foreclosure sale of her home.

134. BANK OF AMERICA's false statements were intended to induce Plaintiff's reliance on HAMP processes or processes internal to BANK OF AMERICA for resolution of the foreclosure issue.

135. BANK OF AMERICA's letters to Plaintiff provided phone numbers and addresses to be used as contacts for the gathering of information related to the status of her mortgage with them. Providing a phone number to call to get information on how to communicate with BANK OF AMERICA on the issue of a mortgage foreclosure intentionally induces reliance on the information provided by representative of BANK OF AMERICA who answers that line, especially in light of the gravity of the matter involved.

136. The series of contradicting assertions, of which at least one by definition is false, of the BANK OF AMERICA representative led Plaintiff to decide to forego formal legal action against BANK OF AMERICA to stall foreclosure sale of her property until all options to save her home had been exhausted.

137. Plaintiff received conflicting and inaccurate information regarding the ownership of her home and the foreclosure process from BANK OF AMERICA, which led her to make decisions that directly led to the wrongful foreclosure of her mortgage and loss of ownership of her home.

138. Plaintiff relied on BANK OF AMERICA for information they had in their possession which was denied to Plaintiff until the real property was already foreclosed.

139. The law does not favor undoing a sale of real estate, a fact which results in BANK OF AMERICA getting ownership of Plaintiff's real property through providing inaccurate, inconsistent and incorrect information to Plaintiff which BANK OF AMERICA knew Plaintiff would rely on to her detriment, as BANK OF AMERICA was the only source of information.

140. The information provided to Plaintiff caused her to take actions that were not suited to resolving the repayment of back monies and restoration of the note, resulting in the loss of her home, threat of homelessness, loss of equity in home, and improperly accrued legal and other fees associated with the wrongful and illegal foreclosure.

141. The material misrepresentations set forth above were fraudulent, and Defendants' representation fraudulently omitted material statements of fact.

142. Defendants' material misrepresentations and omissions set forth above were made without any reasonable ground for believing that the representations were true.

143. Each Defendant knew their representations and omissions were false and/or misleading at the time they were made.

144. Each made the misleading statements with the intent to defraud Plaintiff.

145. Plaintiff justifiably relied on Defendants' false representations and misleading omissions.

146. Had Plaintiff known the true facts regarding Defendants' practices, she would not have agreed to the mortgage note.

147. Upon information and belief:

(i) BIERMAN GEESING caused and/or permitted its employees to execute, witness and/or notarize assignments of mortgage that were back-dated;

(ii) causing and/or permitting BIERMAN GEESING's employees to witness and/or notarize assignments of mortgages, affidavits of indebtedness and/or other affidavits on a daily basis prior to and without actually witnessing execution of the document by the person whose signature was to be witnessed and/or notarized; Case 0:11-cv-61526-MGC Document 13 Entered on FLSD Docket 07/15/2011

(iii) causing and/or permitting BIERMAN GEESING's employees to prepare and execute affidavits of indebtedness for submission to the foreclosure court that failed to follow appropriate professional practices and procedures;

(iv) causing and/or permitting BIERMAN GEESING's employees to sign the name of another person on foreclosure-related documents without any indication of that fact on the documents.

148. Upon information and belief, attorneys at BIERMAN GEESING have admitted that allegations made about BIERMAN GEESING's improper procedures are true.

149. On or about October 12, 2010, The Baltimore Sun, a news organization, published an article written entitled "False Signatures Cloud Maryland Foreclosure Cases." The Baltimore Sun article was highly critical of BIERMAN GEESING's practices in handling mortgage foreclosures in Maryland and reported on allegations that BIERMAN GEESING was backdating assignment of mortgage documents in foreclosure cases and allegedly "lying to the court."

150. The sworn deposition testimony of these witnesses contained accusations against BIERMAN GEESING that included, among other accusations, the following:

- (i) causing and/or permitting BIERMAN GEESING's employees to execute, witness and/or notarize assignments of mortgage that were back-dated;
- (ii) causing and/or permitting BIERMAN GEESING's employees to witness and/or notarize assignments of mortgages, affidavits of indebtedness and/or other affidavits on a daily basis prior to and without actually witnessing execution of the document by the person whose signature was to be witnessed and/or notarized;
- (iii) causing and/or permitting BIERMAN GEESING's employees to prepare and execute affidavits of indebtedness for submission to the foreclosure court that failed to follow appropriate professional practices and procedures;
- (iv) causing and/or permitting BIERMAN GEESING's employees to sign the name of another person on foreclosure-related documents without any indication of that fact on the documents.

151. Upon information and belief, BIERMAN GEESING attorneys have admitted that allegations made about BIERMAN GEESING's improper procedures are true.

152. These illegal practices caused damage to MCCARTER due to the loss of her home to an illegal and improperly documented foreclosure, done without proper notice.

153. Plaintiff has suffered damages in that she has lost her home and risks homelessness, loss of equity in home, and improperly accrued legal and other fees associated with the wrongful and illegal foreclosure.

154. Establishing the prima facie case that there has been a fraud on the courts through BIERMAN GEESING use of robo-signers and rampant fraud on any courts in which they practice,

"the **attorney** must come forward with "proper" or "acceptable" explanatory evidence. *In re Thompson*, 579 A. 2d 218 - DC: Court of Appeals 1990. Board Opinion at 10. If a Hearing Committee finds the **attorney's** explanation "unacceptable" (either because it is "implausible on its face," *id.* at 11, or carries with it no means of verification), has the **attorney** failed merely in his burden of going forward, or realistically has he failed to *persuade* the Committee that the funds were used for the benefit of the client and not himself? In these circumstances, a **shift** in the burden of explanation may blend imperceptibly with a **shift** in the **burden of proof**" *In re Thompson*, 579 A. 2d 218 - DC: Court of Appeals 1990.

155. Therefore, BIERMAN GEESING has the burden of proof that it did not commit fraud in this case and must demonstrate that there was no fraudulently signed documents used to foreclose and sell MCCARTER's home.

FOURTH CAUSE OF ACTION

Gross Negligence (Against all Defendants)

156. The foregoing allegations are repeated and incorporated as if fully set forth herein.

157. In carrying out the obligations under the Deed of Trust, Defendant BANK OF AMERICA owed Plaintiff a duty to act in good faith and fair dealing.

158. Defendant BANK OF AMERICA knew of their obligations to provide a Pre-Acceleration Notice.

159. Defendant BANK OF AMERICA failed to send any other foreclosure, acceleration, and default notices designated per Paragraph 22 of the Deed of Trust. Defendant BANK OF AMERICA knew of their obligations pursuant to Paragraph 22 of the Deed of Trust.

160. Defendant BANK OF AMERICA intentionally failed to perform their duties to act in good faith and fair dealing. This intentional failure was made with reckless disregard of Plaintiff's property.

161. Plaintiff lost her property at foreclosure as a result of the Defendant BANK OF AMERICA's gross negligence.

162. Defendant MERS was tasked with keeping track of the mortgage note and its possession. Defendant MERS lost the underlying note to MCCARTER's mortgage. Plaintiff did not receive a loan modification because the underlying note was lost. Defendant MERS knew of its obligation to provide the document-tracking services for which it was retained. Defendant MERS had a duty to provide the service as it advertised itself to mortgage companies and banks. MERS intentionally failed to perform its duties to act in good faith and fair dealing. MERS' intentional failure was made with reckless disregard of Plaintiff's property.

163. MERS failed to record the mortgage note in accordance with DC law.

164. Defendant BANK OF AMERICA had notice of MERS' sloppy and irresponsible practices and inability to find documents it had been tasked with safekeeping and producing on demand.

165. Defendant BANK OF AMERICA ignored MERS' actions related to the loss of critical papers. Defendant BANK OF AMERICA proceeded to foreclose on Plaintiff's property despite its knowledge that the underlying note could not be located.

166. Defendant FANNIE MAE had notice of improper conduct regarding foreclosure paperwork in 2005 and chose to ignore that misconduct to the detriment of MCCARTER.

167. MCCARTER suffered damages related to FANNIE MAE's oversight in the loss of her home in a foreclosure sale, the ongoing threat of homelessness, loss of equity in her home, and other damages to be established at trial.

168. Plaintiff lost ownership of her property at foreclosure as a result of the Defendants BANK OF AMERICA, BIERMAN GEESING and MERS' gross negligence, in that a loan modification was not performed in part because MERS lost the underlying note that it was tasked with safekeeping, BANK OF AMERICA did not follow its own underwriting procedures in a way calculated to induce MCCARTER to obtain a mortgage for which she did not qualify, BIERMAN GEESING intentionally and recklessly allowed forged documents to be used in the illegal foreclosure of MCCARTER's home.

FIFTH CAUSE OF ACTION
Unfair and Deceptive Business Practices
(Against All Defendants)

169. The foregoing allegations are repeated and incorporated as if fully set forth herein.

170. Defendants failed to undergo a diligent underwriting process for this loan as alleged in this complaint, a fact which is shown by the NCIC Report cited above.

171. Defendant BANK OF AMERICA failed to properly adjust and disclose facts and circumstances relating to Plaintiff's mortgage loan and placed Plaintiff in a loan, by way of "stated" income and misleading facts, which they should never have been approved for because she could not afford it.

172. Defendant BIERMAN GEESING failed to follow the rule of law and procedures of court in presenting foreclosure documents to support a foreclosure on MCCARTER's home.

173. Defendant MERS, knowing it was tasked with the safekeeping of the physical mortgage notes, lost either possession of MCCARTER's note or cannot locate the note. MERS failed to properly record the note as required by DC law.

174. Defendant BANK OF NEW YORK did not apply consistent standards to applicants for mortgage modification under the HAMP program. The standards used were not written down, not applied consistently, and whatever rules that were used by BANK OF NEW YORK, were not correctly applied in MCCARTER's HAMP modification application.

175. Defendants had knowledge of these facts, circumstances, and risks but failed to disclose them.

176. Defendants also used various rates and charges to disguise the actual payment schedule and loaned amount.

177. The Defendants enjoyed unjust enrichment and have profited and deceptively preyed upon Plaintiff and her lack of sophistication.

178. Plaintiff was not benefited in a net tangible way by virtue of this transaction.

179. BANK OF AMERICA's Deed of Trust contained untrue statements and omissions regarding the appraisals for the mortgage loans because the appraisers and originators systematically failed to follow accepted appraisal guidelines, resulting in pervasive appraisal inflation. During the relevant period:

- a. The process used did not conform to USPAP appraisal guidelines. Alan Hummel, Chair of the Appraisal Institute, in his testimony before the Senate Committee on Banking noted that the dynamic of financial dependence between appraisers and underwriters created a "terrible conflict of interest." Where appraisers "experience systemic problems of coercion" and were "ordered to doctor their reports" or might be "placed on exclusionary or 'do-not-use' lists."

180. Appraisals supporting mortgage loans were routinely inaccurate and inflated, and not performed in accordance with professional appraisal practices. As a result of the inflated appraisals, Plaintiff was given a mortgage loan for more than the house was worth. This practice resulted in giving mortgage loans with a high likelihood of default in the future should a downturn in the real estate market occur.

181. By reason of Defendants' fraudulent, deceptive, unfair, and other wrongful conduct as herein alleged, said Defendant has violated the Unfair and Deceptive Acts and Practices, Regulation AA, 12 C.F.R. pt. 227, by consummating an unlawful, unfair, and fraudulent business practice, designed to deprive Plaintiff of this home, equity, as well as their past and future investment.

182. By reason of the foregoing, Plaintiff has suffered and continues to suffer damages in a sum which is as yet unascertained, but in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

Unconscionability

(Against BANK OF AMERICA, N.A., et al Only)

183. The foregoing allegations are repeated and incorporated as if fully set forth herein.

184. If the court as a matter of law finds the contract, or any clause of the contract, to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

185. When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

186. Here, based on the deception, lack of any net tangible benefit to the Plaintiff, unfair bargaining position, lack of adherence to the regulations, civil codes and federal

standards that the Defendants was required to follow, coupled with the windfall that the Defendants reaped financially from predatory practices upon Plaintiff, the court must find that the loan agreement and security deed are unconscionable and of no force or effect.

187. Plaintiff was caused damages by these actions in the loss of her home, suffering through an illegal foreclosure, the constant work of attempting to get accurate information from BANK OF AMERICA, the ongoing threat and stress of impending homelessness, and other damages not yet ascertained but which will be determined at trial.

SEVENTH CAUSE OF ACTION

Action to Quiet Title

(Against All Defendants Claiming Any Interest in the Subject Property)

188. The foregoing allegations are repeated and incorporated as if fully set forth herein.

189. Plaintiff is, at all times herein mentioned, the owners and are entitled to possession of the Subject Property.

190. Upon sale at foreclosure, title is vested in the Plaintiff, but through the course of the transaction involved herein, Defendants have transferred physical possession of the Security Deed and Promissory Note to multiple subsequent purchasers.

191. Plaintiff are informed and therefore believe and allege that Defendants, and each subsequent purchaser, claim an interest in the Subject Property adverse to Plaintiff. However, as a result of the conduct more fully described in the preceding allegations, the claim of Defendants are without any right whatsoever, and said Defendants have no legal or equitable right, claim, or interest in the Property.

192. Plaintiff therefore seek a declaration that the title to the Subject Property is vested in Plaintiff alone and that the Defendants herein, and each of them, be declared to have no estate, right, title or interest in the Subject Property and that said Defendants, and each of them, be forever enjoined from asserting any estate, right, title or interest in the Subject Property adverse to Plaintiff's.

EIGHTH CAUSE OF ACTION
Failure to Comply With District of Columbia Statutes
(Against ALL DEFENDANTS)

193. The foregoing allegations are repeated and incorporated as if fully set forth herein.

194. Plaintiff maintain that the loan they signed was placed into a sophisticated loan financing vehicle called a "derivative", and/or a "hedge fund," which action by the Lender resulted in the actual Promissory Note being destroyed by Defendant or another "lender" or "purchaser," or is no longer available to the Lender to support its claim for the debt.

195. Defendants are attempting to enforce a debt as a "Holder" in due course of the Promissory Note. Plaintiff maintains that Defendants are not the "Holder" of the original "Promissory Note", and as such the true "Holder" is unknown. In addition, there could be thousands of investors claiming to "Hold the Note" given the investment vehicle into which the Promissory Note was placed into by the Lender. Thus the question arises which investor is the Plaintiff obligated by law to pay.

196. Plaintiff maintains that Defendants failed to comply with applicable foreclosure laws, because Defendants are attempting to enforce a claim based on a

Security Deed, or an Assignment that was not properly or timely filed, or correctly executed, and a Promissory Note which may not even exist.

197. Defendants have failed to comply with District of Columbia law governing foreclosures.

198. Defendants on a rudimentary level have failed to properly file the Security Instrument and all assignments on the subject property with the Recorder of Deeds in Washington, D.C., and thus have brought its foreclosure action without proper statutory compliance. Without proper compliance with the local statute governing the foreclosure, the Defendants are outside of their authority to act, and such conduct constitutes a material breach of the Defendants' duty to "fairly exercise" the power of sale created by the District of Columbia's Foreclosure Statute and the Security Deed under District of Columbia Law.

199. Defendants are claiming a private contractual right to foreclose on Plaintiff's property, based on the representation they are a "Holder" in due course of the original Promissory Note executed by the Plaintiff in their closing. Defendants do not have the original promissory note.

200. Defendants have failed to adhere to the following requirements for establishing the right to enforce an instrument:

- a. Prove status of holder of the instrument.; or
- b. Prove status of non-holder in possession of the instrument who has the rights of a holder.; or

- c. Prove status of being entitled to enforce the instrument as a person not in possession of the instrument.

201. Thus Defendant is attempting to enforce a claim without compliance with the Uniform Commercial Code, and based on a Security Deed or Assignments that were not filed correctly, and a Promissory Note which may not exist.

NINTH CAUSE OF ACTION

**Conversion, Aiding and Abetting, Conspiracy, Joint Venture, Promissory Estoppel
or Illegal Attempt To Convert And Fraudulent Misrepresentation
(Against BANK OF AMERICA, N.A., BIERMAN GEESING ONLY)**

202. The foregoing allegations are repeated and incorporated as if fully set forth herein.

203. Defendants' knowingly and intentionally concealed material information from Plaintiff which is required by state and federal laws to be disclosed, including but not limited to the following:

- a. Defendants did not inform Plaintiff that they had relaxed their underwriting standards,
- b. That they had lost possession of the underlying Note,
- c. That the purpose of granting the mortgage loan was to sell bonds,
- d. That loss of possession of the underlying Note meant that a HAMP loan modification could not be done legally, and
- e. Depriving Plaintiff of any meaningful opportunity to have her loan modified as BANK OF AMERICA agreed to do when enrolling Plaintiff in the HAMP program.

204. At all relevant times, Defendants also misrepresented material information to the Plaintiff with full knowledge by the Defendants that their affirmative representations were false, fraudulent, and misrepresented the truth at the time said representations were made.

205. Defendants' material omissions and misrepresentations constitute malice.

206. Not being Mortgage Brokers, Mortgage Bankers, or otherwise knowledgeable in the Mortgage Banking industry, Plaintiff reasonably relied upon the representations of the Defendant BANK OF AMERICA in agreeing to enter into the Promissory Note and Mortgage in this matter thereby placing an alleged lien on the subject property. Had Plaintiff known of the falsity of Defendants' representations, Plaintiff would not have entered into the transactions that are the subject of this Complaint.

207. As a direct and proximate result of Defendants' material omissions and material misrepresentations, Plaintiff has suffered and will suffer damages.

208. Defendants have failed to adhere to the following requirements for establishing the right to enforce an instrument:

- a. Prove status of holder of the instrument.; or
- b. Prove status of non-holder in possession of the instrument who has the rights of a holder.; or
- c. Prove status of being entitled to enforce the instrument as a person not in possession of the instrument.

209. Thus Defendant is attempting to enforce a claim without compliance with the Uniform Commercial Code, and based on a Security Deed or Assignments that were not filed correctly, or were executed improperly, and a Promissory Note which may not exist.

210. At all times material hereto, Defendant BANK OF AMERICA is in the business of selling, buying, and handling the transfer Mortgages, Promissory Notes for profit within the District of Columbia, and would be required to be completely familiar with the state statutes regarding the filing of documents prior to foreclosure, obtaining proof of the legal owner of a Promissory Note or Mortgage.

211. At all times material hereto, Defendant BIERMAN GEESING was employed by one or more of the Defendants to foreclose upon the Subject Property.

212. At all times material hereto, Defendant BIERMAN GEESING, while in the course and scope of business for Defendants, failed to properly investigate the title, the existence of the original Promissory Note, failed to properly file all documents relating to the Assignment of the ownership interest in the Subject property pursuant to District of Columbia law.

213. Defendant BIERMAN GEESING openly and notoriously used fraud in its validation of court documents with the use of robo-signers, who falsely notarized documents for use in foreclosure proceedings.

214. The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

215.If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage.

216.At all times material hereto, all Defendants, have or will benefit by Defendants' misrepresentations, attempts to convert property or title, and their intentional acts of misrepresentation committed by other Defendants.

217.The law imposes strict liability for the damage or loss caused by the acts of Defendants in attempting to defraud, or convert property or legal title, to their use without legal right, or legal title to do so, no finding of intent is required where strict liability applies.

218.As a direct and proximate cause of all Defendants fraudulent misrepresentations and attempts to convert Plaintiff's property inconsistent with Washington, D.C. law

219.As a result of Defendant's actions to induce Plaintiff into executing the alleged Promissory Note and Mortgage in this matter without properly producing these documents to substantiate their claims to foreclose the Subject Property, Plaintiff has been seriously damaged in an as yet unascertained amount, but in an amount to be proven at trial.

TENTH CAUSE OF ACTION

Unjust Enrichment

(Against BANK OF AMERICA, N.A., et al Only)

220.The foregoing allegations are repeated and incorporated as if fully set forth herein.

221. Defendant BANK OF AMERICA, by engaging in fraudulent conduct has been unjustly enriched at Plaintiff's expense.

222. Defendant BANK OF AMERICA, by using Plaintiff's Promissory Note without Plaintiff's knowledge and consent and by leveraging Plaintiff's note to create additional funds, loans and investments and to realize a substantial profit, and without disclosing the true facts to Plaintiff, because of their misconduct Defendant have been unjustly enriched.

223. Defendant BANK OF AMERICA, by fraudulently inducing Plaintiff into executing the subject Promissory Note and other loan documents and by failing to disclose all of the material facts, have unjustly enriched themselves at Plaintiff's expense.

224. As a direct and proximate result of Defendant's actions, Plaintiff has suffered damages in an as yet unascertained amount, but in an amount to be proven at trial.

ELEVENTH CAUSE OF ACTION

Intentional Violation of the Duty of Good Faith

**(Against BANK OF AMERICA, N.A., MERS, FANNIE MAE, BIERMAN
GEESING ONLY)**

225. The foregoing allegations are repeated and incorporated as if fully set forth herein.

226. MERS had a duty to make the original note available upon request.

227. BANK OF AMERICA had a duty in granting a mortgage to follow guidelines for foreclosure and to adhere to its own underwriting standards.

228. BANK OF AMERICA failed to follow its own guidelines for foreclosure and underwriting standards.

229. FANNIE MAE had a duty to adhere to its own underwriting standards.

230. BIERMAN GEESING had a duty to adhere to requirement of the law and a duty to advise BANK OF AMERICA issues with their processes.

231. Each defendant violated their respective duty.

232. Plaintiff reasonably relied on the representations of Defendants.

233. As a direct and proximate result of Defendants actions, Plaintiff has suffered damages in an as yet undetermined amount, but in an amount to be proven at trial.

TWELFTH CAUSE OF ACTION

**Contractual Breach of Good Faith and Fair Dealing
(Against BANK OF AMERICA, N.A., et al)**

234. The foregoing allegations are repeated and incorporated as if fully set forth herein.

235. Every contract imposes upon each party a duty of "good faith."

236. In Washington, D.C. "fair dealing" is also required of a Lender where a Lender acquires a Security Deed. A Lender in its desire to acquire the Security Deed, and its enforcement of the Power of Sale, has a duty of "fair dealing" which applies to their conduct. This duty of fair dealing requires the Lender to adhere strictly to the statutory language of the Foreclosure statute. In a broader sense there is an implied covenant that in all contracts each party will do all things reasonably contemplated by the terms of the contract to accomplish its purpose. This covenant protects the benefits of the contract that the parties reasonably contemplated when they entered into the agreement.

237. The terms of the Loan imposed upon Defendants a duty of good faith and fair dealing in this matter.

238. Defendants enjoyed substantial discretionary power affecting the Plaintiff's legal rights during the events alleged in this Complaint. Defendants were required to exercise such power in good faith, and be fair in dealings with Plaintiff.

239. Defendants have willfully breached this general covenant of good faith and this required duty of "fair dealing" with Plaintiff when Defendants:

- a. Willfully withheld numerous disclosures;
- b. Willfully withheld notices in regard to excessive fees and closing costs; used below standard and non-diligent underwriting standards, did not provide understandable explanations of additional interest rate fixed product, failed to disclose when negative credit scores were disseminated; lost possession of the Note; and failed to provide loan documents.
- c. Willfully placed Plaintiff in a loan that she did not qualify for, could not afford, and subjected her to further financial detriment, while providing Defendants with financial benefits they would not have otherwise enjoyed.
- d. Failed to properly disclose the impact of such a high debt ratio on Plaintiff's ability to repay loan.
- e. Lost the underlying note to the mortgage.
- f. Represented that there was active enrollment in the HAMP program to Plaintiff when loss of the underlying note precluded any HAMP modification at all.

240. As a result of Defendants' breach of this covenant, Plaintiff has suffered injury and has caused Plaintiff the threat of loss of her home. Plaintiff have incurred and continue to incur legal fees, including attorney fees and costs, as well as expenses to right this wrong.

241. Defendants' actions in this matter have been willful, knowing, malicious, fraudulent and oppressive, entitling Plaintiff to punitive damages in an amount appropriate to punish Defendants and to deter others from engaging in the same behavior.

242. As a direct and proximate result of Defendants actions, Plaintiff has suffered damages in an as yet undetermined amount, but in an amount to be proven at trial.

THIRTEENTH CAUSE OF ACTION

Wrongful Foreclosure

(Against BANK OF AMERICA, FANNIE MAE, MERS, BIERMAN GEESING ONLY)

243. The foregoing allegations are repeated and incorporated as if fully set forth herein.

244. Defendant BANK OF AMERICA failed to adhere to Power of Sale Notice Requirements.

245. FANNIE MAE failed to follow its own underwriting requirements.

246. Defendant BANK OF AMERICA did not record the security interest in the mortgage note.

247. There was lack of proper notice for the foreclosure in that written notices were inconsistent and at odds with verbal communications given to Plaintiff.

248. BANK OF AMERICA failed to follow Federal loan modification guidelines.

249. BIERMAN GEESING perpetrated fraud in the false notarization of court documents, making all assignments of the mortgage null and void.

250. As a result of the invalid assignment of the mortgage, Defendant MERS did not have standing to foreclose.

251. District of Columbia law requires that notice of the pending foreclosure sale be sent to Plaintiff's address at least fourteen days before the sale.

252. Defendant BANK OF AMERICA failed to submit the statutorily required notice to Plaintiff's address.

253. Defendant BANK OF AMERICA represented to Plaintiff that there would be no sale of her home in a foreclosure sale through its telephone representatives, leading Plaintiff to believe that she did not need to retain counsel to keep her home.

254. The actions of Defendants resulted in the wrongful foreclosure of her home, leading to irreparable damage to her and her family, and in an as yet unascertained amount, but in an amount to be proven at trial.

FOURTEENTH CAUSE OF ACTION

Abuse of Process and Malicious Prosecution

(Against BANK OF AMERICA, N.A., BIERMAN GEESING ONLY)

255. The foregoing allegations are repeated and incorporated as if fully set forth herein.

256. Defendant BIERMAN GEESING used robo-signers to forge legal documents in pursuit of the wrongful foreclosure and sale of Plaintiff's real property.

257.BANK OF AMERICA relied on HAMP to assure MCCARTER that her mortgage note would not be foreclosed on, and then proceeded to foreclose on her home despite these previous assurances.

258.BANK OF AMERICA represented to Plaintiff that she was in a process for review for eligibility for the HAMP and other Federal programs and foreclosed on her property before the assigned negotiator had made a determination on her case.

259.No direct communication mechanism is in place at BANK OF AMERICA between HAMP negotiators and the REO departments that are deciding to foreclose on properties, the result of which is that no process is in place to stop the wrongful foreclosure of a home.

260.Not providing that communication mechanism between HAMP negotiators and the REO departments was an abuse of process in that no method existed to stop an illegal foreclosure once the process had begun.

261.The result of BANK OF AMERICA's abuse of process is unjust enrichment in that after the wrongful foreclosure was commenced, Plaintiff lost ownership of her home.

262.Defendant BANK OF AMERICA intentionally and wrongfully instituted the foreclosure action knowing that they failed to follow the requirements in the Deed of Trust and the foreclosure law of the District of Columbia.

263.Defendants knew or should have known that such an action would result in the wrongful foreclosure.

264. Defendants instituted the foreclosure proceedings for their own pecuniary gain. McCarter lost all equity in her home, is charged with legal and punitive fees, and her home was resold at auction.

265. As a direct and proximate result of Defendants actions, Plaintiff has suffered damages in an amount to be proven at trial.

FIFTEENTH CAUSE OF ACTION
Predatory Lending
(Against BANK OF AMERICA, N.A., et al ONLY)

266. The foregoing allegations are repeated and incorporated as if fully set forth herein.

267. The Office of Comptroller of the Currency defines Predatory Lending as any lien secured by real estate which shares well known common characteristics that result in Unfair and Deceptive Business Practices.

268. Acts undertaken by the Defendants here that are consistent with the Office of the Comptroller's definition include the fact that this loan was marketed in a way which fails to fully disclose all material terms and includes terms and provisions which are unfair, fraudulent or unconscionable, and which delivers little, or no actual net tangible benefit to the Borrower.

269. This loan is marketed in whole, or in part, on the basis of fraud, exaggeration, misrepresentation, or the concealment of material facts, and was underwritten without due diligence by the party originating the loan.

270. The Lender has used a loan product and loan terms whereby the Borrower can never realistically repay the loan, representative of "Bait and Switch" tactics.

271. This loan was designed to create a transaction whereby equity is removed from the home through an expensive refinance, it delivers no net tangible benefit to the Borrower, it consolidated short term debt into long term debt, created a 30 year amortization whereby payments are not reducing principal significantly, and was utilizing high interest rates. This loan would logically lead the Borrowers into a position where they cannot refinance due to lack of equity. This results in "equity stripping".

272. The failure to extend modification after six months represents promissory estoppel.

273. This loan is underwritten without due diligence by the party originating the loan. There has been no realistic means test for determining the ability of the Borrowers to repay the loan. Further, there is a lack of documentation of income, or assets and/or job verification.

274. As a result of these practices, Plaintiff has suffered damages in an amount to be proven at trial.

SIXTEENTH CAUSE OF ACTION

Violations of Truth in Lending Act

(Against BANK OF AMERICA, N.A., FANNIE MAE ONLY)

275. The foregoing allegations are repeated and incorporated as if fully set forth herein.

276. In violation of the federal Truth In Lending Act (TILA), 15 U.S.C. § 1601 *et seq.*, BANK OF AMERICA extended credit to McCarter without regard to the consumer's repayment ability as of the time of the loan consummation.

277. There was equitable tolling of TILA for fraud. *Pinney Dock and Transportation Company v. Penn Central Corp.*, 838 F.2d 1445, 1465 (6th Cir. 1988).

278.BANK OF AMERICA acted without regard to Plaintiff's ability to repay.

279.Countrywide Home Loans, later purchased by BANK OF AMERICA, overstated the assets, income, collateral, or other financial information in order to qualify McCarter for the mortgage.

280.BANK OF AMERICA was aware of this overstatement.

281.BANK OF AMERICA did not provide a Notice of Right to Cancel as required under TILA.

282.BANK OF AMERICA did not deliver good faith estimates of disclosures within three days of loan application.

283.BANK OF AMERICA did not provide accurate disclosures reflecting the legal obligation between parties.

284.BANK OF AMERICA concealed this income overstatement from Plaintiff.

285.BANK OF AMERICA failed to disclose certain finance charges on the HUD-1 statement that were to be imposed as a part of the extension of credit in the form of the mortgage and/or failed to explain how those charges were to be determined.

286.BANK OF AMERICA did not disclose the payments made to BANK OF AMERICA for its pre-selling and holding the mortgage for Premiere Financial Funding.

287.This fee arrangement was paid in the form of an unlawful yield spread premium, undisclosed to the borrower, but paid for by her in the form of higher payments or interest over the life of the loan.

288.Defendant BANK OF AMERICA concealed these facts from Plaintiff.

289. This concealment prevented Plaintiff from readily discovering the undisclosed acts.

290. Plaintiff was duly diligent in ascertaining these violations.

291. Plaintiff has suffered and is entitled to actual damages, twice the amount of any finance charge, \$400 to \$4000.

SEVENTEENTH CAUSE OF ACTION
Violations of the Real Estate and Settlement Procedures Act
(Against BANK OF AMERICA, N.A., et al ONLY)

292. The foregoing allegations are repeated and incorporated as if fully set forth herein.

293. Defendant BANK OF AMERICA failed to inform Plaintiff of intention to transfer the servicing of the loan and failed to inform Plaintiff of the actual transfer within fifteen days before the effective date of the transfer as required by the Real Estate and Settlement Procedures Act. 12 U.S.C. 2605(b)(2)(A).

294. Defendant BANK OF AMERICA failed to provide the Special Information Booklet explaining the settlement costs within three business days after consumer submitted the loan application. 12 U.S.C. 2604(c).

295. Defendant BANK OF AMERICA did not disclose all affiliated business arrangements such as the primary business purpose of turning the mortgage note in to a bond and selling it.

296. Defendant BANK OF AMERICA gave a fee for the referral of settlement business.

297. Defendant BANK OF AMERICA charged fees in excess of the reasonable value of goods provided.

298. Defendant BANK OF AMERICA imposed the use of a particular service provider.

299. Defendant's misconduct was concealed from Plaintiff, which prevented her from readily discovering the misconduct, which she was duly diligent in attempting to ascertain resulting in "excusable delay" tolling the statute of limitation under equitable considerations. Mullinax v. Radian Guar. Inc. 311 F.Supp 2d 474, 487 (M.D.N.C. 2004).

300. Damages are rescission of contract.

EIGHTEENTH CAUSE OF ACTION
Conspiracy to Commit Mortgage Fraud
(Against BANK OF AMERICA, N.A., BANK OF NEW YORK, BIERMAN
GEESING ONLY)

301. The foregoing allegations are repeated and incorporated as if fully set forth herein.

302. BANK OF AMERICA communicated, consulted, and cooperated with BANK OF NEW YORK in carrying out the acts described in Counts 10 through 13.

303. These communications, consultations, and cooperations took place at the time when BANK OF AMERICA negotiated the sale of Plaintiff's mortgage to BANK OF NEW YORK.

304. At all times pertinent to these allegations, BANK OF AMERICA intended (1) to enter the conspiracy with BANK OF NEW YORK and (2) that BIERMAN GEESING would carry out as a co-conspirator the acts described in Counts 10 through 13.

305. Plaintiff was injured by the conspiracy in that she was denied the opportunity to find cheaper credit, that she was sold and made payments under a predatory loan, and that such fraud and predatory lending practices were the proximate cause of her foreclosure.

306. As a result of these injuries, Plaintiff has suffered damages in an amount to be proven at trial.

NINETEENTH CAUSE OF ACTION
Civil RICO, Civil Conspiracy to Commit Mail Fraud, and Civil Conspiracy to
Commit Wire Fraud
(Against BANK OF AMERICA, N.A., et al ONLY)

307. The foregoing allegations are repeated and incorporated as if fully set forth herein.

308. Defendant BANK OF AMERICA engaged in a mortgage lending enterprise to undertake the conduct described above.

309. This pattern of activities resulted in the loss of Plaintiff's home and the financial damages she suffered from her predatory loan.

310. In furtherance of these acts, Defendant BANK OF AMERICA used the interstate mail and wire system to communicate with Plaintiff.

311. Defendants undertook such acts for their own pecuniary gain to the detriment of Plaintiff as described above.

312. As set forth in Count 8, Defendant BANK OF AMERICA concealed these acts from Plaintiff, which prevented her from discovering them, despite her diligence in attempting to ascertain the truth.

313. As a result of these actions, Plaintiff has suffered damages in an amount to be proven at trial.

TWENTIETH CAUSE OF ACTION
Failure to Comply With State Statutes
(Against BANK OF AMERICA, BANK OF NEW YORK, and BIERMAN
GEESING Defendants)

314. The foregoing allegations are repeated and incorporated as if fully set forth herein.

315. Consumer Protection Procedures Act (CPPA) Violations: Defendant BANK OF AMERICA represented that Plaintiff had a status of someone who can request a postponement of the foreclosure sale of her home which she obviously did not have as the foreclosure sale went forward regardless of her attempts to postpone it. Plaintiff relied on that and other representations to her detriment, resulting in the loss of her home, threat of homelessness, loss of equity in home and improperly accrued legal and other fees associated with the wrongful and illegal foreclosure.

316. CPPA Violation: Defendant BANK OF AMERICA is also in violation of D.C. Code 28-3904 (e). By sending Plaintiff a letter with contact phone numbers, BANK OF AMERICA was representing that the information gathered by calling that number and speaking to a BANK OF AMERICA representative would be accurate. It was not. As such, this information was misleading.

317. The information asked for by Plaintiff was the process by which she could postpone the foreclosure sale of her home and enroll in a mortgage modification program, a material fact related to keeping her home.

318. Defendant's misrepresentation of that process by providing conflicting information upon contact misled Plaintiff and caused her to delay pursuing legal recourse to preserve her rights against the wrongful and illegal foreclosure.

319. As a result of BANK OF AMERICA's actions, Plaintiff suffered damages in the loss of her home, threat of homelessness, loss of equity in home and improperly accrued legal and other fees associated with the wrongful and illegal foreclosure.

320. Defendant BANK OF AMERICA violated District of Columbia law in its refusal to give notice of a foreclosure mediation session to Plaintiff.

321. Defendant BANK OF AMERICA considered rescission of the foreclosure sale until January 12, 2011, and as such its actions are governed by the Saving DC Homes From Foreclosure Act. The terms of that Act were ignored by BANK OF AMERICA.

322. BANK OF NEW YORK violated the CPPA in its decision to deny MCCARTER a HAMP modification. BANK OF NEW YORK represented to MCCARTER that HAMP modification guidelines would be followed in its decision to modify her mortgage. That representation was untrue.

323. BIERMAN GEESING used falsified documents to file in DC courts as a basis for a foreclosure action against MCCARTER.

324. MCCARTER was damaged by the failure of Defendants to follow state statutes in Plaintiff has suffered damages in the loss of her home, loss of equity interest in her home and attorney fees as a result.

325. As a result of these actions, Plaintiff has suffered damages in an amount to be proven at trial.

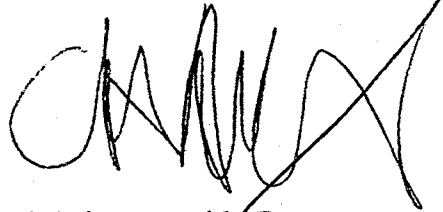
REQUEST FOR RELIEF

326. Plaintiff respectfully requests the following remedy from this court:

- 1) An injunction preventing BANK OF AMERICA from entering the property or attempting to take any action to take possession of the property, including, but not limited to, enjoining any eviction proceedings, pending the resolution of the matters raised in this Complaint;
- 2) Compensation to Plaintiff, in an amount to be proven at trial, for Defendants' Gross Negligence, violations of the Duty of Good Faith and Fair Dealing, Abuse of Process and/or Malicious Prosecution, Fraud, Fraudulent Concealment, Fraudulent Misrepresentation, Negligent Misrepresentation, Conspiracy to Commit Mortgage Fraud, Civil RICO, Civil Conspiracy to Commit Wire Fraud, and Civil Conspiracy to Commit Mail Fraud;
- 3) Punitive damages against BANK OF AMERICA, BIERMAN GEESING, and MERS;
- 4) Statutory damages for violations of the Truth In Lending Act and the Real Estate and Settlement Procedures Act; and
- 5) Compensation to Plaintiff for attorney fees, court costs, and such other relief as this Court may deem appropriate.

Dated: [October 14, 2011]

Respectfully
submitted,

A handwritten signature in black ink, appearing to read 'Christine Axsmith', with a long, sweeping horizontal stroke extending to the right.

Christine Axsmith, Esq.
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Attorney for Plaintiff

VERIFICATION

Vivian McCarter, being duly sworn, hereby swear that the following is true and correct:

That she has read the foregoing Verified Complaint and know the contents thereof; that the same is true to the best of her knowledge and belief except as to the matters therein stated to be alleged upon information and belief, and as to those matters she believes them to be true. She further states that the grounds of their knowledge and belief as to all matters in the Verified Complaint are based upon a review of documents and participation in the transactions at issue.

Dated:

Washington, DC
October 17, 2011

Vivian McCarter

Vivian McCarter

Subscribed and sworn to before
me this 17 day of October 2011.

[Signature]

Notary Public

District of Columbia : SS
Subscribed and Sworn to before me
this <u>17</u> day of <u>Oct</u> , 2011
<u>[Signature]</u>
Notary Public, D.C.
My commission expires <u>4-30-16</u>

