

IN THE UNITED STATES DISTRICT COURT

FOR WESTERN DISTRICT OF TEXAS

UNITED STATES COURTHOUSE

501 WEST FIFTH STREET AUSTIN, TEXAS 78701

DAVID MCCRAE, qui tam	}	
CONSUMER FINANCIAL PROTECTION BUREAU	}	
v.	}	
PHH MORTGAGE CORPORATION (dba BURNET	}	
MORTGAGE SERVICES;	}	
CENTURY 21 MORTGAGE; COLDWELL BANKER	}	CIVIL ACTION NO.
MORTGAGE; DOMAIN DISTINCTIVE PROPERTY	}	1:14-733-LY-ML
FINANCE; ERA MORTGAGE; INSTAMORTGAGE.COM	}	
MORTGAGE SERVICE CENTER;	}	
MORTGAGEQUESTIONS.COM; MORTGAGESAVE.COM	}	
PHH MORTGAGE SERVICES)	}	
And BARRETT DAFFIN FRAPPIER TURNER	}	
AND ENGEL, LLP	}	

§§§ JURY TRIAL DEMANDED §§§

PLAINTIFFS' AMENDED COMPLAINT FOR CONSUMER FRAUD

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE Plaintiff, David McCrae, qui tam Consumer Financial Protection Bureau, who files this Amended Petition for Consumer Fraud. in the interest of Justice and Fairness, and asks this Honorable Court to find in favor of Plaintiff and against Defendants, PHH Mortgage Company, and Barrett Daffin Frappier Turner and Engel, LLP, regarding Plaintiffs' claims of Consumer Fraud, as stated herein, and in support thereof show unto the Court the following:

PARTIES AND SERVICE

1. Plaintiff David McCrae is an American citizen residing at 350 Cee Run, Bertram, Texas 78605. The last three digits of Dave McCrae's US Passport are 952. Plaintiff has standing in this cause due to real and consequential damages sustained in course of Defendants' normal business activity. As full disclosure, though unnecessary to this cause, Plaintiffs are acting as First Relator following an initial meeting with Federal Bureau of Investigation / United States Department of Justice on 26 December 2013 to disclose Statement of Facts as a Confidential Informant and to offer to assist any investigation that may have been ongoing at that time. Presently I am unaware of any ongoing investigation. Plaintiff is bringing this action as First Relator qui tam the Consumer Financial Protection Bureau, representing the United States, pursuant to CFPB Complaint #140506-00027/0030. The CFPB may or may not be pursuing this action also. Plaintiffs have no concern for their welfare, and are waiving the customary right to file under

seal, and are filing publicly. Plaintiff recognizes right of intervention by USAG at any time.

Further investigation will proceed through discovery and trial.

2. Under the Financial Institution Reform, Recovery, and Enforcement Act (FIRREA):

12 U.S.C § 1833 (a) In general – Whoever violates any provision of law to which this section is made applicable by subsection (c) shall be subject to a civil penalty in an amount assessed by the court in a civil action under this section.

...

(c) Attorney General to bring action. A civil action to recover a civil penalty under this section shall be commenced by the Attorney General.

The legislative history of FIRREA explains the purpose of FIRREA and the method for obtaining the civil penalty as follows:

The Committee believes that the enhancement of the regulatory powers and criminal justice provisions should go far in restoring public confidence in the nation's financial system and serve to protect the public interest. This title gives the regulators and the Justice Department the tools which they need and the responsibilities which they must accept, to punish culpable individuals, to turn this situation around, and to prevent these tremendous losses to the Federal Deposit insurance funds (due to the savings and loan crisis) from ever again recurring. "The Attorney General recovers the civil penalty through a civil action brought in a United States District Court." – H. Rep. No. 101-54, Part I (May 16, 1989) (H.R. 1278), at 465-66; 472

"According to *Inside Mortgage Finance*, for the year ended December 31, 2013, PHH Mortgage was the 7th largest overall mortgage loan originator with a 2.7% market share

and the 8th largest mortgage loan servicer with a 2.3% market share and for the nine months ended September 30, 2013 was the 6th largest retail mortgage loan originator with a 2.4% market share.” -PHHCORP_10K_20140226

Per SEC reports, PHH appears to foreclose approximately 8-10,000 properties per month and currently holds \$217 million in mortgage foreclosures and property held for sale.

(SEC 10Q - 30 June 2014) The Plaintiffs are acting locally, as is the right of any citizen, in behalf of the United States Attorney General in this matter. The Department of Justice and the CFPB are fully informed of the plaintiffs’ actions, and intervention at any point by a US attorney, or Mortgage Task Force Working Group, is welcomed. This action is a civil action only. Plaintiff is not a United States Attorney and unable to bring a criminal action.

3. Defendant PHH Mortgage Company (PHH) is a Foreign For-Profit Corporation, doing business in 46 states including Texas, at 1 Mortgage Way, Mt Laurel, NJ 08054. Registered Agent may be served at 211 East 7th Street, Suite 602, Austin, TX 78701. Defendant PHH Mortgage is represented by S. David Smith, State Bar No. 18682550 at McGlinchey Stafford, PLLC, 1001 McKinney St., Suite 1500, Houston, Texas 77002 and Nathan T. Anderson, State Bar No. 24050012 at McGlinchey Stafford, PLLC, 2711 North Haskell Ave., Suite 2750, LB25, Dallas, Texas 75204. Service on this Defendant may be effected by CM/ECF, personal service or US mail.

4. Defendant Barrett Daffin Frappier Turner and Engel, LLP, (BDFTE) is a for-profit corporation, doing business in Texas and California, acting as assignees of US Patent #20080201190, a system and method for electronic processing of default case files, and acting as

Approved Substitute Trustee in behalf of PHH. BDFTE is located at 15000 Surveyor Blvd, Suite 100, Addison, Texas 75001. BDFTE is represented by Coury Jacocks, State Bar No. 24014306. Service on this defendant may be effected by CM/ECF, personal service or US Mail.

JURISDICTION AND VENUE – DISTRICT COURT OF WESTERN TEXAS

5. The subject matter in controversy is within the jurisdictional limits of this Court. Fraudulent acts were committed and continue in commission by resident and foreign corporations and individual actors acting in many United States locations, with adverse results to the Plaintiffs, who reside in Western Texas. All Defendants have offices or registered agents convenient to this venue. These acts were coordinated by more than four individuals, more than three times, in violation of Title 18 U S Code Section 151, Paragraph 4 – Submission of False Claims and numerous violations of the Financial Institution Reform Recovery and Enforcement Act, and Federal Fair Debt and Collection Practices Act. The pattern of fraudulent activity in the course of mortgage service and attempted seizure of property conforms to a pattern of specific prohibited behavior under existing law leading to recent and distinct consent judgments filed in US District Court with Chase/JP Morgan, Ocwen, Citigroup, Bank of America, Wells Fargo, Greentree and all 50 United States Attorney Generals. We are asking for enforcement of those agreements, as is now well defined within the industry and the State of Texas. Investigations and negotiations continue with other actors in this industry. Amount of damages and claims in dispute is expected to exceed \$75,000.

6. [Jury Trial docketed by prior motion]

7. Federal courts have the inherent authority to decide cases that are extraordinarily complex and far-reaching in their impact on a large number of injured parties, an important industry, or the wider public interest. This is a case where the use of that inherent authority is essential.

STATEMENT OF FACTS, OR THREADBARE ALLEGATIONS

8. Plaintiff is the record owner and occupant of the homestead property located at 350 Cee Run, Bertram, Texas 78605.

9. On 30 October 2001 Plaintiff acted as mortgagor in order to refinance the property located at 350 Cee Run, Bertram, Texas 78605 to PHH Mortgage Services with Loan Number 0016371056 (Trial Exhibit “P-1” The Note). Base Loan Amount was \$72,500. Loan to Value ratio was 76.48%. Rate lock could float down but not up. Term was 180 months. Interest was fixed at 6.614%. Type of Loan was defined as Conventional-Uninsured. In case of prepayment no penalty was to be assessed. Homeowner’s insurance was not required at that time.

10. On 30 October 2001, immediately, Plaintiff signed a Deed of Trust as security for the note with BDS Holding, Inc. d/b/a Highland Lakes Affordable Housing, which was recorded in the office of the County Clerk of the Deed of Trust Records of Burnet County, Texas. (Trial Exhibit “P-2” Deed of Trust). Warranty Deed was immediately granted by BDS Holding to Plaintiff David McCrae (Trial Exhibit “P-3” Warranty Deed). Said unencumbered collateral was then mortgaged immediately to PHH Mortgage as mortgage servicer. On 15 August 2001 Defendant PHH transferred note within a securitization package to FNMA (Trial Exhibit “P-1”).

11. During the period from October of 2001 to December of 2012 Plaintiff made many voluntary and periodic early payments of principal, coded as 175 in the Defendants' payment records, (Trial Exhibit "P-6a" Payment Record), and were able to reduce the mortgage principal by ~\$14,000 to \$7,558. These prepayments are stipulated by Plaintiff and confirmed by detailed payment records of the Defendants PHH. Such considerable and voluntary payments effectively accelerated the mortgage by approximately two years by end of 2012, to mid 2014. Plaintiff also made occasional late payments, and assessed late payment fees were generally forgiven. The Loan-To-Value ratio by December 2012 had been reduced to approximately 1:10.

12. In September of 2012, PHH nevertheless and inexplicably demanded more payments be made, and encouraged Plaintiff to refinance property, at Plaintiffs' own expense and with significant additional fee, with Housing Affordable Mortgage Plan (HAMP). Plaintiff expressed intent to pay off property immediately and asked for payoff amount as of November 1, and then as of December 1, 2012, without receiving definitive response. This is not a complex request. Plaintiff was fully aware of the balance due on principal, by his own records. Phone calls were recorded. In an attempt to resolve payment dispute, PHH designated a single point of contact, Audrey Welsh. Audrey Welsh has never responded in any way to Plaintiff's numerous attempts to contact, in writing and by phone. Defendants at this time were apparently pursuing 'dual-tracking,' pretending to negotiate dispute, while all the while preparing a fraudulent foreclosure action and public sale. In Texas this does not require judicial oversight. Correspondence record is at Trial Exhibit "P-9." All of these actions were in direct and willful violation of 2012 Dodd-Frank FIRREA and Federal Consumer Debt Fair Practices then in effect, and most recently interpreted and codified in

Consent Judgments among the general industry leaders and All States Attorneys General, including Texas and New Jersey. Subject parties included Chase/JP Morgan, Citigroup, Ocwen, Wells Fargo, Greenstreet and Bank of America, Trial Exhibits “P-8b/c/d/e/f/g” Consent Judgments.

13. At this time, as a response to correspondence with Defendant representative Telita Carson, Plaintiff received photocopies of complete payment records of mortgage since inception. It was apparent by cursory review that the mortgage was paid well in advance, with early payments noted by ‘Code 175,’ and principal balance properly declining in accord with arithmetic expectation. It was also apparent that this basic information had never been reviewed by any of the Defendants, and none had any interest in such work, which, though required by responsible practice, generated no fee. Plaintiff has processed these photocopies into usable and legible information on a spreadsheet, and incorporated eventual final payments of record of Federal Bankruptcy Court Trustee Deborah Langehennig, in Trial Exhibit “P-6a”. At this filing date, mortgage is paid in full. In fact, payments totaling \$74,427.61 have been paid and charged against original principal of \$72,500. At this filing date, a difference of \$1,927.61 in plaintiff’s favor has not been reconciled, and defendants are holding additional escrow, suspense and advance funds of \$1920.27. Defendants have chosen not to attend scheduled meeting of 12/24/13 for alternative dispute resolution prior to this filing. All actions of defendants through bankruptcy period have consisted of concerted willful and direct violations of FIRREA as most recently interpreted and codified in Consent Judgment of 19 December 2013 in District Court District of Columbia Consumer Financial

Protection Board and All States Attorney General, including Texas, vs OCWEN (Trial Exhibit “P-8b” 192716821-Consent-Judgment).

14. Remarkably, on eventual receipt of ‘Paid-in-Full’ stamped documents received for filing in Burnet County after payoff of note by Federal Trustee, an added page noted that PHH had transferred interest in note to Federal National Mortgage Assurance (FNMA) on 15 August 2001, 14 days after execution with Plaintiff, and apparently lacked standing to pursue foreclosure action after that date. As an investor in the syndication, FNMA lacked standing to pursue recourse versus individual properties in the syndication, only versus the total syndication. On examination of public SEC reports concerning PHH Corporation, we have no reason to believe that the syndication was in default at that time. We are mystified. This appears to be a common unlawful practice. FNMA has not acted in this matter at any point.
15. We believe that PHH also entered at some time in this period a ‘dual-tracking’ mode in which other unknown agents of PHH entered into retention of BDFTE to seek non-judicial expedited foreclosure and sale of property, which is permissible in Texas on agreement by both parties. In this case, both parties were not in agreement, and the Defendants BDFTE were in fact refusing all communication effort by Plaintiff or his counsel of record at that time. All actions of defendants through foreclosure period have been concerted willful and direct violations of FIRREA and Federal Fair Debt Collection Practice as most recently interpreted and codified in the consent judgments previously referenced.
16. BDFTE posted the property at Burnet County Courthouse, thus earning a fat fee, and sent Plaintiff a Notice of Substitute Trustee’s Sale (the “Tombstone Notice”) dated January 15, 2012, Trial Exhibit “P-5”, stating that a foreclosure sale was scheduled for 5 March 2012 in

Burnet County, Texas. Between the time of notice and sale, Plaintiff retained local counsel, Anne Little. BDFTE refused all communication between either Plaintiff or Plaintiff's local counsel. Anne Little advised that nothing could be done. Her engagement was terminated. PHH continued to refuse to communicate in any manner.

17. In order to stop wrongful seizure and sale of homestead, Plaintiff David McCrae retained other local counsel, Ray Fisher, and filed for Chapter 13 bankruptcy protection (Trial Exhibit "P-4"), with the Federal Bankruptcy Court Western Texas on 1 March 2012. BDFTE was so informed and did not appear at 5 March sale. On notice from Trustee, an agent for BDFTE, Donna Wilkinson, eventually prepared a Proof of Claim in amount of \$9,465, including \$1,694 in additional creative fees (including \$810 for fees of public sale that never occurred), and submitted it to the Federal Bankruptcy Trustee, Deborah Langehennig. The inflated Proof of Claim was not challenged by Plaintiff or his attorney at that time, or the Trustee, and was paid in full by the Plaintiffs. Ray Fisher was immediately discharged by Plaintiffs as a result of his inaction. Bankruptcy action 13-10387 now appears complete and is now dismissed. All actions of Defendants through U S Trustee period of conservatorship have been concerted willful and direct violations of FIRREA as most recently interpreted and codified in the growing number of Consent Judgments as previously cited.

18. During period of bankruptcy, Plaintiff made all periodic payments required by schedule to the Trustee, which was again more than the obligation, and Trustee disbursed the claimed secured debt of \$7,558, and the additional balance of fraudulent claim presented, and periodic interest, and including plaintiff's relevant attorney and trustee fees. Plaintiff has incurred damages of more than \$1.00 in defense of wrongful foreclosure action. All actions

of defendants through attempted wrongful foreclosure have been concerted willful and direct violations of FIRREA and Federal Fair Debt Collection Practice.

19. During that period, Plaintiff, acting directly with PHH, succeeded in canceling “force-placed insurance” provided by PHH Mortgage FKA Cendant Mortgage since 2008 and received notice of pro-rata refund of unused premium. The refund of \$559 continues to be held by PHH in escrow in favor of Plaintiff, and has not been applied to claimed debt. The escrow account has not been reconciled. The status of any communications between Defendant Deborah Langehennig and Defendant of BDFTE is unknown, and will be exposed during discovery process of this action. Payment records of the original mortgage (Trial Exhibit “P-6a”), and including payment records of the Trustee in support of claim, show satisfaction of debt and interest. Trustee has additionally paid funds in excess of principal owed, in accord with presentment of BDFTE. Defendant PHH has never reconciled payment records of the periods before and during bankruptcy period, and shows no interest in doing so.
20. Defendants PHH have responded to Plaintiff Complaint #140506-000027/0030 with Consumer Financial Protection Bureau with a voluminous submittal of mortgage process documents between themselves and Christopher McCrae, last known residence at 22 Amanda Street, Springfield, Massachusetts. Christopher McCrae is not related or associated in any way with David McCrae. David McCrae lives in Texas. The apparent confusion or incompetence is typical of Defendant PHH actions throughout their business relations.
21. Defendants PHH are currently under federal prosecution by Consumer Finance Protection Bureau for illegal ‘force placed insurance practices’ in their mortgage business since 1995. This action excludes from consideration all such ‘force placed insurance practices’ which are

now known or may be discovered during discovery phase (CFPB vs. PHH Corp, et al. - Notice of Charges filed 29 January 2014).

22. There is widespread consensus among academic experts, policy makers, and regulators that the type of illegal conduct underlying the normal business activities of PHH as a mortgage holder or processor was one of the central causes of the Financial Crisis and, therefore, damages are likely to be historically high. Ref. FINANCIAL CRISIS INQUIRY COMMISSION, THE FINANCIAL CRISIS INQUIRY REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES, 165-69 (2011) available at http://www.hsgac.senate.gov/imo/media/doc/Financial_Crisis/FinancialCrisisReport.pdf Attached As Trial Exhibit P-11.

VALIDITY OF FRAUDULENTLY CREATED DOCUMENTS

23. As noted in the transcript of the Meeting of the Task Force on Judicial Foreclosure Rules November 7, 2007, (note pages 27, 28 and 33), as found on the Supreme Court of Texas website (<http://www.supreme.courts.state.tx.us/jfrtf/pdf/110707transcript.pdf>), which makes issue with, addresses and discloses the same fraudulent practices, Defendants BDFTE has previously produced just such fraudulent documents to accomplish their actions to wrongfully foreclose on Plaintiff's property. BDFTE, at that time acting in concert with McCalla Raymer, failed to review payment records of a Countrywide mortgage, before filing for sale. Payment records did not support foreclosure. The unfortunate homeowner had sought refuge in

bankruptcy to forestall adverse action. This was also an unlawful foreclosure. On information from the Trustee, the Court invalidated the action (Case 05-90374, Trial Exhibit “P-8a”). In spite of censure in that case and sanctions of \$150,000 in 2007, Defendant BDFTE went on to devise and now characteristically employs procedures described in US Patent #20080201190 (Trial Exhibit “P-7”), a system and method for electronic processing of default case files, which now is used to replace the 350 employees of MR Data Services (subsidiary of McCalla-Raymer) who fraudulently processed the data in that case. Just as blindly, but much more quickly, this system enables BDFTE to produce such fraudulent instruments with little or no effective effort or oversight, and enables process of a very large number of foreclosures in Texas for a wide variety of clients.

24. The employment of such a system since its inception in 2008, may be responsible for 500-1500 fraudulent foreclosures per month, or 25-50 per day, and an incredible burden of contesting such fraudulent activity of several hundred million dollars annually to property owners in Texas. More than four agents have cooperated to produce such fraudulent action, on more than three instances. The full breadth and scale of such activity will be revealed through discovery procedures to be implemented by approval of this action.

25. Plaintiff has therefore been required to expend substantial resources of time, effort and expense to defend a fraudulent complaint, in regards to the original lenders unsecured Debt.

26. It is apparent by cursory review of payment records that the mortgage to PHH was never in default and never subject to legitimate claim of foreclosure. Unknown persons at PHH launched an adventurous action of fraudulent and unlawful seizure, and failed to receive or heed counseling that should have been provided by Defendant BDFTE. Defendant BDFTE

seems to be motivated only by avarice, in the generation and collection of exorbitant and unearned fees, irregardless of basis of action. Defendant BDFTE has never acted in accord with its lawful prime responsibility as Substitute Trustee to communicate with mortgagor and achieve resolution of issue. Defendant BDFTE has been censured in the past (Case #05-9734 Federal Bankruptcy Court Southern District Texas, Trial Exhibit “P-8g”), for this characteristic behavior yet persists unaccountably in their heedless and predatory behavior. Defendants did not have the authority to foreclose on the property and in fact have never reviewed the payment history or any other particular circumstance of the intended action, as their automated system of fee generation and collection does not provide for or allow such oversight.

27. On information and belief, Plaintiff alleges that Defendants were never at risk of loss, never communicated with the Plaintiffs concerning circumstances of the mortgage and were driven headlong into fraudulent and unlawful activity solely by their own greed and avarice for fees and insurance proceeds. Defendants have in fact received at this time complete satisfaction of debt, three years prior to due date, at significant additional unnecessary cost to the Plaintiff. Defendants did not have authority to foreclose on the property and were not entitled to attempt to collect on the alleged debt. Defendants show an intentional pattern of activity in pursuing this behavior only because it has been such a lucrative business practice over the years, with the downside risk generally guaranteed by federally backed loans.

CLAIMS: CONSUMER FRAUD

28. In the mortgage servicing business, consumer fraud has been rampant. The Department of Justice has established a Mortgage Task Force Working Group especially to investigate and prosecute the numerous offenders, and has to this date entered into wide ranging consent judgments with 6 of the major offenders, covering ~40% of the industry. Agreements have been endorsed by all 50 of the state Attorneys General, including Texas and New Jersey. Restitution and fines have so far exceeded \$80 Billion, with expenses of prosecution exceeding \$500 Million. The consent judgments do not make new law or regulation, but clarify for all in an easy to understand format the boundaries of acceptable business practice. These miscreants have all agreed to be bound for specific future periods by an oversight group, Joseph A. Smith, the Office of Mortgage Settlement Oversight. Joseph A. Smith defines 29 easily identifiable metrics that are applicable to any business in this group, to root out undesirable action, and this metric system is incorporated by agreement into the practices of these six companies. Joseph A. Smith, in addition to claims administration, files oversight reports each quarter for the monitored businesses. PHH only represents 2.3% of this industry, but I contend that they are subject to the same law and regulation as their consorts. I am employing these metrics as basis for claims in this action.

29. Claim 1 - Foreclosure Sale in Error

30. Claim 2 - Proof of Claim in Error

31. Claim 3 - Motion for Relief from Stay in Error

32. Claim 4 - Preforeclosure Initiation in Error

33. Claim 5 - Fee adherence to guidance in error
34. Claim 6 - Adherence to customer payment processing in error
35. Claim 7 - Third party vendor management in error
36. Claim 8 - Customer portal in error
37. Claim 9 - Single point of contact in error
38. Claim 10 - Workforce management in error
39. Claim 11 - Affidavit of indebtedness integrity in error
40. Claim 12 - Account status activity in error
41. Claim 12 - Complaint response timeliness in error
42. Claim 13 - Charge of application fees for loss mitigation
43. Claim 14 - Dual track referred to foreclosure in error
44. Claim 15 - Dual track failure to postpone foreclosure in error
45. The agreed penalties for failure of any of these metrics, in addition to a court order to stop the specific action, are up to \$1 Million for each occurrence, and up to \$5 Million for multiple occurrences. PHH is not a party to any such agreement at this time, but is under the law and regulation of the United States, and each State Attorney General. I am asking for penalties to be assessed by jury in this case. For bookkeeping purposes, I am asking for restitution of \$1.00, and \$28 million in fines.
46. In deference to Mark Lane's report, these are indeed threadbare assertions. Plaintiff has complete supporting records of his own. A large amount of supporting business evidence is in the possession of defendants and will be discovered in the normal course of affairs and entered into court exhibits. The defendants deserve a chance to provide exculpatory

evidence. The jury deserves to review as complete a picture of the situation as we can provide. Let's roll.

ARGUMENTS AND AUTHORITIES

47. Seizure of residential property, and correlated explosion of lender-owned real estate is a well known current issue of societal significance, in Texas and in the United States. Non-judicial foreclosure and seizure, especially, has grown well past the random statistical expectation in a normal business environment, and outcomes to this date heavily favor the seizure actions over the defense actions. At the same time, other large financial institutions of note have either failed to manage their risk and oversight responsibilities effectively and failed outright (WAMU, Countrywide, Ameriquest), been victimized by internal control fraud among their principals and have been dissolved (Bear Stearns, Lehman Brothers), or have paid ever increasing penalties and restitutions, amounting to hundreds of billions (Bank of America, Wells Fargo, Citigroup, J P Morgan Chase, Ocwen, Greentree). Large financials allowed to continue despite the fraudulent activity of their past have in consideration of forbearance of criminal prosecution universally pledged restitution to their damaged parties and to conduct their future business affairs fairly and transparently, and for the benefit of the community. The community has deemed these institutions "too big to fail," and the Department Of Justice has by their inaction deemed these institutions "too big to jail." Nevertheless, the jails are now beginning to fill with low-level non-violent offenders who only steal millions or hundreds of millions, from thousands or hundreds of thousands of people, but would never

point a gun at a cash register clerk at 2:00am and steal \$238 dollars and change. Damage to the security of the economic system, and damage to the citizens who depend on a well-regulated society in all aspects of their life, has been and is proportional.

48. Fraud in Texas Legal Code – Chapter 27.01

(a) Fraud in a transaction involving real estate or stock in a corporation or joint stock company consists of a

(1) false representation of a past or existing material fact, when the false representation is

(A) made to a person for the purpose of inducing that person to enter into a contract; and

(B) relied on by that person in entering into that contract; or

(2) false promise to do an act, when the false promise is

(A) material;

(B) made with the intention of not fulfilling it;

(C) made to a person for the purpose of inducing that person to enter into a contract; and

(D) relied on by that person in entering into that contract.

(b) A person who makes a false representation or false promise commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for actual damages.

(c) A person who makes a false representation or false promise with actual awareness of the falsity thereof commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for exemplary damages. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(d) A person who (1) has actual awareness of the falsity of a representation or promise made by another person and (2) fails to disclose the falsity of the representation or promise to the person defrauded, and (3) benefits from the false representation or promise commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for exemplary damages.

Actual awareness may be inferred by confirming facts and allegations.

(e) Any person who violates the provisions of this section shall be liable to the person defrauded for reasonable and necessary attorney's fees, expert witness fees, costs for copies of depositions, and costs of court.

Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, Sec. 1. Amended by Acts 1983, 68th Leg., p. 5208, ch. 949, Sec. 1, 2, eff. Sept. 1, 1983.

49. Specific behavior of Barrett Burke Daffin Frappier Turner and Engel, LLP has been sanctioned in the past by Federal Judge opinion in the Bankruptcy Court of Texas, Southern District, (Case #05-9734 Federal Bankruptcy Court Southern District Texas, Trial Exhibit “P-8g”), and included in whole in this argument. Pertinent issue in this cited case lay in Defendants’ inattention to payment record or circumstances of action, refusal to communicate with opposing parties, and fraudulent creation of claims and proofs of claims, affidavits, notices, filings, etc. of whole cloth in order to mask either their incompetence or their criminal intent. They obviously continue in this activity, seven years later, and have institutionalized and patented their process (Trial Exhibit “P-7”). They are the leader in their field of endeavor. Their sole motivation is economic advantage. It is immensely profitable. It is immensely damaging to the community.

CONCLUSION

50. When the Court takes into account the Statutes and Case Law and applies them to the facts of this case and the documents relied on by the Plaintiff, it is clear why it is necessary to restrain Defendants' continuing well organized predatory behavior in the State of Texas. As a result of detailed information found during discovery, criminal actions are likely to be exposed and indictments will be sought for unrestrained and coordinated criminal conspiracy among the Defendants and their associates continuing today, and existent for past several years. Such behavior can only be addressed by the most forceful judicial action possible. A clear judicial response and directive will enable all enforcement resources of the community to be employed at all levels to eliminate this public hazard, achieve restitution to damaged parties of class, and arrest, sequester and rehabilitate the actors discovered.

PRAYER FOR RELIEF

WHEREFORE PLAINTIFF RESPECTFULLY REQUESTS:

51. That this Petition be filed and that a day be appointed for a hearing before jury on this matter;
52. Restitution in an amount not to exceed the jurisdictional limits of this Court, as decided by jury;
53. Punitive Damages; \$28,000,000 [TWENTY EIGHT MILLION DOLLARS], or a sufficient amount to disgorge and deplete all illegally obtained business assets of this fraudulently organized and corrupt business, as confirmed in jure;
54. Exemplary Damages; \$56,000,000 [FIFTY SIX MILLION DOLLARS, or a sufficient amount to demonstrate and emphasize the cautionary message to associated financial community, as confirmed in jure;
55. Costs of Court, and of bringing this action;
56. Plaintiff prays for general relief, and such other and further relief as this court deems just and proper.

For Truth, Justice, and America,

/s/ David McCrae

22 SEPTEMBER 2014

By: DAVID MCCRAE, Pro Se

350 Cee Run / Bertram Texas 78605

512.557.0283 / xstek99@gmail.com

Trial Exhibits

P-1: Mortgage of 350 Cee Run to PHH Mortgage FKA Cendant Mortgage, and Release of Lien

P-2: Deed of Trust

P-3: Warranty Deed

P-4: Bankruptcy Filing of Plaintiff Case #13-10386 Western District Texas

P-5: Tombstone Notice issued by BBDFTE

P-6a/b: (a) Payment Record, compiled of payments by Plaintiffs to Defendants, and including payment records of US Bankruptcy trustee from funds received from Plaintiff during Chapter 13 event, and Release of Lien as filed in Burnet County, Texas, 10 March 2014; (b) Standard mortgage amortization worksheet

P-7: US Patent #20080201190, noted, assigned to Plaintiffs, a system and method for electronic processing of default case files

P-8a-k: (a) Judge's Opinion in Case #05-9734 Federal Bankruptcy Court Southern District Texas, (b) OCWEN Consent Judgment District Court District of Columbia, (c) Chase/JP Morgan Consent Judgment District Court Eastern California, (d) Citigroup Consent Judgment, (e) BAC Consent Judgment, (f) General Judicial and Non Judicial Foreclosure Information, (g) David Stern Information, (h) US Prosecutors Newsletter ref: Mortgage Fraud, (i) Homeowner's Rights Under Foreclosure, (j) UCC Foreclosure Defense, (k) DOJ Group Budget

P-9: Correspondence record between Plaintiffs and identified Defendants prior to CH 13 bankruptcy filing, and collection invoices of Plaintiffs to Defendants for recovery of resulting expense in defense of fraudulent action, and all other communications to Defendants in attempted resolution of this issue.

P-10a-b: (a) Consumer Financial Protection Bureau Complaint #140506-000027, and (b) PHHCorp response, posted 6/3/2014. Plaintiffs have charged this response as nonresponsive, and CFPB is now pursuing independent confirmation of complaint. Results of their further investigation may or may not be disclosed in future.

P-11a/b: (a) FINANCIAL CRISIS INQUIRY COMMISSION, THE FINANCIAL CRISIS INQUIRY REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES, 165-69 (2011); (b) Five Year Final Report

P--12: SEC Reports of PHH corporation, 10K and 10Q reports, 3Q-2010 through present day

P13a/b/c - Keynotes, General Information

DAVID MCCRAE, qui tam }
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MORTGAGEQUESTIONS.COM; MORTGAGESAVE.COM }
PHH MORTGAGE SERVICES) }
And BARRETT DAFFIN FRAPPIER TURNER }
AND ENGEL, LLP, } }

§§§ JURY TRIAL DEMANDED §§§

BY ORDER OF THE DISTRICT COURT OF WESTERN TEXAS

This cause is ordered set for trial by jury on _____, 2014.

Be it so ordered on this date by _____

Judge Lee Yeakel, United States District Judge

Dated _____, 2014

CERTIFICATE OF SERVICE

I have served this Amended Complaint to:

To

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Sworn to on 10/22/2014

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