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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY TRENTON DIVISION

Charles Edward Lincoln, III, and Michael N. Mastoris, Plaintiffs,	CIVIL ACTION NUMBER: _____
v.	
WELLS FARGO BANK, N.A., KIRN POWERS, LLC, Sarah E. Powers, Esq. REED SMITH, LLC, Diane A. Bettino, Esq., AMS Servicing, LLC, DB50 2011-1 TRUST, PHELAN, HALLINAN, & SCHMEIG, P.C. GRAND BANK, N.A., ARCHER & GREINER, P.C., John & Jane Does 1-10, Defendants.	ORIGINAL COMPLAINT for DECLARATORY JUDGMENT and INJUNCTION

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

(1) Come now the Plaintiffs Charles Edward Lincoln, III, and Michael N. Mastoris, with this Original Complaint for Declaratory Judgment and Injunctive Relief pursuant to the Article I, §10(1) First, Fifth, Ninth, and Fourteenth Amendments to the Constitution, 28 U.S.C. §§1331, 1343, 42 U.S.C. §§1983 & 1988(a), and Rule 11(b)(2) of the Federal Rules of Civil Procedure.

Federal Jurisdiction and Venue

(2) Each of the statutes cited above provide this Court with proper subject matter jurisdiction, venue being proper in the United States District Court for the District of New Jersey because all or most of the transactions or occurrences forming the basis for this complaint, including the bank, bench, and bar, judicial conspiracy alleged in the formulation and implementation of an unconstitutional application and construction of New Jersey Statutory and Common Law, took place in New Jersey, and all of the Defendants do business in New Jersey.

(3) The Central Questions presented in this case are: (a) under the Constitution and laws of the United States, can the judiciary of any state so construe and apply its laws as to create a system which abrogates due process of law and operates to impair the obligations and rights of contract? (b) have the Courts of New Jersey done precisely this in the field of residential mortgage foreclosure?

Background:
Shams, Simulated Process, and Predetermined Outcomes as Court Approved & Judicially Implemented Statewide Systemic Process in New Jersey Residential Home Foreclosure

Michael N. Mastoris' Experience

(4) In three distinct legal proceedings in the State of New Jersey, regarding three separate properties, two proceedings instituted by Wells Fargo Bank, N.A., one residential property located at 221 Squan Beach Drive in Mantoloking in Ocean

County, another residential property located at 24 Hluchy Road in Upper Freehold Township in Monmouth County, and a third in a converted residential (now business) property located in Hightstown in Mercer County, default judgments have been entered against Michael N. Mastoris by the Defendant Banks in this case and law firms acting on their behalf, including but not limited to the individual and Attorney's Firm Defendants in this case.

(5) Review of the published cases reveals that most recent foreclosure cases taken on appeal in New Jersey were originally decided as final judgments by default. Michael N. Mastoris is a businessman and life-long resident of New Jersey. It defies credibility to allege that Michael N. Mastoris, as a doctor of chiropractic who has served as an expert witness in many cases, would be so ignorant or casual in handling his business affairs as to ignore being served with judicial process.

(6) That most residential foreclosure cases in New Jersey would be decided by default in the first instance against homeowners who later are sufficiently aware and sophisticated to bring "Motions to Vacate" pursuant to New Jersey Rule 4:50-1 is likewise not credible.

(7) In short, it appears that, at the very least, there is a systemic problem in the pattern of service of process of New Jersey foreclosure suits, and there must be a rational reason other than that, "all homeowners in New Jersey are lazy and inattentive to minor life-style threatening details such as being served with foreclosure suits." However, this is the sarcastic and cynical story that the Banks and Bank attorneys are attempting to sell, and may have successfully sold, in their concerted efforts to maximize foreclosures resulting from extensions of credit.

The New Jersey Foreclosure Process

(8) Foreclosure Litigation in New Jersey, under the New Jersey Fair Foreclosure Act (FFA) and related statutes, begins with a Notice of Intent to Foreclose which

precedes the filing of a formal judicial complaint for foreclosure. Curiously, the Statutory Notice of Intent to Foreclose requires higher standards of disclosure and provision of information than State Law, at least as construed since February 27, 2012, requires in a formal complaint for foreclosure. In essence, New Jersey Law appears to make filing of the Notice of Intent to Foreclose the sole mandatory, "jurisdictional" pre-requisite to foreclose on residential property in this state.

(9) As regards the actual judicially-filed foreclosure complaint itself, in New Jersey, this document, framing issues apparently need not reiterate or offer to prove most of the matters asserted in the Notice of Intent to Foreclose at all. Despite its prominence in the process, there appear to be no serious consequences to making false statements in or omitting material from the Notice of Intent to Foreclose, especially after February 27, 2012. Because of the statutory focus on the Notice of Intent to Foreclose, perhaps, New Jersey law and procedure, at least as implemented in the Courts, is quite peculiarly summary and brief (one might even quote Thomas Hobbes' ***Leviathan*** to characterize the core New Jersey Foreclosure proceedings as "nasty, brutish, and short").

(10) The three primary peculiarities of those New Jersey Foreclosure complaints which have been appealed (and thus form part of the jurisprudential evidence of how the New Jersey Statutory and Common law is actually applied):

(11) **First,** most (Plaintiffs have not reviewed enough cases to say "all") New Jersey foreclosure complaints appear to be decided by default, often over and against objections of lack of service or inexplicable failure to respond to complaints.

(12) **Second,** as a result, final judgments are entered and acquire that "special aura" of deference everywhere accorded to final judgments with very few hearings and no presentation of any real evidence, beyond the peculiar "certifications" required by New Jersey law (a "certification" in New Jersey practice seems to have

slightly higher "dignity" than the "certificate" afforded to all pleadings signed by attorneys or parties under, for example, Rule 11(b) of the Federal Rules of Civil Procedure, but such certifications are "non-evidentiary" under New Jersey law and hence constitute less than sworn affidavits or declarations under penalty of perjury).

(13) **Third,** as a further result, most litigation of New Jersey Foreclosure comes "post-judgment" and are thus governed largely by New Jersey Rule 4:50-1, which accords great deference to final judgments and, insofar as Plaintiffs have discovered, effectively never (as noted above Plaintiffs cannot and do not claim to have reviewed 100% of all cases at this point in time) reverse a foreclosure judgment, and since February 27, 2012 almost certainly never do.

The Sham of Simulated Process:

(14) Plaintiffs allege that attorneys for judicial "foreclosure mills" such as Defendants Kirn Powers, Reed Smith, Phelan, Hallinan & Schmieg, and Archer & Greiner, have induced a judicial atmosphere and culture of derision and ridicule for the defense "failure of service".

(15) This atmosphere and culture of derision and ridicule has in turn led (in the Chancery Divisions of the Superior Courts of the State of New Jersey) to an habitual procedure of false, perjured or simulated service in which (after the statutory formality of the Notice of Intent to Foreclose) complaints are never actually served on most if not all Residential Foreclosure Defendants in the state.

(16) The New Jersey statutory scheme of Notice of Intent to Foreclose followed a foreclosure mill agreement (implemented in the same Chancery Divisions of the New Jersey Superior Courts) to allow unserved complaints routinely to be adjudicated operates precisely to insulate unworthy, fraudulent and tortious (if not criminal) financial sector Plaintiffs (especially those "too big to fail") from the rigorous examination to which New Jersey Homeowner Defendants would

otherwise be entitled to subject them under the face and letter of New Jersey Statutory (and traditional, Anglo-American common) Law. (And indeed, the examination of a Plaintiff's right to foreclose on private residential property was rigorous, prior to ***Guillaume***: the New Jersey foreclosure statutes ***were*** among the most rigidly protective of homeowners' rights in the entire United States.)

(17) Plaintiffs allege that such insulation from litigation is the actual purpose of the New Jersey Courts' Chancery "foreclosure mill" subversion of the statutory and (traditional common law) foreclosure suit, rather than the Legislature's true statutory purpose.

Under the Fifth and Fourteenth Amendments Can A State Law Be Applied so as to Allow a Certain Class of Plaintiffs (Non-Natural Persons, Banks & Other Financial Credit-Extening Corporations) to Sue Without Standing?

(18) The New Jersey Supreme Court implicitly admitted or at the very least strongly suggested in ***US Bank National Association v. Guillaume***, 38 A.3d 570, 209 N.J. 449 (February 27, 2012), and the New Jersey Superior Court Appellate Division has emphatically confirmed and expounded further in ***Deutsche Bank National Trust Co. v. Russo***, 57 A.3d 18, 429 N.J.Super. 91 (November 14, 2012)(and literally a dozen other cases, both reported and unpublished), that the major banks lack standing to foreclose under the letter of New Jersey Statutory and (traditional and even recent) Common Law.

(19) These two published decisions and their progeny all involved Rule 4:50-1 challenges ("Motions to Vacate") final judgments obtained by default brought by foreclosing financial institutions (servicers and foreclosure law firms); the strong suggestion is that the lawyers for the Banks, the Banks, and the New Jersey Justices and Judges who have ruled that "standing is not jurisdiction in New Jersey" all

know that this ruling is essential to protect the interests of the banks and guarantee the continued mass processing of residential foreclosures.

(20) Accordingly, in ***Russo,*** following ***Guillaume***, the New Jersey Supreme Court and New Jersey Superior Court Appellate Division have declared and affirmed, that the lack of standing to sue is ***"non-jurisdictional".*** This effectively means that even a homeowner's proof that the Banks and their attorneys and servicers lack valid evidence in support of Bank claims, and thus that the foreclosure cases they bring, have no merit to undermine the finality of final orders of foreclosure under the highly deferential standards applied to "Motions to Vacate" filed pursuant to New Jersey Rule 4:50-1.

(21) Thus, a facially valid and constitutional process has been judicially interpreted and reshaped into one complete lacking in due process in the state-approved and implemented foreclosure system. Since most homeowners, being denied a right to actual notice of judicial proceedings by and through waiver of formal service of process, will first see a New Jersey Superior Court Judge in Chancery on a "Motion for Rehearing," Rule 4:50-1 obviously offers the sole accessible frame for litigation opportunity, and this is the time wherein most Garden State foreclosure litigation action takes place.

(22) But the "[actual] Notice and [reasonable] Opportunity," afforded by Rule 4:50-1 to New Jersey Homeowners on a "Motion to Vacate" after a final judgment has been entered is no more than perfunctory and nugatory, and the process amounts to naught but a simulated sham.

(23) For New Jersey Courts to construe a valid and property-protecting statutory scheme so as to allow Banks to file complaints which result in the taking of a natural person's property interests, without firm requirements of either service or standing [aka "tangible right or entitlement to bring suit"] note only violates the

Fifth and Fourteenth Amendments but also impairs the rights of contract guaranteed by Article I, Section 10(1).

(24) The New Jersey Statutes as construed by ***Guillaume*** and ***Russo*** effectively render the New Jersey substantive law concerning obligations of contract either meaningless or incomprehensible of both.

(25) Implicit in the due process clauses of both the Fifth and Fourteenth Amendments is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce.

(26) Plaintiffs allege that the Foreclosure System in the State of New Jersey, as administered, construed, and implemented by the judges of the New Jersey Superior Courts (as well as the New Jersey Supreme Court), is, at least since the rendition of the ***Guillaume*** opinion supplemented by ***Russo*** (entirely independent of, in fact in violation of, state statutory and common law) effectively fixed and predetermined in favor of the Banks, their servicers, and attorneys.

(27) The New Jersey residential foreclosure system, as currently implemented by the Superior Courts, is fixed and predetermined against homeowners and all natural persons litigating against corporate financial interests, including but not limited to the Banks, attorneys, and servicers listed as Defendants in this case). The residential foreclosure system as implemented in New Jersey operates as a uniform, unidirectional, "fixed" and essentially administrative system of expropriation and confiscation of private property.

(28) This judicially designed system consists of an entirely unique and state-specific series of procedural dodges and feints (the worst of which [obliterating the jurisdictional requirement of standing to bring suit] has been expressly approved by the State Supreme Court). These dodges and feints effectively undermine or

obliterate facial due process of law, and effectively render the law as applied and implemented nearly incomprehensible.

(29) Thus, as it stands after ***Guillaume*** and ***Russo*** in 2013, the process of residential foreclosure litigation in New Jersey stands as and exemplifies one of those rare situations in the American Judicial System where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court.

(30) Such a system, devoid of actual notice or reasonable (fair and equal, equitable ***actual*** notice coupled with ***reasonable*** opportunity to be heard) exists without the minimum level of due process guaranteed by the Fifth and Fourteenth Amendments. It is one of the continuing traditions of our legal system that these basic concepts of "actual notice coupled with reasonable opportunity to be heard prior to judgment" define the **due process** standard of "traditional notions of **fair play** and substantial justice."

(31) Plaintiffs seek a judicial declaration that the sound and facially constitutional mortgage foreclosure system enacted by the New Jersey Legislature has been so construed, interpreted, applied, and implemented by the Courts of the State of New Jersey that the system now operates in an unconstitutional manner, effecting nearly automatic takings of property without due process of law in violation of the 5th and 14th Amendments to the United States Constitution and impairing the obligations (and rights) of contract in a manner entirely contrary to Article I, Section 10, Clause 1.

(32) The entire judicial revision of the New Jersey Foreclosure System has operated to relieve the Banks, in foreclosure cases, of the requirements of common law and equity, even as these have been quite precisely implemented by the New

Jersey Legislature in a statutory scheme which, on its face, is protective of private property and homeowners' rights.

(33) Plaintiffs submit to this Court and ask as a final matter to find and hold, declare and adjudge, that standing (which, as the term "standing" is used by the New Jersey Supreme Court in ***Guillaume***, and the N.J. Superior Court Appellate Division in ***Russo,*** means the existence and formal pleading and allegation of provable facts showing a Plaintiff's lawful or equitable entitlement to redress) exists as an indispensible component element of due process of law.

(34) In ***Guillaume***, the Supreme Court of New Jersey has not merely redefined but obliterated this most basic and fundamental requirements of due process of law, namely the requirement of standing that no Plaintiff should file suit or be awarded relief who cannot truthfully allege and ultimately prove a fundamental right to recovery of some rights, the infringement or loss of which belong or should belong to that Plaintiff.

(35) The New Jersey Supreme Court has said that states have the right so to derogate from federal constitutional requirements of due process of law as to allow suits where the Plaintiff neither pleads nor offers to prove "standing" (i.e. any particular justiciable rights).

(36) Plaintiffs submit and ask this Court to rule that standing is in fact a key component of due process of law, guaranteed by the express provisions of the constitution enumerated above, and that accordingly, New Jersey's derogation from the law of standing must be afforded "strict scrutiny" and will only be allowed if shown to be narrowly designed to serve a compelling governmental interest, within the meaning and focus of Footnote 4 of ***U.S. v. Carolene Products, Inc.***, 304 U.S. 144, 153, n. 4, 58 S.Ct. 778, 82 L.Ed. 1234 (1938).

NON-RACE BASED CLASSES OF INEQUALITY & DISCRIMINATION

(37) The Equal Protection Clause directs that all persons in similar circumstances shall be treated alike. Mortgagors and mortgagees stand on opposite sides of what appear to be bilateral contracts, but they are both contracting parties to commercial transactions relating to real estate.

(38) Plaintiffs contend that no legitimate governmental purpose can be offered for treating non-natural persons (such as banks and financial service corporations) different from natural persons with regard to standing to file suit, and that ***Guillaume*** carries with it the clear implication by context and subtext that only mortgagee banks can file suit without standing.

(39) Discrimination (by denial of equal access to the Courts and equal opportunity and right to make and enforce the rights of contract) against natural mortgagors in favor of non-natural mortgagees to effectuate mass expropriation of property is contrary to both equal protection and due process of law.

(40) Because ***Guillaume*** has become entrenched in New Jersey jurisprudence and is cited by every Plaintiff and every Superior court in every Motion to Vacate under Rule 4:50-1, it is extremely unlikely (impossible to imagine, in fact) that the New Jersey Superior Courts would be willing to reverse their Supreme Court's holding.

(41) Plaintiffs maintain that this situation constitutes precisely the kind of "exceptional circumstances" which justify Federal Intervention[1] (even though such intervention could effect many hundreds if not thousands of New Jersey State

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[1] The U.S. Supreme Court originally outlined the "exceptional circumstances" doctrine in ***Dombrowski v. Pfister*** 380 U.S. 479; 85 S.Ct. 1116; 14 L.Ed.2d (1965), thought this was affirmed both in ***Younger v. Harris***, 401 U.S. 37; 91 S. Ct. 746; 27 L.Ed.2d 669 (1971) itself

Court cases, both decided and ongoing, under the due process and incompetency of State Courts to adequately address certain issues

(42) Federal declaratory review and injunction are appropriate here until 42 U.S.C. §§1983 & 1988(a).

(43) Otherwise, the New Jersey Supreme Court's decision in ***Guillaume*** as clarified, extended, and affirmed by ***Russo,*** may have thrown the New Jersey Superior Courts open to infinite chaos: people who have never met or had any kind of dealings or contractual arrangements with each other will henceforth be able to sue each other for every kind of tort or breach of contract. Slippery slope arguments from the abolition of standing as a requirement to file suit tax the outer limits of the imagination: without any requirement of standing couples could start divorce proceedings without ever having married, possibly without ever having met, possibly without ever having heard of each other.

(44) Plaintiffs submit that pleading and proving fact standing, meaning actual legal entitlement jurisdictional, cannot be cast aside as a "state optional" adjunct to due process of law. The United States Supreme Court has held repeatedly that the Constitution is a floor for state standards of civil and constitutional rights.

(45) Actual notice by service of process is plainly required, as a matter of the most elementary definition of due process.

(46) Plaintiffs also submit that mere "certification" of facts rather than sworn testimony tends to lead, in New Jersey, to final judgments entitled to substantial deference upon review, which have no basis in law or fact.

(47) In this case, as in the previously filed Notice of Removal 313-cv-05008 (PGS)(LHG), Plaintiffs Lincoln and Mastoris allege that Defendants Wells Fargo Bank, N.A., Grand Bank, N.A., and the DB50 2011-1 Trust, AMS Servicing, L.L.C., and their respective attorneys, appear to exercise undue and improper

influence even on such procedural matters as the scheduling or adjournment of hearings in the Chancery Division of the Superior Courts of the State of New Jersey, so that it is no wonder that the banks may well extra-judicially influence determine such issues as who shall be allowed to petition for redress of grievances without requiring any actual litigation of facts or law.

(48) Review of the published and unpublished decisions of other Chancery Courts in New Jersey, the New Jersey Supreme Court, and the New Jersey Superior Court Appellate Division, lead to the inescapable conclusion that the New Jersey Foreclosure Laws and Process, as interpreted and generally applied in and by the Superior Courts of New Jersey are unconstitutional as applied, construed, and implemented, even when appearing to be constitutional "on their face."

(49) Plaintiffs further allege that New Jersey state law directly collides with Federal law in such a way as to create two groups with radically disparate and unequal rights under the law: banks and private homeowners, and that the laws of the State of New Jersey so construed pose such a drastic threat to the rights of discrete and insular minorities as to require Federal Intervention analogous to and directly comparable with Federal Intervention in racial civil rights issues both in the 1860s-70s and the 1950s-70s.

(50) Plaintiffs ask, within the meaning of Rule 11(b)(2) of the Federal Rules of Civil Procedure, as they have in the related Removal Case 313-cv-05008, that this United States District Court approve their good faith contentions, *"warranted by [at least the more recent lines of U.S. Supreme Court precedent construing] existing law [and/] or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law,"* that Civil Rights Removal under 28 U.S.C. §1443, and with it also the statutory guarantees of equality of access to the Courts in the purchase, acquisition,

and maintenance of ownership established, protected, secured and set forth in 42 U.S.C. §§1981-1982 should be construed without regard to race.

(51) Civil Rights Removal under 28 U.S.C. §1443 should be extended to "all situations where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court." ***State of Georgia v. Rachel***, 384 U.S. 780, 86 S.Ct. 1783, 16 L.Ed.2d 925 (1966); ***Strauder v. State of West Virginia***, 100 U.S. 303, 25 L.Ed. 664 (1879).

(52) Civil Rights to make and enforce contracts for the acquisition and maintenance of ownership of interests in property, and for equal rights of access to the courts, find protection under 42 U.S.C. §§1981-1982, but only insofar as "all persons within the jurisdiction of the United States" must all have the same rights as "White Citizens":

> (a) Statement of equal rights
> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
> (b) "Make and enforce contracts" defined
> For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
> (c) Protection against impairment
> The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

(53) To the extent that these statutes have been construed to mean that only racial discrimination is forbidden, and that discrimination in favor of non-natural

persons (banks and financial corporations and similar legal entities), Plaintiffs ask this Court to hold that 42 U.S.C. §§1981-1982 have both been construed unconstitutionally.

(54) To the extent that this statute be read and construed to mean that all persons, natural or unnatural, white, black, brown, red, or yellow, male or female, shall be subject to the same laws (and the same application and construction of laws) relating to "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship"---the statute is equally plainly constitutional---but clearly construction and interpretation are everything.

(55) There is no legitimate governmental purpose in creating procedural advantages (such as demoting the doctrine of "standing" from a jurisdictional prerequisite to a nullity) when such a redefinition and demotion will result in fixed outcome litigation discriminating against natural persons as categories or classes of litigants in the Courts.

(56) "Fair play" is a key concept in American judicial procedure, and the Courts are one place where our system requires, not merely as an ideal but as a practical matter, that the "playing field" should be level, and the scales of justice always balanced equally.

(57) Discrimination against natural persons as residential homeowners ("mortgagors") as a class is utterly repugnant and constitutionally intolerable, but such discrimination is fostered if not mandated by the application, construction, and implementation of the New Jersey Foreclosure laws under ***Guillaume***, ***Russo***, and all subsequent cases following and decided thereunder in the past year.

COUNT 1:
DECLARATORY JUDGMENT RE: REQUIREMENT OF STANDING AS INTEGRAL TO DUE PROCESS

(58) Plaintiffs reallege paragraphs (1)-(57) above and incorporate the same by reference as if fully copied and set forth again herein below.

(59) New Jersey state law, as construed by the New Jersey Supreme Court in the New Jersey Supreme Court's decision in ***U.S. Bank, National Association, v. Guillaume***, 38 A.3d 570, 209, N.J. 449 (Supreme Court of New Jersey, February 27, 2012), as clarified, elaborated, and expanded by the Superior Court Appelate Division in ***Deutsche Bank National Trust Co. v. Russo***, 57 A.3d 18, 429 N.J.Super. 91 (November 14, 2012), allows implementation and "operation of a pervasive and explicit state law" that does not require proof of "injury in fact" or "standing" to bring suit, at least in the context of an "equitable action" for foreclosure of mortgage.

(60) Article III standing is an issue often arising on the "cutting edge" of new forms of litigation, such as citizen environmental lawsuits. In such suits, the Supreme Court has defined "the irreducible minimum of standing" to mean that:

> First, the plaintiff must have suffered an injury in fact-an invasion of a legally protected interest which is (a) concrete and particularized, ... and (b) actual or imminent, not conjectural or hypothetical.... Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

(61) Plaintiffs contend that, under the Fourteenth Amendment, due process of law requires that any suit (such as a mortgage foreclosure suit) seeking to deprive any natural person of his or her life, liberty, and property interests in his or her home must, as a matter of elemental due process, be brought by an injured party with what has come to be called "Article III Standing" in the Federal Courts.

(62) The Third Circuit has recently addressed possible differences between state vs. federal standing in ***Good v. City of Philadelphia***, 539 F.3d 311, see esp. 318-322, (USCA 3rd Cir., 2008) without addressing whether the Fifth, Ninth, Fourteenth Amendment imposes a jurisdictional floor, but Plaintiffs herein proposed that with regard to state-implemented or assisted takings of life, liberty or property interests, the Constitution does in fact mandate that state laws can exceed but not fall below the federal minimum guarantees of due process of law.

(63) Plaintiffs submit that the New Jersey Supreme Court in ***Guillaume*** and the New Jersey Superior Court Appellate Division in ***Russo*** have authorized and unconstitutional deprivation of property by allowing suits for the seizure of without requiring proof or even evidence of standing.

(64) In case 313-cv-05008, in which Wells Fargo Bank presents and seeks to enforce a forged promissory note in a suit where notice of suit was never served on the Michael N. Mastoris, shows the kind of unconstitutional results that would obtain and be allowed if suits without standing should be permitted.

(65) Plaintiffs further contend that in such suits as to deprive individuals of their life, liberty, and property interests in their homes (or anything else giving rise to such interests), the strictest standards of actual notice must be applied, and that only indirect or inferential notice is insufficient. New Jersey customary practice in foreclosure litigation appears to be to allow defaults to be taken without service of process, or with fraudulently asserted service of process.

(66) This leaves all "due process" rights of homeowners to post-judgment "Motions to Set Aside Foreclosure" under New Jersey Rule 4:50-1 rights to actual notice and meaningful opportunity to object and respond constitute the fundamental, federally guaranteed, constitutional rights essential to the concept of constitutional (procedural) due process.

(67) Wherefore, Plaintiffs Charles Edward Lincoln III and Michael N. Mastoris ask this Court to declare and adjudge that the entire framework of New Jersey Foreclosure Law and procedure, as construed by the New Jersey Supreme Court in ***US Bank, National Assocation v. Guillaume***, 38 A.3d 570, 209, N.J. 449 (Supreme Court of New Jersey, February 27, 2012) and the derivative holding in ***Deutsche Bank v. Russo***, 57 A.3d 18, 429 N.J.Super. 91 (November 14, 2012) is unconstitutional as applied and must be declared null and void, both retrospectively and prospectively.

(68) Plaintiffs ask this Court to declare and adjudge that no state may excuse the requirements of actual notice and meaningful opportunity to object and respond to matters underlying the present litigation which would effectively deprive natural persons of their life, liberty and property interests in their homes without any proof of loss or ownership of debt.

(69) Plaintiffs pray for their costs of suit, expert, and attorneys' fees as allowed by 42 U.S.C. §§1988(b)-(c).

COUNT II:
PRIVATE ASSIGNMENT OF RIGHTS IS LAWFUL UNDER §1981

(70) Plaintiffs reallege paragraphs (1)-(69) above and incorporate the same as if fully copied and restated herein below.

(71) Charles Edward Lincoln, III, has held Michael N. Mastoris' Power of Attorney since December 2009. In addition, Charles Edward Lincoln, III, received a deed and an assignment of rights and obligations from Michael N. Mastoris and a full deed to his property in December 2009, including property in both Monmouth and Ocean Counties, New Jersey.

(72) Lincoln asks this Court to affirm that his rights to exercise power of attorney and his rights to receive an assignment of property were and still are guaranteed by the United States Supreme Court decision in ***Sprint Communications v. APCC***, 554 U.S. 269, 128 S.Ct. 2531; 171 L.Ed.2d 424 (2008), in that Mastoris' grant of authority to Lincoln exceeded the minimum requirements of that case by combining ALL of the (originally separate) common law methods of transfer of interests at once.

(73) Plaintiffs pray for their costs of suit, expert, and attorneys' fees as allowed by 42 U.S.C. §§1988(b)-(c).

COUNT III:
CONSPIRACY TO DEPRIVE LINCOLN OF RIGHTS SECURED BY 42 U.S.C. §§1981-1982

(74) Plaintiffs reallege paragraphs (1)-(73) above and incorporate the same by reference as if fully copied and restated herein below.

(75) Lincoln submits and contends that Wells Fargo Bank, N.A., Kirn Powers, Sarah Powers, Reed Smith, Diane A. Bettino, and the Monmouth County Clerk[2]

[2] Plaintiffs do not name the Monmouth County Clerk or any other judicial officers as Defendants here on grounds that they might claim or be subject to claims of 11th Amendment or Judicial Immunity, but reserve the right to call these Defendants as witnesses.

have agreed and conspired to deprive both him and Mastoris of their freedom of contract to deal with property in any way they choose.

(76) Lincoln further alleges that Wells Fargo Bank's sole motive in attacking him in this manner is to prevent Lincoln from petitioning the Monmouth County Chancery Court for redress of grievances, namely that Lincoln's rights derived by and through the grants and transfers of interest from Mastoris are threatened by Wells Fargo Bank's fraudulent foreclosure based on a false claim of assignment and derivation of interest from Wachovia.

(77) By accusing Lincoln of the Unauthorized Practice of Law, despite the use of common law and statutory procedures, Wells Fargo Bank and the Monmouth County Clerk are seeking to deprive Plaintiff Charles Edward Lincoln of his most elementary First Amendment Right to Petition regarding his claims of infringement on his property rights.

(78) The August 14, 2013, filings by Diane A. Bettino (Attached Herein as Exhibit A) were the notice and trigger that Lincoln's First Amendment rights were being denied, and hence a proper trigger for the filing of this Notice of Civil Rights Removal pursuant to 28 U.S.C. §§1443 & 1446(b):

> **(b) Requirements; generally.--(1)** The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(79) Plaintiffs ask this Court to declare and adjudge Lincoln's rights and the Defendants' obligations pursuant to the deeds, assignment of rights, and powers of attorney granted him by Mastoris.

(80) Plaintiffs pray for their costs of suit, expert, and attorneys' fees as allowed by 42 U.S.C. §§1988(b)-(c).

COUNT IV:
JUDICIAL CONSTRUCTION and APPLICATION of 28 U.S.C. §1443, 42 U.S.C. §§1981-1982 and related statutes must be MODIFIED TO CONFORM WITH MODERN EQUAL PROTECTION JURISPRUDENCE SINCE *BAKKE*

(81) Plaintiffs reallege paragraphs (1)-(80) and incorporate the same by reference as if fully copied and restated herein below.

(82) As expressly allowed and authorized by Rule 11(b)(2), Plaintiffs Mastoris and Lincoln contend that civil rights removal must be reinterpreted, its judicially crafted role as nothing more than a race-based affirmative action program abolished (because there is no compelling governmental interest involved in the establishment of such a narrow program).

(83) Civil Rights Removal must be reconstrued to allow Federal Court review of any systematic, state law approved and implemented, mass deprivation of fundamental constitutional rights.

28 U.S.C. §1443 states, in full:

28 U.S.C.A. § 1443
§ 1443. Civil rights cases

> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
> **(1)** Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;
> **(2)** For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

CREDIT(S)
(June 25, 1948, c. 646, 62 Stat. 938.)

(84) This statute, on its face, makes no reference to race, color, creed, national origin, sex, or any other categorical limitation.

(85) Congress enacted 28 U.S.C. §1443(1) to protect "any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof" while 28 U.S.C. §1443(2) apparently, facially, permits invocation of the protection of Federal Courts when a defendant is prosecuted or sued, "For any act under color of authority derived from any law providing for equal rights."

(86) The Civil Rights removal statute thus appears to have been formulated as part of the system of "checks and balances" between state and federal power to ensure the protection of all fundamental rights enumerated and protected by implication under the Constitution of the United States.

(87) Civil Rights Removal is almost unique in the Judicial Code of the United States. Unlike almost every other provision permitting removal, an order granting a Motion to Remand to State Court is appealable, *as of right*; 28 U.S.C. §1447(d).

(88) Likewise, the Third Circuit has affirmed that the civil rights removal statute constitutes a narrow exception to the rule that state court action may be removed to federal district court only if federal jurisdiction is evident on face of plaintiff's well-pleaded complaint. ***Davis v. Glanton,*** 107 F.3d 1044 (3rd Cir., 03-03-1997).

(89) A comparison of §1443 to the other sections permitting removal in the Judicial Code of the United States demonstrates the breadth of its scope, as enacted by Congress. Thus, unlike §1441(a), which embraces only *civil* actions, removal under §1443 includes both *civil* and *criminal* actions. Unlike §1442a, which stipulates that the Notice of Removal must be filed "before the trial or final hearing" in the

case, §1443, by its demonstrable text, places no limitation on the stage of the proceeding at which point the right of removal must be exercised, or it is waived.

(90) In short, as the Sixth Circuit Court of Appeals observed in ***Conrad v. Robinson***, 871 F.2d 612, 614 (6th Cir. 1989), the Civil Rights Removal Statute "***is specifically designed to extricate protected persons from state civil and criminal prosecution and provide instead a federal forum.***" Very clearly, Congress intended that "***where a state proceeding...is initiated in order to harass or intimidate a defendant for exercising his civil rights***..." such a person should be able to claim the safe harbor of a Federal Court. Harold S. Lewis, Jr. & Elizabeth J. Norman, *Civil Rights Law and Practice* (2nd ed. 2001), §5.50: p 467.

(91) In spite of this very broad language, and reasonable constitutional purpose (as an incident of the maintenance of the Supremacy of the United States Constitution of 1787, especially as amended in 1791 by the Bill of Rights) the United States Courts have unfairly and unreasonably (Plaintiffs contend unconstitutionally restricted the scope of 28 U.S.C. §1443 to protect ONLY race-based discrimination enacted as a matter of state law, including expressly race-based customs, practices, and policies having the force or effect of law.

(92) In so doing, the Federal Courts have, whether intentionally or unintentionally, and Plaintiffs here contend unconstitutionally, transformed the Civil Rights Removal Statute from its apparent and originally intended purpose as a sword against into a shield to protect Official State laws and policies which violate or infringe upon "Footnote 4" enumerated rights (see, e.g. ***United States v. Carolene Products, Inc.***, 304 U.S. 144, 153, n. 4, 58 S.Ct. 778, 82 L.Ed. 1234 (1938).

(93) The initial premise in the judicial construction of Civil Rights Removal appears reasonable enough: Removal will be appropriate in the present case, pursuant to 28 U.S.C. §§1443(a) & 1447(d) only if Plaintiffs can in good faith allege, as they do herein below, that the procedural and substantive safeguards of New Jersey law relating to Vacating Judgments of Foreclosure obtained by Default, have such slight and nugatory effect, either on their face or as applied, that the relevant New Jersey law constitutes on of those:

> . . . . rare situations where it can be clearly predicted by reason of operation of pervasive and explicit state or federal law that these rights will inevitably be denied by very act of bringing defendant to trial in state court. 28 U.S.C.A. § 1443(1).

Greenwood v. Peacock, 384 U.S. 808, 828, 83 S.Ct. 1800, 1812, 16 L.Ed.2d 944 (1966).

(94) However, the Judicial Construction of the Civil Rights Removal Statute rapidly transforms this broad check and balance on state power into a little or nothing more than a judicially crafted affirmative action (aka "benignly or affirmatively discriminatory") program for promoting minority rights at the expense of the majority:

> . . . . the phrase 'any law providing for equal civil rights' must be construed to mean any law providing for specific civil rights stated in terms of racial equality. Thus, the defendants' broad contentions under the First Amendment and the Due Process Clause of the Fourteenth Amendment cannot support a valid claim for removal under §1443, because the guarantees of those clauses are phrased in terms of general application available to all persons or citizens, rather than in the specific language of racial equality that §1443 demands. As the Court of Appeals for the Second Circuit has concluded, §1443 'applies only to rights that are granted in terms of equality and not to the whole gamut of constitutional rights.' 'When the removal statute speaks of 'any law providing for equal rights,' it refers to those laws

> that are couched in terms of equality, such as the historic and the recent equal rights statutes, as distinguished from laws, of which the due process clause and 42 U.S.C. §1983 are sufficient examples, that confer equal rights in the sense, vital to our way of life, of bestowing them upon all.'

State of Georgia v. Rachel, 384 U.S. 780, 792, 86 S.Ct. 1783, 1790 (1966).

(95) Plaintiffs ask this Court to declare that the ***Georgia v. Rachel*** and ***Greenwood v. Peacock*** constructions of 28 U.S.C. §1443 & 1447(d) are inconsistent with Supreme Court Equal Protection Jurisprudence in cases decided and opinions handed down since ***Bakke v. Regents of the University of California***, that Civil Rights Removal is not and cannot be construed as a judicially created affirmative action program, and that the Courts may not discriminate against those who remove for denials of equal protection other than the narrow grounds allowed in ***Georgia v. Rachel***.

(96) Plaintiffs pray for their costs of suit, expert, and attorneys' fees as allowed by 42 U.S.C. §§1988(b)-(c).

Count V:
28 U.S.C. §1443(2):
Existing Judicial Construction of this Statute
Should likewise be Extended, Modified, Reversed, or New Law Made to conform with Common Law as allowed by 42 U.S.C. §1988(a)

(97) Plaintiffs reallege paragraphs (1)-(96) above and incorporate the same by reference as if fully recopied and restated herein below.

(98) As noted above, Wells Fargo Bank's Attorney Diane A. Bettino also questions the propriety of Mastoris' assignment to Lincoln via a properly notarized and recorded Deed, Assignment, and Power of Attorney, and calls all this the "Unauthorized Practice of Law", relating this contention to a March 12, 2013, Opinion ("50") by the New Jersey Committee on the Unauthorized Practice of Law.

(99) Because common law and statutory rights to grant Agency with Power of Attorney, Assignments of Rights, and Deeds of Title exists in every state, and are NOWHERE limited, conditioned, or connected to the possession of a law license, Lincoln contends that this is a spurious attack under color of law on his common law and statutory rights to receive such grants and authority, in violation of 42 U.S.C. §§1981, 1982, 1983, and 1988.

(100) Parallel to their above-and-foregoing arguments for the extension, modification, or reversal of existing law, or the making of new law, in regard to the general construction of Civil Rights Removal, Lincoln and Mastoris submit and contend that 28 U.S.C. §1443(2) has been unreasonably interpreted to mean that "this subsection of the removal statute is available only to federal officers and to persons assisting such officers in the performance of their official duties" (*Greenwood v. Peacock*, 384 U.S. 808,815, 86 S.Ct. 1800,1805 [1966]).

(101) As the Supreme Court discussed in ***Greenwood***, the original statutory language referred to all civil and military officers, and a Power of Attorney, like an Assignment and delegation of rights and powers to an agent, is a form of civil office (Latin "***officio***" = duty).

(102) Plaintiffs ask this Court to declare and adjudge a modification of the judicial interpretation and construction of 28 U.S.C. §1443(2).

(103) Plaintiffs pray for their costs of suit, expert, and attorneys' fees as allowed by 42 U.S.C. §§1988(b)-(c).

COUNT VI:
IF NOT JURISDICTIONAL (Alternative to Count I)
WHAT IS STANDING TO SUE IN NEW JERSEY?

(104) Plaintiffs reallege paragraphs (1)-(103) above and incorporate the same as if fully copied and restated herein below.

(105) As noted at the outset, and as addressed in Count I, the New Jersey Supreme Court's decision in ***U.S. Bank, National Association, v. Guillaume***, 209, N.J. 449 (Supreme Court of New Jersey, 2012), appears to have held that a state can disregard one of the most important constitutional concepts in all of American jurisprudence, namely the concept of legal standing.

(106) Because of the importance of this question, and to offer the Court an alternative to their Count I requesting that the Court simply strike down ***Guillaume*** and ***Russo*** and all New Jersey Statutes affected by this decision, as an application and construction of New Jersey statutory law, Plaintiffs plead for statutory construction of the due process nature of the right to establish "standing" in a judicial proceeding.

(107) If, as ***Guillaume*** and ***Russo*** appears to hold, standing is not "jurisdictional" in the New Jersey Court system, exactly what would be a jurisdictional bar to suit, and what IS "standing" in the New Jersey Court system, and what would be an example of a "lawsuit over which the court has no jurisdiction"? Standing is, after all a determination of injury-in-fact, as the basis for claiming that one party might be liable to another.

(108) To hold that standing to sue is not a pre-requisite to sue, as the New Jersey Supreme Court seems to have done in ***Guillaume***, (clarified, expanded, and elaborate in ***Russo***) is basically to say that "anyone can file a lawsuit in New Jersey and the Courts can hear that lawsuit, without first requiring a determination that the Plaintiff has any right to sue, or any rights to sue about, whatsoever."

(109) Plaintiffs ask this Court, if the Court does not simply strike down the New Jersey system of standing announced in ***Guillaume*** and ***Russo*** and the peculiar application of these cases to the New Jersey mortgage foreclosure system in violation of due process and equal protection, to declare and construe a constitutionally valid and correct reading of ***Guillaume*** and ***Russo***.

(110) Plaintiffs ask this Court to affirm that standing is the substantive due process notion of what a party must do in order to "open the doors of the courthouse", i.e. to have the legal right to bring a legal action through our judicial system. There is nothing more fundamental factor, way, and means, to distinguishing between "legally sound, fatually well-grounded" and "frivolous" lawsuits, unless we are to abolish such critical concepts all together.

(111) It also leads to the somewhat anomalous and semantically awkward construction of New Jersey's position on standing as this: "having the right to sue someone is not really required before a plaintiff may file suit against a defendant in New Jersey, because standing (injury-in-fact) is not jurisdictional." This would seem to be no mere quibble of law, but an absolutely fundamental question concerning the doctrine of due process, guaranteed by the United States Constitution to all the people of all the states, even including New Jersey.

(112) As an alternative to their First Count, Plaintiffs ask this Court to declare and adjudge the constitutional meaning and purpose of ***Guillaume*** and ***Russo***.

(113) Plaintiffs pray for their costs of suit, expert, and attorneys' fees as allowed by 42 U.S.C. §§1988(b)-(c).

JURY DEMAND

(114) Plaintiffs demand a trial-by-jury of all issues so triable, according to Common Law and the Seventh Amendment, including all questions of fact and all mixed questions of fact and law, pursuant to ***U.S. v. Gaudin***, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444, 63 USLW 4611 (June 19, 1995).

(115) Plaintiffs demand an advisory jury on all issues to be tried by the court alone, as matters of declaratory judgment, injunction, or other equitable relief.

(116) Since this case makes allegations of material fraud, Plaintiffs ask that this Court refer to the jury all question whether defendants allegedly false statements and manipulations of the New Jersey foreclosure process in Chancery constituted the legal and material, formal, efficient, and final cause of the uniform and seemingly predetermined outcome of the vast majority of New Jersey foreclosure cases, in that the questions of materiality and causation are **mixed questions of law** and **fact** typically resolved by **juries**. ***U.S. v. Gaudin*** (supra).

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs move, pray, and request relief as follows:

1. Plaintiffs ask this Court to allow a jury trial of all issues so triable, after allowing full discovery, even to the degree that such discovery inquires into matters of state judicial custom, practice, and policy as implemented by the Courts of the State of New Jersey;
2. Plaintiffs submit, move, ask and pray this Court to find, hold, declare and adjudge that, as construed by the New Jersey Courts, the New Jersey Foreclosure Statues have ***de facto*** (and by ***Guillaume*** and ***Russo***, implicitly and practically ***de jure***) expressly authorized and effected

intentional discrimination against natural persons in favor of non-natural persons;

3. Plaintiffs submit, move, and pray that this Court find, hold, declare, and adjudge, that this bank, bench, and bar-formulated and implemented pattern discrimination in favor of the (non-natural) banking corporations against natural persons is not only illegal, in that it was never expressly authorized by the Legislature or People of New Jersey, but is unconstitutional, and accordingly ought to be added to the list of suspect classes, for which strict scrutiny analysis would apply;
4. Plaintiffs likewise submit, move, and pray that this Court find, hold, declare, and adjudge as a matter of constitutional right that all Federal Civil Rights Statutes should be construed in a manner free of racial discrimination and bias, even "affirmative action" or "benign discrimination" in favor of minorities and against "White Citizens" such as suggested by many current judicial constructions of statutes including but not limited to 28 U.S.C. §1443 & 1447(d), 42 U.S.C. §§1981 & 1982;
5. Plaintiffs submit, move, and pray this Court to declare and adjudge that the mortgage foreclosure epidemic in the United States generally, and the New Jersey Superior Courts handling of the same, together constitute "exceptional circumstances" justifying the exercise of Federal judicial declaratory and injunctive supervision of the State Court systems, as expressly authorized by 42 U.S.C. §§1983 & 1988(a), as held and explained in ***Mitchum v. Foster***, 407 U.S. 225; 92 S.Ct. 2151; 32 L.Ed.2d 705 (1972) as well as by the recognized parallel exceptions to the ***Rooker-Feldman*** doctrine, see, e.g. ***Loubser v. Thacker***, 440 F.3d. 439 (7th Cir. 2006). as well as ***Great Western Mining and Mineral***

Company v. Fox Rothschild, 659 F.3d 159 (2010) to overcome the ***Rooker-Feldman*** state to federal transposition of ***Res Judicata***;

6. Exactly as in ***Great Western,*** Plaintiffs Lincoln and Mastoris here assert, submit, move, ask, and pray that this Court find, hold, declare, and adjudge, as an independent constitutional claim, that the New Jersey bank, bench, and bar conspiracy violated their right to be heard in an impartial forum;
7. In addition, Plaintiffs assert, submit, move, ask, and pray that this Court find, hold, declare, and adjudge that the New Jersey bank, bench, and bar conspiracy violated their constitutional right to be heard in a forum that actually had lawful jurisdiction by obliteration of the "standing" doctrine as a basis for conferring and evaluating jurisdiction;
8. And further, Plaintiffs submit, move, pray and ask this Court to find, hold, declare and adjudge, in all relation to all counts above, that each of the named the defendants committed fraud and misrepresentation in the subject state court proceedings and exerted extra-judicial pressures to bear on the formulation of customs, practices, and policies including but not limited to rendition of "final judgments" in the absence of actual notice by service of process;
9. And to further hold, find, declare, and adjudge, that each of the named defendants intentionally and fraudulently misrepresented the true parties in interest in framing the litigation concerning who had legal right title and interest to the real property; and
10. Finally, to find, hold, declare, and adjudge that each of the named defendants committed multiple abuses of process in the state court

proceedings. As in ***Great Western***, 659 F.3d 159 at 168 (citing ***McCormick v. Braverman,*** 451 F.3d 382, 384, 393 (6th Cir.2006).

11. Plaintiffs also pray that this Court will approve the application of their attorney, Dara Leigh Bloom, to appear ***pro hac vice*** in this case, submitted as of even date with this Original Complaint for Civil Rights Declaratory Judgment and Injunctive Relief.

Respectfully submitted,

Wednesday, 25 September 2013

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Wednesday, 25 September 2013

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Respectfully submitted,

Wednesday, 25 September 2013

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