

TEXAS 13th COURT OF APPEALS, Edinburg, TX #13-16-00257-CV

Appellant requests oral argument of this appeal

DATE _____ Before 1 June 2016 _____

#13-16-00257-CV

Miguel Rojas & Lourdes Rojas

Plaintiffs - Appellants

v.

CitiMortgage, Inc. and Barrett, Daffin, Frappier, Turner and Engel, llp.,

Defendants, Appellees

MORTGAGE AND CONSUMER FRAUD - COMPLEX

BRIEF FOR APPELLANT

Draft Copy
For Review
and Markup

DATE _____ /s/Miguel Rojas

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IDENTITY OF PARTIES AND COUNSEL

In the Cause of Mortgage and Consumer Fraud, 13th COA Texas

#13-16-00257-CV, Appeal from 404th DC Texas #2014-DCL-4116-G

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CERTIFICATE OF INTERESTED PERSONS

[This statement is required in Federal Appeal, optional in Texas]

In the Cause of Mortgage and Consumer Fraud, 13th COA Texas

#13-16-00257-CV, Appeal from 404th DC Texas #2014-DCL-4116-G

The undersigned affiant certifies that the following listed persons and entities may 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. Miguel and Lourdes Rojas, APPELLANTS;
2. Current or past mortgagees to CitiMortgage, Inc., or it's subsidiaries;
3. Employees or Significant Suppliers of CitiMortgage, Inc., APPELLEES;
4. Associates Financial Services, [DISSOLVED];
5. Barrett, Daffin, Frappier, Turner, and Engel, llp f/k/a Barrett, Burke, Wilson, Castle, Daffin and Frappier, llp; Douwe, Cheatham, and Howe, APPELLEES

NOTE: - If you make your living loaning money at interest,⁴⁰ or in real estate speculation and trading,^{36,43} 'flipping houses,' or are now bankrupt, homeless, or

economically diminished by such actions of others,^{31,42} 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,³⁴ mortgagesettlementoversight.com, due to a past association with Bank of America,²⁴ JP Morgan/Chase,²⁴ Citibank,²⁴ Wells Fargo,²⁴ Ocwen,²¹ Ally GMC, Greentree,²⁴ SunTrust,²⁴ Goldman Sachs,^{25,26} or their subsidiaries,²⁶ 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,²² or an investigator or enforcement agent involved in such current ongoing investigation,^{12,35,31} 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.

DATE _____ /s/ MIGUEL ROJAS

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STATEMENT REGARDING ORAL ARGUMENT

From Miguel Rojas, slave of Christ Jesus and Natural Citizen of the United States, and resident of Texas, with all of the rights and privileges attendant thereto, to all the Justices of The 13th Court of Appeal of Texas who are here assembled in Edinburg, Texas, with their clerks and attendants, Grace and Peace to you, from God Our Father and the Lord Jesus Christ!

I'd like to appear to present oral argument in this matter.⁵² I'm not an attorney so I would appear Pro Hac Vice. I'm not going to read the complaint, all set out in 50 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 Sheriff and haul these people off to jail. They're from MISSOURI. Let's show them our Texas jail!

But, I digress...they're also from America. In America, we're a family. We're better. We're entitled to confront our accusers.⁵¹ Our accusers are allowed to confront us. In complex cases, we collect a jury of impartial citizens.¹⁹ This is not the case in most little countries in the world, where people just get their heads chopped off.⁴⁰ 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 his time with such a simple matter of obvious confusion.³⁹ People were trying to steal my house.³ It looked like a professional crew.² (S)he actually gave me some good advice. (S)he said ‘Why don’t you just pay them?’ That was in 2011. 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 paid my money. I want to live in my home.⁴⁶

But, I digress...we aren’t going to solve this complex problem of widespread national concern and interest 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 49 other states. You have a jurisdiction here in Texas.³¹ We need help. We may need to consider a bigger jurisdiction before we’re done.

But, I digress...Today, I have a prayer, 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 appellees, with little discussion. The facts are confusing. 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 the proper jurisdiction, 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.⁴⁷ 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 expose all our issues. Let's deliberate, and let's make some intelligent changes. It's 2016 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. Do you want to get elected again this year? What kind of work do you do? Let's do it!

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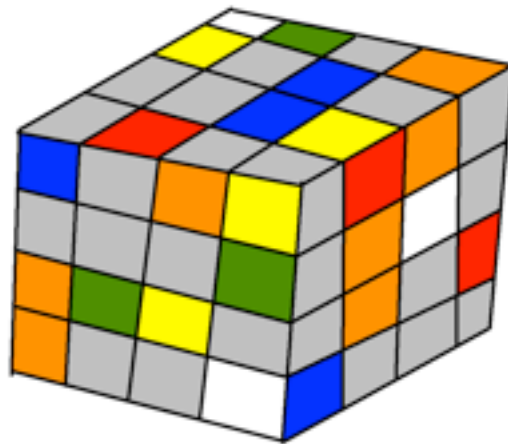
-Appeal Exercises / Oral Argument 13th COA Texas / Fifteen minutes

(A) Put this 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 the proper jurisdiction and ask the jury to color in the missing squares! It's called judging the Facts and Issues.^{10, 28}



(B) the Regulator

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GLOSSARY OF ABBREVIATIONS

CITI - Citimortgage, Inc., Defendant, in business in 50 United States and Most of Earth, currently operating under oversight of Joseph A Smith, CFPB, DOJ and SEC. And today, under your oversight.

BBDFTE or BDFTE - Barrett, [Burke], Daffin, [Wilson, Castle], Frappier, Turner, and Engle, LLP, mortgage mill, patent holder of document processing system,¹ and agent of CITI 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

TRAP - Texas Rules of Appellate Procedure, latest edition

TRCP - Texas Rules of Civil Procedure, latest edition

CFPB - Consumer Financial Protection Bureau, established in 2012 by Dodd-Frank, designated enforcement agent for USAG effective 15 January 2014

STATEMENT OF THE CASE

The defendants initially purchased their home with a mortgage through Associates Financial, now a bankrupt and dissolved company.¹⁵ Associates appears to have surrendered the mortgage almost immediately to Freddie Mac Multiclass REMIC Certificates, Series 2178, with aggregate value of \$1,877,550,000, underwritten by Cleary, Gottlieb, Steen & Hamilton, and marketed through Lehman Brothers.¹⁵ We presume Lehman Brothers was successful in marketing the package to a diverse community of investors, as the REMIC still exists, and is paying investors regularly. It appears CITI may have purchased mortgage servicing rights.

Lehman Brothers went bankrupt in 2008 and all their assets were surrendered to a federal trustee and resolved.¹ It is reasonably believed that the United States underwrote the unwinding of Lehman Brothers affairs to a diverse group. It appears that CITI retained mortgage servicing rights. Ownership of the mortgages within the REMIC remains unclear.⁴

On 9/1/2005 the Rojas modified their loan from Associates to a fixed rate mortgage to Citimortgage #0003953712.¹⁵ On 1/21/2009, on a statement from Citimortgage, the Rojas loan appeared as a fixed rate mortgage loan of \$172,672.78 @ 6.4% interest.¹⁷ The Rojas' were negotiating with unknown agents of CITI to modify terms of loan,⁴¹ while simultaneously unknown

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agents at CITI decided to convert a nonconforming loan taken by Miguel and Lourdes Rojas to REO status, and market property with guarantee by US underwriters. To ease this task, they asked BDFTE to create documents indicating their right of possession,¹⁷ and file for foreclosure in 404th District Court of Cameron County, Texas, the source of this appeal. BDFTE did so.¹⁷ BDFTE later withdrew and Atlas Hall, and Rodriguez took over the case for BDFTE, still acting as agent for CITI.¹⁷

Plaintiff's (APPELLEE) standing was challenged by defendant, and mortgage documentation was challenged to be fraudulent.¹⁷ The 404th District Court accepted the evidence of possession as presented, and dismissed Defendant's (APPELLANT) objection.¹⁷ APPELLANT is now appearing to contest judgment, and remand case for proper trial.

Contemporaneously, and separately, crowning years of regulatory investigation, review of thousands of undisclosed documents, closed depositions of hundreds of agents, CITI entered into consent judgment with USAG, Texas AG, and 48 other state AG's regarding just such mystifying activity as appears in this case,⁸ which mysterious activities had become widespread throughout America,⁹ with consequent negative effect to the entire population,³⁶ except for temporary storage buildings and recreational vehicles.³¹

The 404th court remained somehow unaware of these contemporaneous issues and their settlement by a federal jurisdiction. The 404th court failed to recognize fraudulent claims presented by appellees. The 404th court failed to require proper pre-trial examination of facts and issues concerning chain of title.

Appellant Rojas has now filed this appeal, and has simultaneously initiated attempts to collect debt from appellee CITI through J. A. Smith, their federal conservator, for real and consequential damages incurred in defense of wrongful foreclosure action.⁹

Appellant Rojas has filed a true report of his property status with the Cameron County Clerk.¹⁵

STATEMENT OF JURISDICTION

“There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. And yet there are very few, that will give themselves the trouble to consider the original and foundation of this right. Pleased as we are with the possession, we seem afraid to look back to the means by which it was acquired, as if fearful of some defect in our title; or at best we rest satisfied with the decision of the laws in our favor, without examining the reason or authority upon which those laws have been built. We think it enough that our title is derived by the grant of the former proprietor, by descent from our ancestors, or by the last will and testament of the dying owner; not caring to reflect that (accurately and strictly speaking) there is no foundation in nature or natural law, why a set of words upon parchment should convey the dominion of land; why the son should have a right to exclude his fellow creatures from a determinate spot on the ground, because his father had done so before him; or why the occupier of a particular field or of a jewel, when lying on his deathbed and no longer able to maintain possession, should be entitled to tell the rest of the world which of them should enjoy it after him. These inquiries, it must be owned, would be useless and even troublesome in common life. It is well if the mass of mankind will obey the laws when made, without scrutinizing too nicely into the reasons for making them. But, when law is to be considered not only as a matter of practice, but also as a rational science, it cannot be improper or useless to examine more deeply the rudiments and grounds of these positive constitutions of society.”

-Blackstone, Commentaries on the Laws of England, Book II, The Rights of Things, p. 1¹⁹

Jurisdiction of this Court is invoked under Texas custom, as an appeal from a final judgment and dismissal in the 404th District Court for Cameron County, Texas. Notice of appeal was timely filed in accordance with Rule 26.1 of the Texas 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,¹⁶ 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 of 1987.^{32, 53} 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,²⁴ Ocwen,²³ Citigroup (THE APPELLEES),⁸ Bank of America,²⁴ Wells Fargo,²⁴ Greentree,²⁴ Ally/GMAC,²⁴ SunTrust,²⁴ Goldman-Sachs,^{25, 26} and 49 United States Attorney Generals, excluding Oklahoma, including Texas. We are asking for continuing judicial enforcement of those agreements, as is now well defined within the industry^{18, 37, 44, 48} by regulation, judgment and habit. Investigations and negotiations continue with other actors in this industry.²² Attention of the Court is kindly directed to Padron, et al. v. OneWest, et al. filed in Superior Court of California #BC527752 in Nov 2013.¹² This case, based in

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events of 2003-2011 continues in litigation, and is amazingly similar to our case which continues below. There are a lot of people presently making their living defining the facts and issues, and a jury will one day be sworn and briefed.

Whatever their decision, it will be appealed. The law will soon be settled, about 2025 or so. We kindly direct the court to take a ride out to Los Angeles County for a visit, and size up the situation. How would you like to move to LA tomorrow and start a new life there? Ask some of your new neighbors who moved here from LA how they like their new life in Texas. We are in control of our destiny here in Texas. You have that jurisdiction today. Contrary judgment of this case was entered by 404th Texas District Court without consent of the adverse parties,¹⁷ or required trial by jury of facts and issues,⁵¹ and following the Court's reliance on fraudulent documents¹⁷ alleging party to a debt.

ISSUES PRESENTED

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 Constitution⁴⁷

“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, Book 3, Ch. 23¹⁹

STANDARD OF REVIEW - ISSUE ONE

TEXAS Rules of Civil Procedure - RULE 236 - OATH TO JURY

The jury shall be sworn by the court or under its direction, in substance as follows, “You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and in the evidence submitted by you under the rulings of the court. So help you God.”⁵¹

A jury has never been called or sworn on this cause.

ISSUE TWO - RES JUDICATA⁵²

Miguel Rojas and his wife entered into their financial adventures in housing by taking a home equity loan in 1999 with Associates Financial Services of Texas.¹⁷ Associates went bankrupt on or about 2001, and their assets may have been absorbed by CitiFinancial Mortgage, or Citimortgage, Inc., either in New York or Delaware, or by an unknown intermediary investor group who has yet to appear. At any rate, the asset at 3302 East Cobblestone Drive was at some point securitized by Chase Bank and underwritten by Lehman Brothers,¹⁵ as was a great deal of property in those days, and collateral rights dissolved into the investor community without a trace.² The Federal Mortgage Acceptance Corporation (FMAC) issued Multiclass REMIC Certificates Series 2178 on 1 April 1998, with a total underlying asset value of \$1,877,550,000, including the Rojas property, surrendered at some point by Associates Financial.¹⁵ This was not recorded in the records of Cameron County at the time, but now is.¹⁵ Investors at that time generally preferred these mortgage backed securities and their regular defined income stream over a defined period, to the higher yield, yet uncertain income stream, of an individual home over a thirty year period. Indeed, this REMIC Series of 2178 still exists,¹⁵ and still is paying regular defined proceeds, expected to continue through 2029, and is now guaranteed by the full faith and credit of the United States of America.⁴⁹ Lehman Brothers,

the securitizer, is now bankrupt and dissolved, their assets having been dispositioned by the United States Treasury in September of 2008.³ This mortgage after that point was never assigned. There is no pooling and servicing agreement.¹⁵ The investors in that particular REMIC security forfeited all collateral claims to any individual property within the trust.⁴³ The Rojas family in fact did later experience financial stress at a later time, and twice entered into negotiations with the mortgage servicer, at that time Citimortgage.¹⁷ Negotiations have been unsuccessful. At this time the Rojas' were negotiating a refinance with one group of CITI employees, and unknowingly being foreclosed by another group of CITI employees.⁸ Citimortgage finally presented themselves in Cameron County 404th District Court as the lawful property owner, with forged documents created by BDFTE,⁴⁹ and prayed for foreclosure. Citimortgage was not then and is not now a lawful property owner, which ownership remains with the Rojas family.¹⁵ Through the investigations of Mr. Paatalo, [ref. court record], and confirmed by a now more complete examination of Certified Forensic Loan Auditors,¹⁵ now properly entered into Cameron County Property Records, an inscrutable assignment eventually surfaced, signed by an agent of MERS (who does not own property), Kim Krakowiak, purporting at the time to be a vice president of Associates Financial, which was nine years previously bankrupt and dissolved.¹⁷ Kim

Krakowiak is a well known legal figment, who has never been known to physically exist, though his/her various signatures and affiliations are widely known in property management circles.¹⁷ The document, Cameron County 24.20100022000721.00033142 is a crude forgery, presented for recording by Barrett, Daffin, Frappier and Turner, llp.^{6, 10, 49} This was typical of the times.⁵³ The gravamen of Appellants' defense is that Appellees had long ceased acting as conventional money lenders, and valuable community resources, and instead have morphed into an enterprise engaged in systemic fraud upon their clients, including the appellants, whom in fact CITI had purchased as milk cows from a previous bankrupt asset farmer.

Also typical of the general property muddle, companies were shredding physical property records¹⁶ and creating an ad-hoc property registration tracker denominated MERS, or Mortgage Electronic Registration Systems, ostensibly set up to enable clarity of investment chain of title in mortgage backed securities, and an avenue to quickly earning a small fortune in real estate, much faster than in Chicago porkbellies. The system worked well, if you had a large fortune to start with.⁴⁹ Large fortunes indeed shrank so quickly, the financial regulators of Wall Street were pressed into service as rescuers, pumping alarming amounts of new print money from Maiden Lane into the previously deathly boring and somnolent US mortgage market.⁴⁹ The United States had a

financial crisis in 2008, and filed a Blue Ribbon Report to the President. The United States passed Warren Dodd in 2012²⁹ and created new levels of national financial regulation and responsibility to discourage thievery.³³ We have appended a concise presentation prepared by law enforcement for the Florida Attorney General, Pam Bondi, describing the state of fraud and deception within the industry, in all 50 states.⁵³ We bailed out corporations which appeared most in need of money. We established and funded a cross disciplinary Mortgage Fraud Task Force Working Group.²⁶ They started cleaning up the industry. Consent judgments were our tool of choice.³⁴

CITI was high on the list of predatory financial institutions,¹⁴ and signed a consent judgment with the USAG and all 50 state AG's in April of 2013,⁸ forswearing their devious behavior of the past, and vowing to go and sin no more. CITI set aside \$413M in fines and restitution under their designated conservator and parole officer, Joseph A Smith,⁹ in Charlotte, NC, and was thereby immunized from forced term in the Graybar Hotel. As every SecState knows, if your job requires you to break the law, and you do your job faithfully, you should not have to go to jail. Unfortunately the Rojas were already deeply enmeshed in the machinations of a combo refinance and seizure operation in Cameron County, Texas. The 404th Texas court might have removed the case to federal jurisdiction immediately on word of USAG/CITI

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Consent Judgment;⁸ possibly the Court was somehow unaware of that circumstance in another jurisdiction. CITI was certainly aware of their circumstances, and continued to report the possible negative impact of the legal proceedings to their investors in accord with SEC filing responsibilities,^{7,14} and continue to NOTE that their performance remains negatively affected by legal commitments to USAG, and commercial collapse of Venezuela. Their legal issues are indeed problematical. Oh, what a tangled web we weave, when first we practice to deceive!¹⁴

STANDARD OF REVIEW - ISSUE TWO

DDC Case 1:12-cv-00361-RMC, Document 12, 4/4/2012, Consent Judgment in the US District Court, District of Columbia, United States of America, and Texas, et al. v. Bank of America, and CitiGroup, et al.⁸

DDC Case 1:12-cv-00361-RMC, Document 192, 12/16/2014, Monitor's Report, in the US District Court, District of Columbia, United States of America, and Texas, et al. v. Bank of America, and CitiGroup, et al.⁹

In the aftermath of America's greatest financial catastrophe since 1929,⁴ precipitated by an avalanche of mortgage backed securities exhibiting the same issues as the Rojas case, the Department of Justice expended a herculean effort

to restore minimal regulation and restore faith in our core financial systems and institutions.³⁵ The continuing effort depends on both restitution to damaged parties and strong independent oversight and voluntary self control of continuing financial behemoths such as CITI.⁹ It is not in the public interest to close all our banks, 543 at this writing since 2000. There is a real question of space available - <https://www.fdic.gov/bank/individual/failed/banklist.html>

It is in the public interest to encourage a strong financial business sector, through effective regulation and oversight.²⁷ The US DOJ, and ourselves today here in Cameron County, have indeed accepted our responsibility and taken a strong hand.

From the US Department of Justice FY2013 Budget Request Overview-³⁵

“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.”³⁵

These consent judgments extend to CITI in all its United States operations, including here in Cameron County. This cause is properly under the oversight of Joseph A. Smith, designated conservator, representing and reporting to our current USAG.⁹

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ISSUE THREE - CASE MANAGEMENT⁵¹

CITI filed this mortgage foreclosure action initially in 404th District Court, Cameron County, Texas, and the Rojas' responded there in defense of their title. The property records of Cameron County were and are incomplete, cryptic, and show evidence of fraud. CITI was intent on foreclosure from the start, and made no attempt to resolve the base mortgage, or their own internal records detailing a proper chain of title and their right to appear. CITI had no economic motivation to work with homeowner, as the US Treasury by now had adopted as a regular custom making any TBTF financial institution whole regardless of turmoil in it's confused book, and the books of it's investor community.³⁰

Legislation in this area is relatively recent,²⁹ and specific conflicts are still percolating into and through the judicial system dockets all over America and receiving more definition. Since December of 2013, ~~seven~~ eight like cases have been resolved by consent judgments (one with the New Jersey Attorney General²² and the other ~~six~~ seven with the USAG joined by all 50 State Attorneys General).²⁰ No cases have gone to trial. CITI currently operates in all 50 states, under sanction and consent of the US Attorney General, ~~Erie~~ ~~Holder~~ Loretta Lynch. Our current situation in Texas has been reported to her deputy Joseph A. Smith, and our status under that agreement is unclear.

Nevertheless, in this case the defendants continue to deny CITI's fraudulent assertion of title, and continue to assert that CITI continues to engage in unlawful and prohibited behavior. Based on the widespread social dimension of the current economic crisis,³⁶ a very new regulatory environment which remains largely undefined by the judiciary,¹⁶ the colossal resource assignment and direction of the Department of Justice in this area and equally colossal recoveries by consent judgments,³⁵ CITI's actions remain inscrutable. We are still legislating the issues. We are still in judicial clarification. We are about to elect a new president. Can Donald save us? Let's leave Hilary lie sleeping.

**STANDARD OF REVIEW - ISSUE THREE TRCP - SECTION 8.
PRE-TRIAL PROCEDURE RULE 166. PRE-TRIAL CONFERENCE**

In an appropriate action, to assist in the disposition of the case without undue expense or burden to the parties, the court may in its discretion direct the attorneys for the parties and the parties or their duly authorized agents to appear before it for a conference to consider:

1. (a) All pending dilatory pleas, motions and exceptions; [the APPELLEE's claim prefers to stop here with self-authenticating document of Kim Krakowiak]¹
2. (b) The necessity or desirability of amendments to the pleadings; [NEVER PURSUED]
3. (c) A discovery schedule; [NEVER PURSUED]
4. (d) Requiring written statements of the parties' contentions; [NEVER PURSUED]
5. (e) Contested issues of fact and the simplification of the issues; [NEVER PURSUED]

6. (f) The possibility of obtaining stipulations of fact; [NEVER PURSUED]
7. (g) The identification of legal matters to be ruled on or decided by the court; [NEVER PURSUED]
8. (h) The exchange of a list of direct fact witnesses, other than rebuttal or impeaching witnesses the necessity of whose testimony cannot reasonably be anticipated before the time of trial, who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony of each such witness; [NEVER PURSUED]
9. (i) The exchange of a list of expert witnesses who will be called to testify at trial, stating their address and telephone number, and the subject of the testimony and opinions that will be proffered by each expert witness; [NEVER PURSUED]
10. (j) Agreed applicable propositions of law and contested issues of law; [NEVER PURSUED]
11. (k) Proposed jury charge questions, instructions, and definitions for a jury case or proposed findings of fact and conclusions of law for a nonjury case; [NEVER PURSUED]
12. (l) The marking and exchanging of all exhibits that any party may use at trial and stipulation to the authenticity and admissibility of exhibits to be used at trial; [NEVER PURSUED]
13. (m) Written trial objections to the opposite party's exhibits, stating the basis for each objection; [NEVER PURSUED]
14. (n) The advisability of a preliminary reference of issues to a master or auditor for findings to be used as evidence when the trial is to be by jury; [NEVER PURSUED]
15. (o) The settlement of the case, and to aid such consideration, the court may encourage settlement; [NEVER PURSUED]
16. (p) Such other matters as may aid in the disposition of the action. [NEVER PURSUED]

The court shall make an order which recites the action taken at the pretrial conference, the amendments allowed to the pleadings, the time within which same may be filed, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions, agreements of counsel, or rulings of the court; and such order when issued shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or extend it to all actions. [NEVER PURSUED]

Pretrial proceedings in multidistrict litigation may also be governed by Rules 11 and 13 of the Rules of Judicial Administration.”⁵⁰

STATEMENT OF FACTS

In 1999 we purchased a house on Cobblestone Drive, with mortgage assistance through Financial Associates.¹⁷ Financial Associates dissolved into bankruptcy in 2001 and disappeared. Our mortgage continued to be billed through other parties. We never renegotiated our mortgage with anyone, but continued to make payments as players in the industry continued trading places with each other.³

We appeared to have been assigned mortgage obligation to Citimortgage, Inc. by that time, for an unknown period of time at a declared interest rate of 6.24%, which mortgage appeared to be held for servicing by Citimortgage, Inc. themselves. Chain of title to that point has never been recorded in Cameron County, and remains clouded.¹⁵

In late 2007 there appeared a global economic downturn and our business deteriorated and we were forced to delay mortgage payments for the first time in 16 years. By January of 2009, after indefinite telephone and written contacts with CITI, we were attempting to renegotiate our payment terms more favorably.¹⁷

We shared much information with unidentified CITI personnel at their continuing request; on two occasions we made payments or series of payments per verbal instructions of CITI employees; time went by, and we were told we

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did not meet investor guidelines for two specific programs.¹⁷ Our payments were never accounted properly. We never learned what those guidelines were,¹⁷ It appeared that unknown parties at Citimortgage were also preparing foreclosure action on our property, and we were told in 2010 that our principal was accelerated and was now due in full.¹⁷ We must repeat that we had never to our knowledge mortgaged our house to Citimortgage.¹⁷

We have never reviewed or acceded in any form to a Pooling or Servicing Agreement. We have never received any information from any bankruptcy trustee or any other agency concerning changed disposition of our property.¹⁷

In July of 2010 we were notified by BDFTE that they were acting to foreclose our property in behalf of Citimortgage, Inc. We received no response from either Citimortgage or BDFTE to our 'Qualified Written Request' to detail their authority.¹⁷ We have never received such information, as of this date.

BDFTE filed in Cameron County Property Records and then presented in Texas District Court a notarized transfer of interest in a mortgage note (but no note) executed by Kim Krakoviak, a well known non-person in the fraudclosure industry, who presented herself as a vice president of Financial Associates in 2010, eight and one half years after Financial Associates had ceased to exist.¹⁷ She appeared momentarily to a notary, Kimberley Dinwiddie, in the State of Missouri, County of St. Charles, convenient to CITI headquarters location.

This is the basis of their claim. The note is obviously fraudulent, and we have shared our information with the Department of Justice.¹⁵

The note has been viewed as self-authenticating by Judge Elia Lopez. This case has always appeared somewhat puzzling, we have from the outset demanded a jury to be gathered to review and determine both facts and issues, and clarify opposing claims of both parties.

The usual and unusual mechanisms of Mediation or Alternative Dispute Resolution have never been ordered by the Court, though readily available.

No pre-trial activity or discovery has been pursued by either party, relying on the usually useful and generally successful tools of intimidation, obfuscation and delay. Strangely, our mortgage note progressed from Financial Associates through any number of undisclosed and unrecorded parties at the county level, although a proper chain of title very likely exists within the electronically stored information of private parties and well run public companies from the period of Financial Associates bankruptcy to CITI's foreclosure claim.¹⁵ We have ordered at our own expense a Forensic Title Examination of all of this private party information which is publicly available without a discovery warrant and have now recorded it with the Cameron County Clerk.¹⁵ This is a clarification and expansion of the Paatalo report submitted at previous court hearing.

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Judge Elia Lopez, after familiarizing herself to her own satisfaction with the foregoing events and chain of title, has ordered our defense dismissed without trial, and cleared BDFTE to proceed with foreclosure and public sale. We remain resolutely opposed.

Contemporaneously with our years of attempting to resolve our own issues, from 2008 to 2013, the United States Attorney General and his minions have been examining similar issues with the major lenders in the business segment, and on April 12, 2013, in Federal District Court District of Columbia appeared for a few minutes, with all 50 state Attorney Generals, including Texas, to unveil the consent agreement with Citimortgage pleading no contest to just such facts as are alleged in our case.⁸

In the District Court, District of Columbia, "Case 1:12-cv-00361-JDB
Document 1 Filed 03/12/12

COMPLAINT

Now comes the United States, and the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia, and the District of Columbia by and through their undersigned attorneys, and respectfully allege as follows:

...As described in the allegations below, Defendants' misconduct resulted in the issuance of improper mortgages, premature and unauthorized foreclosures, violation of service members' and other homeowners' rights and protections, the use of false and deceptive affidavits and other documents, and the waste and abuse of taxpayer funds. Each of the allegations regarding Defendants contained herein applies to instances in which one or more, and in some cases all, of the Defendants engaged in the conduct alleged....."⁸

With their apology, CITI posted \$413M with the court's designated conservator, J. A. Smith, to manage restitution to all such as ourselves.⁹ CITI on that date resolved publicly to change their lying thieving ways immediately and forevermore, and J. A. Smith still reports to DOJ every 90 days on that status.⁹ As we see, CITI continues their lying thieving ways still today, and for BDFTE, business is booming! Their sole business is fabrication of documents, earning fat fees of \$200-5,000 with each computer click in their patented foreclosure document processing program, and selling 3,500-5,000 fraudulently foreclosed

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homes on the first Tuesday of every month, in our 155 Texas counties, and in

California^{6, 50}

SUMMARY OF THE ARGUMENT

1. The appellee BDFTE and Atlas, Hall and Rodriguez, as agents for the appellee CITI, acted without good cause to foreclose and sell appellant's homestead at public auction.¹⁷
2. The appellant mounted an unsuccessful defense to this unlawful and fraudulent seizure attempt.¹⁷
3. Contemporaneously, and separately, crowning years of regulatory investigation, review of thousands of documents, depositions of hundreds of agents, CITI entered into consent judgment with USAG, Texas AG, and 48 other state AG's regarding just such activity as this case, which activities had become widespread throughout America, with consequent negative effect to the entire population.⁸
4. The court remained somehow unaware of these contemporaneous issues and their settlement by a superior jurisdiction. The court failed to recognize fraudulent claims presented by appellees. The court failed to require proper pre-trial examination of facts and issues concerning chain of title.
5. Appellant filed motion under Rule 21¹⁷ in demand of jury trial.¹⁷ Jury trial was docketed, as such motion cannot be routinely opposed, and was not in this case.

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

Judge Elia Lopez.

7. Appellants Rojas filed this appeal, and simultaneously initiated attempts to

collect debt from appellee CITI through J. A. Smith, CITI's federal

conservator, for real and consequential damages incurred in defense of

wrongful foreclosure action.⁹

ARGUMENT

10. Citimortgage has no standing in this case. The Supreme Court of California in *Yvanova* opened another door to stop a wrongful nonjudicial foreclosure case in California. Apparently the California Appeal courts are starting to see through the false claims and false arguments that Banks have been using for years to wrongfully foreclose. The *Sciarratta* decision confirms the standing rule in *Yvanova*: "The borrower owes money not to the world at large but to a particular person or institution, and only the person or institution entitled to payment may enforce the debt by foreclosing on the security."^{11, 13}
11. In *Sciarratta v. U.S. Bank*, Monica Sciarratta alleged that because of a void assignment (void not voidable) of her promissory note and deed of trust that the party (Bank of America) attempting to foreclose on her home had no interest in the underlying debt or the property and therefore should be barred from foreclosing. This case exemplifies what courts should do when confronted with factual evidence, to wit: no court should arrogate jurisdiction to themselves --- making up facts and then applying erroneous presumptions in favor of a bank who is using deceptive tactics to steal a home. As the Appeal Court ruled, "When a non-debt holder forecloses, a homeowner is harmed by losing her home to an entity with no legal right to

take it.” It is pathetic that an Appeal court must point this out, but obviously they thought the lower court might not understand the take away message: A homeowner is harmed when an entity with no right to take it, takes it.¹³

12. We pray for enforcement of Consent Judgment currently in effect between USAG, Texas AG, and CITI. Miguel Rojas will retain ownership and occupancy of his home. CITI will be enjoined from public sale of property they do not own.⁵
13. In view of the complexity of facts and issues,¹ the apparent large class of affected parties in similar current or past circumstance,¹⁶ and the continuing financial crisis of far-reaching negative social impact in the United States,⁴⁹ we pray this panel to remand this case, for possible petition for removal to Western Texas Federal District court, in consideration of consent judgment, for proper trial before jury of all facts and issues.⁴²
14. We pray also for directed assignment¹ of a US Attorney or Attorneys from such existent resources as the Mortgage Fraud Task Force Working Group,³⁵ or the FBI White Collar Crime Task Force,³⁵ to assist our pro se effort 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. Fraud claims under either Texas or Federal Law, and in almost any other venue, typically require nine elements: (1) a representation;

(2) it's falsity; (3) it's materiality; (4) the speaker's knowledge of it's falsity or ignorance of it's truth; (5) his intent that it should be acted upon by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of it's falsity; (7) his reliance on it's truth and (8) his right to rely thereon; and (9) his consequent and proximate injury. We believe all of these elements are present and are readily discernible in this case.

15. We 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 CITI in 50 states, and by their agents Atlas, Hall and Rodriguez, BDFTE in Texas and California.⁵³ We are able to join the current Attorney General ~~Eric Holder~~ Loretta Lynch in recommending Joseph A. Smith⁹ of mortgagesettlementoversight.com as most appropriate analyst and expert witness, based on his current specific and appropriate knowledge and experience as designated monitor for all consent judgments currently under enforcement action by US Department of Justice.⁹
16. We pray for restraining order to stay all non-judicial foreclosures currently in process in Texas, about 3,500-5,000 per month across Our Fair State of one million or more properties in some stage of mortgage service, by CITI and their regional agents until jury trial in Western Texas of all facts and

issues is complete. Defer to Oral Argument. The looting we all watched in Ferguson was for amateurs.⁵⁵ These people are professionals.

17. In short, we need to remand this case to the senior judge in Western Texas District Court, who needs to fully embrace his/her duties¹ to conserve the public good and assign serious resources into resolving this local, regional, and national issue.⁵⁴

OUR PRAYER

In Summary, we pray the court to protect this property from public sale until Heck Freezes Over and remand this case for probable removal to District Court in Western Texas with order for proper trial of facts and issues before a jury.

We pray assignment of a qualified and knowledgeable United States Attorney or his designated conservator, Joseph A. Smith, to be given the task of coordination of federal resources, the State of Texas, and any available information pertaining to issues. We also pray the sanction of the firms Atlas, Hall and Rodriguez, and BDFTE, and disappearance from this continuing case as attorneys.

For Truth, Justice, and America,

DATE _____ /s/ MIGUEL ROJAS

By: MIGUEL ROJAS, Pro Se* **
3302 East Cobblestone /
Harlingen, Texas 78551
956.454.3669 / mrojas@eximepc.com

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 21 (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. What kind of a railroad are we running here in Texas?

CERTIFICATE OF COMPLIANCE WITH TRAP RULE 9.4

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

1. This brief complies with the type-volume limitation of TRAP 9.4 because:

- this brief contains no more than 15,000 words, excluding the parts of the brief exempted by TRAP 9.4.i.1, or

-this brief uses a proportionally spaced typeface and contains no more than 15,000 words of text, excluding the parts of the brief exempted by TRAP 9.4.i.3.

2. This brief complies with the typeface requirements of TRAP 9.4.e and the type style requirements of TRAP 9.4.e because:

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

DATE _____ /s/ MIGUEL ROJAS

By: MIGUEL ROJAS, Pro Se* **
3302 East Cobblestone
Harlingen, Texas 78551
956.454.3669 / mrojas@eximepc.com

APPENDIX

Necessary Contents

- (A) The 404th DC Judgment or Order - 3pp
- (B) The Jury Charge and Verdict - N/A
- (C) The Opinion and Judgment of 13th COA - TBD
- (D) The Text of any Rule, Regulation, Ordinance Statute, Constitutional Provision, or other law on which the Argument is Based (excluding case law), and the text of any contract or other document that is central to the Argument
 - (A) Dodd-Frank Financial Reform Act of 2012, establishing CFPB, 858 pp [May be stipulated as Public Knowledge]
 - (B) Real Estate Settlement Procedures Act of 2015 (The TILA-RESPA Final Rule, with Public Comments, and Guidance), 2015, 1838 pp [May be stipulated as Public Knowledge]
 - (C) Civil Action DD/C #12-00361-RMC, Document 12, Consent Decree and Get Out of Jail but Not 4 Free. 183 pp
 - (D) Civil Action DD/C #12-00361-RMC, Document 192, Monitors-Report-re-Citimortgage.pdf, 130 pp

Optional Contents

- (A) Certified Forensic Loan Auditors Title Examination Report, Miguel Rojas and Lourdes Rojas 5.11.16 130 pp
- (B) Unfair, Deceptive and Unconscionable Acts in Foreclosure Cases, Office of the Florida Attorney General, Economic Crimes Division, 98 pp
- (C) Mortgage Servicers Have Wrongfully Terminated Homeowners Out of the HAMP Program, SIGTARP Report of 27 January 2016, 12 pp
- (D) System and Method for Electronic Processing of Default Case Files, Patent Application 20080201190, Barrett Burke Wilson Castle Daffin & Frappier, LLP, 28 pp

As inclusion of these supporting files are necessary to our argument, and the record, we respectfully ask the court to waive requirements and extend allowed total length to 2227 pp including our 50 pp APPELLANT BRIEF above.

CERTIFICATE OF SERVICE

I have served this Appellant Brief to:

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