

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Eastern District of New YorkPatricia Roth a/k/a Patricia McCarthy, individually and
on behalf of a class of borrowers similarly situated*Plaintiff*

v.

CitiMortgage Inc.*Defendant*

Civil Action No.

CV 12 2446
FEUERSTEIN,
WALL, MJ

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* CitiMortgage Inc. P.O. Box 689196, Des Moines, IA 50368-9196 (and physical
address of 6200 Park Ave, Des Moines, Iowa 50321)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Rosario G. Sicuranza, Esq., The Sicuranza Law Firm LLC, 445 Broad Hollow Road, Suite 25, Melville, New York 11747


If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER

CLERK OF COURT

MAY 16 2012

Date: _____



Signature of Clerk or Deputy Clerk

CV 12 2446

UNITED STATES DISTRICT COURT OF THE STATE OF
EASTERN DISTRICT OF NEW YORKRECEIVED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ MAY 16 2012 ★

LONG ISLAND OFFICE

-----X
PATRICIA ROTH, A/K/A PATRICIA MCCARTHY,
Individually and on behalf of
a class of borrowers similarly situated,

Plaintiff

Index No.

-against-

CITIMORTGAGE INC.

CLASS ACTION COMPLAINT

Defendants

-----X
FEUERSTEIN, J
WALL, M.J.

Plaintiff, by her undersigned attorneys as and for her complaint against Defendants,
alleges as follows:

INTRODUCTION

1. Patricia Roth, a/k/a Patricia McCarthy ("Plaintiff"), seeks redress for violations of CitiMortgage Inc.'s ("Defendant") respective statutory and common law obligations due to (a) its untimely and inadequate failure to provide information in response to "qualified written requests" ("QWR"), made on her behalf, through her attorney, and (b) its failure to remove information regarding any alleged overdue payments, owed by Plaintiff, to any consumer reporting agencies, pursuant to the Real Estate Settlement Procedures Act ("RESPA") at 12 U.S.C. Section 2605(e) et seq., (c) its violation's in regard to the collection of debts, pursuant to the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 c et seq. in communicating with Plaintiff in connection with the collection of any debt while having actual

knowledge that Plaintiff was (and still is) represented by an attorney with respect to such debt, as well as (d) Defendant's engagement in deceptive business practices pursuant to New York General Business Law ("GBL") §349 (a) (resulting from the above-mentioned violations); all of which resulted in statutory strict liability damages, and actual damages in the form of emotional distress to Plaintiff.

2. Plaintiff alleges that Defendant's actions were (and continue to be) purposeful, systematic, and in deliberate circumvention and contravention of the abovementioned statutes, constituting a pattern or practice of noncompliance with regard to said statutes. As a direct result of these violations by Defendant, Plaintiff has suffered, and is entitled to statutory damages, as well as actual damages (resulting from Defendant's tortious acts).

3. Plaintiff brings this action on behalf of herself and representatively on behalf of all others similarly situated.

PARTIES

4. Plaintiff is a citizen of the United States and resides at 7 Fort Hill Rd, Hampton Bays, New York 11946 ('residence').

5. Upon information and belief, Defendant maintains offices at 1 EAB Plaza, Uniondale, New York 11555.

6. Upon information and belief, Defendant is regularly engaged in the servicing of residential mortgages.

7. Upon information and belief, Defendant is a "debt collector" as that term is defined by the FDCPA, 15 U.S.C. §1692a (6).

JURISDICTION AND VENUE

8. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C.

§ 1331 et seq. because Plaintiff is asserting claims under 12 U.S.C. § 2605 et seq., and under 15 U.S.C. § 1692, et seq..

9. This Court has additional jurisdiction to resolve the claims asserted in this case, pursuant to diversity jurisdiction under 28 U.S.C. § 1332 et seq.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district. Venue is also proper in this district since the defendant transacts business in this district; and, the Defendant's correspondences with Plaintiff were made in this district.

FACTS

11. On or about 10/22/2005, Plaintiff took out a federally regulated second mortgage, on her residence in Suffolk County, in the State of New York. Said residence bears the following legal description:

"All that certain plot, piece or parcel of land, with the buildings and improvement thereon erected, situate, lying and being in the Town of Southampton, County of Suffolk and State of New York, known and designated as Lot No. 7 on a certain map entitled, "Map of Holzman Estates, Section No. 1", and tiled in the Office of the Clerk of the County of Suffolk on December 16, 1989 as Map No. 3098. Suffolk County Tax Map Designation No. District: 900; Section 207.00; Block:2; Lot 036.000."

12. The original mortgage loan (with a mortgage account number of 105101006140000), relating to Plaintiff, identified the "Mortgagee" as Mortgage Electronic Registrations Systems (MERS), Inc. ("...acting solely as a nominee for the lender and [the] Lender's successors and assigns"). Both the Mortgage and the Note identified the lender as CitiBank N.A. See Exhibit 1, at page 1 of the "Mortgage"

13. Upon information and belief, CitiBank N.A. has an "affiliated business arrangement" with Defendant to the extent that, on occasion, (or at CitiBank N.A.'s election) Defendant assumes mortgage servicing in regard to CitiBank N.A. (and/or MERS) originated mortgage loans and/or deeds of trust.

14. Upon information and belief, the present mortgage servicer is Defendant with a postal address of P.O. Box 689196, Des Moines, IA 50368-9196 (and physical address of 6200 Park Ave, Des Moines, Iowa 50321) and bearing a mortgage account number of 0630024486.

15. Upon information and belief, at a presently unknown time, an assignment of mortgage servicing rights took place between CitiBank N.A. (and/or MERS) and the Defendant. This appears to be the case because the Defendant has sent numerous letters and made numerous phone calls to Plaintiff in regard to an alleged failure to make timely payments as well as alleged amounts of arrears in mortgage payments owed to Defendant.

16. On April 8, 2011, through her legal counsel, Plaintiff sent a QWR, by certified mail, to Defendant in accordance with the requirements of RESPA. The caption of the document read: "QUALIFIED WRITTEN REQUEST, COMPLAINT, DISPUTE OF DEBT AND VALIDATION OF DEBT LETTER, TILA REQUEST" Exhibit 2

17. Therein, said QWR, specifically stated the following:

"Because of this and other reasons I am now making inquiries as to whether Ms. Roth may [have *sic*] been a victim of predatory lending. Ms. Roth is disputing the validity of the current debt you claim she owes. By debt, I am referring to the principal balance claimed owed; her calculated monthly payment, calculated escrow payment and any fees claimed to be owed to you or any trust or entity you may represent" (emphasis added).

18. Therein, said QWR also requested all assignments, transfers, allonges, or other document evidencing a transfer, sale or assignment of Ms. Roth's mortgage, deed of trust,

promissory note or other document that secures payment by Ms. Roth's to her alleged obligation in this account from the inception of her loan to the present date including any such assignments on MERS.

19. On April 9, 2011, through her legal counsel, Plaintiff sent yet another QWR to Defendant, by certified mail, under RESPA. This QWR was identical to the QWR of April 8, 2011, with the exception that this time it was sent along with a notarized statement executed by Plaintiff authorizing her attorney (Rosario G Sicuranza) to act on her behalf. Exhibit 3

20. On April 18, 2011, Defendant sent a letter, to Plaintiff's attorney, which was completely unresponsive as it failed to provide an adequate response to Plaintiff's QWRs of April 8 and 9, of 2011. In this regard, said letter did not provide copies of any documents or information as requested in these QWRs. In pertinent part, said response stated the following:

"While your letter has asked numerous questions about the origination and/or servicing of your clients' (emphasis added) mortgage loan, it appears your immediate concern is obtaining financial assistance. In this context, we prefer to direct our efforts to making this assistance happen....." Exhibit 4

21. Upon information and belief, Defendant violated the provisions of RESPA¹ because, within 30 days (excluding legal public holidays, Saturdays, and Sundays) of its receipt of

¹ 12 USCS § 2605 (e) states the following in pertinent part:

"(e) Duty of loan servicer to respond to borrower inquiries.

(1) Notice of receipt of inquiry.

(A) In general. If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 5 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.....

(2) Action with respect to inquiry. Not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the

Plaintiff's first QWR of April 8, 2011 (Receipt by CMI Workout April 11, 2011 and cc receipt by CitiMortgage Inc. on April 13, 2011 – See Exhibit 2), it did not conduct an investigation.

22. Moreover, Defendant clearly violated the provisions of RESPA because it did not provide the Plaintiff's attorney (or even the Plaintiff), within the required 30 day period (with regard to the abovementioned QWRs sent to it), with a written explanation or clarification that included the following:

- (i) a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and
- (ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower (Said letter merely provided a department. However, it did not provide "the servicer (emphasis added) who can provide assistance to the borrower" as said letter was unsigned and had no telephone number.); or
- (iii) after conducting an investigation (if it did at all), provide the borrower with a written explanation or clarification that includes —
- (iv) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer.

See footnote 1 and Exhibit 4

borrower, the servicer shall—(B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--

(i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or

(C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes (Emphasis added)--

(i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer (Emphasis added); and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower (Emphasis added).

(3) Protection of credit rating. During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (Emphasis added) (as such term is defined under section 603 of the Fair Reporting Act [15 USCS § 1681a])."

23. Furthermore, said letter of April 18, 2011 was a clear violation of FDCPA at 15 U.S.C. § 1692, et seq.² because although it addressed Plaintiff's attorney it stated the following in pertinent part:

"We have mailed a financial package to the mortgagor (emphasis added), which you may request they complete and return to us so we may determine what type of assistance will best suit their needs." Exhibit 4

24. In said letter of April 18, 2011, Defendant also stated the following:

"Since CitiMortgage is unable, to correct or adjust the credit report exactly as you requested we have placed an "in dispute" comment on the CitiMortgage trade line."

25. Attached is a copy of Plaintiff's credit report (redacted) which, in pertinent part, indicates a "dispute" with regard to this mortgage, alleged to be serviced by Defendant. However, as can be seen by reviewing Plaintiff's credit report, this notation by Defendant was in clear violation to the provisions of RESPA (regarding Plaintiff's QWRs), because Defendant failed to remove information regarding alleged overdue payments, owed Plaintiff, to the consumer reporting agencies (as such term is defined under section 603 of the Fair Reporting Act [15 USCS § 1681a])." See Exhibit 5 and Footnote 1 at 2605(e)(3).

² 15 USC § 1692c - Communication in connection with debt collection

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of (emphasis added), or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or..."

26. Not receiving an adequate response in regard to Defendant's letter of April 18, 2011, Plaintiff, through her legal counsel, sent yet another QWR, by certified mail on June 11, 2011, to Defendant pursuant to RESPA³. Said QWR stated the following in pertinent part:

"Unfortunately, it appears that no one from your company [is] (sic) willing to take responsibility for signing your April 9 ((sic).. it was intended to say "your letter of April 18), 2011. If this was not an oversight, it would appear that you are concerned with personal culpability. Rather, than trying to read hidden meanings, in my letter of April 9, 2011, I would respectfully again request that you provide the information requested (which my client is entitled to). Please be advised that in the event that your choose to ignore my requests as reiterated herein, all correspondences between your company and my office will be used in evidence in the event that this matter results in litigation.

Again and for the second time, please respond to the requests as contained herein. They are clear enough." Exhibit 6

27. Subsequently, Defendant sent what appears to be a "form cover letter", dated July 11, 2011, which was addressed to Plaintiff (and not to her attorney) with along with an enclosed "financial package". Exhibit 7

28. Defendant's letter as evidenced in Exhibit 7 appeared to be a "form cover letter" used over and over again, with the Plaintiff, as well as members of her class, because its salutation read: "Dear CitiMortgage Customer(s)". This is indicative of the large quantity of the class which Plaintiff seeks to represent.

³ Although said letter was addressed to CMI Workout MS, 420 1000 Technology Drive, O'Fallon, MD 63368-2240, Plaintiff's attorney cannot produce proof that it was sent to this address. Nevertheless, Plaintiff's attorney has produced proof that said letter was sent as a cc to CitiMortgage Inc., P.O. Box 689196, Des Moines, IA 50368-9196. Notwithstanding, Plaintiff contends that CMI Workout MS regularly (or properly should regularly) corresponds with CitiMortgage Inc. (Defendant) in regard to such matters (as they both work in conjunction with regard to mortgage servicing).

29. This form cover letter purported to enumerate a few of the possible ways that Defendant would be able to help Plaintiff keep her home.

30. These options, recited in this form cover letter, were a "Repayment Plan/Special Forbearance", "Loan Modification" or a "Claim Advance/Partial Claim".

31. However, in that same letter, Defendant stated that if it was unable to find a solution to help Plaintiff keep her home, or if she did not wish to keep her home, it had additional alternatives to foreclosure which may include monetary assistance to satisfy other lien holders or help pay moving costs (emphasis added).

32. These options, in said letter, also included "Pre-Foreclosure Sale and a "Deed-in-Lieu of Foreclosure".

33. On or about late January or early February of 2012, Plaintiff made a complaint against Defendant with the New York State Department of Financial Services ("DFS") in regard to her mortgage.

34. In response, on February 8, 2012, Ms. Olga Zeldin with the DFS wrote a letter to Plaintiff, which stated in pertinent part:

"We have forwarded a copy of your letter to that institution and instructed them to respond to your issues by March 9, 2012. Their response will be sent to us and a copy will be mailed to you.

Once we receive a response from CitiMortgage, Inc., we will determine if any additional action is necessary to resolve your complaint...." Exhibit 8

35. On February 23, 2012, Defendant responded to the New York State Department of Financial Services, stating:

"We respectfully decline Ms. Roth's request to reimburse her attorneys costs. Enclosed is our April 18, 2011, correspondence directed to Ms. Roth's attorney, Rosario G. Sicuranza. Our position remains the same." Exhibit 9

36. Therefore, by its letter of February 23, 2012 to the DFS, Defendant acknowledged that they had knowledge that Plaintiff was represented by counsel. Moreover, as is evidenced in said letter, Defendant nevertheless declined to provide the information requested in Plaintiff's numerous QRWs.

37. On March 2, 2012, the DFS sent a letter to Plaintiff stating the following in pertinent part:

"The New York State Department of Financial Services (DFS) has received a response to your complaint, referenced above, from CitiMortgage, Inc.... You should have received a copy of that response also (emphasis added)..." Exhibit 10

38. Subsequently, Plaintiff did receive a letter from Defendant dated March 14, 2012 wherein a Ms. Sarah Geerling, from its "Executive Response Unit" stated the following in pertinent part:

"With regard to your questions about the servicing of your loan, if you send CitiMortgage a statement of the reasons why you believe there have been errors in the servicing of your loan. CitiMortgage will research and respond to any specific servicing questions (emphasis added). CitiMortgage is not required by any applicable state and/or federal law to undertake a life-of-loan review of the servicing of your loan or to research general, unsubstantiated claims about alleged servicing errors.....

Additionally, we have submitted a request for a full payment history to be sent to you, which will arrive under separate cover." Exhibit 11

39. This letter of March 14, 2012 from Defendant which was sent directly to Plaintiff (and not to her attorney) far exceeded its statutory requirement to respond to her QRWs within the 30 day requirement pursuant to RESPA. See footnote 1.

40. Additionally, this letter, of March 14, 2012, from Defendant to Plaintiff referred to "[t]he documents you submitted". These 'submitted documents', upon information and belief, made reference to the several QRWs (mentioned hereinabove) sent on Plaintiff's behalf through her

attorney. This letter reinforced that fact that Defendant had actual knowledge that Plaintiff was represented by an attorney.

41. In said letter, neither a HUD 1 nor any other evidence of a transfer of the mortgage servicing from CitiBank N.A. to the Defendant was provided, notwithstanding Defendant's obligations to provide these documents (pursuant to the provisions of RESPA) which were requested in Plaintiff's several QWRs (sent through her attorney).

42. Following Defendant's above mentioned correspondence to the Plaintiff of March 14, 2012, the Plaintiff received yet an additional correspondence, sent under a different cover, from Defendant. Said correspondence was also dated March 14, 2012 and purported to enclose a "detailed history" of transactions made on her account as of 3/14/2012 ranging from 11/26/2005 through 3/14/2012. Exhibit 12.

43. Plaintiff then received yet another notice from Defendant entitled: "YOU COULD LOSE YOUR HOME. PLEASE READ THE FOLLOWING NOTICE CAREFULLY". Said document stated the following in pertinent part:

"As of 4/10/2012, your home loan is 1322 days in default. Under New York State Law, we are required to send you this notice to inform you that you are at risk of losing your home. You can cure this default by making the payment of 46385.32 (sic \$46,385.32) dollars by 7/14/2012.

If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home. Attached to this notice is a list of government approved housing counseling agencies in your area which provide free or very low-cost counseling. You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors (emphasis added) can help you assess your financial condition and work with us to explore the possibility of modifying

your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance....

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait, the fewer options you may have.

If this matter is not resolved within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence (Emphasis added).

If you need further information, please call the New York State Banking Department's toll-free helpline at 1-877-BANK-NYS (1-877-226-5697) or visit the Department's website at <http://www.banking.state.ny.us>." Exhibit 13

44. Contrary to its offer to 'direct its efforts to making assistance to the plaintiff happen' (paragraph 20 hereinabove), Defendant expressed a completely contrary intention (in paragraph 43 hereinabove). In said correspondence, Defendant's intention was to not to assist the Plaintiff. Rather, its intention was to refer her to "government approved housing counseling agencies" with the threat of foreclosure on her home when by saying the following: "we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence" (Emphasis added).

45. To date, Defendant has never provided Plaintiff's legal counsel with any responsive answers to his three QWRs as required pursuant to the provisions of RESPA.

46. Plaintiff and her family members (as well as other similarly situated Plaintiffs whom Plaintiff seeks to represent) have suffered reasonably expected personal humiliation, embarrassment, mental anguish, and severe emotional distress, manifested in physical ailments such as headaches, stomach discomfort, depression, as well as anxiety, all of which are the direct

result of Defendant's violations of RESPA as well as the FDCPA, for which they are entitled to recover judgment against Defendant for actual damages.⁴

47. As indicated in paragraph 13 (hereinabove) upon information and belief, CitiBank N.A. has an "affiliated business arrangement" with Defendant to the extent that, on occasion, (or at CitiBank N.A.'s election) Defendant assumes mortgage servicing in regard to CitiBank N.A. loans.

48. Moreover, a recent "Consent Order" against CitiBank N.A., originating from the "United States Of America Department of the Treasury Comptroller of the Currency", was issued on April 13, 2011 by Mr. Vance S. Price, (Deputy Comptroller for Large Bank Supervision). The prerequisite for issuing this "Consent Order" was that duly elected members of the Board of Directors of CitiBank N.A. agree to the terms of said "Consent Order" by executing a "Stipulation and Consent to the Issuance of a Consent Order" (which they, in fact, did). The provisions and mandates of said "Consent Order", include terms which are almost identical (and in spirit) to the provisions of RESPA. See Exhibit 14

⁴ "Actual damages" under §2605(f)(1)(A) include emotional distress damages. "An individual prevailing on a claim that 12 U.S.C.S. § 2605(e) of the Real Estate Settlement Procedures Act was violated is entitled to: (A) any actual damages to the borrower as a result of the failure; and (B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$ 1,000. 12 U.S.C.S. § 2605(f)(1)(A)&(B)." Moon v. GMAC Mortgage Corp., 2009 WL 3185596, at *4 (W.D. Wash. 2009).

Also see: 12 U.S.C. § 2605(f)(2)(A) and (B): "Class actions. In the case of a class action, an amount equal to the sum of--

(A) any actual damages to each (emphasis added) of the borrowers in the class as a result of the failure; and (Emphasis added)

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than \$2,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of--

(i) \$ 1,000,000; or

(ii) 1 percent of the net worth of the servicer.

49. Therein, said "Consent Order" at relevant parts provided that Citibank N.A. would comply as follows:

"ARTICLE VIII MANAGEMENT INFORMATION SYSTEMS,
CitiBank N.A. (1) (i)(ii) ensure the ongoing accuracy of records for all serviced mortgages, including, but not limited to, records necessary to establish ownership and the right to foreclose by the appropriate party for all serviced mortgages, outstanding balances, and fees assessed to the borrower;...."

"ARTICLE IX MORTGAGE SERVICING

(1) (c) establishment of an easily accessible and reliable single point of contact for each borrower so that the borrower has access to an employee of the Bank to obtain information throughout the Loss Mitigation, loan modification, and foreclosure processes;
(d) a requirement that written communications with the borrower identify such single point of contact along with one or more direct means of communication with the contact;

(e) measures to ensure that the single point of contact has access to current information and personnel (in-house or third-party) sufficient to timely, accurately, and adequately inform the borrower of the current status of the Loss Mitigation, loan modification, and foreclosure activities;

(i) policies and procedures to enable borrowers to make complaints regarding the Loss Mitigation or modification process, denial of modification requests, the foreclosure process, or foreclosure activities which prevent a borrower from pursuing Loss Mitigation or modification options, and a process for making borrowers aware of the complaint procedures;

(j) procedures for the prompt review, escalation, and resolution of borrower complaints, including a process to communicate the results of the review to the borrower on a timely basis (Emphasis added);"

50. As indicated hereinabove, because, upon information and belief, CitiBank N.A. has an "affiliated business arrangement" with Defendant, Defendant has breached its obligations referred to in the aforementioned "Consent Order."

FIRST CAUSE OF ACTION:
RESPA VIOLATIONS FOR NOT PROVIDING REQUIRED INFORMATION

51. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-50 as if set forth fully in this cause of action.

52. Defendant is, by definition, the loan servicer of Plaintiff's loan pursuant to 12 U.S.C. § 2605(i)(2).⁵

53. Plaintiff's QWRs, sent through her legal counsel, not only requested Defendant's "records related to the servicing of her (Plaintiff's) loan from its origination to the present date", but they specifically requested, among other items, "[a]ll loan servicing records, payment payoffs, payoff calculations, ARM audits, interest rate adjustments, payment records, transaction histories, loan histories, accounting records, ledgers, and documents that relate to the accounting of Ms. Roth's loan from the inception of her loan until present date."

54. Defendant exercised a pattern of systematically and continuously violating the provisions of RESPA with respect to Plaintiff in declining to provide the information requested in the several QWRs made through Plaintiff's attorney (within 30 days of its receipt excluding legal public holidays, Saturdays, and Sundays) as well as by not providing the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower;...". See Paragraph 20 hereinabove. Also see footnote 1.

55. In its letter to Plaintiff dated March 14, 2012 (paragraph 38, above), Defendant also indicated that as a prerequisite for it to provide the information sought by her, (which was sent via her attorney's QWRs), it would require a statement of the reasons for her belief why her account is in error.

⁵ Definitions. For purposes of this section:

(2) Servicer. The term "servicer" means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan).

56. However, a statement of the reasons for the belief of the borrower that the account is in error or that the borrower provide sufficient detail to the servicer regarding other information sought by the borrower is not required (See Moon v. GMAC Mortgage Corp., 2009 WL 3185596, (W.D. Wash. 2009).⁶

57. In requiring Plaintiff to explain why she believes there have been errors in the servicing of her loan, Defendant was employing both dilatory and evasive tactics in direct violation of RESPA as well as the mandates and spirit of the above mentioned "Consent Order".

58. Defendant's continuous, systematic and deliberate attempts to avoid its responsibilities pursuant to RESPA (by refusing to provide the information requested by Plaintiff (through her attorney) in her QWRs of April 8, 2011, April 9, 2011 and of June 11, 2011) constituted a definite pattern of noncompliance.⁷

59. By failing to respond to Plaintiff's QWRs in accordance with its responsibilities and statutory obligations pursuant to RESPA, Defendant maintained a pattern of continuously and repeatedly committing illegal and tortious acts against Plaintiff (as well as Plaintiffs similarly situated whom Plaintiff seeks to represent).

60. As a result of Defendant's pattern or practice of noncompliance in relation to the requirements of RESPA (12 U.S.C. § 2605(e) et seq.), Plaintiff, and those similarly situated

⁶ In Moon, Judge Zilly rejected this very issue that CitiMortgage raises. Therein, he stated that "[d]efendants' contention that none of the three letters at issue constitute a qualified written request ("QWR") lacks merit. Defendants assert that plaintiff's letter dated September 7, 2007, is not a QWR because it is unsigned and does not state that the account is in error. Neither a signature nor an accusation of error, however, are requirements of a QWR." Therein, Judge Zilly stated that "[a] QWR need only ask for information relating to servicing and provide the relevant names and account numbers."

⁷ In Moon, Judge Zilly stated that "[t]he Court concludes that three successive failures to timely acknowledge receipt and a failure to timely respond to a request for loan documents might well constitute a pattern or practice of noncompliance..."

suffered both statutory and actual damages (as indicated in paragraph 46 hereinabove) for which they are entitled to recover a judgment against Defendant.

**SECOND CAUSE OF ACTION:
RESPA VIOLATIONS FOR PROVIDING INFORMATION TO
CREDIT REPORTING AGENCIES REGARDING ALLEGED OVERDUE PAYMENTS**

61. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-60 as if set forth fully in this cause of action.

62. Notwithstanding its knowledge of Plaintiff's QWRs (sent through her attorney), Defendant maintained a pattern of practice in continuously violating the provisions of RESPA because it failed to remove information regarding any alleged overdue payments, owed by Plaintiff, to any consumer reporting agencies (as such term is defined under section 603 of the Fair Reporting Act [15 USCS § 1681a]). See Exhibit 5 and Footnote 1.

63. By failing to remove information regarding any alleged overdue payments, owed by Plaintiff, to any consumer reporting agencies, Defendant breached its responsibilities and statutory obligations pursuant to RESPA, and thereby repeatedly committed illegal and tortious acts against Plaintiff (as well as Plaintiffs similarly situated whom Plaintiff seeks to represent).

64. As a result of Defendant's pattern or practice of noncompliance in relation to the requirements of RESPA 12 U.S.C. § 2605(e) et seq., Plaintiff, and those similarly situated suffered both statutory and actual damages (as indicated in paragraph 46 hereinabove) for which they are entitled to recover a judgment against Defendant.

**THIRD CAUSE OF ACTION:
FDCPA VIOLATIONS**

65. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-64 as if set forth fully in this cause of action.

66. At all times relevant, Defendant was "debt collector" as defined in the FDCPA, 15 U.S.C. § 1692, et seq.

67. In the Defendant's collection actions against Plaintiff (as well as those similarly situated), it violated the FDCPA because it knew that Plaintiff was represented by legal counsel with respect to the debts. See 15 U.S.C. § 1692c(a)(2).

68. Further, because Defendant frequently telephoned and wrote letters to Plaintiff (and upon information and belief, those similarly situated) while knowing that she had an attorney by virtue of Plaintiff's numerous QWRs (sent through her attorney), it engaged in conduct, the natural consequence of which was to harass, oppress, or abuse a person in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d et seq..

69. Because of the Defendant's frequency pattern, and persistence of intentional noncompliance, Defendant also bears an additional civil liability to Plaintiff (as well as similarly situated Plaintiffs). See 15 USC 1692k

FOURTH CAUSE OF ACTION:
VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW 349

70. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-69 as if set forth fully in this cause of action.

71. Plaintiff, as well as many of the members of the class Plaintiff seeks to represent, are consumers whose loans are serviced by Defendant within the State of New York.

72. As such, Defendant has engaged in deceptive business practices pursuant to New York General Business Law ("GBL") §349 (a), due to:

- (i) its untimely and inadequate failure, or complete failure to provide the required information as requested in Plaintiff's QWRs pursuant to its obligations under RESPA;

- (ii) its failure to remove information regarding any alleged overdue payments, owed by Plaintiff, to any consumer reporting agencies pursuant to its obligations under RESPA;
- (iii) its illegal practices concerning the collection of debts pursuant to its obligations under RESPA; and
- (iv) by its violation of the FDCPA in corresponding directly with mortgagors while having the knowledge that said mortgagors had legal representation.

73. In so doing, Defendant maintained a repeated practice of committing illegal and tortious acts against Plaintiff (as well as similarly situated Plaintiff s whom Plaintiff seeks to represent in this action), within the State of New York (as well as outside of the State of New York).

74. Defendant's actions were (and continue to be) purposeful, systematic, and in deliberate circumvention and violation of the abovementioned statutes.

75. Said actions by Defendant continue to date, and display a pattern or practice of noncompliance with regard to said statutes.

76. As a direct result of these violations by Defendant, Plaintiff (as well as similarly situated Plaintiff s whom Plaintiff seeks to represent in this action) has suffered, and is entitled to the recovery of statutory damages in the area of strict liability relating to the Defendants violations of RESPA and the FDCPA (as mentioned hereinabove), as well as actual damages (resulting from Defendant's tortious acts) because of its violations of RESPA, the FDCPA and New York General Business Law §349.

77. Such actions, and failures to act, have caused direct, foreseeable, and proximate damages to Plaintiff as well as numerous other similarly situated members of the class which Plaintiff seeks to represent.

CLASS ACTION ALLEGATIONS

78. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-77 as if set forth fully in this cause of action.

79. This cause of action is brought on behalf of Plaintiff and the members of the class whom Plaintiff seeks to represent.

80. The class of persons Plaintiff seeks to represent are those owners of "owner occupied" residential structures or condominiums (or who have an interest in such real property) who's mortgage loans are serviced by Defendant, and who have been injured by Defendant's pattern of systematically, violating and circumventing the provisions of RESPA (12 U.S.C. Section 2605(e) et seq.), and the FDCPA (15 U.S.C. § 1692(c) et seq.), as well as New York GBL § 349 within one year from the date of the commencement of this action.

81. The central questions in this litigation relate to the Defendant's pattern of practice whereby (a) it systematically and deliberately violated and circumvented the provisions of RESPA (12 U.S.C. Section 2605(e) et seq.) by (a) its complete failure to respond, or its inadequate responsiveness, to QWRs, as well as its timeliness of responses in providing the information in response to QWRs, (b) by Defendant's failure to remove information regarding any alleged overdue payments, to consumer reporting agencies during its review of said QWR's, and (c) for Defendant's violations of the FDCPA (15 U.S.C. § 1692 et seq.) in circumventing Plaintiff's attorney(s) by corresponding directly with the mortgagor instead of Plaintiff's attorney(s) in responding to QWRs. It is alleged that Defendant's violations of the aforementioned statutes resulted in damages to the Plaintiff, as well as the class she seeks to represent, in the form of (a) statutory violations as well as (b) actual damages as mentioned hereinabove.

82. Class certification is appropriate because common issues predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

83. The relief sought in this action would, as a practical matter, be unavailable to many members of the class. There would be little incentive to individual members of the class to bring individual actions to redress the wrongs suffered by them; because small individual recoveries would not provide the proposed class members with enough incentive to prosecute separate actions.

84. Upon information and belief there is no present litigation concerning this controversy already commenced by or against any members of the class.

85. The proposed class consists of a class of persons ("mortgagors") sharing the single common issue and legal theory related to violations, by the Defendant, of the provisions of RESPA with respect to the mortgagor's QWR(s) submitted to the Defendant.

86. Although a consistent legal theory applies, the class of persons Plaintiff seeks to represent may be divided into subclasses as this Honorable Court may deem appropriate. They are as follows:

- (a) All mortgagors who resided within the United States, and submitted a QWR (or QWRs) to the Defendant as related to their mortgage (either through an attorney or on their own behalf) and did not receive the information to which they were entitled under RESPA (pursuant to 12 U.S.C. Section 2605(e) et seq.) within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the Defendant's receipt of said QWR(s);

- (b) All mortgagors who resided within the United States, and submitted a QWR (or QWRs) to the Defendant as related to their mortgage (either through an attorney or on their own behalf) and did not receive the information to which they were entitled under RESPA (pursuant to 12 U.S.C. Section 2605(e) et seq.) within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the Defendant's receipt of said QWR(s) and who were additionally injured by the Defendant during the 60-day period (beginning on the date of the Defendant's receipt of said QWR (or QWRs) relating to a dispute regarding their payments) because the Defendant did not protect their credit rating due to its continuance in providing information concerning overdue payments to consumer reporting agencies.
- (c) All mortgagors who resided within the United States, and submitted a QWR (or QWRs) to the Defendant as related to their mortgage (either through an attorney or on their own behalf) and did not receive the information to which they were entitled under RESPA (pursuant to 12 U.S.C. Section 2605(e) et seq.) within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the Defendant's receipt of said QWR(s) and who were additionally injured because the Defendant circumvented said mortgagor's attorney by directly contacting and corresponding with said mortgagors in violation of the FDCPA (15 U.S.C. § 1692c et seq.).
- (d) all mortgagors who resided within the United States, and submitted a QWR (or QWRs) to the Defendant as related to their mortgage (either through an attorney or on their own behalf) and did not receive the information to which they were entitled under RESPA (pursuant to 12 U.S.C. Section 2605(e) et seq.) within 30 days

(excluding legal public holidays, Saturdays, and Sundays) after the Defendant's receipt of said QWR(s) and who were additionally injured by the Defendant as described in any or all of paragraphs (a), (b) and (c) (immediately hereinabove) and who suffered actual damages as a result of the Defendant's noncompliance.

87. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

(A) This action is manifestly of the type where class treatment is appropriate since its management as a representative action is not likely to encounter substantial difficulties which would outweigh the advantages of a class suit.

(B) Based on the fact that the heart of this litigation involves the issue of Defendant's failure to timely respond to QWRs pursuant to the provisions of RESPA the class is so numerous that joinder of all members is impracticable.

(C) There are questions of law and fact common to the class; and these questions predominate over any questions affecting only individual class members,

(D) The identification of the mortgagors who sent out qualified written requests (either through their attorney or independently), is a matter capable of ministerial determination from the records of the Defendant (see Exhibit 14 – "Consent Order"), as well as through the Plaintiff's attorney's independent investigative source. Moreover, Plaintiff's attorney's independent investigative source (www.bankclassactions.com ("BCA")) will work with Plaintiff's attorney in utilizing its bank of information to ascertain, sort, and categorize class plaintiffs in accordance with the abovementioned subclasses. Plaintiff's has consulted with, and will continue to consult with BCA during the course of this action on a regular basis. BCA maintains a growing database of distressed United States homeowners, who, to a large extent, do not receive adequate responses to their QWRs. On a regular basis, these, homeowners fill out questioners on the BCA site which provides BCA with extensive mortgage profile information, as well as many points of data in regard to the underwriting and servicing of their mortgages. More specifically, the BCA site evidences, a large quantity of comments from these homeowners that relate directly to the allegations maintained in this case concerning the Defendant's failure to adhere to the

provisions of RESPA as related to QWR's. Attached is a letter from Mr. Jeff Greenberg (the proprietor at BCA), which remarks as to his personal credentials as well as the type of information homeowners provide as related to their interaction with mortgage originators and servicers. See Exhibit 15

(E) The main claims of the Plaintiff pertain to RESPA violations regarding the Defendants adequacy of responsiveness, and timeliness of responses, to QWRs as well as its RESPA violations regarding credit reporting (in regard QWRs). These claims are typical to those of the class members. All are based on the same basic facts and legal theories.

(F) Plaintiff has no interest antagonistic to those of any other member of the class. The plaintiff's interests are consistent with those of the members of the class. The Plaintiffs will fairly and adequately represent the interests of the class. Plaintiffs are represented by counsel with experience in real estate related litigation. In addition, for several years as a home builder, Plaintiffs' attorney has attended numerous closings. As such, Plaintiffs' attorney is quite familiar with residential real estate transactions as well as all documents as related to the nature of this action. Additionally, Mr. Amir J. Goldstein, Esq., with offices at 591 Broadway, Suite 3A New York, New York 10012 (Tel: (212) 966-5253, Fax: (866) 288-9194) will be acting in a capacity "Of Counsel" in regard to this matter; and, although not "Of Counsel" in this matter, Ms. Antoinette M. Davis, lead attorney in the case of Judith Moon v. GMAC Mortgage Corporation, d/b/a Ditech.Com, a Pennsylvania Corporation, et al., 2009 U.S. Dist. LEXIS 91933, has agreed to act as a "consultant" to Plaintiffs' attorney on an "as needed" basis with regard to this matter.

88. A class action is superior for the fair and efficient adjudication of the class member's claims. Congress specifically envisions class actions as a principal means of enforcing the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. Section 2605(e) et seq. as well as the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692(c) et seq. The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of

inconsistent or varying standards for the parties and would, therefore, not be in the interest of judicial economy.

89. With the Court's permission, the Plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

90. Qualified Written Requests as made by the Plaintiffs to the Defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

91. The Defendant's actions as set forth above in the within complaint violates the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. Section 2605(e) et seq., and the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692(c) et seq..

92. Because the Defendant violated the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. Section 2605(e) et seq., and the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692(c) et seq., Plaintiff and the members of the class are entitled to damages in accordance with the provisions of these acts.

JURY DEMAND

93. Plaintiff requests a trial by jury in regard to the claims asserted herein.


WHEREFORE, Plaintiffs and each of the members of the class on whose behalf this action has been brought demand judgment as follows:

- (a) Finding that Defendant violated provisions of 12 U.S.C. Section 2605(e) et seq. and permanently enjoining it from engaging in any further such similar acts and practices;
- (b) Finding that Defendant violated provisions of 15 U.S.C. § 1692(c) et seq. and permanently enjoining it from engaging in any further such similar acts and practices;;
- (c) Finding that Defendant violated provisions of General Business Law § 349(a) and permanently enjoining it from engaging in any further such similar acts and practices;
- (d) Awarding Plaintiff and each of the members of the class on whose behalf this action has been brought statutory damages as to all statutes alleged to have been violated hereinabove;

- (e) Awarding Plaintiff and each of the members of the class on whose behalf this action has been brought actual damages as the result of the Defendant's tortious acts alleged hereinabove;
- (f) Awarding Plaintiff and each of the members of the class on whose behalf this action has been brought punitive damages;
- (g) Awarding costs and expenses including reasonable attorneys' and accountants' fees to the Plaintiff pursuant to the applicable statutes in amounts to be fixed by the Court and paid by Defendant;
- (h) For judgment against Defendant in amounts to be proven at trial;
- (i) For pre judgment interest on all liquidated sums awarded against Defendant at the highest allowable rate, and post judgment interest on the judgments entered against Defendant at the highest allowable rate;
- (j) Awarding Plaintiffs and each of the members of the class on whose behalf this action has been brought damages against Defendant in such sum as the Court may deem just and proper.

Respectfully submitted,

DATED: May 16, 2012.


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