

**IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF TEXAS
UNITED STATES COURTHOUSE
501 WEST FIFTH STREET
AUSTIN, TEXAS 78701**

DAVID MCCRAE AND BARBARA MCCRAE,]	
PLAINTIFFS, qui tam]	
CONSUMER FINANCIAL PROTECTION BUREAU]	
vs.]	
LENDER PHH MORTGAGE, LLC., and]	CIVIL ACTION NO.
SUBSTITUTE TRUSTEE BARRETT BURKE DAFFIN]	1:14-cv-00733-LY
FRAPPIER TURNER AND ENGEL, LLP,]	
and VARIOUS ACTORS AND EMPLOYEES]	
OF DEFENDANTS JOHN DOE 1-100]	

§ **JURY TRIAL REQUESTED**

**PLAINTIFFS' ORIGINAL PETITION FOR REDRESS OF WRONGFUL
FORECLOSURE ACTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs, David McCrae and Barbara McCrae, and Class, qui tam Consumer Financial Protection Bureau, who file this Original Petition for Wrongful Foreclosure and Motion for Stay and Injunctive Relief, in the interest of Justice and Fairness, and asks this Honorable Court to find in favor of Plaintiffs and against Defendants, PHH Mortgage FKA Cendant Mortgage, as Nominee for Lender and Lender's Successors and Assigns, and USAA Federal Savings Bank, and Barrett Burke Daffin Frappier Turner and Engel, LLP, attorneys and associates John Does 1-100 to be named during discovery, regarding Plaintiffs' claims of Wrongful Foreclosure, as stated herein, and in support thereof show unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiffs intend to conduct discovery in this case under Level 3.
2. Records of further Defendants' actions and productions and including identification of other adverse parties are recorded in electronically stored information in the possession of Defendants.
3. Plaintiffs have concern over spoliation of such records and hereby move for production of such electronically stored information for discovery and preservation.

PARTIES AND SERVICE

11. Plaintiffs' David McCrae and Barbara McCrae are individuals whose mailing address is 350 Cee Run, Bertram, Texas 78605. The last three digits of Dave McCrae's US Passport are 952, and the last three digits of Barbara McCrae's US Passport are 498. Plaintiffs have standing in this cause due to real and consequential damages sustained by Plaintiffs in course of Defendants' normal business activity. Defendants are acting as First Relator following an initial meeting with Federal Bureau of Investigation / United States Department of Justice on 26 December 2013 to disclose Statement of Facts as a Confidential Informant and to offer to assist any investigation that may have been ongoing at that time. Presently we are unaware of any ongoing investigation. Plaintiffs are bringing this action as First Relator qui tam the Consumer Financial Protection Bureau, pursuant to CFPB #140506-00027, and in behalf of all members of class who have sustained or are currently incurring damages through the illegal and unlawful business practices of PHH Mortgage.

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

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

...

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

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

The Committee believes that the enhancement of the regulatory powers and criminal justice provisions should go far in restoring public confidence in the nation's financial

system and serve to protect the public interest. This title gives the regulators and the Justice Department the tools which they need and the responsibilities which they must accept, to punish culpable individuals, to turn this situation around, and to prevent these tremendous losses to the Federal Deposit insurance funds (due to the savings and loan crisis) from ever again recurring. “The Attorney General recovers the civil penalty through a civil action brought in a United States District Court.” – H. Rep. No. 101-54, Part I (May 16, 1989) (H.R. 1278), at 465-66; 472 The Plaintiffs are acting locally in behalf of the United States Attorney General in this matter.

12. Defendant PHH Mortgage Corp FKA Cendant Mortgage, as Nominee for Lender and Lender’s Successors and Assigns is a Foreign For-Profit Corporation, doing business in 46 states including Texas, at 1 Mortgage Way, Mt Laurel, NJ 08054. Registered Agent may be served at 211 East 7th Street, Suite 602, Austin, TX 78701. Financial 10-Q reports disclose Defendant currently owns or manages approximately \$59 Trillion in assets in the United States. Defendant PHH Mortgage is represented by S. David Smith, State Bar No. 18682550 at McGlinchey Stafford, PLLC, 1001 McKinney St., Suite 1500, Houston, Texas 77002 and Nathan T. Anderson, State Bar No. 24050012 at McGlinchey Stafford, PLLC, 2711 North Haskell Ave., Suite 2750, LB25, Dallas, Texas 75204. Service on this Defendant may be effected by personal service or Certified Mail Return Receipt Requested.

13. Defendants Audrey Welsh, designated single point of contact for negotiation as designated by Defendant PHH Mortgage FKA Cendant Mortgage, as Nominee for Lender and Lender’s Successors and Assigns, and others John Does 1-50, are individuals and may be served at 2001 Bishops Gate, Mount Laurel, NJ 08054. Service on these Defendants may be effected by personal service or US Certified Mail Return Receipt Requested.

14. The identities and actions of other parties acting as agents or employees of these named parties will be found during analysis of electronically stored information currently in possession of Defendants to be examined during discovery process.

15. [Deleted]

16. [Deleted]

17. Defendant Barrett Burke Daffin Frappier Turner and Engel, LLP, is a for-profit corporation, doing business in Texas and California, acting as assignees of US Patent #20080201190, a system and method for electronic processing of default case files, and acting as Approved Substitute Trustee in behalf of PHH Mortgage FKA Cendant Mortgage. Mary Daffin, or any other partner, may be served at 15000 Surveyor Blvd, Suite 100, Addison, Texas 75001. Service on this defendant may be effected by personal service or US Certified Mail Return Receipt Requested.

18. Defendant Donna Wilkinson, an attorney acting in behalf of Barrett Burke Daffin Frappier Turner and Engel, LLP, preparer or reviewer of adverse Proof of Claim of PHH Mortgage FKA Cendant Mortgage as presented to US Bankruptcy Court Western District of Texas in Case 13-10386, and John Does 51-100, are individuals who may be served at 15000 Surveyor Blvd, Suite 100, Addison, Texas 75001. Service on these defendants may be effected by personal service or US Certified Mail Return Receipt Requested.

JURISDICTION AND VENUE – DISTRICT COURT OF WESTERN TEXAS

31. The subject matter in controversy is within the jurisdictional limits of this Court. Fraudulent acts, wrongful foreclosure, were committed and continue in commission by resident and foreign

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

32. The class of plaintiffs is expected to exceed 1000. There are questions of law or fact common to the class of plaintiffs. The defenses of the parties are expected to be typical to the class of plaintiffs. The representative plaintiffs will fairly and adequately protect the interests of the class of plaintiffs.

33. In view of the consent judgments with Chase, Ocwen, Citigroup, and Bank of America, we are requesting a jury trial in this matter. This group of judgments represent the largest settlements achieved to date in this arena, so far without any judicial or jury review. The executive branch, through DOJ, has been acting as investigator, prosecutor, judge, jury and sentence without any review or approval of its unilateral and largely secret actions. Better Markets, Inc. is currently petitioning for open judicial review of the Chase judgment, in order to reveal the dimensions of the illegal conduct by a private entity that may or may not have caused

or contributed to the financial crash and consequent economic wreckage that has affected virtually every American property owner of the last thirty years. Remarkably, this activity continues unabated, with no regulatory guidance for others in the industry such as PHH Mortgage other than fear of extortion, and satisfactory financial reserves, should they be caught up in the witch hunt. A jury must be selected, and be able to review openly the facts of the investigation, the underlying illegal conduct and identity of the actors, the specific violations committed, the consequences of the actions, the benefits of the actions to the Defendants, the damages inflicted on the Plaintiffs, and whether any penalties assessed are fair, adequate, reasonable and in the public interest, and able to provide clear guidelines for future behavior. The imperative for real and responsible judicial review is all the more important because of the considerable financial size of the charges, and that the DOJ and the Attorney General have an apparent conflict of interest, if not a motive to accept a seemingly strong but actually weak and inadequate settlement that could not pass judicial scrutiny. We cannot have one standard of justice for Wall Street, and one for Main Street.

34. The jury will also be expected to exercise its judgment regarding the penalty phase, if applicable, regarding the acts of commission or omission of PHH Mortgage, and accounting for the Defendants degree of scienter, the extent of the injury to the public, whether the defendants' conduct created substantial losses to other persons, the egregiousness of the violations, the isolated or repeated nature of the violations, and the defendants' financial condition and ability to pay. A jury to date has never been afforded the opportunity to consider such question in these matters.

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

FACTS

41. Plaintiffs are the record owner of the property is located at 350 Cee Run, Bertram, Texas 78605, more specifically described as property ID #68068, GEOGRAPHICAL ID B0593-0000-00301-004, ABS A0593 SAMUEL MCFARLAND, TRACT PT OF 2, 5.0 ACRES WITH IMPROVEMENT PLUS UTILITY EASEMENT AND ACCESS RIGHT OF WAY, ACCORDING TO BURNET CENTRAL APPRAISAL DISTRICT, OF THE TAX RECORDS OF CHIEF APPRAISER STAN HEMPHILL, BURNET COUNTY, TEXAS.

42. On 30 October 2001 Plaintiffs' acted as mortgagor in order to refinance the property located at 350 Cee Run, Bertram, Texas 78605 to USAA Federal Savings Bank assignee PHH Mortgage Services FKA Cendant Mortgage with Loan Number 0016371056. Attached as Exhibit "P-1." Base Loan Amount was \$72,500. Loan to Value ratio was 76.48%. Rate lock could float down but not up. Term was 180 months. Interest was fixed at 6.614%. Type of Loan was defined as Conventional-Uninsured. In case of prepayment no penalty was to be assessed. Homeowner's insurance was not required at that time.

43. On 30 October 2001, immediately, Plaintiffs' signed a Deed of Trust as security for the note with BDS Holding, Inc. d/b/a Highland Lakes Affordable Housing, which was recorded in the office of the County Clerk of the Deed of Trust Records of Burnet County, Texas. Attached as Exhibit "P-2" Deed of Trust. Warranty Deed was immediately granted by BDS Holding to

Plaintiffs David and Barbara McCrae. Attached as Exhibit “P-3” Warranty Deed. Said unencumbered collateral was then mortgaged immediately to PHH Mortgage FKA Cendant Mortgage, acting in behalf of USAA Federal Savings Bank as mortgage servicer. The business arrangement between USAA and PHH remains unclear at this point and will be clarified in this proceeding. Exhibit “P-1” Attached.

44. During the period from October of 2001 to December of 2012 Plaintiffs made many voluntary and periodic early payments of principal, coded as 175 in the Defendants’ payment records, and were able to reduce the mortgage principal by ~\$14,000 to \$7,558. These payments are stipulated by Plaintiffs and confirmed by detailed payment records of the Defendants. Such considerable and voluntary payments effectively accelerated the mortgage by approximately two years by end of 2012, to mid 2014. Attached Exhibit “P-6” Payment Record.

45. In September of 2012, the defendant, PHH Mortgage FKA Cendant Mortgage nevertheless demanded more payments be made, and encouraged Plaintiffs to refinance property, at Plaintiffs’ own expense and with significant additional fee, with Housing Affordable Mortgage Plan (HAMP). Plaintiffs expressed intent to pay off property immediately and asked for payoff amount as of November 1, and then as of December 1, 2012, without receiving definitive response. In an attempt to resolve payment dispute, PHH Mortgage FKA Cendant Mortgage designated a single point of contact, Defendant Audrey Welsh. Audrey Welsh has never responded in any way to Plaintiffs’ numerous attempts to contact, in writing and by phone. Defendants at this time were apparently pursuing ‘dual-tracking,’ pretending to negotiate dispute, while all the while preparing a fraudulent and wrongful foreclosure action. All of these actions were in direct and willful violation of 2012 Dodd-Frank FIRREA and Federal Consumer Debt Fair Practices then in effect, and most recently interpreted and codified in Consent

Judgment of 19 December 2013 in District Court District of Columbia Consumer Financial Protection Board and All States Attorneys General, including Texas, vs OCWEN. This behavior was also interpreted and codified in Consent Judgment of November 2013 in Eastern District Court of California between CFPB and All States Attorneys General, including Texas, vs Chase/JP Morgan, Citigroup, and Bank of America. Attached Exhibit "P-8" 192716821-Consent-Judgment. Correspondence record is attached as Exhibit "P-9."

46. At this time, as a response to correspondence with Defendant representative Telita Carson, Plaintiffs received photocopies of complete payment records of mortgage since inception. It was apparent by cursory review that the mortgage was paid well in advance, with early payments noted by 'Code 175,' and principal balance properly declining in accord with arithmetic expectation. It was also apparent that this basic information had never been reviewed by any of the Defendants, and none had any interest in such work, which, though required by responsible practice, generated no fee. Plaintiffs have processed these photocopies into usable information, and incorporated eventual final payments of record of Federal Bankruptcy Court Trustee Deborah Langehennig. Exhibit "P-6" attached. At this filing date, mortgage is paid in full. In fact, payments totaling \$74,427.61 have been paid and charged against original principal of \$72,500. At this filing date, a difference of \$1,927.61 in plaintiffs' favor has not been reconciled, and defendants are holding additional escrow, suspense and advance funds of \$1920.27. Defendants have prepared and filed Release of Lien in Burnet County on property on 10 March 2014, acknowledging satisfaction of mortgage. Exhibit "P-1" Attached. Prior to this filing date, Defendants continue to refuse all communication with Plaintiffs. Defendants have chosen not to attend scheduled meeting of 12/24/13 for alternative dispute resolution prior to this filing. All actions of defendants through bankruptcy period have consisted of concerted willful

and direct violations of Federal Fair Debt Collection Practice as most recently interpreted and codified in Consent Judgment of 19 December 2013 in District Court District of Columbia Consumer Financial Protection Board and All States Attorney General, including Texas, vs OCWEN. Attached Exhibit "P-8" 192716821-Consent-Judgment. Remarkably, on eventual receipt of 'Paid-in-Full' stamped documents received for filing in Burnet County after payoff of note by Federal Trustee, an added page noted that PHH Mortgage had transferred interest in note to Federal National Mortgage Assurance (FNMA) on 15 August 2001, 14 days after execution with Plaintiff, and had no standing to pursue foreclosure action after that date.

47. Defendant PHH Mortgage FKA Cendant mortgage also entered at some time in this period a 'dual-tracking' mode in which other unknown agents of PHH Mortgage FKA Cendant Mortgage entered into retention of Barrett Burke Daffin Frappier Turner and Engel, LLP to seek non-judicial expedited foreclosure and sale of property, which is permissible in Texas on agreement by both parties. In this case, both parties were not in agreement, and the Defendants BBDFTE were in fact refusing all communication effort by Plaintiff or his counsel of record at that time. Barrett Burke Daffin Frappier Turner and Engel, LLP was a 3rd party debt collector, illegally pretending to be the Lender. Barrett Burke Daffin Frappier Turner and Engel, LLP failed to adhere to the Federal Fair Debt Collection Practice Act, as all 3rd party debt collectors are required to do. All actions of defendants through foreclosure period have been concerted willful and direct violations of Federal Fair Debt Collection Practice as most recently interpreted and codified in Consent Judgment of 19 December 2013 in District Court District of Columbia Consumer Financial Protection Board and All States Attorney General, including Texas, vs OCWEN. Attached Exhibit "P-8" 192716821-Consent-Judgment.

44. Barrett, Burke, Daffin, Frappier, Turner & Engel, LLP, (“BBDTFE”) agents for Defendants, whose address is 15000 Surveyor Blvd, Suite 100, Addison, Texas, 75001, sent Plaintiff a Notice of Substitute Trustee’s Sale (the “Tombstone Notice”) dated January 15, 2012, attached as Exhibit “P-5” hereto and incorporated as if stated fully herein, stating that a foreclosure sale was scheduled for 5 March 2012 in Burnet County, Texas. Between the time of notice and sale, Plaintiffs retained local counsel, Anne Little. BBDFTE refused all communication between either Plaintiffs or Plaintiffs’ local counsel.

44.5 All facts confirming details provided by First Relator are contained in Electronically Stored Information held by Plaintiffs and maintained with their standard business practices. In the course of discovery, forensic copies will be attained and examined by a third party, other members of class will be identified and afforded opportunity to join action, and details will be stipulated by all parties.

44.6 After examination of forensic information thus attained, named actors for Defendants will be identified and deposed.

45. In order to stop wrongful seizure and sale of homestead, Plaintiff David McCrae retained other local counsel, Ray Fisher, and filed for Chapter 13 bankruptcy protection (Exhibit “P-4” attached) with the Federal Bankruptcy Court Western Texas on 1 March 2012. BBDFTE was so informed and did not appear at 5 March sale. On notice from Trustee, an agent for BBDFTE, Donna Wilkinson, eventually prepared a fraudulent Proof of Claim in amount of \$9,465, including \$1,694 in fraudulent fees, and submitted it to the Federal Bankruptcy Trustee, Deborah Langehennig. The inflated Proof of Claim was not challenged by Plaintiffs or their attorney at that time, and was paid in full. Ray Fisher is no longer retained by Plaintiffs as a result of his inaction. Bankruptcy action 13-10387 now appears complete and is awaiting discharge or

dismissal. All actions of defendants through U S Trustee period of conservatorship have been concerted willful and direct violations of Federal Fair Debt Collection Practice as most recently interpreted and codified in Consent Judgment of 19 December 2013 in District Court District of Columbia Consumer Financial Protection Board and All States Attorney General, including Texas, vs OCWEN. Attached Exhibit "P-6" 192716821-Consent-Judgment.

46. During period of bankruptcy, Plaintiff made all periodic payments required by schedule to the Trustee, which was again more than the obligation, and Trustee disbursed the claimed secured debt of \$7,558, and additional balance of fraudulent claim presented, and periodic interest, and including relevant attorney and trustee fees. Plaintiff has incurred damages of \$14,453 in defense of wrongful foreclosure action. All actions of defendants through attempted wrongful foreclosure have been concerted willful and direct violations of FIRREA and Federal Fair Debt Collection Practice as most recently interpreted and codified in Consent Judgment of 19 December 2013 in District Court District of Columbia Consumer Financial Protection Board and All States Attorney General, including Texas, vs OCWEN. Attached Exhibit "P-8" 192716821-Consent-Judgment.

47. During that period, Plaintiff succeeded in cancelling "force-placed insurance" provided by PHH Mortgage FKA Cendant Mortgage since 2008 and received pro-rata refund of unused premium. The refund of \$559 continues to be held by PHH Mortgage FKA Cendant Mortgage in escrow in favor of Plaintiff, and has not been applied to claimed debt. The status of any communications between Defendant Deborah Langehennig and Defendant John Doe of Barrett Burke Daffin Frappier Turner and Engel, LLP is unknown, and will be exposed during discovery process of this action. Payment records of the original mortgage, and including payment records of the Trustee in support of claim, showing satisfaction of debt and interest, are attached as

Exhibit “P-6.” Trustee has additionally paid funds in excess of principal owed, in accord with fraudulent presentment of BBDFTE. Plaintiff claims secured debt is ‘Paid in Full’ as of 31 December 2013, which date is a full three years before maturity of original secured mortgage. Plaintiff has in fact deposited funds with Trustee in excess of that obligation.

48. Defendants have since prepared standard Release of Lien and filed document with Burnet County Texas on 10 March 2014, approximately two years eight months ahead of original mortgage schedule, as appropriate. Defendants have never reconciled excess payments with Plaintiffs. Attached as Exhibit “P-1”

49. Defendants have responded to Plaintiff Complaint #140506-000027 with Consumer Financial Protection Bureau with a voluminous submittal of mortgage process documents between themselves and Christopher McCrae, last known residence at 22 Amanda Street, Springfield, Massachusetts. Christopher McCrae is not related or associated in any way with David or Barbara McCrae. The apparent confusion or incompetence is typical of Defendant actions throughout their business relations, and Plaintiffs are moving for Stay of all Foreclosure Actions currently in process by Plaintiffs until review and approval by this Court.

50. Defendants are currently under Federal prosecution regarding Consumer Finance Protection Bureau for illegal ‘force placed insurance practices’ in their mortgage business since 1995. This action excludes from consideration all such ‘force placed insurance practices’ which are now known or may be discovered during discovery phase. CFPB vs. PHHCorp, et al. - Notice of Charges filed 29 January 2014.

51. There is widespread consensus among academic experts, policy makers, and regulators that the type of illegal conduct underlying the normal business activities of PHH Mortgage as a mortgage holder or processor was one of the central causes of the Financial Crisis and, therefore,

damages are likely to be historically high. Ref. FINANCIAL CRISIS INQUIRY COMMISSION, THE FINANCIAL CRISIS INQUIRY REPORT:FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES, 165-69 (2011) available at http://www.hsgac.senate.gov/imo/media/doc/Financial_Crisis/FinancialCrisisReport.pdf and attached As Exhibit P-11.

VALIDITY OF FRAUDULENTLY CREATED DOCUMENTS

51. As noted in the transcript of the Meeting of the Task Force on Judicial Foreclosure Rules November 7, 2007, (note pages 27, 28 and 33), as found on the Supreme Court of Texas website (<http://www.supreme.courts.state.tx.us/jfrtf/pdf/110707transcript.pdf>), which makes issue with, addresses and discloses the same fraudulent practices, Defendants previously produced just such fraudulent documents to accomplish their actions to wrongfully foreclose on Plaintiffs' property. Defendants, at that time acting in concert with McCalla Raymer, failed to review payment records of a Countrywide mortgage, before filing for sale. Payment records did not support foreclosure. The unfortunate homeowner had sought refuge in bankruptcy to forestall adverse action. This was also an unlawful foreclosure. On information from the Trustee, the Court invalidated the action (Case 05-90374, attached as Exhibit "P-8"). In spite of censure in that case and sanctions of \$150,000 in 2007, Defendant Barrett Burke Daffin Frappier Turner and Engel, LLP went on to devise and now characteristically employs procedures described in US Patent #20080201190 (Exhibit "P-7" attached), a system and method for electronic processing of default case files, which now is used to replace the 350 employees of

MR Data Services (subsidiary of McCalla Raymer) who fraudulently processed the data in that case. Just as blindly, but much more quickly, this system enables Defendant Barrett Burke Daffin Frappier Turner and Engel, LLP to produce such fraudulent instruments with little or no effective effort or oversight, and enables process of a very large number of foreclosures in Texas for a wide variety of clients. Victims of this automated adverse and fraudulent action are become other members in our class. All actions of Defendants throughout their business structure have been concerted willful and direct violations of Federal Fair Debt Collection Practice as most recently interpreted and codified in Consent Judgment of 19 December 2013 in District Court District of Columbia Consumer Financial Protection Board and All States Attorney General, including Texas, vs OCWEN. Attached Exhibit "P-8" 192716821-Consent-Judgment.

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

53. Plaintiffs have therefore been required to expend substantial resources of time and effort to defend a wrongful foreclosure, in regards to the original lenders unsecured Debt. Other Plaintiffs in the Member Class are currently expending such unnecessary resources of time and effort, and we ask that Defendants receive an order to cease and desist from further unlawful activity. Other Plaintiffs of the Member Class have already suffered wrongful foreclosure and seizure of their property and deserve lawful recompense.

54. It is apparent by cursory review of payment records that the mortgage to PHH (Exhibit “P-1”) was never in default and never subject to legitimate claim of foreclosure. Unknown persons at PHH Mortgage FKA Cendant Mortgage launched an adventurous action of fraudulent and unlawful seizure, and failed to receive or heed counseling that should have been provided by Defendant Barrett Burke Daffin Frappier Turner and Engel, LLP. Defendant Barrett Burke Daffin Frappier Turner and Engel, LLP seems to be motivated only by avarice, in the generation and collection of exorbitant and unearned fees, irregardless of basis of action. Defendant Barrett Burke Daffin Frappier Turner and Engel, LLP has never acted in accord with its lawful responsibility as Substitute Trustee to communicate with mortgagor and achieve resolution of issue. Defendant Barrett Burke Daffin Frappier Turner and Engel, LLP has been censured in the past (Case #05-9734 Federal Bankruptcy Court Southern District Texas Exhibit “P-8” attached), for this characteristic behavior yet persists unaccountably in their heedless and predatory behavior. Defendants did not have the authority to foreclose on the property and in fact have never reviewed the payment history or any other particular circumstance of the intended action, as their automated system of fee generation and collection does not provide for or allow such oversight. Accordingly, Plaintiffs are moving for Stay of all processes currently underway by BBDFTE, until examination and approval by this Court.

55. On information and belief, Plaintiffs allege that Defendants were never at risk of loss, never communicated with the Plaintiffs concerning circumstances of the mortgage and were driven headlong into fraudulent and unlawful activity solely by their own greed and avarice for fees. Defendants have in fact received at this time complete satisfaction of debt, three years prior to due date, at significant additional unnecessary cost to the Plaintiffs. Accordingly, Defendants did not have authority to foreclose on the property and were not entitled to attempt to collect on

the alleged debt. Defendants show an intentional pattern of activity in pursuing this behavior only because it has been such a lucrative business practice over the years, with the downside risk generally guaranteed by federally backed loans.

COUNT I: WRONGFUL FORECLOSURE

61. Plaintiffs re-allege and incorporate by reference the foregoing allegations.

62. The Defendants foreclosure action was fraudulent and wrongful. The debt was prepaid by both a large amount and considerable time, though unrecognized by all Defendants. Therefore any notice, acceleration, default or any other notice by defendants has always been without merit and ineffective. All actions of defendants in preparation and pursual of wrongful foreclosure action have been concerted willful and direct violations of Federal Fair Debt Collection Practice as most recently interpreted and codified in Consent Judgment of 19 December 2013 in District Court District of Columbia Consumer Financial Protection Board and All States Attorney General, including Texas, vs OCWEN. Attached Exhibit "P-8" 192716821-Consent-Judgment.

63. All Defendants have purposefully, intentionally, and wrongfully violated the Federal Fair Debt Collection Practices Act and constructed and carried out a fraudulent collection action by way of the foreclosure and Substitute Trustee's attempted Non-Judicial Foreclosure Sale in violation of the Texas Finance Code sections 392.301(8) and 392.304 and other various State Laws in Ch. 27 - Fraud Plaintiffs believe either a conflict of interest or a conspiracy has taken place due to all alleged parties residing within the same address, and all using the same misinformation. PHH Mortgage FKA Cendant Mortgage appears to have been motivated by the opportunity to seize valuable property with minimal effort or expenditure, and Barrett Burke

Daffin Frappier Turner and Engel, LLP has always and solely been motivated by opportunity in an ill regulated area of practice to generate and collect fees.

64. It would appear that the few Defendants living and working in Addison at 15000 Surveyor Boulevard could hardly be responsible for the avalanche of affidavits, notices, filings, cases and appeals which issue from that address every month. Plaintiff has worked in the past in heavily automated processes, and it is not unusual to see a robot or collection of robots working assiduously on a vacant spot in an assembly line, since the artifact that would appear to be the object of work has been removed prior to that robotic station. This case appears to embody that situation of a case of no substance moving through the assembly area, with the robots generating fees by their mindless attention to motion, but nothing of substance being manufactured. The Plaintiffs believe that theirs is not the only case moving through the Barrett Burke Daffin Frappier Turner and Engel, LLP automated system and method for electronic processing of default case files. Their system is patently ridiculous, of fraudulent nature and design, and plainly criminal in intent. Plaintiffs believe their claims will be validated during discovery, by examination of Barrett Burke Daffin Frappier Turner and Engel, LLP electronically stored information.

ARGUMENTS AND AUTHORITIES

81. Seizure of residential property, and correlated explosion of lender-owned real estate is a well known current issue of societal significance, in Texas and in the United States. Non-judicial foreclosure and seizure, especially, has grown well past the random statistical expectation in a normal business environment, and outcomes to this date heavily favor the seizure actions over

the defense actions. At the same time, other large financial institutions of note have either failed to manage their risk and oversight responsibilities effectively and failed outright (WAMU, Countrywide, Ameriquest), been victimized by internal control fraud among their principals and have been dissolved (Bear Stearns, Lehman Brothers), or have paid ever increasing penalties and restitutions, amounting to hundreds of billions (Bank of America, Wells Fargo, Citigroup, J P Morgan Chase, Ocwen). Large financials allowed to continue despite the fraudulent activity of their past have in consideration of forbearance of criminal prosecution universally pledged restitution to their damaged parties and to conduct their future business affairs fairly and transparently, and for the benefit of the community. The community has deemed these institutions “too big to fail,” and the Department Of Justice has by their inaction deemed these institutions “too big to jail.” Nevertheless, the jails are now beginning to fill with low-level non-violent offenders who only steal millions or hundreds of millions, from thousands or hundreds of thousands of people, but would never point a gun at a cash register clerk at 2:00am and steal \$238 dollars and change. Damage to the security of the economic system, and damage to the citizens who depend on a well-regulated society in all aspects of their life, has been and is proportional.

82. Fraud in Texas Legal Code – Chapter 27.01

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

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

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

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

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

(A) material;

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

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

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

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

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

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

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

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

83. Plaintiffs will address each of these elements individually in trial before jury and supply evidence in support of each aspect. All exhibits are attached to this petition only in typical support of claims of David and Barbara McCrae. During discovery phase, all electronically stored information in BBDFTE's patented system will be examined, and confirmed by contact with other potential class members to be identified during examination and deposition. On confirmation or self identification, each party will be offered opportunity to join this suit or act separately in his own behalf.

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

85. An analogous automated system is in use in a typical chicken processing plant, wherein chickens of various shapes and sizes, in various circumstance, are guided in at the entrance, and frozen chicken nuggets emerge from the other end of the plant, inspected by the FDA, uniformly shaped and packaged, stamped with a bar code ready for shipment and sale, nutritious and delicious. This is the business of a mortgage mill today.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

91. Plaintiffs request this Honorable Court to restrain Defendants, or any of them, Defendants' officers, agents, servants, employees, and assigns, constables, sheriffs, Justices of the Peace, and attorneys from directly or indirectly taking, leasing, encumbering, selling, taking possession of, altering, or destroying the subject property, reporting the subject property for any other sale, or otherwise disturbing or attempting to disturb Plaintiffs' peaceable possession and enjoyment of the subject property during the pendency of this cause.

(a) There is no adequate remedy at law that will give Plaintiffs complete and final relief if the Temporary Restraining Order is not granted, and any transfer, alteration, or destruction of the property is allowed to occur.

(b) Plaintiffs are willing to post a reasonable temporary restraining order bond of One United States Dollar (Attached) and hereby request this Honorable Court to set such bond at a reasonable amount.

(c) Plaintiffs have met their burden by establishing each element that must be present before injunctive relief can be granted by this Court, and Plaintiffs therefore are entitled to the requested temporary restraining order.

92. Plaintiffs are likely to succeed on the merits of this lawsuit. All actions of defendants throughout their business structure have been concerted willful and direct violations of Federal Fair Debt Collection Practice as most recently interpreted and codified in Consent Judgment of 19 December 2013 in District Court District of Columbia Consumer Financial Protection Board

and All States Attorney General, including Texas, vs OCWEN. Attached Exhibit "P-8" 192716821-Consent-Judgment.

93. Plaintiffs ask that the restraining order be extended to all current foreclosure actions involving Barrett Burke Daffin Frappier Turner and Engel, LLP, acting in behalf of PHH Mortgage FKA Cendant Mortgage or any other client, based on their considerable abuse of the debt collection system and demonstrated dependency on willful production of fraudulent documentation. All ongoing actions will be frozen and reviewed during discovery phase of this action. Plaintiffs ask that unrestricted access to Barrett Burke Daffin Frappier Turner and Engel, LLP, transactional data be provided, for forensic examination off site. In view of the probable risk of destruction of these records by Defendants, Plaintiffs ask that this order be sealed until service. Plaintiffs will subpoena Defendants, including John Doe 1-100, to be named during process of discovery, for compelled testimony supporting these allegations of fraud.

CONCLUSION

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

all levels to eliminate this public hazard, achieve restitution to damaged parties of class, and arrest, sequester and rehabilitate the actors discovered.

PRAYER FOR RELIEF

WHEREFORE PLAINTIFF RESPECTFULLY REQUESTS:

101. That this Petition be filed and that a day be appointed for a hearing before jury on this matter;

102. That an order will be issued, restraining Defendants, or any of them, Defendants' officers, agents, servants, employees, and assigns, constables, sheriffs, Justices of the Peace, and attorneys from directly or indirectly taking, leasing, encumbering, selling, taking possession of, altering, or destroying any subject property, reporting or listing the subject property for any other sale, or otherwise disturbing or attempting to disturb Plaintiffs' and other Members of Class' peaceable possession and enjoyment of the subject property during the pendency of this cause; that an order be issued to seize all computers, hard drives, programs, statistical reports, daily activity logs of users, and any electronically stored information, written records and files at PHH Corporation, LLC or their computer resource provider, to be forensically examined by a neutral and qualified Certified Fraud Examiner; that subpoenas be issued to elicit deposition testimony from Defendants and all John Does as identified during the discovery process; that an order be issued to seize all computers, hard drives, programs, statistical reports, daily activity logs of users, and any electronically stored information, written records and files at Barrett Burke Daffin Frappier Turner and Engel, LLP or their computer resource provider, to be forensically examined

by a neutral and qualified Certified Fraud Examiner; that subpoenas be issued to elicit deposition testimony from Defendants and all John Does as identified during the discovery process; that a neutral and qualified resource be empowered to locate and interview affected Members of Class as may be identified during discovery, or as may self-identify.

103. That the Court sets a reasonable bond of One Dollar (attached) for the temporary restraining order;

104. That, after trial on the merits, the Court permanently enjoin Defendants, or any of them, Defendants' officers, agents, servants, employees, successors and assigns, constables, sheriffs, Justices of the Peace, and attorneys from directly or indirectly taking, leasing, encumbering, selling, taking possession of, altering, or destroying the subject property of the subject property, reporting the subject property for any other sale, or otherwise disturbing or attempting to disturb any Plaintiffs' peaceable possession and enjoyment of the property;

105. Damages in an amount not to exceed the jurisdictional limits of this Court, as decided by jury;

106. Economic Damages of Restitution as demonstrated; [\$14,453 per class member, as confirmed in jure]

107. Punitive Damages; [\$50,000,000,000, or a sufficient amount to deplete all business assets of this fraudulently organized and corrupt business, as confirmed in jure]

108. Additional Treble Damages for all intentional and knowing violations; [\$43,359 per class member, as confirmed in jure]; and Additional Double Damages for all intentional and knowing violations committed with the assistance of computer resources [\$28,906 per class member, as confirmed in jure]

109. Exemplary Damages; [\$100,000,000,000, or a sufficient amount to demonstrate and emphasize the cautionary message to associated financial community, as confirmed in jure]

111. Equitable Relief; [return of property seized in past fraudulent action, as confirmed in jure]

112. Costs of Court, and of bringing this action;

113. All other relief to which Plaintiffs' and Members of Class are entitled; [censure and disbarment of actors]

114. Plaintiffs' pray for general relief, and such other and further relief as this court deems just and proper.

Respectfully submitted

By:

DAVID MCCRAE, Pro Se

350 Cee Run

Bertram Texas 78605

By:

BARBARA MCCRAE, Pro Se

Same as above

Exhibits provided on USB and website:

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

P-2: Deed of Trust

P-3: Warranty Deed

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

P-5: Tombstone Notice issued by BBDFTE

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

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

P-8: Judge's Opinion in Case #05-9734 Federal Bankruptcy Court Southern District Texas, OCWEN Consent Judgment District Court District of Columbia, Chase/JP Morgan Consent Judgment District Court Eastern California, Citigroup Consent Judgment, BAC Consent Judgment, General Judicial and Non Judicial Foreclosure Information, David Stern Information, US Prosecutors Newsletter ref: Mortgage Fraud, Homeowner's Rights Under Foreclosure

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

P-10: Consumer Financial Protection Bureau Complaint #140506-000027, and PHHCorp response, posted 6/3/2014. Plaintiffs have charged this response as nonresponsive, and CFPB is now pursuing independent confirmation of complaint.

P-11: FINANCIAL CRISIS INQUIRY COMMISSION, THE FINANCIAL CRISIS INQUIRY REPORT:FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES, 165-69 (2011)

DAVID MCCRAE AND BARBARA MCCRAE, et al]	
PLAINTIFFS, qui tam]	
CONSUMER FINANCIAL PROTECTION BUREAU]	
vs.]	
LENDER PHH MORTGAGE, LLC., and]	CIVIL ACTION NO.
SUBSTITUTE TRUSTEE BARRETT BURKE DAFFIN]	1:14-cv-00733-LY
FRAPPIER TURNER AND ENGEL, LLP,]	
and VARIOUS ACTORS AND EMPLOYEES]	
OF DEFENDANTS JOHN DOE 1-100]	

BY ORDER OF THE DISTRICT COURT OF WESTERN TEXAS

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

All property seizures currently in motion in Texas by PHH Mortgage, their agents or representatives, whether judicial or non-judicial in origin, are hereby stayed pending resolution of this matter. No property seizures or sales are to proceed without specific release of stay by this court. PHH Mortgage, and their agents or representatives, are hereby directed to cease all adverse action, and produce and deliver for Court review all electronically stored information concerning current property seizures either contemplated or currently in motion in the State of Texas.

Be it so ordered on this date by _____

Judge Lee Yeakel, United States District Judge

Dated _____, 2014

CERTIFICATE OF SERVICE

I certify that on 13 August, 2014, this true and correct copy of Plaintiff's Original
Petition for Wrongful Foreclosure was served on opposing counsel in accordance with the rules.

For PHH Mortgage Corporation:

Nathan T. Anderson

McGlinchey Stafford, PLLC

2711 North Haskell Avenue, Suite 2750, LB25

Dallas, Texas 75204

S. David Smith

McGlinchey Stafford, PLLC

1001 McKinney Street, Suite 1500

Houston, Texas 77002

For BPDFTE:

Donna Wilkinson

Barrett, Burke, Daffin, Frappier, Turner and Engel, LLP

15000 Surveyor Blvd, Suite 100

Addison, Texas 75001

By: /s/David McCrae, pro se

350 Cee Run, Bertram, TX

Date: 13 August 2014

This petition and all exhibits have been served on Plaintiffs by Certified Mail on or approximately 13 August 2014. All Plaintiffs have been afforded opportunity to attend Alternative Dispute Resolution Meeting on 24 December 2013. No interest has been shown. No comment has been received from any party.

This petition and all exhibits have been and are posted for public review and comment at Plaintiffs' website at

<http://www.phhmortgagemustbedestroyed.weebly.com>

or by direct e-mail at xstek99@gmail.com Public comment is moderated by the Plaintiff.

All comment is public.

Potential Members of Class are hereby solicited for self-identification.

Plaintiffs believe we are Primary Relator qui tam and Class Members #1, effective 26 December 2013, and no civil or criminal investigation of these circumstances is currently in progress by any state or federal agency.

Any discovery of specific criminal activity of Defendants will be referred to Grand Jury in Burnet County, Texas, USA, The United States Department of Justice, or the United States Security and Exchange Commission, as appropriate.