

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

STEVEN AND RUTH MITCHELL,
and

JUDITH L. PICKERILL,

Plaintiffs,

vs.

RESIDENTIAL FUNDING COMPANY,
LLC,

RESIDENTIAL FUNDING MORTGAGE
SECURITIES II, INC.,

JP MORGAN CHASE BANK, N.A., AS
TRUSTEE,

BANK OF NEW YORK TRUST COMPANY,
N.A., AS SUCCESSOR TRUSTEE,

WILMINGTON TRUST COMPANY
HOMECOMINGS FINANCIAL, LLC,

HOUSEHOLD FINANCE CORPORATION,
III,

WACHOVIA EQUITY SERVICING LLC
F/K/A HOMEQ SERVICING
CORPORATION,

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., and

JP MORGAN CHASE BANK, N.A. AS
SUCCESSOR BY MERGER TO BANK ONE,
N.A.,

Defendants.

Case No. 03-CV-220489

Division 4



THIRD AMENDED PETITION FOR DAMAGES

The above-named plaintiffs state and allege the following for their Third Amended Petition in this cause:

NATURE OF THE CLAIMS

1. This action is brought by the plaintiffs on behalf of themselves and as a plaintiffs' class action for violations of Missouri's Second Mortgage Loan Act with respect to Missouri second mortgage loans that were originated by MORTGAGE CAPITAL RESOURCES CORPORATION (hereinafter "MCR"), a California corporation that has since filed bankruptcy, but which second mortgage loans were sold and assigned to the following defendants and which defendants are liable for the violations of Missouri's Second Mortgage Loans Act as committed by MCR, their assignor and loan originator, and also for the violations committed by the following defendants in connection with such loans: RESIDENTIAL FUNDING COMPANY, LLC. (sometimes referred to as "GMAC-RFC"), RESIDENTIAL FUNDING MORTGAGE SECURITIES II, INC. ("RFMS"), HOMECOMINGS FINANCIAL NETWORK, LLC ("HOMECOMINGS") and WILMINGTON TRUST COMPANY ("WILMINGTON TRUST") and JP MORGAN CHASE BANK, N.A., as Trustee and BANK OF NEW YORK TRUST COMPANY, N.A., as Successor Trustee (together "BNY") as the Owner Trustee and Indenture Trustee, respectively, and as representatives and agents of securitized trusts formed by GMAC-RFC and RFMS to hold the loans of the putative class members and that hold the loans of the named plaintiffs, and HOUSEHOLD FINANCE CORPORATION III ("HOUSEHOLD"), and WACHOVIA EQUITY SERVICING, LLC. f/k/a HomEq Servicing Corporation ("HOMEQ"), MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") and JP MORGAN CHASE BANK, N.A., as successor by merger to Bank One, N.A. ("BANK ONE"), all of which

defendants purchased or had assigned to them or their controlled subsidiaries or the trusts which they caused to be formed and/or for which they are trustees for the said Missouri second mortgage loans and which defendants also “charged” and/or “received” monthly payments from the borrowers of the second mortgage loans that are the subject of this action, all in violation of the Missouri Second Mortgage Loans Act. This case also includes the wrongful and conspiratorial efforts of GMAC-RFC and Homecomings to procure second mortgage loans from hundreds of Missouri homeowners because of the extreme profitability of such loans regardless of the legality of such loans and all in violation of Missouri’s Second Mortgage Loans Act (§ 408.231 et seq. RSMo) (“SMLA”).

2. Defendants GMAC-RFC, RFMS, and their Securitized Trusts, WILMINGTON TRUST, BNY, HOMECOMINGS, HOUSEHOLD, MERS, HOMEQ and BANK ONE individually, and as representatives of a defendant class, all purchased loans made or originated by MCR or had assigned to them loans made or originated by MCR and now hold or previously held the hereinafter described second mortgage loans and/or have charged and/or received or now charge and/or receive the monthly payments from the borrowers, which illegal fees together with the other closing costs were payable at the closing of such second mortgage loans and were included in the principal of such loans, and which illegal fees and charges were thereafter charged and/or received by the defendants as part of the monthly payments of such second mortgage loans.

3. Plaintiffs are individual Missouri borrowers that seek redress on behalf of themselves and on behalf of a plaintiff class (“PLAINTIFF CLASS”) against GMAC-RFC, RFMS, and their Securitized Trusts, WILMINGTON TRUST, BNY, HOMECOMINGS, HOUSEHOLD, MERS, HOMEQ and BANK ONE and the other defendants (including a defendant class) consisting of

those entities that now hold or have held and/or now charge and/or receive or have charged and/or received the illegal fees and charges and the resulting illegal interest from the Missouri second mortgage loans that are the subject of this action for violations of Missouri's SMLA, including claims for monetary damages and injunctive relief.

FACTUAL BACKGROUND

The Predatory and Fraudulent Lending Scheme – In General

4. Plaintiffs and the Plaintiff Class, all as more particularly alleged below, were the victims of a predatory lending scheme that charged them bogus and illegal fees and charges, together with charging high interest rates all as part of a scheme to make high-cost loans to Missouri borrowers, as well as borrowers across the country. Such bogus and illegal fees were unlawful under Missouri's SMLA and included illegal origination fees, loan discount fees, underwriting fees, processing fees, document preparation fees, attorneys' fees and other fees and charges contracted for by MCR and were payable to MCR and were thereafter charged by and received by the defendants, together with the illegal interest that were charged by and received by these defendants and all of which fees, charges and interest violate Missouri's SMLA.

5. With respect to the loan origination fees, the loan discount charges, the underwriting fees, the processing fees and the document fees, such were paid to the originating lender, MCR and were not in fact paid to a third party. Further, the attorneys' fees, regardless of to whom such were paid, were not permitted by Missouri's SMLA.

6. The Missouri second mortgage loans at issue were and are "high-cost" loans under the Home Ownership and Equity Protection Act, 15 U.S.C. §§ 1602 and 1641 (hereinafter "HOEPA").

7. GMAC-RFC and RFMS, individually, and in connection with the securitized trusts that were created and formed by them, and through the securitized trusts' Owner Trustee, Wilmington Trust, and Indenture Trustee, BNY, purchased a substantial number of the loans at issue from MCR, thereby "stepping into the shoes of" MCR with respect to any liability, claims or defenses arising from the loan transactions pursuant to 15 U.S.C. § 1641(d)(1) and also pursuant to having "charged" and/or "received" such illegal fees and the resulting illegal interest, all in violation of § 408.233 RSMo Supp. 1998.

8. HOUSEHOLD, HOMEQ and BANK ONE also purchased a number of the loans at issue from MCR, thereby "stepping into the shoes of" MCR with respect to any liability, claims or defenses arising from the loan transactions pursuant to 15 U.S.C. § 1641(d)(1) and also pursuant to having "charged" and/or "received" such illegal fees and the resulting illegal interest, all in violation of § 408.233 RSMo Supp. 1998. Plaintiffs have standing to include HOUSEHOLD and HOMEQ in this action on behalf of the members of the Plaintiff Class whose loans were purchased, directly or indirectly, from MCR, and which claims are juridically linked to those of the Representative Plaintiffs in that all of the loans were made by MCR to Missouri borrowers and the joinder of HOUSEHOLD, and HOMEQ as parties is permitted in order to afford all members of the class the same relief.

9. MERS is named in its capacity as a "nominee" for Defendant HOUSEHOLD. As nominee for Defendant HOUSEHOLD, MERS has been assigned certain rights and liabilities of Household and stands in the shoes of HOUSEHOLD.

10. GMAC-RFC and RFMS, to the extent that they individually purchased such loans, thereafter sold and assigned the loans, in whole or in substantial part, to securitized trusts that they formed for that purpose. WILMINGTON TRUST is the Owner Trustee and BNY is the

Indenture Trustee of these securitized trusts that continue to hold the subject Missouri second mortgage loans.

11. Defendants (as well as any other holder or assignee of the subject Missouri second mortgage loans or their respective trustees) have “charged” to and/or “received” from the plaintiffs and the members of the Plaintiff Class those aforementioned illegal fees and charges and the resulting illegal interest, all in violation of the SMLA and in particular § 408.233 RSMo Supp. 1998.

12. Defendants were aware of the fraudulent conduct at issue and they individually and jointly participated in and acted in furtherance of said scheme and funded the said scheme by providing the financing necessary to continue the illegal scheme, all in its effort to feed an insatiable appetite for these high cost loans.

13. MCR aggressively solicited residential home equity mortgages across the country, including Missouri, all through a massive national direct mail marketing campaign.

The Role Of Defendant GMAC-Residential Funding Corporation and Residential Funding Mortgage Securities II, Inc. in this Scheme

14. Residential Funding Corporation (n/k/a Residential Funding Company, LLC) although not the exclusive purchaser, was a substantial purchaser of the Missouri second mortgage loans made or originated by MCR.

15. Residential Funding Corporation was originally a subsidiary of Banco Mortgage Company, an affiliate of Northwestern National Bank, the predecessor of Norwest Bank.

16. Initially, Residential Funding Corporation focused on buying and securitizing “jumbo” mortgages. “Securitization” as used herein and as meant in general terms refers to the process of consolidating loans (including but not limited to residential mortgage loans) and/or packaging loans (not only mortgage loans) for sale as securities.

17. Residential Funding Corporation, like many purchasers of mortgage loans, profited by not only purchasing and holding mortgage loans in its own inventory, but also generated significant profits by acting directly or through an affiliate, such as RFMS, to consolidate such mortgage loans into securitized pools and sell, as securities, interests in the pools.

18. Several years ago, Residential Funding Corporation was acquired by General Motors Acceptance Corporation and became known as GMAC-RFC.

19. Some of the most profitable loans that GMAC-RFC could either hold or securitize through its affiliates, such as RFMS, or their securitized trusts, were high cost home equity mortgage loans, including those commonly referred to as High Loan To Value (“HLTV”) loans.

20. Thus GMAC-RFC and RFMS turned to a number of originators of these high cost and often HLTV loans in order to generate substantial profits that were generated from either holding such loans in inventory or by securitizing such loans in securitization pools/trusts.

21. MCR became a substantial source for GMAC-RFC’s appetite for these high cost loans and in particular became a substantial source of high cost Missouri second mortgage loans for GMAC-RFC.

22. GMAC-RFC, individually, and through its affiliates, including RFMS, and the Owner Trustee, WILMINGTON TRUST, and Indenture Trustee, BNY, of the securitized trusts, and HOMECOMINGS, as the servicer, directly participated in and conspired with MCR or its affiliated entities to participate in the fraudulent and predatory lending practices of MCR. Said defendants’ scheme was made possible by said defendants’ provision of the necessary funding and commitment to purchase substantially all of the loans generated by the MCR’s lending activities and to expand the same so that GMAC-RFC could, in turn, expand its substantial profits from acquiring and/or securitizing these high cost loans through said defendants,

including a substantial number of the Missouri second mortgage loans that are the subject of this action.

THE PARTIES

The Plaintiffs

23. Plaintiffs Steven and Ruth Mitchell (the "MITCHELLS") are lawfully married individuals who reside at 2109 NW Harbor Place, Blue Springs, Jackson County, Missouri 64105.

24. Plaintiff Judith L. Pickerill resides at 712 Edwin Avenue, St. Louis, Missouri 63122.

The Defendants

Holder and Charging/ Defendants

25. Defendant RESIDENTIAL FUNDING COMPANY, LLC (sometimes referred to above and below as "GMAC-RFC") has previously been served with (or waived service of) process in this action.

26. Defendant RESIDENTIAL FUNDING MORTGAGE SECURITIES II, INC. ("RFMS") has previously been served with (or waived service of) process in this action..

27. Defendant WILMINGTON TRUST COMPANY ("WILMINGTON TRUST") is named in its capacity as Trustee for the GMAC-RFC and RFMS-formed securitization trusts that owned and held the named plaintiffs' loans and that own and hold or held the loans of the members of the Plaintiff Class. WILMINGTON TRUST is the Trustee for the 2000-H11 securitization trust the MITCHELLS' loan. Wilmington Trust has previously been served with (or waived service of) process in this action..

28. Defendant JP MORGAN CHASE BANK, N.A., as Trustee, and BANK OF NEW YORK TRUST COMPANY, N.A., as Successor Trustee (together "BNY") are named in their

capacities as the Indenture Trustee and as the Successor Indenture Trustee for the GMAC-RFC and RFMS securitization trusts that own and hold the named plaintiffs' loans and that own and hold the loans of the members of the Plaintiff Class. BNY is the Successor Indenture Trustee for the 2000-HI1 securitization trust holding the MITCHELLS' loan. BNY has previously been served with (or waived service of) process in this action.

29. Defendant HOMECOMINGS FINANCIAL NETWORK, LLC ("Homecomings") is a Delaware corporation (and was known as "a GMAC Company") has previously been served with (or waived service of) process in this action. HOMECOMINGS is named as a defendant for having charged and received from the named plaintiffs and from the members of the Plaintiff Class the illegal charges and fees and the resulting illegal interest from the Missouri second mortgage loans that are the subject of this action, and which actions of charging and receiving and continuing to charge and receive such illegal charges and fees and the resulting illegal interest, all in violation of the SMLA and in particular, in violation of § 408.233 RSMo.

30. Defendant HOUSEHOLD FINANCE CORPORATION III ("Household") has previously been served with (or waived service of) process in this action. Household is named as a defendant for having purchased and held the loans of members of the Plaintiff Class and for having charged and received from the named plaintiffs and from the members of the Plaintiff Class the illegal charges and fees and the resulting illegal interest from the Missouri second mortgage loans that are the subject of this action, and which actions of charging and receiving and continuing to charge and receive such illegal charges and fees and the resulting illegal interest, all in violation of the SMLA and in particular, in violation of § 408.233 RSMo.

31. Defendant Mortgage Electronic Registration Systems, Inc. ("MERS") has previously been served with (or waived service of) process in this action. MERS is named in its capacity as

nominee for HOUSEHOLD, having received an assignment of certain rights and liabilities of HOUSEHOLD.

32. Defendant WACHOVIA EQUITY SERVICING, LLC. f/k/a HomeEq Servicing Corporation has previously been served with (or waived service of) process in this action. HOMEQ is named as a defendant for having purchased and held the loans of members of the Plaintiff Class and for having charged and received from the named plaintiffs and from the members of the Plaintiff Class the illegal charges and fees and the resulting illegal interest from the Missouri second mortgage loans that are the subject of this action, and which actions of charging and receiving and continuing to charge and receive such illegal charges and fees and the resulting illegal interest, all in violation of the SMLA and in particular, in violation of § 408.233 RSMo.

33. JP MORGAN CHASE BANK, N.A., as successor by merger to Bank One, N.A. (“BANK ONE”) is also named as a defendant, since BANK ONE purchased and held the loans of named Plaintiff Judith Pickerill and other members of the Plaintiff Class, and for having charged and received from the named plaintiffs and from the members of the Plaintiff Class the illegal charges and fees and the resulting illegal interest from the Missouri second mortgage loans that are the subject of this action, and which actions of charging and receiving and continuing to charge and receive such illegal charges and fees and the resulting illegal interest, all in violation of the SMLA and in particular, in violation of § 408.233 RSMo.

The Doe Defendants

34. Defendants DOE 1 through 25 (“DOES 1-25”) are the remaining owner, assignees (holders) and trusts, funds and/or pools, and the trustees thereof, organized under various state laws, that are yet to be identified and named, and whose identity will become known through

discovery and/or by requests made by plaintiffs or the members of the Plaintiff Class of their second mortgage servicers, after which such remaining assignees (holders) and trusts, funds and pools, and the trustees thereof, to the extent that they can be identified, will be added as individual and class representative defendants.

The Holder/Recipient Defendants

35. Each of the HOLDER AND CHARGING/RECIPIENT DEFENDANTS and DOES 1 through 25 (collectively, the “HOLDER/RECIPIENT DEFENDANTS”), together with the lender, MCR, are “moneyed corporations” as that term is defined in § 516.420 RSMo because each of said defendants are assignees of the second mortgage loans; entities or association in form and in substance engaged in the business of buying loans (streams of money) that are used to collateralize certain notes or evidences of indebtedness that they sell to the public; as well as enterprises that are engaged in the business of using money to make money and each is named as a defendant both individually and in their capacity as an owner and/or assignee (holder) of, and/or the trustee of a trust, fund or pool owning or holding, and/or the servicer of the Missouri second mortgage loans that were made by MCR, and as named defendants and representatives of every other member of the Defendant Class (as hereinafter defined), which includes the remaining owners and assignees (holders) of, and trustees of the trusts, funds and pools owning and/or holding, and servicers of the said Missouri second mortgage loans that were made by MCR.

36. The Holder/Recipients Defendants, even if not holder recipient defendants of the Representative Plaintiffs, are juridically linked by virtue of the fact that each are derivative holders and/or recipients of Missouri second mortgage loans made by MCR and are holders and/or recipients of the loans of either the Representative Plaintiffs or of members of the Plaintiff

Class and are joined herein necessarily and permissibly under Mo. Rule 52.04(a) so as to give full and complete relief to members of the Plaintiff Class as described, just as such relief is sought for the Representative Plaintiffs.

JURISDICTION AND VENUE

37. This Court has jurisdiction over each of the HOLDER/RECIPIENT DEFENDANTS since each violated Missouri's Second Mortgage Loans Act. In doing so, each of the HOLDER/RECIPIENT DEFENDANTS transacted business, made contracts, committed torts and unlawful actions in Missouri, and/or are assignees or nominees of such entities and/or used or possessed an interest in real estate all located within the state of Missouri, and/or are subject to the service of process in this state, all as is more particularly alleged in this Petition. The HOLDER/RECIPIENT DEFENDANTS all have sufficient minimum contacts, and in fact, substantial contacts, with Missouri such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. The HOLDER/RECIPIENT DEFENDANTS have purposefully obtained Missouri second mortgage loans through MCR and its other loan originators, brokers and correspondents, and have purposefully charged and/or received unlawful fees and charges thereby violating Missouri's Second Mortgage Loans Act such that said defendants should reasonably anticipate being haled into court in Missouri to answer for the unlawful acts of MCR and their own unlawful acts. Defendants' scheme, built around the assignment and securitization of the second mortgage loans into pools, securitized trusts and the secondary market, is designed in substantial part to insulate the HOLDER/RECIPIENT DEFENDANTS from being haled into Missouri courts to account for their loan originator' and loan correspondents' violations of Missouri's consumer protection

laws, including the SMLA. Missouri has a strong interest in providing a forum for its residents aggrieved by such schemes to violate its consumer protection acts.

0. Additionally, defendants GMAC-RFC and RFMS are subject to the jurisdiction of this Court, each having a registered agent in and/or a continuous and systematic presence in or contacts with the state of Missouri, and, additionally, pursuant to § 506.500 RSMo having engaged individually, and by virtue of being an assignee of the high-cost second mortgage loans and/or having also engaged in the following actions through its agents, subsidiaries or affiliates:

- (a) Transacted business within this state by virtue of making and purchasing numerous high cost Missouri second mortgage loans, by acting as a substantial source of the funding for such second mortgage loans, and having charged and received illegal fees and charges and the resulting illegal interest, all in violation of Missouri law;
- (b) Made contracts within this state by virtue of its promoting and making through their assignor, MCR, numerous high cost second mortgage loans in this state;
- (c) Committed tortious acts within this state by virtue of their violations of Missouri's SMLA and their unlawful contracting for, charging and receiving of such illegal fees and the resulting illegal interests and the continuing collection of illegal fees and charges and the resulting illegal interest from the plaintiffs and members of the Plaintiff Class, as more specifically set forth below; and
- (d) Used real estate situated in this state to secure the Missouri second mortgage loans individually and/or by virtue of being assignees (holders) or the trustees of an assignee of MCR and/or the second mortgage loans, and/or by virtue of its continuing capacity as the beneficiary of the deeds of trust and mortgages, or the

trustee for such beneficiaries, that secure the second mortgage loans that are the subject of this action.

0. Additionally, defendant HOMECOMINGS is subject to the jurisdiction of this Court having a registered agent in and/or a continuous and systematic presence in or contacts with the state of Missouri, and, additionally, pursuant to § 506.500 RSMo having engaged in the following actions:

- (a) Transacted business within this state by virtue of having charged and received illegal fees and charges and the resulting illegal interest, all in violation of Missouri law;
- (b) Committed tortious acts within this state by virtue of its violations of Missouri's SMLA and its unlawful charging and receiving such illegal fees and the resulting illegal interests and the continuing collection of illegal fees and charges and the resulting illegal interest from the plaintiffs and members of the Plaintiff Class, as more specifically set forth below;
- (c) Committed tortious acts within this state by virtue of its violations of Missouri's SMLA and its unlawful contracting for, charging and receiving of such illegal fees and the resulting illegal interests and the continuing collection of illegal fees and charges and the resulting illegal interest from the plaintiffs and members of the Plaintiff Class, as more specifically set forth below
- (d) Used real estate situated in this state to secure the Missouri second mortgage loans individually and/or by virtue of being an assignee (holder) or the trustee of an assignee of MCR and/or the second mortgage loans, and/or by virtue of its continuing capacity as the beneficiary of the deeds of trust and mortgages, or the

trustee for such beneficiaries, that secure the second mortgage loans that are the subject of this action.

0. Additionally, defendants WILMINGTON TRUST and BNY, as the trustees of the GMAC-RFC and RFMS-formed securitized trusts, are subject to the jurisdiction by virtue of their own actions and the actions of MCR, GMAC-RFC, and RFMS as more particularly described above and for which WILMINGTON TRUST and BNY stands in the shoes of each of these said defendants.

0. Additionally, defendants HOUSEHOLD, MERS, HOMEQ, BANK ONE are subject to the jurisdiction of this Court, having a registered agent in and/or a continuous and systematic presence in or contacts with the state of Missouri, and, additionally, pursuant to § 506.500 RSMo having engaged in the following actions individually or through its agents, subsidiaries, affiliates and/or nominees:

- (a) Transacted business within this state by virtue of purchasing numerous high cost Missouri second mortgage loans, by acting as a substantial source of the funding for such second mortgage loans, and having charged and received illegal fees and charges and the resulting illegal interest, all in violation of Missouri law;
- (b) Made contracts within this state by virtue of its promoting and making through their assignor, MCR, numerous high cost second mortgage loans in this state;
- (c) Committed tortious acts within this state by virtue of their violations of Missouri's SMLA and its unlawful contracting for, charging and receiving of such illegal fees and the resulting illegal interests and the continuing collection of illegal fees and charges and the resulting illegal interest from the plaintiffs and members of the Plaintiff Class, as more specifically set forth below

- (d) Used real estate situated in this state to secure the Missouri second mortgage loans individually and/or by virtue of being assignees (holders) or the trustees of an assignee of MCR and/or the second mortgage loans, and/or by virtue of their continuing capacity as the beneficiary of the deeds of trust and mortgages, or the trustee for such beneficiaries, that secure the second mortgage loans that are the subject of this action.

0. Each of the HOLDER/RECIPIENT DEFENDANTS is subject to the jurisdiction of this Court, either having a registered agent in and/or a continuous and systematic presence in or contacts with the state of Missouri, and/or pursuant to the provisions of §506.500 RSMo, having further:

- (a) Transacted business within this state individually and/or by virtue of being an assignee (holder) or the trustee of an assignee of the Missouri second mortgage loans that are the subject of this action from MCR, by acting as a substantial source of the funding for such second mortgage loans, and/or by virtue of it being a holder of and/or a trustee of a holder of said second mortgage loans and collecting the benefits of said second mortgage loans from residents of this state;
- (b) Made contracts within this state individually and/or by virtue of being an assignee (holder) or the trustee of an assignee of MCR and/or said second mortgage loans;
- (c) Committed tortious acts within this state individually and/or by virtue of being an assignee (holder) or the trustee of an assignee of MCR and/or the Second Mortgage Loans, and/or by virtue of its continuing to charge and receive the illegal charges and fees and the resulting illegal interests from the second mortgage loans that are the subject of this action; and

- (d) Used real estate situated in this state to secure the Missouri second mortgage loans individually and/or by virtue of being an assignee (holder) or the trustee of an assignee of MCR and/or the second mortgage loans, and/or by virtue of its continuing capacity as the beneficiary of the deeds of trust and mortgages, or the trustee for such beneficiaries, that secure the second mortgage loans that are the subject of this action.

43. Venue is proper in this Court pursuant to the terms of § 408.562 RSMo because the named plaintiffs reside in this county and the transactions of the named plaintiffs complained of in this action occurred in this county and pursuant to § 508.010 RSMo because the causes of action accrued in this county.

GENERAL ALLEGATIONS

44. As noted above, plaintiffs (sometimes collectively, the "REPRESENTATIVE PLAINTIFFS") bring this action individually, and as a class action on behalf of the statewide class of Missouri residential real estate owners or borrowers who obtained second mortgage loans from MCR.

45. The "Second Mortgage Loans" that are the subject of this action are defined at §408.231 et seq. RSMo to mean "...a loan secured in whole or in part by a lien upon any interest in residential real estate created by a security instrument, including a mortgage, trust deed, or other similar instrument or document, ... which residential real estate is subject to one or more prior mortgage loans."

46. "Residential real estate" is defined at § 408.231.3 RSMo, to mean "... any real estate used or intended to be used as a residence by not more than four families"

47. Finally, § 408.234.2 RSMo makes it illegal for a lender to take a security interest in any collateral other than residential real estate in connection with a Second Mortgage Loan.

48. From and after six years prior to the filing of this action and through the present time, MCR “made” Second Mortgage Loans to the REPRESENTATIVE PLAINTIFFS and the other members of the Plaintiff Class, defined below.

49. In each of the of the Second Mortgage Loans at issue, MCR received a promissory note from the REPRESENTATIVE PLAINTIFFS and from the various members of the Plaintiff Class (as hereinafter defined) and was named as the “Beneficiary” in a second mortgage deed of trust to secure the said Second Mortgage Loans.

50. In connection with these Second Mortgage Loans, MCR contracted for and/or charged and/or received the above referenced illegal costs and fees which were payable at closing of the second mortgage loans, all in violation of Missouri’s Second Mortgage Loans Act, which costs and fees included illegal loan origination fees, loan discount charges, underwriting fees, processing fees and document fees that were paid to the originating lender, MCR and were not in fact paid to a third party. Further, the attorneys’ fees, regardless of to whom such were paid, were not permitted by Missouri’s SMLA.

51. These unlawful fees and closing charges were payable by the borrower at closing and were contracted for and thereafter charged and received by the said defendants by virtue of the fact that the said unlawful fees and closing charges were added to the principal balance of the second mortgage loan notes (§ 408.231.2 RSMo), and the resulting unlawful interest was charged on the entire principal balance of the notes, although no such interest is due under such notes pursuant to § 408.236 RSMo.

THE MITCHELLS’ SECOND MORTGAGE LOAN

52. On or about November 24, 1999 and in connection with the above alleged predatory lending scheme, MCR loaned the MITCHELLS a total loan of \$21,000.00, to be repaid with interest at the yearly rate of 10.85% in consecutive monthly installments over a period of 15 years.

0. To secure repayment of their note, the MITCHELLS were required to and did execute a deed of trust for the benefit of MCR. The deed of trust granted MCR a security lien in Residential real estate as defined at § 408.231 RSMo and was subject to one or more prior mortgage loans.

0. In connection with this Second Mortgage Loan, MCR contracted for and charged and/or received (and the HOLDER/RECIPIENT DEFENDANTS GMAC-RFC, RFMS and Homecomings and Wilmington Trust and Chase Manhattan, as Owner Trustee and Indenture Trustee, later charged and/or received) the following illegal fees and costs, none of which were interest, and some of which were in fact finder's fees:

Loan Discount Fee to MCR	\$ 735.00
Credit Report Fee to MCR	\$ 50.00
Custodial Fee to Republic Bank	\$ 35.00
Underwriting Fee to MCR	\$ 525.00
Processing Fee to MCR	\$ 525.00
Federal Express Fee	\$ 80.00
Document Preparation Review Fee to MCR	\$ 420.00
Attorney's Fees to Johnson & Payne	\$ 450.00
Wire Transfer Fee to Johnson & Payne	\$ 30.00

MS. PICKERILL'S SECOND MORTGAGE LOAN

0. On or about December 29, 1999 and in connection with the above alleged predatory lending scheme, MCR loaned Judith Pickerill a total loan of \$29,600.00, to be repaid with interest at the yearly rate of 11.6% in consecutive monthly installments over a period of 15 years.

0. To secure repayment of their note, Ms. Pickerill was required to and did execute a deed of trust for the benefit of MCR. The deed of trust granted MCR a security lien in Residential real estate as defined at § 408.231 RSMo and was subject to one or more prior mortgage loans.

0. In connection with this Second Mortgage Loan, MCR contracted for and charged and/or received (and Banc One Financial Services, Inc. and one or more DOES 1 through 25 later charged and/or received) the following illegal fees and costs, none of which were interest, and some of which were in fact finder's fees:

Loan Discount Fee to MCR	\$ 1,036.00
Custodial Fee to Republic Bank	\$ 35.00
Underwriting Fee to MCR	\$ 592.00
Processing Fee to MCR	\$ 592.00
Federal Express Fee	\$ 80.00
Document Preparation Review Fee to MCR	\$ 296.00
Attorneys' Fees to Johnson & Payne, PLC	\$ 450.00
Wire Transfer Fees to Johnson & Payne LLC	\$ 30.00

**CLASS ACTION FOR VIOLATIONS OF
MISSOURI'S SECOND MORTGAGE LOANS ACT**

Plaintiff Class Action Allegations

58. This action is properly brought as a plaintiff class action under Mo. Rule 52.08(b)(3).

The Class consists of all persons who satisfy the following criteria:

- Those borrowers that obtained Second Mortgage Loans on Residential Real Estate from MCR, all within the meaning of Missouri's Second Mortgage Loans Act (§ 408.231 et seq. RSMo); and
- That as part of that Second Mortgage Loans, MCR and the defendants herein, contracted for, charged and/or received or Plaintiffs were charged, contracted for or paid, and an entity received, the following types of fees:
 - A Loan Discount Fee contracted for and payable to MCR and which was thereafter charged by and paid to the HOLDER/RECIPIENT DEFENDANTS;
 - An Underwriting Fee contracted for and payable to MCR and which was thereafter charged by and paid to the HOLDER/RECIPIENT DEFENDANTS;
 - A Processing Fee contracted for and payable to MCR and which was thereafter charged by and paid to the HOLDER/RECIPIENT DEFENDANTS;
 - A Document Preparation Fee contracted for and payable to MCR and which was thereafter charged by and paid to the HOLDER/RECIPIENT DEFENDANTS.
 - Other charges or fees that were in excess of those that were permitted or were not permitted under § 408.233 RSMo and were contracted for, charged and/or received by MCR or the HOLDER/RECIPIENT DEFENDANTS.

59. The Plaintiff Class includes persons who took such Missouri Second Mortgage Loans within six years next before the filing of this action or those persons who originally took a MCR Missouri second mortgage loan and who were charged or who paid such fees and interest on such loans within the six years next before filing of this action. ("THE SECOND MORTGAGE CLASS").

60. The Plaintiff Class also includes persons who were “charged” or who paid those above fees or interest on the said loans within six years next before filing of this action.

0. The particular members of THE SECOND MORTGAGE CLASS are capable of being described without difficult managerial or administrative problems. The members of THE SECOND MORTGAGE CLASS are readily identifiable from the information and records in the possession or control of MCR, and/or the HOLDER/RECIPIENT DEFENDANTS and/or the representatives or servicing agents of each.

0. THE SECOND MORTGAGE CLASS members are so numerous that individual joinder of all members is impractical. This allegation is based on the fact that MCR made extensive Second Mortgage Loans in Missouri throughout this period.

0. There are questions of law and fact common to the Class, which questions predominate over any questions affecting only individual members of THE SECOND MORTGAGE CLASS and, in fact, the wrongs suffered and remedies sought by the REPRESENTATIVE PLAINTIFFS and the other members of THE SECOND MORTGAGE CLASS are identical, the only difference being the exact monetary amount to which each member of THE SECOND MORTGAGE CLASS is entitled. The principal common issues are:

- Whether MCR violated §§ 408.231 et seq. RSMo by charging the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTGAGE CLASS the fees and charges described above;
- Whether MCR and the HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class as defined below) are barred under the provisions of § 408.236 RSMo from recovery of any interest under these Second Mortgage Loans, and

whether they are liable to return all past interest illegally received and should be enjoined from receiving any future interest; and

- Whether MCR and the HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class) are liable, in addition to the other civil remedies or penalties, for actual damages, together with punitive damages and attorneys fees pursuant to §408.562 RSMo.

64. The REPRESENTATIVE PLAINTIFFS' claims are typical of those of the members of the Class and are based on the same legal and factual theories.

65. The REPRESENTATIVE PLAINTIFFS will fairly and adequately represent and protect the interests of the SECOND MORTGAGE CLASS. They have suffered substantial economic injury in their own capacity from the practices complained of. They have retained counsel experienced in handling class actions, and actions involving unlawful commercial practices. Neither REPRESENTATIVE PLAINTIFFS nor their counsel have any conflicting interests which might cause them not to vigorously pursue this action.

66. Certification of a plaintiff class under Mo. Rule 52.08(b)(3) is appropriate as to the HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class), in that the common questions predominate over any individual questions pertaining to individual members of the Class, and a plaintiff class action is superior to any other available methods for the fair and efficient adjudication of this controversy. A plaintiff class action will cause an orderly and expeditious administration of THE SECOND MORTGAGE CLASS' claims and economies of time, effort and expense will be fostered, and uniformity of decisions will be insured. Moreover, the individual class members are likely to be unaware of their rights and not in a position (either through experience or financially) to commence individual litigation against the likes of GMAC-

RFC, RFMS, HOMECOMINGS, HOUSEHOLD, MERS, HOMEQ and BANK ONE and the other HOLDER/RECIPIENT DEFENDANTS.

Defendants' Liability Under Missouri's Second Mortgage Loans Act

67. Each of the loans that MCR made to the REPRESENTATIVE PLAINTIFFS and members of THE SECOND MORTGAGE CLASS constituted a "Second Mortgage Loan" within the meaning of §§ 408.231 et seq. RSMo.

68. § 408.233 RSMo provides in pertinent part as follows:

1. No charge other than that permitted by section 408.232 shall be directly or indirectly **charged, contracted for or received** in connection with any Second Mortgage Loan, except as provided in this section:

(3) Bona Fide closing costs **paid to third parties**, which shall include:

(a) Fees or premiums for title examination, title insurance or similar purposes including survey;

(b) Fees for preparation of a deed, settlement statement, or other documents;

(c) Fees for notarizing deeds and other documents;

(d) Appraisal fees; and

(e) Fees for credit reports

(5) A nonrefundable origination fee not to exceed five percent of the principal... (two percent prior to August 28, 1998).

69. MCR, GMAC-RFC, RFMS, WILMINGTON TRUST and BNY, as Owner Trustee and Indenture Trustee of the GMAC-RFC and RFMS-formed securitized trusts, HOMECOMINGS, and BANK ONE violated § 408.233 RSMo as such relates to the REPRESENTATIVE PLAINTIFFS' loan and together with HOUSEHOLD, MERS, HOMEQ

and the other HOLDER/RECIPIENT DEFENDANTS as it relates to the members of the SECOND MORTGAGE CLASS by engaging in the following acts, methods or practices:

- Charging and/or receiving, either directly or indirectly, nonrefundable origination fees not allowed by and/or in excess of what fees were allowed by § 408.233.1(5);
- Charging and/or receiving, either directly or indirectly, Discount Fees not allowed by § 408.233.1 RSMo; and
- Charging and/or receiving, either directly or indirectly, other closing fees and costs that were not allowed by the statute.

70. As a result of such violations, § 408.236 RSMo provides as follows:

Any person violating the provisions of sections 408.231 to 408.237 shall be barred from recovery of any interest on the contract, except where such violation occurred either:

- (1) As a result of an accidental and bona fide error of computation; or
- (2) As a result of any acts done or omitted in reliance on a written interpretation of the provisions of sections 408.231 to 408.240 by the division of finance.

71. The conduct of MCR and the resulting statutory violations described above as such relates to all of the defendants, and each of them, did not occur as a result of an accidental and bona fide error of computation or as a result of any acts done or omitted in reliance on any governmental interpretation; but said conduct was, instead, intentional, willful, wanton and malicious, or otherwise showed a complete indifference to and a conscious disregard of the rights of the REPRESENTATIVE PLAINTIFFS and every other member of THE SECOND MORTGAGE CLASS.

72. As the purchasers and/or assignees and holders or as trustee for the assignees and holders of the notes and deeds of trust given under the Second Mortgage Loans by the REPRESENTATIVE PLAINTIFFS and every other member of THE SECOND MORTGAGE

CLASS, the HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class, as hereinafter defined) are liable to the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTGAGE CLASS, just as MCR is liable to the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTGAGE CLASS.

73. The HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class, as hereinafter defined) are liable to the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTGAGE CLASS for all interest that they have collected or hereinafter will collect from the Second Mortgage Loans, and any such interest collected after the date of the filing of this action shall be additional evidence of the willful and malicious nature of and conscious disregard of the unlawfulness of the acts of MCR and the HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class, as hereinafter defined).

74. The HOLDER/RECIPIENT DEFENDANTS (individually, and as a defendant class, as hereinafter defined) and each of them should be forever barred and enjoined under § 408.236 RSMo from collecting or recovering any interest on the Second Mortgage Loans of the REPRESENTATIVE PLAINTIFFS and the other members of THE SECOND MORTGAGE CLASS for the reasons set out above.

75. § 408.562 RSMo provides as follows:

In addition to any other remedies or penalties provided for by law, any person who suffers any loss of money or property as a result of any act, method or practice in violation of the provisions of sections 408.100 to 408.561 may bring an action in the circuit court of the county in which any of the defendants reside, in which the plaintiff resides, or in which the transaction complained of occurred to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party in such action attorney's fees, based on the amount of time reasonably expended, and may provide such action attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper.

76. As a result of the statutory violations described above, each of the REPRESENTATIVE PLAINTIFFS and other members of THE SECOND MORTGAGE CLASS suffered a loss of money or property in that they were charged and paid and/or became obligated to pay fees, charges and costs in amounts greater than those allowed by Missouri law and were charged interest in violation of Missouri law.

77. The conduct of MCR (and the HOLDER/RECIPIENT DEFENDANTS by virtue of their status as assignees or trustees for the assignees) and the resulting violations of Missouri law, were intentional, willful, wanton and malicious, or otherwise showed a complete indifference to or a conscious disregard of the rights of each of the REPRESENTATIVE PLAINTIFFS and the other members of THE SECOND MORTGAGE CLASS, including, without limitation, the fact that defendant GMAC-RFC and RFMS, individually, and WILMINGTON TRUST and BNY, as trustees over certain trusts holding loans originated by MCR and consolidated by GMAC-RFC, RFMS, HOMECOMINGS and BANK ONE, all as such relates to the REPRESENTATIVE PLAINTIFFS and other members of the SECOND MORTGAGE CLASS and HOUSEHOLD, MERS, and HOMEQ, as to members of the SECOND MORTGAGE CLASS, have continued to collect interest after they knew of the violations of Missouri law, therefore for that and the other reasons set forth herein the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTGAGE CLASS are entitled to punitive damages against the defendants and each of them in such amount as is fair and reasonable to punish defendants and to deter defendants and others from like conduct.

Defendant Class Action Allegations

78. This action is also properly brought as a defendant class action under Mo. Rule 52.08(b)(3). The defendant class (“THE DEFENDANT SECOND MORTGAGE CLASS”) consists of all persons who satisfy the following criteria:

- Those persons or entities or their trustees that have held or now hold, by virtue of transfer or assignment or otherwise (including acting as nominee or trustee of such holder or assignee), the Second Mortgage Loans of the REPRESENTATIVE PLAINTIFFS or THE SECOND MORTGAGE CLASS; or
- Those persons or entities that have “charged” or “received” the monthly payments from the REPRESENTATIVE PLAINTIFFS or THE SECOND MORTGAGE CLASS, which monthly fees include the illegal charges and resulting illegal interest by virtue that such fees were financed as part of the principal of the Second Mortgage Loans (collectively “THE DEFENDANT SECOND MORTGAGE CLASS”).

79. The specifically named HOLDER/RECIPIENT DEFENDANTS and each of them are the REPRESENTATIVE DEFENDANTS of THE DEFENDANT SECOND MORTGAGE CLASS.

80. The particular members of THE DEFENDANT SECOND MORTGAGE CLASS are capable of being described without difficult managerial or administrative problems. The members of THE DEFENDANT SECOND MORTGAGE CLASS are readily identifiable from the information and records in the possession or control of MCR and/or the representatives or servicing agents of the Second Mortgage Loans or the assignees or holders (or their trustee(s)) of such Second Mortgage Loans.

81. Upon information and belief, THE DEFENDANT SECOND MORTGAGE CLASS members are so numerous that individual joinder of all members is impractical. This allegation is based on the fact that MCR made extensive Second Mortgage Loans in Missouri throughout this period and those loans have since been assigned to a number of mortgage trusts or pools and may thereafter have been reassigned.

0. There are questions of law and fact common to THE DEFENDANT SECOND MORTGAGE CLASS which questions predominate over any questions affecting only individual members of THE DEFENDANT SECOND MORTGAGE CLASS and, in fact, the wrongs alleged against THE DEFENDANT SECOND MORTGAGE CLASS and remedies sought by the REPRESENTATIVE PLAINTIFFS and the other members of THE SECOND MORTGAGE CLASS against the HOLDER/RECIPIENT DEFENDANTS are identical, the only difference being the exact monetary amount to which each HOLDER/RECIPIENT DEFENDANT is liable to the respective members of THE SECOND MORTGAGE CLASS and the amount of interest that should be barred, enjoined and returned. The principal common issues are:

- Whether THE DEFENDANT SECOND MORTGAGE CLASS is liable as a result of MCR's violations of Missouri's Second Mortgage Loans Act and/or whether THE DEFENDANT SECOND MORTGAGE CLASS is entitled to assert any defenses to such violations.
- Whether THE DEFENDANT SECOND MORTGAGE CLASS is barred under the provisions of § 408.236 RSMo from the recovery of any interest under these Second Mortgage Loans and whether they are liable to return all past interest illegally received and should be enjoined from receiving any future interest; and

- Whether THE DEFENDANT SECOND MORTGAGE CLASS is liable, in addition to the other civil remedies or penalties, for actual damages, together with punitive damages and attorneys fees pursuant to § 408.562 RSMo.

0. The HOLDER/RECIPIENT DEFENDANTS' defenses of THE DEFENDANT SECOND MORTGAGE CLASS (which defenses are denied) are typical of those of the individual HOLDER/RECIPIENT DEFENDANTS and will be based on the same legal and factual theories.

0. The HOLDER/RECIPIENT DEFENDANTS will fairly and adequately represent and protect the interests of THE DEFENDANT SECOND MORTGAGE CLASS. They have in the past and will undoubtedly in this action retain counsel experienced in defending class actions and actions involving unlawful commercial practices. Said defendants do not, based upon information and belief, have any interests which might cause them not to vigorously defend this action.

0. Certification of a defendant class under Mo. Rule 52.08(b)(3) is appropriate as to THE DEFENDANT SECOND MORTGAGE CLASS in that common questions predominate over any individual questions pertaining to individual members of the Defendant Class and a defendant class action is superior to any other available methods for the fair and efficient adjudication of this controversy. A defendant class action will cause an orderly and expeditious administration of THE DEFENDANT SECOND MORTGAGE CLASS defenses, if any, and economies of time, effort and expenses will be fostered and uniformity of decisions will be insured.

Prayer for Relief

WHEREFORE, the REPRESENTATIVE PLAINTIFFS, individually, on behalf of themselves and all members of THE SECOND MORTGAGE CLASS, pray for judgment against the HOLDER/RECIPIENT DEFENDANTS (including GMAC-RFC, RFMS, WILMINGTON TRUST and BNY, as Owner Trustee and Indenture Trustee of the GMAC-RFC and RFMS-formed securitized trusts, HOMECOMINGS, HOUSEHOLD, MERS, HOMEQ, and BANK ONE) and THE DEFENDANT SECOND MORTGAGE CLASS, jointly and severally, as follows:

- For an order certifying that this action may be maintained as a plaintiff class action under Mo. Rule 52.08(b)(3), appointing the REPRESENTATIVE PLAINTIFFS and their counsel to represent THE SECOND MORTGAGE CLASS, and directing that reasonable notice of this action be given to all other members of THE SECOND MORTGAGE CLASS;
- For an order certifying that this action may be maintained as a defendant class under Mo. Rule 52.08(b)(3), appointing the HOLDER/RECIPIENT DEFENDANTS to represent THE DEFENDANT SECOND MORTGAGE CLASS, and directing that reasonable notice of this action be given to all other members of THE DEFENDANT SECOND MORTGAGE CLASS;
- For a permanent injunction enjoining the HOLDER/RECIPIENT DEFENDANTS and THE DEFENDANT SECOND MORTGAGE CLASS, together with their officers, directors, employees, agents, partners or representatives, successors and any and all persons acting in concert from directly or indirectly engaging in the wrongful acts and practices described above (including the charging or receipt of any future

interest in connection with the Second Mortgage Loans that are the subject of this action), all for the benefit of the REPRESENTATIVE PLAINTIFFS and THE SECOND MORTGAGE CLASS;

- For an order directing disgorgement or restitution against each defendant, jointly and severally, as to each REPRESENTATIVE PLAINTIFF and each member of THE SECOND MORTGAGE CLASS, that contracted for, charged or received the aforesaid illegal charges and fees and the imposition of an equitable constructive trust over such amounts for the benefit of the REPRESENTATIVE PLAINTIFFS and other members of THE SECOND MORTGAGE CLASS;
- A judgment of monetary damages against each defendant, jointly and severally, as to each REPRESENTATIVE PLAINTIFF and each member of THE SECOND MORTGAGE CLASS, that contracted for, charged or received the aforesaid illegal charges and fees, including not only such prohibited or excess fees, but also jointly and severally for all interest that has been contracted for, charged or received by each of the defendants individually and as members of THE DEFENDANT SECOND MORTGAGE CLASS as to each of the plaintiffs, including THE REPRESENTATIVE PLAINTIFFS and as members of THE SECOND MORTGAGE CLASS.
- For a judgment of punitive damages against each of the defendants in a sum that is fair and reasonable;
- For reasonable attorneys' fees as provided by law and statute;
- For pre-and-post judgment interest as provided by law in amount according to proof at trial;

- For an award of costs and expenses incurred in this action; and
- For such other and further relief as the Court may deem necessary and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

3 It is hereby certified that a copy of the above and foregoing document was mailed this day of July 2007, to:

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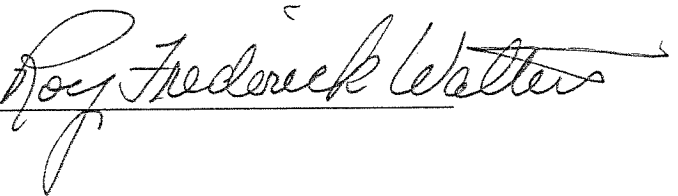
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