

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NUMBER:

HPG CORPORATION,)
MARK GIULIANO, EDNOR ALTIDOR)
AND RAYMONDE LEGERME,)
on behalf of themselves and all others similarly situated,)

Plaintiffs)

vs.)

JP MORGAN CHASE BANK, N.A.,)
SUCCESSOR IN INTEREST FROM THE)
FEDERAL DEPOSIT INSURANCE CORPORATION)
AS RECEIVER FOR WASHINGTON MUTUAL)
BANK F/K/A WASHINGTON MUTUAL BANK F.A.,)
AMERICAN SERVICING COMPANY – SC, AND)
HSBC BANK, U.S.A., N.A. AS TRUSTEE FOR)
NAAC MORTGAGE-PASS-THROUGH)
CERTIFICATES SERIES 2007,)
on behalf of themselves and as representatives for)
all others similarly situated,)

Defendants)

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. In this Class Action Complaint, Plaintiff(s) seek, *inter alia*, the injunction of various foreclosure and eviction proceedings, for themselves and others similarly situated, based on the Defendants' routine failure to comply with statutory prerequisites to foreclosure. Plaintiffs and the class they seek to represent, also seek a determination of

the validity of foreclosure sales held in violation of statutory requirements, together with damages and other relief.

2. The Commonwealth of Massachusetts has longstanding, statutorily prescribed non-judicial foreclosure procedures, by entry and/or by power of sale, with minimal consumer protections for homeowners. G.L. c. 244 § 1 et seq. Homes are normally foreclosed pursuant to the statutory power of sale, without a pre-foreclosure court hearing except to establish that the mortgagor is not in active military service on duty overseas. G.L. c. 183, § 21; Beaton v. Massachusetts Court, 367 Mass. 385 (1975).

3. The law is clear, however, that entities foreclosing on mortgages must strictly comply with the Commonwealth's statutory prerequisites to foreclosure. Among other things, as a matter of black letter law, the entity exercising the right to foreclose must have actual legal authority to enter the property and/or to exercise the power of sale. G.L. c. 244, §§ 1, 14; G.L. c. 183, § 21.

4. In recent years, many foreclosing entities, including the Defendants, have dispensed with this fundamental requirement. Such entities foreclose, through their counsel, without having first obtained assignment of the mortgage and the power of sale on the property they purport to foreclose.

5. Massachusetts' foreclosure process has become an undisciplined and lawless rush to seize homes. Many thousands of foreclosures are plainly void under statute and settled Massachusetts case law. Most borrowers never obtain accurate statutorily required notices, Massachusetts Court judgments are entered based on inaccurate recitations concerning ownership of the mortgage, and homes are resold without a proper chain of title.

6. Plaintiffs in this matter seek relief for the Defendants' wrongful foreclosure practices. They seek declaratory and injunctive relief concerning the validity of foreclosures conducted by entities who do not hold a power of sale at the time of the sale, injunction of eviction actions pending procedures to verify the validity of the underlying sales, injunction of upcoming sales where there is no proof of assignment, cancellation of fees and costs for invalid sale processes and damages.

7. Plaintiffs seek such relief on their own behalf and on behalf of a class of similarly situated individuals.

II. JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1332(d) and 1453. In addition, this Court therefore also has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

9. Subject matter jurisdiction and venue are proper in this Court on the grounds of diversity under 28 U.S.C. 1332 inasmuch as the challenged actions are alleged to have been committed in this District, all Defendants regularly conduct business in this District, and all the Named Plaintiffs reside in this District.

III. PARTIES

10. Plaintiff, HPG Corporation ("hereinafter "HPG") is a Massachusetts domestic corporation with a principal place of business located at 60 State Street, Suite 700, Boston, Massachusetts. HPG provides homeowners certain services and provides access to certain services that help to educate homeowners and assist homeowners in alleviating clients financial issues, including but not limited to protecting clients home ownership.

HPG represents dozens of homeowners in Massachusetts and thousands of homeowners throughout the United States.

11. Plaintiff, Mark Giuliano is a natural person who reside at 2 Laura Lee Circle, Saugus, Massachusetts 01906, a single family home.
12. Plaintiff, Ednor Altidor, is a natural person who owns 2403 Lewis O'Gray Drive, Building 24, Saugus, Massachusetts 01906.
13. Plaintiff, Raymonde Legerme is a natural person who resides at 2403 Lewis O'Gray Drive, Building 24, Unit 2403, Sheffield Heights Condominium, Saugus, Massachusetts 01906.
14. Defendant, JP Morgan Chase Bank, N.A., successor in interest from the Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank f/k/a Washington Mutual Bank F.A. ("JP Morgan") is a corporate entity, with a business address of 1111 Polaris Parkway, Columbus, Ohio 43240. JP Morgan through its various agents, purportedly has begun conducting a foreclosure sale of Plaintiff, Mark Giuliano's property referred to above. JP Morgan has conducted or may conduct other foreclosures in Massachusetts.
15. Defendant, American Servicing Company -SC, ("ASC") is a corporate entity with a business address of Des Moines, Iowa. ASC through various agents, purportedly began conducting a foreclosure sale of Plaintiff, Raymonde Legerme's property.
16. Defendant, HSBC Bank, U.S.A., N.A. as Trustee for NAAC Mortgage -Pass-through Certificates Series 2007, allegedly under a power of sale and by entry for the alleged breach of the conditions of the loan documents, is a corporate entity with a business address of One HSBC Center, Buffalo, New York 14203 with a Resident Agent

in the Commonwealth of Massachusetts, being CT Corporation System, 101 Federal Street, Boston, Massachusetts 02110. (Hereinafter "HSBC") HSBC through various agents, is in the process of conducting a foreclosure on Plaintiff, Raymonde Legerme's home. Upon information and belief, HSBC acts as Trustee for similarly securitized mortgage pools that have conducted or may conduct foreclosures in Massachusetts on Massachusetts properties.

IV. LEGAL AND FACTUAL BACKGROUND

17. Recent data shows that the rate of foreclosures has doubled nationwide in the last year, with one in every 171 houses nationwide receiving a foreclosure notice. See L.W. Elphinstone, "U.S. Foreclosure Filings More Than Double" in the Boston Globe (July 25, 2008) available at:

http://www.boston.com/business/articles/2008/07/25/us_foreclosure_filings-more_than_double_in_2q/

18. The Commonwealth is also experiencing a foreclosure crisis. From 2006 to 2007, the Massachusetts foreclosure rate nearly tripled. In 2008, the problem accelerated. Over the course of 2008, there were approximately 22,000 petitions filed in the Massachusetts Court seeking authorization to foreclose.

19. In the past four years, in a rush to foreclose, the Defendants and others have foreclosed many mortgages in Massachusetts without holding the necessary rights as the mortgagee or as an assignee of the original mortgagee at the time of foreclosure.

20. Only a "mortgagee" may foreclose by entry under Massachusetts law. G.L. c. 244, § 1.

21. The statutory power of sale, incorporated by reference in virtually all Massachusetts residential mortgages, including those at issue in this case, provides for foreclosure sales only by “the mortgagee or his executor, administrators, successors or assigns.” G.L. c. 183 § 21.
22. Relevant statutory procedures for exercising the power of sale do not expand the category of entities authorized to exercise the power. A power of sale may be exercised only by “the mortgagee or person having his estate in the land mortgaged, or a person authorized by the power of sale, or the attorney duly authorized by a writing under seal, or the legal guardian or conservator [of any entity or person authorized to exercise a power of sale].” G.L. c. 244 § 14.
23. The form of foreclosure notice contained in G.L. c. 244 § 14 contains language that provides that where the foreclosing entity holds “by assignment, or in any fiduciary capacity” a reference to that instrument must be provided.
24. A recent amendment to the statute also requires that as a prerequisite to foreclosure “the mortgagee” give written notice of, *inter alia*, the right to cure “containing the name and address of the mortgagee or anyone holding thereunder.” Acceleration and enforcement of the mortgage cannot occur until at least ninety (90) days after the date such notice is given. G.L. c. 244, § 35A.
25. Mortgages, and by extension, rights under mortgages may be assigned, but a valid written assignment, consistent with the statute of frauds, is a prerequisite to effective assignment. G.L. c. 259, § 1; Warden v. Adams, 15 Mass. 233 (1818). Absent effective assignment, an entity has no rights as a “mortgagee” to exercise a power of sale or to send notices required by the statute.

26. Strict compliance with the statutory requirements for exercise of the power of sale has long been required under Massachusetts law. See, e.g. McGrevey v. Charlestown Five Cents Savings Bank, 294 Mass. 480, 483-84 (1936); Moore v. Dick, 187 Mass. 207, 211 – 212 (1905). This longstanding public policy is grounded not just in protection of property owners, but also in the proper maintenance of title records and the orderly succession of ownership of land.

27. A foreclosure sale conducted by an entity that does not have legal authority to conduct the sale is void under Massachusetts law. G.L. c. 244, § 14; Roche v. Farnsworth, 106 Mass. 509 (1871); Bottomly v. Kabachnick, 13 Mass. App. Ct. 480, 483-84 (1982); U.S. Bank National Association v. Ibanez, No. 384283, 2009 WL 795201 (Mass. Land Ct. March 26, 2009).

28. Notices that do not comply with Massachusetts law because they are not from the mortgagee or someone acting under the authority of the mortgagee are void. See Roach v. Farnsworth, 106 Mass. 509 (1871); Bottomly v. Kabachnick, 13 Mass. App. Ct. 480, 483-84 (1982).

29. A foreclosing mortgagee owes the mortgagor a duty of good faith and reasonable diligence in the foreclosure process. See Williams v. Resolution GGF OY, 417 Mass. 377, 382-83 (1994).

30. Knowing failure to send legally correct statutorily required notices is inconsistent with the duty of good faith and reasonable diligence. Exercise of a power of sale without proper legal authority is also inconsistent with the duty of good faith and reasonable diligence.

31. Failure to send proper notice of foreclosure deprives homeowners of a fair opportunity to prevent the sale. Absent notice and/or evidence of the assignment, notices frequently are sent by an entity with whom the homeowner has never had any previous communication. In addition, some homeowners have multiple mortgages. In some cases, they cannot tell from the notice which mortgage is being foreclosed.

32. In addition to black letter law on the subject, the Defendants have known or should have known of the problem of routine unauthorized foreclosure for several years. Defendants and/or the Defendants class have all been involved, either directly or through a corporate affiliate, in judicial foreclosure proceedings in New York State in which the existence of a proper assignment to the foreclosing entity was found lacking. See, American Mortgage Co. v. Basevich, No. 147/07, 2007 WL: 1815992 (N.Y. Sup. Ct. June 26, 2007) (GMAC); U.S. Bank Nat. Assn. v. Bernard, No. 29003/07, 2008 WL 383814 (N.Y. Sup. Ct. Feb. 14, 2008) .

33. In addition, Joel B. Rosenthal, a United States bankruptcy judge in the District of Massachusetts recently wrote that rising foreclosures were resulting in a greater number of lenders that, "in their rush to foreclose, haphazardly fail to comply with even the most basic legal requirements of the bankruptcy system." In re: Maisel, 378 B.R. 19, 20-21 (Bankr. D. Mass. 2007). Among other things, he has pointed out that lenders and servicers are seeking to foreclose and otherwise to pursue homeowners in foreclosure without the requisite legal authority to do so. In re Schwartz, 366 B.R. 265 (Bankr. D. Mass. 2007).

34. Further, numerous state and federal courts have enforced the bedrock rule that foreclosures cannot be completed without a valid assignment of the underlying mortgage

including, without limitation, courts in Connecticut, Ohio, Florida, Illinois, Minnesota and Michigan. See *In re Foreclosure Cases*, 2007 WL 3232430 (N.D. Ohio October 321, 2007); *Bayview Loan Servicing, L.L.C. v. Nelson*, 382 Ill. App. 3d 1184 (Ill. Ct. App. 2008); *Davenport v. HSBC Bank*, 275 Mich. App. 344 (Mich. Ct. App. 2007); *Fleet National Bank v. Nazareth*, 818, A. 2d 69 (Conn. Ct. App. 2003); *Jeff-Ray Corporation v. Jacobson*, 566 So. 2d 885 (Fla. 4th D. Ct. 1990); relying on *Marianna & B.R. Co. v. Maund*, 62 Fla. 538 (1911); *Moore v. Carlson*, 128 N.W. 578 (Minn. 1910). On information and belief, no states allow foreclosures by entities that do not have a valid written assignment consistent with the statute of frauds. See, *Landmark National Bank v. Kesler*, 2009 Lexis 834, and *U.S. Bank N.A. v. Ibanez*, (Mass. Land Court 2009 WL 7551)

V. ADDITIONAL ALLEGATIONS

A. ADDITIONAL FACTUAL ALLEGATIONS AS TO BUSINESS PRACTICES

35. The factual circumstances described above affecting the Plaintiffs and their properties are not isolated occurrences.
36. Failure to obtain valid written assignment prior to commencing the legal process of noticing and conducting foreclosures has become common and routine.
37. Representatives are commonly and routinely made to the Massachusetts Courts that a foreclosing Plaintiff is the "assignee" of the mortgage even when no valid assignment of the mortgage exists.
38. Representations are commonly and routinely included in notices required by statute that the party giving notice is the "assignee" of the mortgage even when no valid assignment of the mortgage exists.

39. Parties that do not hold the statutory power of sale commonly and routinely conduct foreclosure sales.

40. As such foreclosure sales, it is generally true that properties sell for less than their full market value.

41. Defendants and members of the Defendants' class routinely bill for foreclosure processes that are invalid under the law. These charges are then placed on borrowers' accounts.

42. The conduct identified in this Complaint is willful and knowing.

43. The problems identified in this case are more than simple technical issues. As more mortgages are securitized, sold into pools and transferred to various entities across the country, it is entirely possible, if not likely, that more than one entity asserts rights under the mortgage. The historical legal protection to prevent these conflicts is a writing that complies with the statute of frauds.

44. In addition to protecting homeowners and others with an interest in the property being foreclosed, compliance with the technical requirements of the law protects future owners in the echoing of title. Ultimately, compliance with the law is not onerous to the Defendants. Any burdens are far outweighed by the benefits of a clearly established written record of transfers that may affect the validity of Massachusetts' titles.

VI. CLASS ACTION ALLEGATIONS

45. Plaintiffs bring this action on behalf of themselves and a Plaintiff Class of all other persons similarly situated ("Plaintiff Class"), against the Named Foreclosing Defendants and a Defendant class of all other Defendants similarly situated other Named Foreclosing Defendants pursuant to Fed. R. Civ. P. 23.

A. THE PLAINTIFF CLASS

46. The Plaintiff Class includes and is represented by the Plaintiffs and consists of all Massachusetts residents in the following two subclasses:

(SUBCLASS 1: FORECLOSED BORROWER SUBCLASS)

Individuals whose primary residence was foreclosed by power of sale in the past four years by a Member of the Defendant Class that did not have actual written assignment of the mortgage being foreclosed at the time that Notice of Sale was sent pursuant to G.L. c. 244, § 14.

(SUBCLASS 2: IMPROPER NOTICE SUBCLASS)

Individuals who have or had a foreclosure sale scheduled by a Member of the Defendant Class that did not have actual written assignment of the mortgage being foreclosed at the time that notice was executed pursuant to G.L. c. 244 § 14, and/or at the time that notice of the right to cure was sent, if required, pursuant to G.L. c. 244 § 35A.

47. There are questions of law and fact common to all members of the Plaintiff Class, which questions predominate over any question affecting only individual Plaintiff Class members. The principal common issues are:

- a. Whether Defendants or a member of the Defendant Class acted without authority pursuant to a power of sale during the foreclosure process;
- b. For the Foreclosed Borrower Subclass: Whether the foreclosure sales conducted are void or voidable;
- c. For the Improper Notice Subclass: Whether pending foreclosure sales may be conducted and whether foreclosure sales that occurred without proper notice are void or voidable; and

- d. Whether Plaintiff Class members are entitled to declaratory judgment, injunctive relief or damages.

48. The only individual questions concern the identification of members of the Plaintiff Class. Identification can be made by a review of records in possession of the Defendant, members of the Defendant Class (defined below) and/or from public records.

49. Mailed notice can be provided to the Plaintiff Class by various means of communications, as identified in public records, the records of the Defendant, the records of members of the Defendant Class (defined below) and/or in other sources. Publication notice can be provided to supplement mailed notice.

50. Plaintiff claims are typical of the claims of Plaintiff Class members. All are based on the same legal and remedial theories.

51. Plaintiffs will fairly and adequately protect the interest of all Plaintiff Class members in the prosecution of this action and in the administration of all matters relating to claims stated herein. They are similarly situated with, and have suffered similar injuries as, the members of the class they seek to represent.

52. Plaintiffs have retained a team of attorneys experienced in handling defenses to foreclosure as well as complex litigation and/or class action suits involving unfair business practices and consumer law. Neither the Named Plaintiffs nor their counsel have any interest that might cause them not to vigorously pursue this action.

B. THE DEFENDANT CLASS

53. The Defendant Class includes and is represented by the Named Foreclosing Defendants and consists of all entities that within the last four years, have foreclosed, or are in the process of foreclosing, a mortgage in Massachusetts or who have sent notices

required by G.L. c. 244, § 14 or 35A, and who are not mortgages or entities authorized to foreclose by the statutory power of sale because such entities have not first obtained an actual written assignment of the mortgage ("Defendant Class").

54. There are questions of law and fact common to all members of the Defendant Class, which questions predominate over any question affecting only individual class members. The principal common issues are:

- a. Whether members of the Defendant Class acted without authority pursuant to a power of sale in the process of foreclosing a mortgage in Massachusetts;
- b. Whether the foreclosure sales conducted are void or voidable; and
- c. Whether pending future foreclosure sales may be conducted.

55. The only individual questions concern the identification of members of the Defendant Class. Identification can be made by review of records in the possession of the Defendant and/or from public records.

56. Notice can be provided to the Defendant Class by various means of communications, as identified in public foreclosure records, the records of the Defendant and/or in other sources.

57. The Named Foreclosing Defendants are typical of Defendant Class members. All of their potential defenses are based on the same legal and equitable theories.

58. The Named Foreclosing Defendants can fairly and adequately protect the interest of all Defendant Class members in the defense of this action and in the administration of all matters relating to claims stated herein. They are similarly situated with, and have

similar defenses to the members of the Defendant Class. They can be expected to retain counsel to vigorously defend this action.

C. OTHER CLASS ACTION ISSUES

59. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, in that:

- a. the losses suffered by the Plaintiff Class members are such that prosecution of individual actions is impractical or economically unfeasible;
- b. the form of proof required is such that prosecution of individual actions is impractical or economically infeasible;
- c. in the absence of the class action device, Plaintiffs and Plaintiff Class Members would be left without a remedy for the wrongful acts alleged, and the Defendants would be unjustly enriched;
- d. the prosecution of separate lawsuits by individual members of the Plaintiff Class would create the risk of inconsistent adjudications with respect to individual class members, which would establish incompatible standards of conduct for the named Defendants and the Defendant Class, making concentration of the litigation concerning this matter in this Court desirable;
- e. the claims of the representative Plaintiffs are typical of the claims of the Plaintiff Class; and
- f. no unusual difficulties are likely to be encountered in the management of this action as a class action.

60. Both the Plaintiff Class and the Defendant Class are so numerous as to make it impracticable to join all members in this action. Based upon the investigation of counsel, the number of members of the Plaintiff Class is estimated to be in excess of 1000 persons. The number of members of the Defendant Class is estimated to be in excess of 100 entities.

**COUNT 1: BY THE FORECLOSED BORROWER SUBCLASS AGAINST THE
DEFENDANT CLASS
(Wrongful Foreclosure – Violation of Statute: G.L. c. 244 § 14.
G.L. c. 183, § 21 – Sale Void Pursuant to Statute and Common Law)**

61. Plaintiffs repeat and realleges all paragraphs above as if set forth fully herein.

62. The Named Foreclosing Defendants are representatives of the Defendant Class for the purposes of this claim.

63. Throughout the four years prior to the commencement of this action, the Named Foreclosing Defendants and the Defendant Class routinely exercised the statutory power of sale contained in G.L. c. 183, § 21, under procedures required by G.L. c. 244 § 14.

64. Under the statute of frauds, G.L. c. 259 § 1, in order to act as an assignee, the Named Foreclosing Defendants and the Defendant Class are required to possess such assignment in writing.

65. The Named Foreclosing Defendants and the Defendant Class, acting by and through their agents and others, routinely exercised the power of sale, without the requisite legal authority, pursuant to a valid written assignment that meets the statute of frauds.

66. The resulting foreclosure sales were wrongful, without legal effect and are void.

67. The Named Foreclosing Defendants and the Defendant Class, acting by and through their Law firms and others, routinely sent or published statutorily mandated

notices pursuant to G.L. c. 244 §§ 14 and 35 A asserting authority to foreclose by assignments that did not exist.

68. Said notices do not meet the statutory requirements and are void and without legal effect. Foreclosures are conducted based on improper mailed or published legal notices are wrongful, void and without legal affect.

69. The Named Foreclosing Defendants and the Defendant Class, acting by and through their Law firms and others, routinely represented to the Massachusetts Courts authority to exercise powers of sale based on assignments that did not exist at the time of the representation. The misrepresentations result in void or voidable judgments of the Massachusetts Courts.

70. Absent valid written assignment prior to notice required by G.L. c. 244, § 35A and/or G.L. c. 244, § 14, foreclosure sale are wrongful and improper under Massachusetts law.

71. The foreclosure sales conducted by such entities are also void or voidable as against public policy.

72. The Foreclosed Borrower Subclass suffered damages as a result of the conduct of the Named Foreclosure Defendants and all others similarly situated.

73. The Foreclosed Borrower Subclass is entitled to a dclclaratory judgment determining that the foreclosure sales of their properties is void and setting aside those sales.

**COUNT II. BY THE IMPROPER NOTICE SUBCLASS AGAINST THE
DEFENDANT CLASS (Violation of Statute: G.L. c. 244 § 14, Notice Void Under
Statute and Common Law)**

74. Plaintiffs repeat and rcalleges all paragraphs above as if fully set forth herein.

75. The Named Foreclosing Defendants are representatives of the Defendant Class for purposes of this claim.

76. Throughout the four years prior to the commencement of this action, the Named Foreclosing Defendants and the Defendant Class routinely sent or published statutorily required notices necessary to exercise the power of sale contained in G.L. c. 183, § 21, under procedures mandated by G.L. c. 244 § 14.

77. Under the statute of frauds, G.L. c. 259 § 1, in order to act as an assignee, the Named Foreclosing Defendants and the Defendant Class are required to possess such assignment in writing.

78. The Named Foreclosing Defendants and the Defendant Class, acting by and through their Law firms and others, routinely send or publish statutorily mandated notices pursuant to G.L. c. 244 §§ 14 and 35A asserting authority to foreclose by assignments that did not then exist.

79. Said notices do not meet the statutory requirements and are void and without legal effect. Foreclosure sales are routinely scheduled without proper mailed and published legal notices. If conducted, such sales would be void, improper and without legal effect.

80. The Named Foreclosing Defendants and the Defendant Class, acting by and through their Law firms and others, routinely represented to the Massachusetts Courts authority to exercise powers of sale based on assignments that did not exist at the time of the representation. The misrepresentations result in void or voidable judgments of the Massachusetts Courts.

81. The Improper Notice Subclass is entitled to a declaratory judgment that the notices of sale they have received were without legal effect and cannot meet statutory requirements for a valid foreclosure sale.

82. The Improper Notice Subclass is entitled to an injunction preventing foreclosure sale of their properties until such time as proper notice is made pursuant to the statute.

83. The Improper Notice Subclass suffered damages as a result of the conduct of the Named Foreclosure Defendants and all others similarly situated.

**COUNT III: BY THE PLAINTIFF CLASS (BOTH SUBCLASSES) AGAINST
THE DEFENDANT CLASS
(Breach of duty of good faith and reasonable diligence)**

84. Plaintiffs repeat and realleges all paragraphs above as if set forth fully herein.

85. All of the individual Plaintiffs named in this action are representatives of the Plaintiff Class for the purposes of this claim.

86. The Named Foreclosing Defendants are representatives of the Defendant Class for the purposes of this claim.

87. As the entities responsible for exercising the statutory power of sale, the Named Foreclosing Defendants and the Defendant Class owed the Plaintiffs and the Members of the Plaintiff Class a duty of good faith and reasonable diligence in the conduct of the foreclosure proceedings.

88. By conducting foreclosure proceedings without assignment of the relevant mortgage, the Named Foreclosure Defendants violated this duty.

89. The Defendants were aware of, participated, aided and abetted in the wrongful conduct described herein. The Defendants received substantial fees and profits as a result of said wrongful conduct. These fees and charges, for foreclosures that did not meet

statutory requirements, were ultimately placed, with the Defendants' knowledge and acquiescence, as charges on the accounts of members of the Plaintiff Class.

90. Members of the Plaintiff Class were damaged by these breaches of duty including without limitation, by loss of equity, by lost opportunities to work out their mortgage delinquencies, by early loss of shelter, and by imposition of inappropriate foreclosure fees and costs on their accounts.

91. The Foreclosed Borrower Subclass is entitled to a declaratory judgment determining that foreclosure sales of their properties is void and setting aside those sales.

92. The Foreclosed Borrower Subclass is entitled to an injunction requiring that the Named Foreclosure Defendants and all others similarly situated take steps necessary to restore the legal title to the property to the same condition as if no foreclosure sale had ever occurred.

93. The Improper Notice Subclass is entitled to an injunction preventing foreclosure sale of their properties until such time as proper notice is made pursuant to the statute.

94. The Plaintiff Class is entitled to cancellation of costs and fees assessed to them for wrongful foreclosures, together with additional damages.

COUNT IV: BY PLAINTIFFS AGAINST DEFENDANTS

(Claim for Injunctive Relief: Wrongful Foreclosure—Breach of Statute and breach of Duty)

95. Plaintiffs repeat and realleges all paragraphs above as if fully set forth herein.

96. The Defendants owed a duty of good faith and/or reasonable diligence in the commencement and conduct of foreclosure proceedings.

97. The foreclosure proceedings started by Defendants was executed in violation of their duty of good faith.

98. By commencing, noticing, conducting and executing a foreclosure by power of sale at a time when Defendants did not actually hold a written assignment of the mortgage, and by misrepresenting Defendant's status to the Massachusetts Courts, the Defendants did not exercise good faith and/or reasonable diligence, and violated G.L. c. 183, § 21 and G.L. c. 244, § 14.

99. Plaintiffs are entitled to an injunction to stay any pending eviction, now scheduled or to be scheduled, pending a determination of the outcome of these proceedings including, without limitation, a determination of the validity of the foreclosure sale of his/her/their property.

100. Plaintiffs are also entitled to relief as members of the Plaintiff Class and Foreclosed Borrower Subclass on the claims as aforesaid.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this honorable Court:

- a. assume jurisdiction over this matter;
- b. certify this case as a Plaintiff class action and appoint Named Plaintiffs to be Plaintiff Class and Subclass representatives and their counsel to be class counsel;
- c. certify this case as a Defendant class action and appoint Named Foreclosing Defendants as class representatives for the defendant Class and their counsel to be class counsel;

- d. as to the Foreclosed Borrower Subclass, issue declaratory and/or injunctive relief setting aside the foreclosure sales of their homes as void or voidable and in violation of statute and public policy;
- e. as to the Improper Notice Subclass, issue declaratory and/or injunctive relief preventing foreclosure sales of Class Members' property pending proper notices of sale and/or setting aside completed foreclosure sales of their homes as void and in violation of statute and public policy;
- f. as to the Plaintiff Class issue an injunction and/or declaratory relief to prevent further improper foreclosure related proceedings;
- g. as to the Plaintiff Class issue an injunction preventing assessment or collection of attorneys' fees and charges for improper foreclosure proceedings, together with an order of restitution or disgorgement with respect to such fees and charges already paid;
- h. award damages, attorney's fees and costs to the Plaintiffs and the Plaintiff Class on each claim set forth above;
- i. as to all Plaintiffs and Plaintiff's Class, issue a temporary and/or permanent injunction of the eviction proceedings pending against her/him/them;
- j. as to all Plaintiffs and Plaintiffs' Class, issue a temporary and/or permanent injunction of the eviction proceedings pending against them;
- k. as to all Plaintiffs and Plaintiffs' Class, issue a temporary and/or permanent injunction of the foreclosure proceeding and foreclosure sale now pending;
- l. award such other relief as the Court deems necessary in equity and the interests of justice.

Dated: December 24, 2009

Respectfully Submitted,
HPG Corporation,
Mark Giuliano,
Ednor Altidor and
Raymonde Legerme
on behalf of all others similarly situated,
by their attorneys,

/s/ Michael J. Reed

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