

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT #14-51224

Appellant requests oral argument of this appeal

DATE _____

14-51224

David A. McCrae

Plaintiff - Appellant

v.

PHH Mortgage; Barrett, Burke, Daffin, Frappier, Turner and Engel, LLP
Defendants, Appellees

MORTGAGE AND CONSUMER FRAUD - COMPLEX

BRIEF FOR APPELLANT

DAVID MCCRAE , PRO SE
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CERTIFICATE OF INTERESTED PERSONS

In the case of Mortgage and Consumer Fraud,5th Circuit USCA #14-51224,
Appeal from Western Texas District Court 1:14-cv-733-ly-ml

The undersigned affiant certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification and recusal.

1. UNITED STATES OF AMERICA - CONSUMER FINANCIAL PROTECTION BUREAU, APPELLANT,
2. David McCrae, APPELLANT,
3. Current or past mortgagees to PHH Mortgage Corporation, or it's subsidiaries; CLASS
4. PHH MORTGAGE CORPORATION, APPELLEES,
5. BURNET MORTGAGE SERVICES,
6. CENTURY 21 MORTGAGE,
7. COLDWELL BANKER MORTGAGE,
8. DOMAIN DISTINCTIVE PROPERTY FINANCE,

9. ERA MORTGAGE,

10. INSTAMORTGAGE.COM,

11. MORTGAGE SERVICE CENTER,

12. MORTGAGEQUESTIONS.COM,

13. MORTGAGESAVE.COM,

14. PHH MORTGAGE SERVICES

15. BARRETT, DAFFIN, FRAPPIER, TURNER AND ENGEL, LLP;

APPELLEES

16. MCGLINCHEY STAFFORD, LLP; COUNSEL,

NOTE:

-If you make your living loaning money at interest,⁴³ or in real estate speculation and trading,¹⁷ ‘flipping houses,’ or are now bankrupt, homeless, or economically diminished by such actions of others,³⁸ you may have strongly held personal opinions that should prompt your recusal from this case.

-If you are currently a class member under the administrative oversight of Joseph A. Smith,⁶ mortgagesettlementoversight.com,⁶ due to a past association with Bank of America,¹¹ JP Morgan/Chase,¹¹ Citibank,⁷ Wells Fargo,¹²

Ocwen,⁸ Ally GMC, Greentree,¹³ or their subsidiaries,³⁶ you should consider recusal from this case.

-If you are a managing officer or stockholder of a corporation under current ongoing investigation by SEC or US DOJ,¹⁵ or an investigator or enforcement agent involved in such current ongoing investigation,³⁹ you should consider recusal from this case.

-If you work in law enforcement, or as a principal or partner in a law practice which serves an inordinate concentration of either plaintiffs or defendants, you should consider recusal from this case.

/s/David McCrae, pro se - APPELLANT

29 January 2015

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ORAL ARGUMENT REQUESTED

I'd like to appear to present oral argument in this matter.³⁷ I'm not an attorney so I would appear Pro Hac Vice. I'm not going to read the complaint, all set out in 30 pages or less. I wrote it, you've read it. You have an opinion already. Like Officer Monday, I've stuck to the facts. I try not to judge. If I had my druthers, I would just call the Marshal and haul these people off to jail. They're from New Jersey. What else would they expect?

But, I digress...they're also from America. In America, we're a family. We're better. We're entitled to confront our accusers.⁵⁰ Our accusers are allowed to confront us. In complex cases, we collect a jury of impartial citizens.³ This is not the case in most little countries in the world, where people just get their heads chopped off.⁴³ I've had a sad experience with these people. If I thought that this was just an unfortunate series of events, I wouldn't waste your time. I would go play golf. I'd go swimming. I'm retired; I have a million commitments today that I'm not going to get to.

But, I digress...the first time I called a lawyer to get this straightened out, I apologized for taking up her time with such a simple matter of obvious confusion.⁴ People were trying to steal my house.⁴⁰ It looked like a professional

crew.^{15,48} Ann actually gave me some good advice. She said ‘Why don’t you just pay them?’ That was in February of 2012. I should have gotten a Title Loan and just paid them off. Then we could go play golf today; none of us would have any work. I didn’t pay the ransom. I like my house. I still live in my house. It cost me money. I want my money back.⁴⁵

But, I digress...the first response of the defendants’ in this case was ‘We didn’t do nothin’. He still lives in the house. It’s just business.’^{5,40} I’ve decided that this is a business we don’t need.¹⁸ Other people in my neighborhood feel the same way. A friend of mine in California lives in her car. She used to live in a house. In California, at least they have nice beaches. People live there. No dogs, though. A friend of mine in Idaho lives in a connex box. I’ve lived in connex boxes, out on the ocean, hooking up oil wells. Houses are nicer. I have 290 other friends who have these problems such as myself. There are probably more out there. We will eventually retain counsel, charter a Class, amend our complaint, and proceed through our pretrial motions until we’re all prepared and informed. We are not at that point yet.

But, I digress...we aren’t going to solve this problem today. We’re not going to pass messages back and forth and see who’s right and who’s wrong. The

solution is not in the back of the book. We're talking about more than \$75,000. We're talking about my house in Texas, and a bunch of other people spread out over 45 other states. You have that jurisdiction.¹ We need help. I pick up the phone, and talk to people in Pakistan to help me out. It's daytime over there, when it's night over here. I have a blog. Consumer fraud is a hot topic on Google.

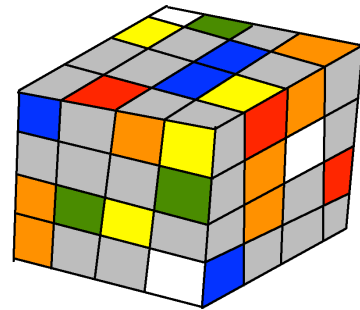
But, I digress...Today, I have a proposal, and I'd like to advocate it. I'd like to shed some light on your concerns. I'd like to find out more from my counterparties. I'd like to share our thoughts. The case is closed in Texas, on motion from the defendants, with little discussion. In fact, none. We still have issues. They're on somebody else's docket now. It's five o'clock somewhere. I'd like to remand this case back to Texas, complete our pretrial responsibilities to the best of our ability, and try these issues before a jury. I thought we were doing just that. I think the judicial system, and the jury system, is an incredibly good system for solving problems.³² This is a problem, in every town in America. Let's use the system. Let's get a jury together. Let's get them the best information we can collect. Let's disclose all our facts, and let's decide all our issues. Let's deliberate, and let's make some intelligent changes. It's 2014 in

America. It's modern times. Let's act like citizens. Let's do our jobs. Let's solve some problems. I need your help.

-Appeal Exercise / Oral Argument 5th USCA / Fifteen minutes

Put scrambled Rubik's cube in order, 16 squares x 6 sides, one color each side. 42 squares are identifiable color, 8 red, 11 green, 2 white, 5 yellow, 6 blue, 10 orange. The other stickers have been removed and original color must be deduced. The correct order is-

Side 1, Blue Facts -Side 2, White Facts -Side 3, Yellow Issues -Side 4, Green Facts -Side 5, Orange Issues -Side 6, Red Facts



-OR-

Remand this complex case back to District Court and ask the jury to color in the missing squares! It's called judging the Facts and Issues.^{38, 35}

TABLE OF AUTHORITIES

STATUTES AND REGULATIONS

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GLOSSARY OF ABBREVIATIONS

PHH - PHH Corporation, Defendant, in business in 46 states, excluding Hawaii, Illinois, Nebraska and Colorado

BPDFTE or **BDFTE** - Barrett, [Burke], Daffin, [Wilson, Castle], Frappier, Turner, and Engle, LLP, mortgage mill, patent holder of document processing system, and agent of PHH in Texas and California

FIRREA - Financial Institution Regulatory and Reform Act of 1989, clarification of lawful and unlawful business practices in the United States

TILA-RESPA - Truth in Lending Act - Real Estate Settlement Procedures Act, clarification of lawful and unlawful business practices of the United States, latest rules have been issued for comment, revised and scheduled to take effect in 2015

FRAP - Federal Rules of Appellate Procedure, latest edition, in this case including Local Court Rules and IOP USCA 5th Circuit

CFPB - Consumer Financial Protection Bureau, established in 2012 by Dodd-Frank, designated enforcement agent for US in 2014

JURISDICTIONAL STATEMENT

Jurisdiction of this Court is invoked under Section 1291, Title 28, United States Code, as an appeal from a final judgment and dismissal in the United States District Court for the Western District of Texas. Notice of appeal was timely filed in accordance with Rule 4(b) of the Federal Rules of Appellate Procedure.

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 appellant, who resides in Western Texas. All appellees 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.⁴ 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,¹¹ Ocwen,⁸ Citigroup,⁷ Bank of America,¹¹ Wells Fargo,¹² Greentree¹³ and all 50 United States Attorney Generals. We are asking for continuing enforcement of

those agreements, as is now well defined within the industry⁶ by regulation, judgment and habit. Investigations and negotiations continue with other actors in this industry.³⁶ Contrary judgment of this case was entered by Western Texas District Court without consent of the adverse parties, or required trial by jury of facts and issues. Amount of damages and claims in dispute is expected to exceed \$75,000.

STATEMENT OF ISSUES

Issue One. Right to Jury Trial

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. - *Heritage Guide to the Constitution*

ref: BLACKSTONE’S COMMENTARIES - The Jury³²

“Great as this eulogium may seem, it is no more than the admirable constitution, when traced to its principles, will be found in sober reason to deserve. The impartial administration of justice, which secures both our persons and our properties, is the great end of civil society. But if that be entirely trusted to the magistracy, a select body of men, and those generally selected by the prince or such as enjoy the highest offices in the state, their decisions, in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity: it is not to be expected from human nature, that the few should always be attentive to the interests and good of the many. On the other hand, if the power of judicature were placed at random in the hands of the multitude, their decisions would be wild and capricious, and a new rule of action would be every day established in our courts. It is

wisely therefore ordered, that the principles and axioms of law, flowing from abstracted reason, and not accommodated to times or to men, should be deposited in the breasts of the judges, to be occasionally applied to such facts as come properly ascertained before them. For here partiality can have little scope: the law is well known, and is the same for all ranks and degrees; it follows as a regular conclusion from the premises of fact pre-established. But in settling and adjusting a question of fact, when entrusted to any single magistrate, partiality and injustice have an ample field to range in; either by boldly asserting that to be proved which is not so, or more artfully oppressing some circumstances, stretching and warping others, and distinguishing away the remainder. Here therefore a competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice. For the most powerful individual in the state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by twelve indifferent men, not appointed until the hour of trial; and that when once that fact is ascertained, the law must of course redress it. This therefore preserves in the hands of the people that share which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens. Every new tribunal, erected for the decision of facts, without the intervention of a jury (whether composed of justices of the peace, commissioners of the revenue, judges of a court of conscience, or any other standing magistrates), is a step towards establishing aristocracy, the most oppressive of absolute governments.”

*-Blackstone's Commentaries on the Laws of England,*³² Book 3, Chapter 23

STANDARD OF REVIEW - ISSUE ONE

Federal Rules of Civil Procedure Rule 38. Right to a Jury Trial; Demand³

(a) **RIGHT PRESERVED.** The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

(b) **DEMAND.** On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d).

(c) SPECIFYING ISSUES. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may—within 14 days after being served with the demand or within a shorter time ordered by the court—serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) WAIVER; WITHDRAWAL. A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

(e) ADMIRALTY AND MARITIME CLAIMS. These rules do not create a right to a jury trial on issues in a claim that is an admiralty or maritime claim under Rule 9(h).

Issue Two - Recusal of Mark Lane

Mark Lane was assigned as Magistrate Judge in the initial stages of case management, and filed an early report and recommendation for dismissal. Mark is actually regularly employed as Deputy Assistant Federal Prosecuting Attorney. In his normal course of duties with the Department of Justice, he was very likely aware of, or may have taken an active role in, significantly increased enforcement activity in this milieu, or possibly even with these defendants. Mark should have recused himself immediately from a judgment role.

STANDARD OF REVIEW - ISSUE TWO

From the US Department of Justice FY2013 Budget Request Overview³⁹

“The Administration and the Department remain committed to investigating and prosecuting financial and mortgage fraud that harm the American people and the financial markets. In order to strengthen our efforts at combating this fraud, we propose a new financial and mortgage fraud enforcement initiative, which is intended to complement ongoing efforts to root out various forms of fraud, including health care fraud, that are supported by existing direct resources and reimbursable funding.

DOJ plays a crucial role in the federal financial recovery effort through criminal and civil litigation. The Department requests program increases totaling \$55 million for a variety of economic fraud enforcement efforts, including work being done by DOJ members of the President’s Financial Fraud Enforcement Task Force. This increase will support additional FBI agents, criminal prosecutors, civil litigators, in-house investigators, forensic accountants, paralegals, and other support positions to ultimately improve the Department’s capacity to investigate and prosecute allegations of financial and mortgage fraud. This national initiative will pool state and federal resources to leverage impact.

To that end, the FY 2013 Budget requests a total program increase of \$55 million (including \$9.8 million for technology tools and automated litigation support) for this priority initiative. The request seeks 328 additional positions, including 40 FBI agents, 184 attorneys, 49 in-house investigators, 31 forensic accountants, 16 paralegals, and 8 support staff. Of the total \$55 million program increase, \$37.4 million is to increase criminal enforcement efforts and \$17.6 million is to increase civil enforcement efforts.

The additional resources will support the Department’s investigation and prosecution of the broad range of crimes that fall under the definition of financial fraud, including securities and commodities fraud, investment scams, and mortgage foreclosure schemes. The additional resources will build upon the successes of the Financial Fraud Enforcement Task Force that, since its inception in FY 2010, has facilitated increased investigations and prosecutions of financial fraud relating to the financial crisis and economic recovery efforts.

As a prelude to implementing this initiative in FY 2013, the Attorney General has announced the formation of the Residential Mortgage-Backed Securities Working Group, supported by existing FY 2012 resources, which will leverage state and federal resources to strengthen current and future efforts to investigate and prosecute instances of wrongdoing in the residential mortgage-backed securities market. The working group, working under the authorities of the Financial Fraud Enforcement Task Force, will be co-chaired by senior DOJ and Securities and Exchange

Commission officials, along with the New York Attorney General. It will be staffed by at least 55 DOJ attorneys, analysts, agents, and investigators from around the country.

Program Increases Federal Bureau of Investigation (FBI)

- **Financial and Mortgage Fraud:** \$15.0 million and 44 positions (40 agents)

The requested funding will increase the FBI's capacity to investigate financial fraud and mortgage fraud schemes. In FY 2011 the FBI had over 1,500 pending financial fraud (corporate and securities) cases and over 2,900 pending mortgage fraud cases. The requested 40 new agents and 4 forensic accountants will create two hybrid squads to target the most significant complex financial crimes and remaining resources will be allocated to FBI field offices to increase financial and mortgage fraud efforts. This enhancement will permit the FBI to address high priority and high loss investigations and provide a substantial return on investment. For example, the average return on investment for one corporate fraud agent was approximately \$54 million over the past three fiscal years. FY 2013 current services for economic fraud are 1,239 positions (921 agents) and \$195.7 million.

Criminal Division (CRM)

- **Financial and Mortgage Fraud:** \$5.0 million and 28 positions (16 attorneys)

The Criminal Division will use its resources to prosecute the most significant financial crimes, including mortgage fraud, corporate fraud, and sophisticated investment fraud, coordinate multi-district financial crime cases, and assist U.S. Attorneys Offices (USAOs) in financial crime cases with significant money laundering and asset forfeiture components. The FY 2013 current services for this initiative are 278 positions (182 attorneys) and \$66.5 million.

Civil Division (CIV)

- **Financial and Mortgage Fraud:** \$7.0 million and 51 positions (38 attorneys)

Through this enhancement, the Civil Division will expand civil enforcement efforts to continue to obtain recoveries from individuals and companies who have defrauded the government by violating the terms of Federal contracts, grants, loans, and subsidies. This increase will enable the Division to vigorously pursue perpetrators of mortgage, procurement and other financial fraud that have robbed the treasury of hundreds of millions of dollars. The Division will also use the additional funds to obtain relief for consumers who have fallen victim to unscrupulous schemes that contributed to the financial crisis that is crippling so many sectors of our economy today. The FY 2013 current services for this initiative are 65 positions (52 attorneys) and \$17.8 million.

Civil Rights Division (CRT)

- **Financial and Mortgage Fraud:** \$1.5 million and 15 positions (10 attorneys)
CRT will expand civil enforcement efforts, including investigations of predatory lending; pricing discrimination matters involving allegations of potentially fraudulent behavior; and redlining discrimination involving allegations that reputable lenders failed to provide loan opportunities on an equal basis in majority-minority neighborhoods leaving those markets open to fraudulent or predatory lenders. FY 2013 current services for this initiative are 12 positions (9 attorneys) and \$1.4 million.

U.S. Attorneys (USA)

- **Financial and Mortgage Fraud:** \$26.5 million and 190 positions (120 attorneys)
The U.S. Attorneys will expand criminal investigations and prosecutions of mortgage fraud, predatory lending, financial fraud, and market manipulation matters. These prosecutorial resources will enable the U.S. Attorney community to quickly address the increasing number of mortgage and financial fraud cases referred by the FBI for prosecution. The U.S. Attorneys will also expand civil enforcement efforts to continue to obtain recoveries from individuals and companies that have defrauded the government by violating the terms of Federal contracts, grants, loans, and subsidies. The FY 2013 current services for this initiative are 2,262 positions (1,544 attorneys) and \$274.3 million.”

Issue Three - Case Management by Western Texas District Court³⁵

David McCrae filed this case initially in Burnet County 447th Court and as it more clearly emerged as a complex case it was sheltered briefly at the Western Texas Federal Bankruptcy Court, and then removed to Western Texas District Court on motion of the defendants. The early stages of the dispute, David’s defense of his own homestead property, were resolved at the Western Texas Bankruptcy Court Level.^{5,49} On removal to District Court about a year after initiation, Mr. McCrae amended his complaint to file as a whistleblower¹⁹ on behalf of the Consumer Financial Protection Bureau (which agency had since

assumed such enforcement responsibilities for the United States in January of 2014)¹, and on behalf of a Class of like individuals.⁷ The Class is yet to be identified and certified, and Mr. McCrae continues to seek qualified and interested counsel. On appearance at District Court the Court expressed stronger concern that Mr. McCrae was practicing law without the necessary training and certification,^{32,42} rather than a more proper concern that counsel should be provided to investigate the wider claim more thoroughly.¹⁶ This error was possibly confounded by the failure of Mark Lane to recuse himself, or recognize the issue.²⁰ Legislation in this area is relatively recent,¹ and specific conflicts are still percolating into the judicial system dockets for more definition. Since December of 2013, seven like cases have been resolved by consent judgments (one with the New Jersey Attorney General,⁹ and the other six with the USAG joined by all 50 State Attorneys General).^{7,8,10,11,12,13} No cases have gone to trial. PHH currently operates in 46 states, under sanction and consent of the New Jersey Attorney General. Our current situation in Texas has been reviewed by the New Jersey AG, and excluded from that agreement. Nevertheless, in this case the defendants' initial response to the complaint of blanket denial, or charge of failure to state a claim, were supported by Mark Lane in his initial fact-finding report, and the case was dismissed without investigation. No pre-trial conferences occurred. No Rule 26(f) meetings

occurred. No disclosures were entered or discovery of evidence pursued. Based on the widespread social dimension of the current economic crisis,¹⁸ a very new regulatory environment which remains largely undefined by the judiciary,¹ the colossal resource assignment and direction of the Department of Justice in this area and equally colossal recoveries by consent judgments,³⁹ judgment was ill-considered and premature.

STANDARD OF REVIEW - ISSUE THREE

Federal Rules of Civil Procedure - Rule 16. Pretrial Conferences; Scheduling; Management

(a) **PURPOSES OF A PRETRIAL CONFERENCE.** In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

- (1) expediting disposition of the action;
 - (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
 - (3) discouraging wasteful pretrial activities;
 - (4) improving the quality of the trial through more thorough preparation; and
 - (5) facilitating settlement.
- (b) **SCHEDULING.**

(1) *Scheduling Order.* Except in categories of actions exempt- ed by local rule, the district judge—or a magistrate judge when authorized by local rule—must issue a scheduling order:

- (A) after receiving the parties' report under Rule 26(f); or
- (B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means.

(2) *Time to Issue.* The judge must issue the scheduling order as soon as practicable, but in any event within the earlier of 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared.

Issue Four - [DELETED]

Issue Five - Failure to State a Claim

This claim was docketed at \$150,000,072,000, an estimate of real and consequential damages to an uncertain number of class members to be discovered,^{20,36} an estimate of salutary fines to be levied per current FIRREA Guidelines⁴ along current DOF Consent Judgments in the industry, an estimate of disgorgement of unlawful gains to be discovered, and an estimate of salutary penalties as signposts to the industry. Ref. Appendix 1 pp. 117-22. Appellant hesitates to imagine how a jury might address the situation,³⁷ if properly presented.⁵⁰ Appellant and Appellees all have business records, and records of any eventual class to be identified are also readily available in electronically stored information format, able to be discovered in pre-trial action.³ Plaintiff has entered written offers of settlement. Plaintiff has entered motion for Alternative Dispute Resolution. Our pre-trial discovery responsibilities were never pursued. Our jury was never assembled. Our work is incomplete.

STANDARD OF REVIEW - ISSUE FIVE

STATEMENT OF CLAIM*

#	Description	McCrae	CLASS
1	Costs of Defense, Professional Services	100	x6847
2	Costs of Defense, Court Filings	IFP	
3	Costs of Defense, Incidental	n/c	
4	Restitution	10,000	68,470,000
5	Foreclosure Sale in Error	1,000,000	4,000,000
6	Affidavit of Indebtedness Preparation	1,000,000	4,000,000
7	Proof of Claim	1,000,000	4,000,000
8	Motion for Relief from Stay Affidavits	1,000,000	4,000,000
9	Preforeclosure Initiation	1,000,000	4,000,000
10	Fee adherence to guidance	1,000,000	4,000,000
11	Adherence to customer payment processing	1,000,000	4,000,000
12	Reconciliation of certain waived fees	1,000,000	4,000,000
13	Third party vendor management	1,000,000	4,000,000
14	Customer portal (multiple)	5,000,000	-
15	Single point of contact (multiple)	5,000,000	-
16	Workforce management	1,000,000	4,000,000
17	Affidavit of indebtedness Integrity	1,000,000	4,000,000
18	Account status activity (multiple)	5,000,000	-
19	Complaint response timeliness (multiple)	5,000,000	-
20	Dual track referral to foreclosure	1,000,000	4,000,000
21	Dual track failure to postpone foreclosure	1,000,000	4,000,000

#	Description	McCrae	CLASS
22	Other violations		50,000,000
23	Disgorgement of unlawful gains		500,000,000
24	Salutary Fines		1,500,000,000
	Total	33,010,100	2,170,470,000

***FIRREA Guidelines,**

Joseph A. Smith

Mortgage Settlement Oversight Guidance

All penalties to date have been assessed by consent judgments,^{6,7,8,9,10,11,12,13} essentially ‘plea bargains,’ with the individual mortgage servicer and the DOJ prosecution team, considering both the extent and seriousness of the violations, the sincerity of the management motivation to reform, and the company resources. All agreements to date have also involved a period of oversight and consequent variability of sanction. A jury has never been presented with this situation. An opportunity to seek their judicial review and guidance in resolution of this widespread socioeconomic crisis would be invaluable.

Issue Six - Sanctions

In view of Appellee's consistent dithering and delay, and apparent strategy of procedural obfuscation rather than honest and forthright address of the issues of contention, Appellant prays for his removal and for substantial sanctions to be issued.³⁴ PHH is currently operating under a consent judgment with the New Jersey AG for just such behavior as we have noted, with current quarterly legal expenditures of \$10M noted in their SEC 10Q and 10K reports. Their behavior continues unchecked. BDFTE focuses their effort in this tiny area of concentration, has been sanctioned in the past for this specific behavior as local agent for Countrywide, indeed has a patented document processing system⁴⁸ focused on maximal generation of fees, and their behavior continues unchecked.

STANDARD OF REVIEW - ISSUE SIX

Federal Rules of Civil Procedure - Rule 16

(f) SANCTIONS.

(1) *In General.* On motion or on its own, the court may issue

any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney:

(A) fails to appear at a scheduling or other pretrial conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or other pretrial order.

Issue Seven - [DELETED]

Issue Eight - [DELETED]

ARGUMENT

1. The appellee BDFTE, as agent for the appellee PHH, acted without good cause to foreclose and sell appellant's homestead at public auction.⁵

Reference Appendix pp. 1-4

2. The appellant filed an unsuccessful motion in Burnet County 447th to stop sale.⁵ Reference Appendix p. 5

3. As time went by, appellant McCrae filed bankruptcy in Western Texas, #13-10386, to protect assets while bankruptcy plan was implemented in satisfaction of creditors.³⁸ Reference Appendix p. 7-8

4. BDFTE, an appellee, filed proof of claim with trustee and was paid in full.

PHH executed release of lien on mortgage and filed in Burnet County.

Reference Appendix p. 9

5. Appellant McCrae resumed attempts to collect debt from appellee PHH for real and consequential damages incurred in defense of wrongful foreclosure action, predatory insurance practice of PHH, and lost escrow funds.³⁴

Reference Appendix pp. 9-11

6. Appellees removed trial from Burnet County to Texas Western District Court, for diversity, and as claim appeared in excess of \$75,000. Appellant concurred. Reference Appendix p. 14

7. Appellant filed amended complaint to recover damages for himself and a potential class of like parties.^{19,33,47} The class is not certified at this point.

Reference Appendix p. 15

8. Appellant filed motion under Rule 38⁴ in demand of jury trial.^{3,32} Jury trial was docketed, as such motion cannot be routinely opposed, and was not in this case. Reference Record On Appeal Document 23 and Document 23.1,

Appendix p. 15 - Jury Demand

9. Prior to trial, without examination, the case was judged and dismissed.

Reference Appendix p. 16

SUMMARY OF ARGUMENT

10. In view of the complexity of facts and issues,^{17,19,47} the apparent large class of affected parties in similar current or past circumstance,^{18,37} and the continuing financial crisis of far-reaching negative social impact in the

United States,^{37,45,47} I pray this panel to remand this case to Western Texas

District court for proper trial before jury of all facts and issues.^{4,33,47}

Reference Appendix. p. 29-45

11. I pray also for directed assignment³⁹ of a US Attorney or Attorneys from such existent resources as the Mortgage Fraud Task Force Working Group,³⁹ or the FBI White Collar Crime Task Force,³⁹ to assist our lead counsel in the prosecution of this case, and the judge in proper case management, as

information liaison to facilitate investigation and discovery under Rule 26 prior to trial. Reference Appendix p. 45

12. I pray for production to that attorney, or the Mortgage Fraud Task Force Working Group, of electronically stored information and complete audit of all payment records and circumstances of foreclosures currently in process by PHH in 46 states, and by their agent BDFTE in Texas and California.³⁶

I am able to join the current Attorney General Eric Holder in recommending Joseph A. Smith⁶ of mortgagesettlementoversight.com as most appropriate analyst and expert witness, based on his current specific and appropriate experience as designated monitor for all consent judgments currently under enforcement action by US Department of Justice.

Reference Appendix p. 41

13. I pray for meaningful and cautionary sanctions⁴⁵ to be assessed versus McGlinchey Stafford and BDFTE for gratuitous obstruction of legal process by their obfuscation, dithering and delay up to this point. PHH currently operates under the consent and sanction of the New Jersey Attorney General. BDFTE has been sanctioned for just such behavior in the past by Federal Bankruptcy Court of Southern Texas. Reference Appendix pp.

163-202

14. ~~I pray for restraining order to stay all non judicial foreclosures currently in process, about 8-10,000 across America of one million or more properties in some stage of mortgage service, by PHH⁹ and their regional agents until jury trial in Western Texas of all facts and issues is complete. Defer to Oral Argument.⁵⁰ The looting we all watched in Ferguson was for amateurs.⁵¹~~
15. In short, we need to remand this case to the senior judge in Western Texas District Court, who needs to fully embrace his duties^{41,35} to conserve the public good and assign serious resources into resolving this local, regional, and national issue.^{17,37,40} We have a ‘rocket docket’ here in Texas. With no judicial oversight, a company in Guernsey can assert ownership and post and sell a home in twenty three days on the courthouse steps.⁴⁸ This is not a benefice to our community.³⁷ I’ve wasted ten thousand dollars, which was invested in ...NOTHING. This gives us a community wherein we can hold a lottery to choose 275 public welfare residents of our showpiece ‘tiny houses,’ which is all they really need as breakfast is still served every day at Austin Resource Center for the Homeless. I have a public high school education, and I listen to the Law Hour,⁴² and I am able to read, write, spell, do sums, communicate at great distances, manage robots...that is a statistical outlier in today’s graduate. Our foundation in this country is private property,³² and we have noted that attention to that value since 1776 tends

to contribute to strong and valuable communities. Our economy is not built on tulips, or South Seas Trading Stock, or collateralized debt obligations.⁴⁷ We never had a King, or a treasure vault. Our community is not enhanced by owning a package of 30% houses, 30% hotels, 30% commercial strip center, 10% manufacturing for a few moments until the euros or renminbis balance in our favor and we can dump it on the Russians. This is like a 250-year-old hollow oak tree, waiting for the lightning stroke. We are still experiencing an economic crisis in this country. We have a judicial system which is able to contribute significant value to satisfactory resolution, and we have the necessary resources. Bernie Madoff is in jail. Countrywide no longer does business here. I have a litigation budget of five million dollars, and a projected return to the community of several thousand percent, along with the intangible benefit of supplying a little guidance to the business interests among us.^{1,5} I propose we have an organizational meeting at ARCH on the day we remand this case to Austin, and make some serious plans. We should invite the New Jersey Attorney General, or one of his minions, to join us to discuss how they addressed this identical problem in New Jersey. I'm retired. I work for free. I have the time, and the inclination. Everyone else is getting paid.³⁹ I was asked at one point in this case, by one of my esteemed counterparties, 'Are you going to oppose all my

motions?’ I replied, ‘Yes, any motion that operates to delay or prevent this case from going before a jury, I will oppose. It costs me ten cents per page. I can write economically.’ We have a nice new courthouse, built by Barack Obama especially for our use, for work just like this. He has big ears, so what? He runs this country.

SHORT CONCLUSION

In Conclusion, I would request the court to remand this case to District Court in Western Texas with order for proper trial of facts and issues before a jury. I would request assignment of a qualified and knowledgeable United States Attorney to be assigned the case to ensure coordination of federal resources, the State of New Jersey, and any available information pertaining to issues, and certification of class. I am also recommending sanction of the firms McGlinchey and Stafford, and BDFTE, and disappearance from this case as attorneys.

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT #14-51224

For Truth, Justice, and America,

29 January 2015

/s/ David McCrae

By: DAVID MCCRAE, Pro Se* **
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TRIAL EXHIBITS

This case was judged and dismissed for failure to state a claim on motion of appellee without trial. The facts and issues have been unexplored beyond assertion and denial, remain in question between the parties. Pretrial discovery was never pursued, ordered or completed by the litigants. Jury Demand was filed by appellant in accord with Rule 38 (Ref. Record on Appeal, Documents 23 and 23.1) and properly docketed, prior to dismissal. No evidence has been reviewed. No jury has been summoned or assembled. We have nothing to Exhibit.

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because:

- this brief contains no more than 14,000 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii), or

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2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because:

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(s)David McCrae, pro se

Sworn to on 29 January 2015

by /s/David McCrae, Pro se

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512.667.0283

CERTIFICATE OF SERVICE

I have served this Appellant Brief, including

- Appendix 1, Statement of David McCrae
- Record on Appeal, Documents 23 and 23.1

To

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