

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

Texas.

Little House on the Prairie.

Carpetbaggers.

I'm your HuckleBerry.

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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 its 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,³⁶ or in real estate speculation and trading,¹⁶ ‘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,⁵ mortgagesettlementoversight.com, due to a past association with Bank of America,¹⁰ JP Morgan/Chase,¹⁰ Citibank,⁶ Wells Fargo,¹¹

Ocwen,⁸ Ally GMC, Greentree,¹² 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,¹⁴ or an investigator or enforcement
agent involved in such current ongoing investigation,²⁷ 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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TABLE OF CONTENTS

ORAL ARGUMENT REQUESTED	6
TABLE OF AUTHORITIES	10
STATUTES AND REGULATIONS	10
CASES	10
OTHER AUTHORITIES	11
GLOSSARY OF ABBREVIATIONS	13
JURISDICTIONAL STATEMENT	14
STATEMENT OF ISSUES	15
STATEMENT OF CLAIM*	24
STATEMENT OF FACTS	27
ARGUMENT	43
SUMMARY OF ARGUMENT	44
SHORT CONCLUSION	48
TRIAL EXHIBITS	50
CERTIFICATE OF COMPLIANCE WITH RULE 32(a)	51
CERTIFICATE OF SERVICE	52

ORAL ARGUMENT REQUESTED

I'd like to appear to present oral argument in this matter.²⁶ 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.³⁹ Our accusers are allowed to confront us. In complex cases, we collect a jury of impartial citizens.² This is not the case in most little countries in the world, where people just get their heads chopped off.³¹ 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.²⁸ It looked like a professional

crew.^{15,37} 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.³⁴

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.’^{4,28} I’ve decided that this is a business we don’t need.¹⁷ 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.^{1,22} 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.

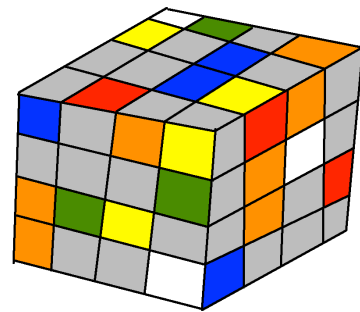
But, I digress...Today, I have a proposal, and I'd like to advocate it. I'd like to shed some light on your concerns. I'd like to find out more from my counterparties. I'd like to share our thoughts. The case is closed in Texas, on motion from the defendants, with little discussion. In fact, none. We 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.²⁰ 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.^{20, 35}

TABLE OF AUTHORITIES

STATUTES AND REGULATIONS

1. Dodd-Frank Financial Reform Act of 20128, 21, 22, 47
2. Federal Rules of Civil Procedure esp. Rule 386, 16-7, 21-3, 26, 44
3. Financial Institution Recovery, Reform and Enforcement Act of 1989 (FIRREA)14, 23, 27
4. Real Estate Settlement Procedures Act of 2015 (The TILA-RESPA Final Rule)7, 20, 43, 44, 47

CASES

5. Jos. Smith Mortgage Settlement Oversight Reports to DOJ -.....3, 14, 25, 45
6. Case 11 Civ 5473(VM) Sherry Hunt, qui tam United States of America, Plaintiffs v. Citigroup, Inc., Citibank NA, Inc., and Citimortgage, Inc, Defendants; Stipulation and Order of Settlement and Dismissal, Eastern New York District Court3, 21, 25
7. Consent Judgment 192716821, Consumer Financial Protection Bureau and ALL 50 State Attorneys General, Plaintiffs, v. Ocwen Financial Corporation and Ocwen Loan Servicing, LLC, Defendants District of Columbia District Court4, 14, 21, 25
8. Consent Order, State of New Jersey, Administrative Action v. PHH Mortgage Corporation, Respondent, Department of Law and Public Safety, Division of Consumer Affairs21, 25, 45
9. Stipulation and Consent to the Issuance of a Consent Order, United States of America, CFPB v. Flagstar Bank, F.S.B., File #2014-CFPB-001421
10. Consent Judgment, United States of America, and ALL50 State Attorneys General, Plaintiffs, v. Bank of America Corp, and J.P. Morgan Chase &

Company and J.P. Morgan Chase Bank, N.A., Defendants, District of Columbia District Court3, 14, 21, 25

11. Consent Judgment, Wells Fargo4, 14, 21, 25

12. Consent Judgment, Greentree4, 14, 21, 25

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OTHER AUTHORITIES

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15. The Best Way to Rob a Bank Is to Own One - Bill Black7,46

16. The Big Short: Inside the Doomsday Machine - Michael Lewis3, 44

17. Broke - Glenn Beck7, 22-3, 44

18. Bull By The Horns - Sheila Bair47

19. Client Alert, No. 1500, April 15, 2013, Latham&Watkins44

20. Commentaries on the Laws of England - Blackstone8-9, 15-6, 46

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23. Do - A. C. Ping44, 47

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25. <u>Fed Up!</u> - Rick Perry	46
26. <u>A Fighting Chance</u> - Elizabeth Warren	6, 44, 46
27. FY 2013 Budget Request US DOJ	4, 18-20, 23, 44
28. <u>Greedy Bastards</u> - Dylan Ratigan	6, 7, 44, 46
29. <u>Know How</u> - Ram Charan	46
30. Law Hour and Editorial Review - www.GeorgeGordon.org	21, 46
31. <u>The Merchant of Venice</u> - Wm. Shakespeare	6, 43
32. <u>The No Asshole Rule</u> - Robert Sutton	45
33. <u>Other People's Houses</u> - Jennifer Taub.....	44, 46
34. <u>The Revolution</u> - Ron Paul	7, 44
35. <u>Right to Jury Trial</u> , Eric Grant, Hicks, Thomas, LLP website	9, 44
36. <u>Stress Test</u> - Tim Geithner	3, 4, 44, 46
37. <u>System and Method for Electronic Processing of Default Case Files</u> , Patent Application 20080201190, Barrett Burke Wilson Castle Daffin & Frappier, LLP	7, 26, 33, 46
38. <u>Web of Debt</u> - Ellen Hodgson Brown	3, 44, 46
39. <u>Win Your Case</u> - Gerry Spence	6, 20, 21, 23, 44, 45
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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, most recent revision 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 effective 15 January 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.³ 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,¹⁰ Ocwen,⁷ Citigroup,⁶ Bank of America,¹⁰ Wells Fargo,¹¹ Greentree¹² and all 50 United States Attorney Generals. We are asking for continuing enforcement of

those agreements, as is now well defined within the industry⁵ by regulation, judgment and habit. Investigations and negotiations continue with other actors in this industry.²⁴ 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 Jury²⁰

“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,*²⁰ Book 3, Chapter 23

STANDARD OF REVIEW - ISSUE ONE

Federal Rules of Civil Procedure Rule 38. Right to a Jury Trial; Demand²

(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 Lane²⁴

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 Overview⁻²⁷

“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 Court²⁴

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.^{4,39} On removal to District Court about a year after initiation, Mr. McCrae amended his complaint to file as a whistleblower²¹ 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.⁶ 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,^{30, 39} rather than a more proper concern that counsel should be provided to investigate the wider claim more thoroughly.² This error was possibly confounded by the failure of Mark Lane to recuse himself, or recognize the issue.²⁴ 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,⁸ and the other six with the USAG joined by all 50 State Attorneys General).^{6,7,9,10,11,12} 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,¹⁷ 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,²⁴ judgment was ill-considered and premature.

STANDARD OF REVIEW - ISSUE THREE

Federal Rules of Civil Procedure - Rule 16. Pretrial Conferences; Scheduling; Management²

(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 - 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,^{21,27} an estimate of salutary fines to be levied per current FIRREA Guidelines³ 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. Appellant hesitates to imagine how a jury might address the situation,¹⁷ if properly presented.³⁹ 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, 24} 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 FOUR

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.⁵ 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 Five - 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.²⁸ 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 Countrywide¹³, indeed has a patented document processing system³⁷ focused on maximal generation of fees, and their behavior continues unchecked.

STANDARD OF REVIEW - ISSUE FIVE

Federal Rules of Civil Procedure - Rule 16³

(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.

STATEMENT OF FACTS

In October of 2001, I retired from Northwestern Steel in Sterling Illinois on occasion of plant bankruptcy and closing. I purchased five acres in Burnet County, Texas and erected a manufactured home. I obtained a mortgage through United Services Automobile Association for \$72,500 on declared property value of \$100,000. USAA delegated the mortgage to PHH, an unaffiliated recommended vendor, and Barbara and I signed a 15-year conventional mortgage at 6.25% fixed rate. On receipt and review of loan payoff documents filed in Burnet County in March 2014 (Paid in Full 12 years and six months after execution), we noted that the mortgage had been endorsed to Federal National Mortgage Assurance approximately 8 days after we had executed it. Since that time, I believe our mortgage document had been securitized in many investment packages, and held in part or in toto by many investors or syndicates of investors, for trading purposes. Typically these investor groups operate to acquire packages of real property from the securitization authority, hoping to profit from turnover times as short as a few

moments, while protecting themselves from any risk of asset maintenance, impairment or destruction. The syndicator surrenders all collateral rights to a black hole, and keeps a commission for his efforts in sorting and posting income payments to the various traders of record. The traders naturally surrender all collateral rights to any individual properties in these monster packages, relying on the statistical general increase of value and yield, while protecting themselves from an unfortunate local disaster. The syndicator generally invests a small tithe of his earnings from the package to insure continuous flow of cash for disbursement to his group. With the economies of scale, it generally works to the benefit of all, until the wheels fall off and a major goes bankrupt. Bankruptcy events can also be profitably managed, by those who are a little less bankrupt.

But, I digress. I continued to work in Texas after leaving Northwestern, mostly as a consultant for clients still interested in building or overhauling steel mills, refineries, undersea oil production, and the like. At 62 years old, I came to the end of a project in Mississippi for the Russians and found it convenient to retire almost completely, working occasionally in the area for Home Depot and the like. I decided to pay off my house and economize on my daily/

weekly/monthly expenditures. My computer is able to run Excel, so I can find out stuff like @PMT, PRIN, INT, @NOW, @NOW+30.25, and I knew how much money I owed. My mortgage was at that time prepaid by two years and eight months. I called PHH in New Jersey to ask for a loan payoff statement. They were very confused, and unable to send me anything. A while went by, and I received a notice to contact HAMP and get another thirty year mortgage for however much I needed. We were having some difficulty communicating. I sent them a pretty clear letter stating I did not intend to take out a new mortgage, I only wanted them to send me a statement that I owed \$7,558 on my existing mortgage, so I could pay it off on 1 January, 2013. I couldn't address it to anyone, as no one signs anything in New Jersey with their name, and different people answer the phone each time I call. Later I found out that they have about 16,000 employees, and maybe one is named Lemony Snicket. I started sending registered mail to see who signed for stuff. I was able to eventually contact Nora Wocken, and found out I needed to send a Qualified Written Request. My next letter to Nora I wrote 'Qualified Written Request,' and asked how we could resolve our issues. She appointed me a Single Point of Contact, Audrey Welsh. Audrey Welsh never answered the phone. She never

returned a letter. I spent one day on the phone with Robert, Mike, and Melanie, who consulted their computer screens and eventually told me I owed \$8,300+. They indicated I would soon receive a payoff statement. It never arrived. What did arrive was a Notice of Foreclosure, and a house inspector to see if my house did in fact exist, and to hang a notice on my doorknob that she had been there. She didn't have time to talk. She waved as she drove off. I went to the courthouse to see my house posted for sale on 5 March. BBDFTE would not talk to me on the phone, only in writing. I went to see Ann Little, a local lawyer. She advised me to just pay them whatever they want, it was cheaper. We talked some more, and I decided to hire her for \$1,000 to intervene with BBDFTE and get our financial differences resolved. BBDFTE would not talk to Ann without my written authorization. I authorized Ann in writing to communicate with BBDFTE (there were two B's then). BBDFTE told Ann it was their policy to communicate only with their client, and never with an adverse party. Ann told me I could file a lawsuit, but with little probability of success, for \$2,500. I considered it. I decided to go to the courthouse and see if I could talk to a judge and stop the sale. I paid \$350 and filed my motion. I thought that was more reasonable than \$2,500, and it seemed fairly

simple. The clerk told me to call Miss Cindy for scheduling. A couple days went by before I could get in touch with Miss Cindy, who told me the Judge couldn't look at my motion due to lack of a white space page for him to sign. Sure enough, I hadn't thought to put in a white space page.

I had to go down Option Path 2 and seek bankruptcy advice. By this time my e-mail and mailbox was full of letters from the bankruptcy attorneys offering to help me out. I picked Ray Fisher. I got quickly trained on credit on the internet, protected all my personal inventory, disclosed all my debts, and we filed our petition and notified BBDFTTE that the house was unavailable for sale.

I paid Ray a retainer of \$1,500 for a flat fee of \$2,500 and dismissed Ann.

Later Ann paid me back \$400 in unused retainer funds. I paid Ray another \$1,000 to cover his whole fee. His fee had gone up to \$3,500 due to the rate change. I paid the rest of my US Income Tax refund to the trustee and started on my \$1,200 payments, in accord with plan. No one had yet submitted their proof of claim, though we were expecting it. The trustee continued making payments to everyone, plus PHH in anticipation. Mississippi eventually sent me a tax refund of \$183, which I gave to the trustee. She was expecting more, since I had filed for \$3,200 and I was never a resident of Mississippi, just

working there occasionally, staying in a hotel and paying my transient tax nightly. I'd also worked that year in Illinois, Ohio, and Michigan, but those were flat rate states and I was not required to file, having paid my obligations as they occurred. Like paying the Federal tax on fuel, every time I purchase a gallon of fuel, wherever I buy it, I pay the tax. So the trustee wanted more money, after the \$183. I told Ray that I had agreed to pay all the money, which I had done. Mississippi had not explained their reasoning to me, but I had paid the trustee all the money they had sent. Ray said he would make some calls. The trustee made some calls. Sure enough, Mississippi sent me another \$1,630. I gave it to the trustee. Ray told the trustee he had done some extra work, and asked for \$450. the trustee gave Ray \$450, and added it to my bill. I had to fire Ray before he did any more extra work, and I had to pay another \$450. I fired Ray, and told the trustee and the judge Ray was no longer working for me and I would handle all further inquiries. I asked the trustee for a proof of claim from PHH and sure enough they had by now submitted one, for \$9,465, which was their \$7,558 plus a bunch of fees for selling my house. The fees were created from thin air, as BBDFTE had a computer program that specialized in creating fees and submitting them to

anyone who had an account. A person logs into the computer system periodically and clicks a permissive, and the fee is generated. They used to do this by hand, but sometimes they forgot, so they devised a computerized document processing system and patented it.³⁷ It was a great improvement, and there were no more people involved. They had not sold my house. We never had an auction. They never earned any fees. But this is how they make their living, creating and processing documents, and creating and processing fees. They are apparently tremendously successful. I paid the entire proof of claim, and all of Ray's fees, and told the trustee the plan was all paid and to discharge me. She wanted another \$23, which she paid to PHH. PHH returned \$18 that was overpaid. The trustee could not give the money to me, so she gave it to a charitable cause.

PHH had been holding \$1,280 in escrow for insurance and taxes, and they wanted more. I canceled the PHH insurance and bought my own insurance from Standard Guaranty for \$481. We corresponded for a while, and PHH issued a refund credit of \$600 for the pro rata insurance premium cancellation. They could not give me the money, so they credited it to escrow. I told them I had already paid the taxes directly so send the remaining escrow

money to me, along with the Release of Lien documentation for filing. At the time I had completed the fraudulent Proof of Claim payments so I stopped paying anything. I had no more creditors. All my lawyers were paid.

Eventually my bankruptcy was dismissed. Burnet County received the Paid In Full lien release and recorded the paperwork. We now owned our house, two years and eight months before scheduled contractual mortgage end date of 31 October 2016. My payment records showed an additional \$1,900 in fraudulent fees, \$2,400 in missing escrow funds, \$600 in fees for an ineffective lawyer, and \$4,950 for an incompetent lawyer.

Now I was able to communicate directly again with PHH, as they were no longer a creditor, and I asked for my money back. I also asked for my fee of one bitcoin per day for the 18 months or so of account administrations. I prefer to deal in bitcoins for my own billing, as it is a more stable currency than the dollar. Some people like renminbi, indeed most people. Renminbis are used in China, and there are more of them than there are of us. I prefer bitcoins, as they go right into my phone, and I can buy whatever I need, wherever I'm at. I don't think PHH took my complaints seriously. I know their lawyer thought I was acting frivolously. But...I was not the one who was

threatening to send the sheriff to their office in New Jersey, cleaning out their bank accounts, and evicting all their employees. I just wanted to collect my debts. Now I had them on a downhill pull.

Now that I knew the extent of my damages, I lodged a complaint with the Consumer Financial Protection Bureau. The CFPB had been set up by Congress as part of the Warren Dodd Financial Reform act of 2012 to strengthen America, and especially to address and reconcile situations just such as I had been going through for the last eighteen months. The Financial Crisis Investigation Committee, in 2008, had issued a report assigning significant responsibility for the Financial Crisis of 2006, to the largely unregulated financial speculators, who were dealing in real estate like they were playing on roulette wheels and living in comped rooms. They were winning the black bets among themselves, and the government was paying the red bets. The situation was intolerable. American citizens who used to own houses were living under bridges. The Americans who still lived in houses were only paying half taxes, because the neighborhoods were full of vacant houses and shantytowns. Long Term US Government Bonds were just for suckers. People like me were working for Russian investors, French investors, German

investors, Italian investors, English and Norwegian investors, Chinese investors, and American capital was fleeing the country. Life was intolerable, and getting intolerabler [SIC].

I was hopeful that the CFPB would be able to find someone responsible, clear up the confusion and get everything straightened out. I sent in my complaint, and all my documentation. PHH responded with about 62 pages of the confused accounts of Christopher McCrae, who was having similar problems as I, and the same lack of resolution. Christopher lived in Ludlow, Massachusetts, where I lived in second grade, but other than that we were totally unrelated. I gave CFPB some feedback that the response of PHH was totally unresponsive, and they should redouble their efforts. CFPB may or may not have proceeded further, and PHH may or may not have ever replied. After that we were all confidential.

I started assembling my material and organizing to go to court again. I decided I would go in as a class action, and I had learned that since FIRREA of 1989, when the Keating Five went to jail, all these cases needed to be brought by the Attorney General. These cases are often fairly complex, heavily interlocked, sometimes involving organized crime, requiring a lot of deal

making and structured prosecution, so they are generally best pursued by an organized, centralized authority. That was sure enough the case with Ocwen, a mirror image of PHH, who entered into a consent agreement on 19 December of 2013 after appearing in court for about 20 minutes with the CFPB and all 50 State attorneys general to resolve their claims without the need for a lot of discrete and time consuming litigation and only the payment of \$2.1 Billion in consumer relief to be refunded to damaged individuals just such as myself, and the monitoring for three years of Joseph A. Smith to verify that their activities continued in a lawful and just manner, of benefit to the community. I was greatly encouraged.

I knew I had to go through this qui tam procedure in a specific and lawful manner, so I initially invited my counterparties, PHH and BBDFTE, to an Alternative Dispute Resolution meeting at my house on 25 December 2013, so we could walk around the property, discuss our differences like civilized people, and come to a mutual agreement acceptable to all. Nobody responded. Nobody came. On 26 December 2013, I went to the FBI in Austin, the nearest Department of Justice, and reported the suspicious activity in my community and my intent to prosecute the miscreants to the fullest extent of

the law. They have 90 days to make sure there are no investigations in progress that I might disrupt, and are able to order me to desist if they feel that necessary. Unless ordered not to, I am then free as a citizen to represent the United States, investigate the extents of the activity and eventually report my findings to the prosecutor, or prosecute them with my own resources.

These methods have been tremendously successful in the arena of drugs or organized crime, and investigators are generally extended the courtesy of anonymity if they so desire, as one contributor to personal security. For financial people, generally considered pillars of the community, I had no such concerns and have waived that privilege.

Actually, the qui tam approach has been of tremendous assistance to the DOJ in their investigations and prosecutions, and a flurry of consent judgments have continued all through 2014, with such large financial institutions as Citibank, Chase/JP, BAC, Greentree, Ally, Wells Fargo quickly coming to fruition. These companies, with their feet held to the fire, are standing in line to come to Jesus, and seeing the benefit of converting large liabilities of unknown size into manageable disgorgements of earnings, and clear regulatory oversight of their continuing operations. To date, at this writing,

all settlements have been negotiated by the Department of Justice, and no jury has yet been empanelled for the complex duty of disentangling the web of interlocking debt and speculation. My case would appear to be unique, precedent setting, of great current social import, and of invaluable guidance to the long term planning of both the legitimate businesses and the interested consumers. It's like a sign post on the highway – “How fast should I be able to go here? Is there a school nearby? Does this bridge get icy?” And then you can read the signs – “80 – School Zone 7:15 to 8:45, 2:30 to 4:15 – Bridge Ices Before Road.” It all contributes to help make modern life simple. America is not a jungle.

While I was organizing myself and gathering resources, and seeking legal counsel, I received a note that my initial motion to stay my foreclosure sale had been removed to Western Texas District Court, at the request of one of the defendants, PHH. I was at the time wondering what district court I should file a new cause in, and actually Austin is downright convenient. I modified my complaint to update all the intervening time since last visited, in accord with the rules of civil procedure and the local court rules, and delivered my amended complaint to the court clerk. I also simultaneously served my

counterparties, applied for my PACER account so we could all work electronically, and stopped by the local Austin FBI office again and delivered them a printed copy of my amended complaint so they could get caught up on events, or take over prosecution if they so desired. We had another long talk and we reviewed my amended complaint. I told them the filing was not sealed, and I had no unusual concerns for my personal protection. I have nothing but good things to say about the FBI field agents, who show remarkable knowledge of and interest in current events. There was a nice picture of Barack Obama on the wall. Maybe today there is someone else. We then started through the characteristic Complaint–Response–Reply routine characteristic of establishing the informational foundations of emerging conflict, and organizing the presentation to the jury. I thought we were getting ourselves pretty well established in our differing views, and moving toward a little better definition. The defendants consistently motioned for dismissal, on many grounds, which in itself is not unusual. I made sure to move for jury trial under Rule 38, to get it in the record and notify the defendants that they should not neglect their fact-seeking responsibilities to their client. I was accused of being intransitive at one

point, so I immediately entered my written offer of settlement. Two have expired, the third offer is still in effect, expiring when we seat a jury. We were all seemingly neglecting our responsibilities under Rule 26, and at one point I moved for Alternative Dispute Resolution to be ordered, as a catalytic process. Time went by. The magistrate judge, Mark Lane, eventually opined in support of the defendants for dismissal, on the basis of very little information. I replied that I'm sure we would continue to entertain motions for dismissal, right up to the point of the jury retiring to deliberations, but we could surely put that off to a point in the future where we might all have a little more information, and a little more basis for our opinion.

On 4 November 2014 the judge passed judgment and dismissed the case. I filed an appeal to USCA 5th to remand the case for proper jury trial, including completing all our obligations under Rule 26 to enable the jury to receive as complete a picture of the situation as possible. PHH forecloses 8–10,000 houses per quarter. Lender owned real estate is a blight on the landscape in every town in America. I believe there are 6,000 people like me who have been damaged by common predatory practices all over the country. I can look on Zillow.com and shop for foreclosed houses nearby, in a 10 mile radius, in

Lubbock, Texas, in Washington, D.C. and be overwhelmed with offers from slumlords everywhere. The regulatory and enforcement arms of government have been ineffective. The legislative powers have created sweeping new regulatory powers. The DOJ has a Mortgage Fraud Task Force, with significant power, reach, and budgetary resources. Now I am a judicial activist. Let's put away these bad actors, one by one.

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.⁴ Reference Statement of Facts pp. 27-30
2. The appellant filed an unsuccessful motion in Burnet County 447th to stop sale.⁴ Reference Appendix p. 31
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.³¹ Reference Statement of Facts p. 33-4
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 Statement of Facts p. 35
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.³⁰ Reference Statement of Facts pp. 34-36
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 Statement of Facts p. 40

7. Appellant filed amended complaint to recover damages for himself and a potential class of like parties.^{2, 26, 33} The class is not certified at this point.

Reference Statement of Facts p. 40

8. Appellant filed motion under Rule 38⁴ in demand of jury trial.^{2,35} Jury trial was docketed, as such motion cannot be routinely opposed, and was not in this case. Reference Statement of Facts p. 40-41 - Jury Demand

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

Reference Statement of Facts p. 41

SUMMARY OF ARGUMENT

10. In view of the complexity of facts and issues,^{17,19,28} the apparent large class of affected parties in similar current or past circumstance,^{16,36} and the continuing financial crisis of far-reaching negative social impact in the United States,^{33,34,38} I pray this panel to remand this case to Western Texas District court for proper trial before jury of all facts and issues.^{4,33,39}

11. I pray also for directed assignment²³ of a US Attorney or Attorneys from such existent resources as the Mortgage Fraud Task Force Working Group,²⁷ or the FBI White Collar Crime Task Force,²⁷ 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.

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.²⁴

I am able to join the current Attorney General Eric Holder in recommending Joseph A. Smith⁵ 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.

13. I pray for meaningful and cautionary sanctions³² 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.

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 PHH⁸ and their regional agents until jury trial in Western Texas of all facts and issues is complete. Defer to Oral Argument.³⁹ The looting we all watched in Ferguson was for amateurs.⁴⁰

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^{24,29} to conserve the public good and assign serious resources into resolving this local, regional, and national issue.^{15,36,38} 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.³⁷ This is not a benefice to our community.^{25,26} 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,³⁰ 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,²⁰ 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.^{28,33} 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.^{1,4, 18} 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.²³ 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)

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

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-this brief uses a proportionally spaced typeface and contains no more than 1300 lines of text, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

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:

-this brief has been prepared in a proportionally spaced typeface using Apple Pages 7.0 in Baskerville 14.

(s)David McCrae, pro se

Sworn to on 29 January 2015

by /s/David McCrae, Pro se

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CERTIFICATE OF SERVICE

I have served this Appellant Brief

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