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★ AUG 17 2010 ★

**UNITED STATES DISTRICT
EASTERN DISTRICT COURT OF NEW YORK**

BROOKLYN OFFICE

CONCEPCION CAMPBELL,
individually & for all those similarly situated,
Plaintiff,

CASE NUMBER: **10 3800**

-against-

SUMMONS IN A CIVIL ACTION

STEVEN J. BAUM, ESQ.; STEVEN J. BAUM, PC;
STEPHANIE M. VAMPOTIC; DAWN HANZLIK-
HEXEMER, ESQ.; JANE & JOHN DOES 1-10 AS
AGENTS AND/OR EMPLOYEES RELATED
TO STEVEN J. BAUM, PC; MERSCORP, INC.;
MORTGAGE ELECTRONIC REGISTRATIONS,
INC.; REBECCA A. COSGROVE; JOHN DOES 1-10
AS AGENTS AND/OR EMPLOYEES RELATED
TO DEFENDANT MERSCORP, INC.;&
HSBC MORTGAGE CORP;
Defendants.

Plaintiff demands trial by jury
CIVIL
COMPLAINT FOR DAMAGES

PLAINTIFF DEMANDS TRIAL BY JURY

WEINSTEIN, J.

J. ORENSTEIN, M.J.

Assigned to: Hon. _____

Plaintiff, Concepcion Campbell ("Campbell"), by and through her counsel, complains as follows:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this action pursuant to federal question under 18 U.S.C.A. §§1961-68, 18 U.S.C.A. §1343 and 28 U.S.C. §1331; 12 U.S.C. § 2605-2608, and 15 U.S.C. §1692.
2. Diversity subject matter jurisdiction exists over this class-action pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2,119 Stat. 4 (CAFA"), amending 28 USC §1332, at new subsection (d), conferring federal jurisdiction over class actions involving (a) 100 or more members in the proposed Class; (b) at least some members of the proposed class have different citizenship from some Defendants and (c) the claims of the proposed class members exceed the sum or value five million dollars (\$5,000,000) in the aggregate. 28 U.S.C. §1332(d)(2) and (6).
3. Venue is proper in the Eastern District of New York, Brooklyn, pursuant to 28 U.S.C. §1391 and 18 U.S.C. §1965(a), in that Defendants systematically conduct and transact substantial business in this State and District as New York State licensed attorneys, licensed banks and corporations organized and operating in the State of New York, the causes of action occurred in this District and Plaintiff Campbell resides in Kings County Brooklyn.

PARTIES

4. Plaintiff Campbell is a resident of the State of New York, Kings County, Brooklyn.
5. Defendant Steven J. Baum, Esq. is a New York State licensed attorney who owns and operates Defendant Steven J. Baum, PC (collectively, "Baum"), with an office located at 220 North Pointe, Parkway, Suite G, Amherst, NY 14228 that conducts substantial business in this District filing foreclosures and default documents in the Courts and with the County Clerks in this District.
6. Defendants Stephanie M. Vamporic, Dawn Hanzlik-Hexemer, Esq., Jane & John Does 1-10 as agents and/or employees of Steven J. Baum, PC are employees and/or licensed attorneys who work under the direct supervision, management and control of Defendants Baum throughout New York State and in this District.
7. Defendant Merscorp, Inc. is a foreign corporation located at 1818 Library Street, Suite 300 Reston, VA 20190 transacting substantial business in the State of New York and the Eastern District as a foreclosure industry registration service that is the sole shareholder of the entity Defendant Mortgage Electronic Registrations Systems, Inc. (collectively, "MERS") which served as the "nominee" on documents at issue in this action.
8. During all relevant times stated herein, Defendant MERS executed and/or had filed in the New York State Supreme Court, Kings County and with the Kings County Clerk legal documents, including Mortgages, Notes and they allege to file Assignments of Notes.
9. Defendant HSBC Mortgage Corp. ("HSBC") is a Delaware corporation transacting substantial banking business in the State of New York and the Eastern District with banks located in the State of New York and Kings County, maintaining a principal place of business in Buffalo, New York and is a principal shareholder of Defendant MERS.
10. Upon information and belief, Defendant Rebecca A. Cosgrove is an employee of Defendants MERS, HSBC and/or Defendants Baum in the State of New York and she has executed legal documents filed in the Eastern District on behalf of said Defendants.
11. Defendants Jane & John does 1-10 as agents and/or employees related to Steven J. Baum, PC are at all times relevant herein were acting under the direction and supervision of Defendants Baum as co-conspirators to the acts alleged herein that occurred throughout the State of New York and in this District. Their identities are to be discovered in this action.
12. Defendants Jane & John does 1-10 as agents and/or employees related to Merscorp, Inc. are at all times relevant herein were acting under the direction and supervision of Defendant MERS as

co-conspirators to the acts alleged herein that occurred throughout the State of New York and in this District. Their identities are to be discovered in this action.

FACTS

13. On or about July 13, 2005, Plaintiff Campbell as Mortgagor executed a 30 year mortgage of \$190,000 at 5.85% annual interest for monthly payments of \$1,23.93 on her home located at 171 Union Street, Brooklyn, with Defendant MERS as Mortgagee (the "Mortgage") (**Exhibit "A"**- attached hereto and made a part hereof as if fully set forth herein).
14. On or about July 28, 2005, the Mortgage was recorded naming Defendant MERS as Mortgagee.
15. Upon information and belief, Defendant MERS was created in 1996 by the mortgage banking industry to create a secondary mortgage market, internally administer the purchasing and selling of mortgaged and simplify home mortgage administration, including foreclosure proceedings.
16. In the case at bar, Defendants never assigned Plaintiff's mortgage to Defendant HSBC
17. Members of Defendants MERS are mortgage originators, mortgage servicers and sub-servicers, warehouse lenders, wholesale lenders, retail lenders, settlement agents, title companies, insurers and investors who act as agents of Defendants MERS.
18. At all relevant times herein, Defendant MERS was under the direct control of Defendant HSBC as one of many other banks, including Citigroup, JPMorgan Chase and Wells Fargo, that own, operate, control, manage and direct the activities of Defendant MERS.
19. Defendant MERS was created and established to facilitate the business interests and limit the liability of its members, including Defendant HSBC.
20. Upon information and belief, Defendant MERS has an annual income of \$11 Million Dollars and about 40 employees.
21. Upon information and belief, Defendant HSBC makes hundreds of billions of dollars annually.
22. Mortgages registered with the MERS' registry system hold title in Defendant MERS' name.
23. Defendant MERS saves its members, one of which being Defendant HSBC, county filing fees by not recording assignments that Defendants' mortgage documents state they will assign.
24. Defendants Baum is a mortgage foreclosure business representing banks, including Chase, HSBC, Bank of America and admits that they are "a New York State law firm serving the default industry." at <http://www.mbaum.com/SJB/index.jsp> .
25. Upon information and belief, Defendant Baum over the years has filed tens of thousands of foreclosures in the New York State Supreme Court and other Courts against homeowners and their properties throughout the State of New York, including this District, by naming a member of the MERS system as the mortgagee when the mortgage was never assigned to that member.

26. On June 7, 2007 a Notice of Pendency and Foreclosure Complaint was filed against Plaintiff by Defendants Baum as attorneys for Defendant HSBC stating Defendant HSBC was foreclosing on a Plaintiff's July 13, 2005 Mortgage (**Exhibit "B"**- attached hereto and made a part hereof as if fully set forth herein).

27. Both the Notice of Pendency and the Foreclosure Complaint ¶3 state "Said Mortgage to be assigned by an Assignment to be recorded in the Office of the Clerk of KINGS County."

28. Attached to the documents referred to in ¶26 herein above, Defendant Dawn Hanzlick-Hexemer executed and filed affidavits under penalty of perjury that the Notice of Pendency and Foreclosure Complaint filed with the Kings County Court and clerk were not "frivolous" after due inquiry and that "the grounds for her belief as to all matters in the complaint not stated to be upon her knowledge are the original note, mortgage and/or financial statements together with correspondence."

29. Defendant Dawn Hanzlick-Hexemer is not an agent or officer of Defendants MERS or HSBC.

30. On September 3, 2009, Defendants Baum, by their agent and employee attorney Michelle Maccagnano, admitted to Plaintiff's counsel that Defendants Baum never had the original Note as follows:

"**From:** Michelle D. Maccagnano [mailto:Michelle-Maccagnano@mbaum.com]
Sent: Thursday, September 03, 2009 11:36 AM
To: Susan Chana Lask, Esq.
Subject: RE: Campbell-Subpoena

The only communications that will not be provided will be those between our office and our client. To the extent that we possess any communications with your client, they will be provided. **We do not have the original note as the original note is not required in the State of New York to commence a foreclosure action.** Upon information and belief, our client would be in control of the original note."

31. The admission that Defendants Baum did not have the original Note means Defendant Dawn Hanzlick-Hexemer's affidavits referred to in ¶27 hereinabove were fraudulent filings.

32. Nowhere did the Foreclosure Complaint establish a prima facie case in an action to foreclose a mortgage by establishing the existence of the mortgage and the mortgage note, **ownership of the mortgage**, nor did it disclose that Defendant HSBC was the assignee of the mortgage or provide proof that HSBC was an assignee of the originally recorded Mortgage as required by law.

33. The Notice of Pendency and Foreclosure Complaint named Defendant HSBC as the plaintiff yet HSBC had no standing as a plaintiff to foreclose as no assignment from Defendant MERS existed to Defendant HSBC.
34. The Foreclosure Complaint conceals facts and is deliberately disoriented to sow confusion that at ¶15 it states the Mortgage was to Defendant Mers “ as nominee for HSBC” but provides no proof of an actual assignment to HSBC.
35. The Notice of Pendency and Foreclosure Complaint and affidavits attached thereto were fictitious, false, and fraudulent legal documents filed in the Courts and County Clerk’s office under penalty of perjury.
36. On October 30, 2007, a Satisfaction of Mortgage, dated October 17, 2007, was recorded in the Kings County Clerk’s office regarding Plaintiff’s 2005 Mortgage, with a cover page listing Defendant HSBC as presenter but MERS as Mortgagee (**Exhibit “C”**- attached hereto and made a part hereof as if fully set forth herein).
37. Page 2 of the Cover page to the Satisfaction of Mortgage lists HSBC as Mortgagee.
38. The actual Satisfaction document states Defendant HSBC is the lender with MERS as the Mortgagee, and that “The mortgage has not been assigned unless stated below”.
39. There is no statement in the Satisfaction of Mortgage of any assignment, recorded or otherwise.
40. The Satisfaction is signed by Defendant Rebecca A. Cosgrove as an Officer of Defendant Mers and notarized as by an Erie New York notary.
41. Defendant Cosgrove claims to be an officer of Defendant MERS whose offices are located in Virginia, not Erie, New York.
42. Erie New York is located near Buffalo New York where Defendants Baum are located.
43. Upon information and belief, Cosgrove is not an officer of Defendant MERS.
44. Upon information and belief, the notary is a fraud and known to be a fraud by Defendants.
45. The Satisfaction of Mortgage along with the affidavits attached thereto were fictitious, false, and fraudulent legal documents filed in the County Clerk’s office under penalty of perjury.

46. Defendants knew they filed false and fraudulent documents with the court and county clerk to foreclose on Plaintiff's property.
47. Defendants participated in a scheme to file fraudulent foreclosure documents against Plaintiff to extract money and her property from her knowing the Mortgage was never assigned and that Defendant HSBC had no standing to file a foreclosure.
48. New York Federal and State Courts consistently hold that a "mortgagee" that files a foreclosure complaint in the courts without standing equates to fraud.
49. New York criminal statutes relating to false filings and perjury exist to protect citizens and the judiciary from false filings, including §210.05: A person is guilty of perjury in the third degree when he swears falsely; § 210.35: A person is guilty of making an apparently sworn false statement in the second degree when (a) he subscribes a written instrument knowing that it contains a statement which is in fact **false** and which he does not believe to be true, and (b) he intends or believes that such instrument will be uttered or delivered with a jurat affixed thereto, and (c) such instrument is uttered or delivered with a jurat affixed thereto; and (c) § 175.35 Offering a false instrument for filing in the first degree-A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority ..., he offers or presents it to a public office, public servant, public ...with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority ...; and §175.30 A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.
50. The Foreclosure Complaint was the typical slovenly and ambiguous document recently complained of by many New York State judges as it named persons irrelevant to the action at paragraph 26 as "Patricia Graziano and Lena M. Alio" and after ¶35 it states "***Add to WHEREFORE Clause" with improper numeration.
51. The Foreclosure Complaint is a document that is one of thousands of sloppy, irresponsible and fraudulent Court filings as part of Defendants Baum "foreclosure mill" practice which, upon information and belief, is a conspiracy between the Defendants to unlawfully extract money and

property from desperate homeowners throughout the State of New York after they have sold parts of the “bad paper” mortgages they made to hundreds of thousands of homeowners nationwide during the home buying boom.

52. Upon information and belief, Defendants are part of the nationwide foreclosure scandal who knew in advance their “bad paper” would bust so they sold and resold it to investors over the years and when it completely failed, after making money on it, they knew they could make more money by taking the property from fraudulent foreclosure filings and auctioning it off.
53. Upon information and belief, the original sales and resales of the “bad paper” included sales to investors in the stock market that affects interstate commerce.
54. Upon information and belief, the real parties in interest, here being Defendant HSBC, received the benefit of obtaining “mortgage insurance” which was an additional fraud when Defendants MERS never assigned the mortgage to them; thus, Defendants engaged in insurance fraud.
55. Upon information and belief, the present mortgage crisis and economic recession was planned in advance by our own banking institutions, including Defendants HSBC and MERS with the help of attorney “Foreclosure Mills” such as Defendants Baum, all of whom profit from their conspiracy while homeowners and American citizens suffer.
56. On July 31, 2007, Defendants Baum and Vampotic sent a reinstatement letter to Plaintiff listing the following fees due Defendants Baum to reinstate the Mortgage:

Bank Charges

PROPERTY INSPECTIONS	\$66.50
ESCROW ADVANCE	\$301.56
LATE CHARGES	\$505.80
OVERDUE PAYMENTS	\$10,282.44

Disbursements

SEARCH CHARGES	\$485.00
INDEX NUMBER FEE	\$210.00
NOTICE OF PENDENCY FILING FEE	\$35.00
SERVICE FEES	\$950.00
CANCEL NOTICE OF PENDENCY	\$35.00

Attorney Fees

LEGAL FEES TO FORECLOSURE	\$1,620.00
REINSTATEMENT AMOUNT DUE AS OF JULY 31, 2007	
TOTAL PAYABLE TO: STEVEN J. BAUM, PC	\$14,491.30

Estimated Additional Attorney Fees & Disbursements

Good Through August 15, 2007

REQUEST FOR JUDICIAL INTERVENTION FEE	\$95.00
COURT ADMIN. FEE (EX PARTE/MOTION)	\$45.00

OVERNIGHT MAIL	\$10.00
COURT SERVICE	\$62.50
ESTIMATED ADDITIONAL REINSTATEMENT AMOUNT GOOD THROUGH AUGUST 15, 2007	
TOTAL PAYABLE TO: STEVEN J. BAUM, PC	\$14,703.80

57. Upon information and belief, the actual legal fees paid by Defendants MERS or HSBC are about \$400, not \$1,620, and other above listed fees are inflated and false.
58. Plaintiff's mortgage ¶14 states that the Lender may charge her fees on default which means actual fees paid, not false or inflated fees to Defendants Baum.
59. The July 31, 2007 reinstatement letter stated Defendants Baum were acting as debt collectors "pursuant to federal law".
60. On or about September 28, 2007, Defendants Baum sent a Payoff statement to Plaintiff's attorney Alfred Walendowski listing different numbers :

Bank Charges

PROPERTY INSPECTIONS	\$95.00
ESCROW ADVANCE	\$1,823.94
LATE CHARGES	\$393.40
INTEREST	\$8,141.30
PRINCIPAL BALANCE	\$186,574.54
RECORDING FEE	\$40.00

Disbursements

SEARCH CHARGES	\$485.00
INDEX NUMBER FEE	\$210.00
NOTICE OF PENDENCY FILING FEE	\$35.00
SERVICE FEES	\$950.00
REQUEST FOR JUDICIAL INTERVENTION FEE	\$95.00
COURT ADMIN. FEE (EXPARTE/MOTION)	\$45.00
COURT SERVICE	\$62.50
CANCEL NOTICE OF PENDENCY	\$35.00

Attorney Fees

LEGAL FEES TO FORECLOSURE	\$1,260.00
PAYOFF AMOUNT DUE AS OF SEPTEMBER 28, 2007	
TOTAL PAYABLE TO: STEVEN J. BAUM, PC	\$200,???

Estimated Additional Attorney Fees & Disbursements

Good Through August 15, 2007

REQUEST FOR JUDICIAL INTERVENTION FEE	\$?
COURT ADMIN. FEE (EXPARTE/MOTION)	\$45.00
REFEREE'S FEE TO COMPUTE	\$50.00
OVERNIGHT MAIL	\$10.00
COURT SERVICE	\$125.00
28 DAYS OF INTEREST @\$30.030833 PER DIEM	\$840.??
ESTIMATED ADDITIONAL REINSTATEMENT AMOUNT	

- 61.** That September 28, 2007 payoff letter stated Defendants Baum were acting as debt collectors “pursuant to federal law”.
- 62.** Plaintiff’s mortgage ¶14 states that the Lender may charge fees on default, which means actual fees paid, not false or inflated fees to Defendants Baum.
- 63.** Upon information and belief, Defendant Steven Baum acting by himself or through or with the other persons, associations and/or companies, has formulated, directed, controlled, or participated in the acts or practices of Defendants Steven Baum P.C., MERS and HSBC as set forth in this Complaint, including developing, producing, creating and disseminating to Plaintiff and the purported class members false, fraudulent and deliberately deceitful (a) collection letters regarding impending foreclosures, (b) Notice of Pendencies, (c) Summons and Complaints for Foreclosure, (d) other legal documents filed with courts and clerks throughout the State of New York and (e) Reinstatement and Payoff letters.
- 64.** Upon information and belief, Defendants MERS and HSBC acting by themselves or through or with the other persons, associations and/or companies, have formulated, directed, controlled, or participated in the acts or practices of Defendants Baum and all other Defendants named herein as set forth in this Complaint, including developing, producing, creating and disseminating to Plaintiff and the purported class members internationally false, fraudulent and deliberately deceitful (a) collection letters regarding impending foreclosures, (b) Notice of Pendencies, (c) Summons and Complaints for Foreclosure, (d) other legal documents filed with courts and clerks throughout the State of New York and (e) Reinstatement and Payoff letters.
- 65.** Defendants, including licensed attorneys, have become skilled in using the artifice of MERS to sabotage the judicial process to the detriment of homeowner borrowers.
- 66.** Upon information and belief, from on or about January, 2006 to date, Defendants engaged in a pattern and practice being a scheme to prey upon the homeowners of the State of New York and the New York Judiciary and County Clerks’ by use of the federal wires and mails to citizens, other counsel, the judiciary, and clerks by making believe they are filing proper legal papers when they actually are filing fraudulent documents to take people’s homes, property and money away from them and to Defendants.
- 67.** By entering into their scheme of filing unlawful foreclosures, Defendants Baum and the other conspiring Defendants were and are able to secure a reliable source of income wherein Defendants Baum make legal fees and other costs above and beyond actual costs incurred and

Defendants HSBC and MERS make money from the foreclosed properties by getting the loans paid off based on their fraudulent letters and foreclosure filings or taking over homeowners homes and auctioning or selling them off.

- 68.** To further their scheme, Defendants used the federal wires and mail to transfer said income, monies received at the foreclosure closings and sent their false and fraudulent payoff and other letters to homeowners, banks, title companies, attorneys, judges, court clerks and county clerks regarding their false foreclosure filings.
- 69.** At all times relevant herein, Defendants knew it was unlawful, unethical and improper to deceive the public and the judiciary that could lead to referral to a disciplinary committee and a risk of revocation or suspension of one or more of the Conspiring Defendants' licenses to practice law.

CLASS ACTION ALLEGATIONS

- 70.** Plaintiff brings this action on behalf of herself and as a class action under the provisions of Rule 23 of the Federal Rules of Civil Procedure on behalf of all members of the following class:

“Between January, 2005 to date, all persons in the State of New York subjected to Defendants' Baum collection procedures to foreclose their home mortgages naming Defendant MERS on said mortgages who were served with or received from Defendants' Baum foreclosure papers, including but not limited to reinstatement letters, payoff letters, Notice of Pendencies and/or Foreclosure Complaints filed naming a banking institution other than Defendant MERS, which said homeowners either paid off their mortgage in response thereto or lost their homes.”

- 71.** Excluded from the class are Defendants, their subsidiaries and affiliates, officers, directors, and employees.
- 72.** Plaintiff believes that there are at least some ten thousand members of the class as above described; their exact number and identities are currently unknown. The basis of this belief is that recent news articles report Defendants Baum file over ten thousand foreclosures at issue annually. As this case includes the past 6 years at about ten thousand filings a year, then there are enough persons to form a class.
- 73.** The members of the class are so numerous that joinder of all members is impracticable.
- 74.** There are questions of law and fact common to the members of the class, which questions relate to the existence of the acts of the Defendants hereinafter alleged, the wrongful nature thereof, and the type of damage sustained as a result thereof, to wit:
- (a) Is Defendant Baum and his Defendant employees and agents working at his office in a conspiracy with Defendants MERS and HSBC to serve fraudulent foreclosures upon homeowners in the State of New York to deceive homeowners into paying their mortgages off and/or removing them from their homes so Defendants could sell the properties?

- (b) Are Defendants filing fraudulent foreclosure papers with the courts of the State of New York and the County Clerks to deceive the Courts and clerks that they are accepting proper legal papers when the papers are fictitious?
- (c) Are Defendants Baum and his Defendant employees and agents, some being licensed attorneys, deliberately drafting and filing ambiguous legal documents to confuse the courts, clerks and homeowners as to whom the real party in interest is in the collection and foreclosure proceedings they commence to avoid following the law by filing assignments of mortgage to avoid paying county clerk fees?
- (d) Is the conduct of Defendants illegal, unlawful and criminal to which they are engaging in a racket against the public and the judiciary that causes homeowners to unlawfully lose their homes and any money to Defendants?
- (e) Is Defendants Baum charging inflated and other fees to homeowners that are not permitted by the Mortgages he seeks to collect nor actual fees incurred?
- (f) Are Defendants making profits from their illegal, unlawful and criminal conduct?

75. Plaintiff's claims are typical of the claims of class members, and she will fairly and adequately protect the interests of the class. The interests of Plaintiff are coincident with, and not antagonistic to, those of the other members of the class.

76. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

77. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

78. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

79. The class is readily definable and prosecution as a class will eliminate the possibility of repetitious litigation, while also providing redress for claims too small to support the expense of individual, complex litigation.

COUNT ONE

(Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(a))

80. The averments of the above stated paragraphs are stated here as if fully set forth herein.

81. Plaintiffs and each member of the Class are "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1964.

- 82.** Defendants are "persons" within the meaning of 18 U.S.C. § 1961(3).
- 83.** Defendant Baum is the leader, manager, organizer and controller who influences the enterprise consisting of all other Defendants.
- 84.** Defendants follow the directions of Defendant Baum to file fraudulent foreclosures, false letters, and other false documents with courts and county clerks to promote his scheme to defraud the the public and the judiciary to fictionalize foreclosures in the name of partys without standing.
- 85.** With respect to Plaintiff's claims under 18 U.S.C. § 1962(a) Defendants together constitute an "enterprise" as that term is defined in 18 U.S.C. § 1961(4), which through Defendants, were and are engaged in interstate or foreign commerce and the activities of which affect interstate or foreign commerce.
- 86.** During the Class Period, the acts lasted a substantial period of time and to date do last indefinitely and are pervasive as Defendants intend to have them last indefinitely and to victimize tens of thousands of homeowners, attorneys and the judiciary by perpetuating their frauds and deceptions.
- 87.** Defendants acting individually and/or by and through their officers and directors, engaged in a fraudulent scheme and common plan which included using or causing the interstate wires to transfer and obtain funds from the fraudulent foreclosures and by so doing they engaged in multiple commissions of wire fraud involving the same and/or similar fraudulent representations to tens of thousands of homeowners, violating 18 U.S.C. §§ 1341 and 1343, and 15 U.S.C. §§ 45 and 52.
- 88.** This conduct constitutes predicate acts of racketeering activity within the meaning of 18 U.S.C. § 1961(1). All such instances were related in their common objective, or repeated on multiple occasions during the Class Period, and are capable of further repetition, as a result of which they constitute a pattern of racketeering activity.
- 89.** Defendants and their respective agents have used or invested income derived from this pattern of racketeering activity in the enterprise in violation of 18. U.S.C. § 1962(a), including use of the proceeds of their racketeering activity to further their scheme.
- 90.** Plaintiffs and the other members of the Class suffered injury and financial damages to their by reason of Defendants' use for investment of income derived from their pattern of racketeering and the enterprise, which used or invested enabled the enterprise to continue its operations, and paid for Defendants' perpetuation of their fraudulent activities, as a result of which Plaintiff and the other members of the Class have been deceived to believe they were in foreclosure when the foreclosure documents were unlawful.

91. The amount of financial damage remains undetermined.

COUNT TWO

(Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(d))

92. The averments of the above stated paragraphs are stated here as if fully set forth herein.

93. Defendants have conspired to use or invest income derived from a pattern of racketeering activity along with each other, all in violation of 18 U.S.C. § 1962(d).

94. Plaintiff and members of the Plaintiffs' class suffered injury and financial damage to their property by reason of Defendants' conspiracy

COUNT THREE

(Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c))

95. The averments of the above stated paragraphs are stated here as if fully set forth herein.

96. The association in fact of the Defendants is an enterprise engaged in, and whose activities affect, foreign and interstate commerce within the meaning of 18 U.S.C. §§ 1961(4) and 1962. The enterprise exists separate and apart from the pattern of racketeering alleged.

97. Defendants conducted or participated, directly and/or indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

98. The conspiracy was agreed upon between Defendants wherein Defendants Baum perpetuated the false, fraudulent and deceitful foreclosure filings for years.

99. The other named Defendants agreed to the conspiracy of the fraudulent foreclosure filing scheme by using their computers, phones and wires to distribute to homeowners and judiciary the false, fraudulent and deceitful foreclosure filings and false county clerk recordings.

100. Plaintiff and the other members of the Class sustained injury and financial damages to their property as a direct and proximate result of the acts of Defendants and the enterprise by Defendants through the pattern of racketeering activity alleged herein.

COUNT FOUR

(Wire Fraud)

101. The averments of the above stated paragraphs are stated here as if fully set forth herein.

102. Defendants' accomplished and completed their fraudulent scheme to defraud the public and judiciary by using the wires via e-mail, the web and faxing their fraudulent foreclosure documents and related letters in violation of 18 U.S.C. § 1343 wherein the transmissions were made in and left the State of New York between all named Defendants and to the public, plaintiff,

class members, the judiciary, courts and other persons to file the fraudulent foreclosure documents.

103. The purpose is specified hereinabove .

COUNT FIVE

(fraud and deceit)

104. The averments of the above stated paragraphs are stated here as if fully set forth herein.

105. Defendants scheme obstructs justice by corruptly influencing, obstructing, and impeding, and endeavoring to influence, obstruct, and impede the due administration of justice in fraudulent foreclosure lawsuits filed and litigated in the United States courts, violating Title 18, U.S.C. § 1503.

COUNT SIX

(False Oaths)

106. The averments of the above stated paragraphs are stated here as if fully set forth herein.

107. Defendants made false material declarations under oath in proceedings before and ancillary to courts of the United State in violation of 18 U.S.C. §1623(a).

COUNT SEVEN

(unjust enrichment and imposition of constructive trust)

108. The averments of the above stated paragraphs are stated here as if fully set forth herein.

109. As a result of the conduct described above, defendants have been and will be unjustly enriched at the expense of the members of the Class.

110. Defendants have been unjustly enriched by the receipt of Under the mortgage agreement, lenders are strictly limited to their actual costs, fees and expenses that were actually incurred or obligated to be paid in connection with any enforcement proceedings.

111. Defendants Baum, MERS and HSBC have been routinely overcharging for attorneys' fees and other fees and costs that have not been incurred in addition to such things as clerk filing fees, service of process fees, statutory clerk fees, late charges, delinquency fees, appraisal fees, recording fees, unspecified foreclosure fees and costs, administrative fees, escrow fees, and interest charges.

112. Those fees and expenses charged were not actually incurred by Defendants and/or were incurred at lesser amounts than were billed to and paid by Class members.

113. Defendants Baum, MERS and HSBC have unjustly profited.

114. Plaintiff demands all said fees accounted for and returned.

115. Unless enjoined, Plaintiffs and the members of the Class will be irreparably harmed.

116. Defendants should therefore be required to disgorge the profits they have obtained and will unjustly obtain at the expense of the members of the Class and homeowners or their agents who paid any sums to them during this period of fraud as detailed above, and a constructive trust should be imposed thereon.

COUNT EIGHT
(RESPA Violation)

117. The averments of the above stated paragraphs are stated here as if fully set forth herein.

118. Pursuant to 12 U.S.C. §2605 a Lender shall notify the borrower in writing of any sale, transfer or assignment of the mortgage within 15 days of the assignment.

119. Defendants Baum, MERS and HSBC filed legal documents in the foreclosure action against Plaintiff stating the mortgage was assigned to HSBC.

120. Plaintiff never received a 15 day notice.

Plaintiff demands damages pursuant to 12 U.S.C. §2605(f) of any actual damages to her as a result of that failure, and any additional damages as the court may allow, up to \$1,000 and Defendants are liable in the case of this class action for any actual damages to the borrowers, and any additional damages in an amount not greater than \$1,000 to each class member, except that the total amount of damages may not exceed the lesser of \$500,000 or 1 percent of the net worth of the servicer and mandatory costs and attorney fees.

COUNT NINE
(Fair Debt Collection Practices Act (FDCPA))

121. The averments of the above stated paragraphs are stated here as if fully set forth herein

122. Defendants Baum, MERS and HSBC were and are a debt collector under the FDCPA.

123. Defendants Baum, MERS and HSBC filed false and fraudulent legal documents in the courts and county clerks to collect a debt they had no standing to collect.

124. Defendants Baum, MERS and HSBC deceived Plaintiff and the class into believing they owed a debt because of legal documents that were actually unlawful.

125. Plaintiff demands damages under the FDCPA 15 U.S.C. §1692K providing for civil liability and damages against any debt collector who fails to comply with any provision thereof with respect to a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members,

without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and the costs of the action, together with a reasonable attorney's fee as determined by the court.

COUNT TEN

(punitive damages)

- 126.** The averments of the above stated paragraphs are stated here as if fully set forth herein.
- 127.** Defendants are banking institutions and licensed attorneys who are held to a high standard of honesty.
- 128.** Defendants' frauds and other misconduct upon the public and the judiciary for their financial benefit is reprehensible, outrageous and demands serious punitive damages to stop Defendants from further harming the public and deceiving the judiciary.
- 129.** Defendants' conduct described herein was done with the conscious disregard of Plaintiff's and the class members rights and with the intent to vex, injure or annoy Plaintiffs and members of the Class such as to constitute oppression, fraud or malice, entitling Plaintiffs and the members of the Class to an award of punitive damages in an amount appropriate to punish or set an example of Defendants.

JURY DEMAND

- 130.** Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for relief as follows:

1. That the Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure;
2. That the aforesaid conduct of Defendants be adjudged and declared to have been in violation of RICO, 18 U.S.C. §1961 et seq., and that judgment be entered for Plaintiff and the members of the class and against Defendants for threefold the amount of damages sustained by Plaintiff and the class together with the costs of this action, including reasonable attorneys' fees;
3. That the aforesaid conduct of Defendants be adjudged and declared to have been in violation of the common law and statutes of New York and other states, and that judgment be entered for Plaintiffs and the members of the class and against Defendants for the amount of damages determined to have been sustained by them or otherwise allowed by law, together with punitive damages to punish Defendants and deter them from future misconduct, multiple damages where authorized by statute, and the costs of this action, including reasonable attorneys' fees;

4. That Defendants, their subsidiaries, successors, transferees, assignees and their respective officers, directors, partners, agents, and employees, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining, or reviving the unlawful conduct alleged herein with respect to any product;

5. That reasonable attorney fees and costs of the suit be granted to Plaintiff and the Class;

6. That Punitive damages be granted to Plaintiff and the Class;

7. That compensatory damages, restitution and all allowable damages be granted to Plaintiff and the Class regarding the FDCPA, RESPA, Fraud, Unjust Enrichment and other violations alleged herein above; and

6. That Plaintiff and members of the class have such other, further and different relief as the Court may deem just and proper.

Dated: August 17, 2010
New York, NY

LAW OFFICES OF SUSAN CHANA LASK



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