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9 others similarly situated

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 KENNETH L. KRAL, an individual;
14 LISA A. STRICKER, an individual;
15 on behalf of themselves and all others
16 similarly situated,

17 Plaintiffs,

18 vs.

19 GMAC MORTGAGE, LLC; EXECUTIVE
20 TRUSTEE SERVICES, LLC;
21 and DOES 1 through 10, inclusive,

22 Defendants.

CASE NO. CV12-01023 GW (OPx)

Assigned to: Honorable George H. Wu

FIRST AMENDED COMPLAINT

1. **Unlawful/Unfair Acts §17200**
Improper Notarial Business Practices
2. **15 USC 1641g Notice Violations**

DEMAND FOR JURY TRIAL
Complaint filed: February 7, 2012

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24
25 Plaintiffs captioned above, by and through his attorney of record, brings this action against
26 defendants GMAC MORTGAGE, LLC (“GMAC”) AND EXECUTIVE TRUSTEE SERVICES
27
28

1 (“ETS”) AND DOES 1 through 10, inclusive, inclusive (collectively, “Defendants”) and alleges the
2 following on information and belief, except as to those allegations which pertain to the Plaintiffs:

3
4 **VENUE**

5 1. The Court has subject matter jurisdiction over this action under 28 USC § 1331
6 wherein the action arises under the Constitution, laws or treaties of the United States and/or under
7 28 USC § 1332 wherein this is a class action over \$10,000,000.00 where at least one plaintiff is
8 diverse from one defendant.

9
10 2. The Court has personal jurisdiction over the defendants in this action by the fact that the
11 Defendants are conducting business in the state of California.

12 3. Nothing in the Consent Order entered into between GMAC and its affiliates (ALLY
13 FINANCIAL, INC., ALLY BANK and RESIDENTIAL CAPITAL, LLC) and the United States
14 Department of Treasury’s Office of the Comptroller of Currency (the “OCC”) signed on April 13,
15 2011 restricts this Court’s jurisdiction. Plaintiffs’ rights do not derive from the Consent Order nor
16 does the Consent Order attempt to remedy public land records.

17
18 4. Plaintiffs seek equitable relief arising from defendants’ systemic violations of Notary
19 laws and standards which will not affect enforcement or otherwise restrict the scope of Consent
20 Order. Plaintiffs seek equitable relief to compel defendants to cure the effect of the widespread
21 dissemination of improperly acknowledged foreclosure documents in public land records and expect
22 that this action will be joined by several California county District Attorneys.

23
24 5. Venue is proper in this Court pursuant to 28 USC § 1392 because the action involves
25 real property located in the Central District of California; and pursuant to 28 USC § 1391(b) and a
26 substantial part of the events or omissions on which the claims are based occurred in this District.
27
28

1 **I. PARTIES**

2 6. Defendant, GMAC MORTGAGE, LLC (“GMAC”) is believed to be a Delaware Limited
3 Liability Company and subsidiary of a national banking association, ALLY BANK,
4 organized and existing under the laws of the United States, with its principal banking
5 association organized and existing under the laws of the United States, doing business in the
6 State of California.

7
8 7. Defendant EXECUTIVE TRUSTEE SERVICES, LLC (“ETS”), is believed to be a Delaware
9 Limited Liability Company is the alleged Trustee in hundreds of California Deeds of Trusts
10 serviced or owned by GMAC. At all time relevant ETS acted an agent to and under the
11 exclusive control of GMAC.
12

13 8. Plaintiff, KENNETH L. KRAL, at all times mentioned herein relevant to the First Amended
14 Complaint is a resident of the State of California and the owner of real property secured by a
15 defaulted Note and Deed of Trust allegedly serviced and presumably owned by GMAC. The
16 residential property is commonly known as 13260 SOLOMAN PEAK DRIVE, RIVERSIDE
17 CA 92503 (Hereinafter, “KRAL Property”).
18

19 9. Plaintiff, LISA A. STRICKER, at all times mentioned herein relevant to the First Amended
20 Complaint is a resident of the State of California and the *former* owner of real property
21 secured by a defaulted Note and Deed of Trust allegedly serviced by GMAC on behalf of a
22 mortgage backed security trust commonly known as US BANK, NATIONAL
23 ASSOCIATION, a federally chartered bank of the United States and as Trustee, successor in
24 interest to WACHOVIA BANK, N.A., as Trustee for MASTER ALTERNATIVE LOAN
25 TRUST 2004-09, (hereinafter, the “US BANK TRUST”). Stricker’s property was sold by
26 credit bid to US BANK TRUST at a non-judicial foreclosure sale by ETS. The residential
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28

1 property is commonly known 2401 Chandler Avenue #5, Simi Valley, California
2 (Hereinafter, "STRICKER Property").

3
4 10. Plaintiffs do not know the true names and capacities of the defendants DOES 1 through 10,
5 inclusive, and, as such, names said defendants by such fictitious names. Plaintiffs will amend
6 the complaint to state the true name and capacity of the DOE defendant(s) when such
7 information is ascertained.

8
9 11. Plaintiffs are informed and believe, and allege thereon, that each defendant is responsible in
10 some manner for the occurrences alleged in the complaint at all times mentioned and that
11 plaintiffs', and the general public's, actual injury were proximately caused by the defendants
12 business practices.

13
14 12. Plaintiffs are further informed and believe, and allege thereon, that each defendant was the
15 agent, servant, representative, and/or employee of their co-defendants, and in doing the things
16 hereinafter alleged were acting in the scope of their authority as agents, servants,
17 representatives, family members and/or employees, and with the permission and consent of
18 their co-defendants.

19
20 13. Additionally, plaintiffs are informed and believe, and allege thereon, that each defendant
21 assisted, aided and abetted, adopted, ratified, approved, or condoned the actions of every
22 other defendant and that each corporate defendant, if any, was acting as the alter ego of the
23 other in the acts alleged herein.

24
25 14. Plaintiffs do not seek to litigate wrongful foreclosure here and reserve their individual rights
26 to pursue such matters independently.

27
28 15. In addition to the allegations violations of 15 USC 1641g, the allegations detailing Plaintiffs'
wrongful foreclosure claims are described so as to provide the context of the complained of

1 business practice: that defendants solicit, coerce and influence persons to commit improper
2 notarial acts in furtherance of a broader business model that results in wrongful foreclosures
3 and the widespread pollution of public land records with thousands of improperly
4 acknowledged documents.
5

6 **GENERAL ALLEGATIONS**

7
8
9 16. Plaintiff incorporates these allegations into the claim below as though fully set forth herein.

10 17. A notary public is an official entrusted by her state to serve as an objective witness to the
11 execution of specific legal documents. This function serves to inhibit the fraudulent
12 manipulation of identity and ensure a properly formatted signature. Normally commissioned
13 by a Secretary of State and always subject to state laws and discipline, an individual seeking
14 commission as a notary must satisfy criteria regarding character and competence.
15

16 18. The acts of notaries are *official state act* regulated by professional code and state statutes.
17 The statutory and professional duties of notaries include verification that a signer of a
18 document presented satisfactory evidence of identity, oath, appeared in the Notary's presence,
19 and actually signed the document. It is unlawful for a non-notary to act as a notary or to use
20 the stamp, signature of sequential journal of a notary. In California and in other states, a
21 notary is required to possess, utilize and keep secure a notary seal and sequential journal. A
22 notary public is required to keep one active sequential journal at a time of all acts performed
23 as a notary public. The journal must be kept in a locked and secured area (such as a lock box
24 or locked desk drawer), under the direct and exclusive control of the notary public. The
25 sequential journal is the exclusive property of the notary public and shall not be surrendered
26 to an employer upon termination of employment.
27
28

1 19. The official acts of notarized, including proper acknowledgement; affect the evidentiary value
2 of documents. A duly notarized foreclosure document executed on behalf of an incorporated
3 or unincorporated entity by a duly authorized person is *prima facie evidence* that the
4 instrument is the duly authorized act of the entity named in instrument. As such, the public
5 assume the validity of notarized documents. Courts frequently take judicial notice of
6 documents at the request of defendants.
7

8 20. Defendants' loan servicing business includes the processing and acknowledgment of tens of
9 thousands of documents created in contemplation of non-judicial foreclosure of real property.
10

11 21. In a proper and lawful notarization business practice, compliance with notary laws and
12 standards, proper due diligence and maintenance of sequential notary logs would represent a
13 substantial cost of doing business for defendants and its competitors.
14

15 22. So as to substantially reduce legitimate notary related costs, and so as to enhance the illusion
16 and evidentiary value of non-judicial foreclosure documents, most of which contain a range
17 of inaccurate, deceptive and fraudulent representations of fact, defendants have implemented
18 a business practice that relies upon the systemic violation of notary laws and standards.
19

20 23. That this practice has polluted our public land records non-judicial foreclosure documents
21 which very often contain false, improper, inaccurate and fraudulent content as well as faulty
22 acknowledgements.
23

24 24. Notwithstanding their content, because these documents appear to be properly acknowledged,
25 the documents are presumed by the public, citizens, title companies, judges, trustees, buyers,
26 attorneys and borrowers to be *prima facie evidence* that the document is the duly authorized
27 act of the entity named in the instrument (see Civil Code Section 1190).
28

1 25. While the foreclosure documents themselves are published in contemplation of effectuating
2 non-judicial foreclosure, defendants have exploited, and continue to exploit, the evidentiary
3 presumption of validity of these improperly acknowledged documents in thousands of
4 bankruptcy and foreclosure defenses cases involving Class members.
5

6 26. The improperly acknowledged documents are published in contemplation of non-judicial
7 foreclosure and remain in the public record. Where litigation or bankruptcy subsequently
8 arises, defendants knowingly offer these improperly acknowledged documents as evidence
9 and receive the benefit of the Civil Code Section 1190 presumption. Said practice injures
10 Plaintiffs and the integrity of both the courts and public land records.
11

12 27. That each lead Class Plaintiff was the borrower of a residential mortgage loan (“MLN”) that
13 is a non-negotiable instrument and which MLN is now owned or serviced by Defendant or its
14 agents.
15

16 28. In each case, Defendants initiated and completed a non-judicial foreclosure of the subject
17 properties under the California statutory scheme, Civil Code 2924.
18

19 29. In each, case Defendants caused various documents to be recorded in the public land records
20 each of which were created by Defendants in contemplation of a non-judicial foreclosure.
21

22 30. Said documents, including Assignments of Deeds of Trust, Substitutions of Trustee and
23 Deeds Upon Trustee Sale, were each executed by an agent of Defendants who lacked any
24 personal knowledge as to the facts asserted in each document and who lacked any agency
25 relationship to the true party entitled to enforce the terms of the subject MLN.
26

27 31. That each foreclosure document was then improperly acknowledged. That the mass
28 production of improperly acknowledging documents is defendants’ standard business
practice. That said notary practice is central to an institutionalized business practice of

1 “Robo-signing” and includes soliciting, coercing and influencing improper notarial acts. That
2 said improper acts are known by defendants to be wrongful, deceptive and improper but are
3 institutionalized in an effort to reduce foreclosure processing costs.
4

5 32. Said foreclosure documents are frequently acknowledged by non-notaries, acknowledged
6 outside the presence of the signers, acknowledged without verification of the signer’s
7 identification, and acknowledged without proper recordation in a sequential journal.

8 33. Plaintiffs are informed, believe and herein allege therein that in connection with a California
9 residential mortgage default servicing portfolio, Defendants have implemented and engaged
10 in a deceptive, unlawful and unfair business practices each of which institutionalize the
11 soliciting, coercing and influencing the performance of improper notarial acts in violation of
12 CA Government Code Section 8225 and other state laws.
13

14 34. As required under California law, certain foreclosure documents are required to be properly
15 acknowledged by a notary prior to recording in the public land record.
16

17 35. Central to this *unlawful* practice is the creation, execution and publication of tens of
18 thousands of improperly acknowledged foreclosure related documents in the public land
19 records. While the practice has saved defendants millions in processing costs, the practice
20 has polluted our public land records system with improperly acknowledged foreclosure
21 documents.
22

23 36. The business practice allows non-notaries to act in a notary’s capacity, eliminates the time,
24 need and effort to maintain notary standards, eliminates the time, need and effort to maintain
25 journals and further facilitates quick and inexpensive non-judicial foreclosure of California
26 real property with total disregard for the law and the rights of the affected Class members.
27
28

1 37. As stated in the Consent Order entered into between GMAC and the United States
2 Department of Treasury's Office of the Comptroller of Currency (the "OCC") on April 13,
3 2011, the Comptroller found that GMAC

4
5 "(b) filed or caused to be filed in state and federal courts, or in local land records
6 offices, numerous affidavits or other mortgage-related documents that were not
7 properly notarized, including those not signed or affirmed in the presence of a notary"

8 38. According to the Consent Order, GMAC and its affiliates:

9
10 "filed or caused to be filed in state courts in connection with bankruptcy proceedings
11 in federal courts numerous affidavits executed by employees of the Mortgage
12 Servicing Companies (GMAC and affiliates) or employees of third-party providers
13 making various assertions, such as ownership of the mortgage note and mortgage, the
14 amount of the principal and interest due, and the fees and expenses chargeable to the
15 borrower, in which the affiant represented that the assertions in the affidavit were
16 based on personal knowledge or based on a review by the affiant of the relevant books
17 and records, when, in many cases, they were not based on such knowledge or review"

18
19 39. From January 1, 2009 to December 31, 2010, GMAC completed 89,998 foreclosure actions
20 according to the Consent Order which only covers abuses in this limited period. That
21 improperly acknowledged documents recorded before, during and after this two year period
22 remain in the public land record and that defendants continue to use the evidentiary
23 presumption accompanying said documents against Plaintiffs in non-judicial foreclosure,
24 bankruptcy and civil cases. That said Consent Order fails to remedy the continuing effects of
25 the publication of thousands of improperly acknowledged documents in California public
26 land records.
27
28

- 1 40. That Defendant EXECUTIVE TRUSTEE SERVICES, LLC is such a third-party provider to
2 GMAC and acted as GMAC's agent in furtherance of the improper notarial business practice.
- 3 41. Individual employees of defendants are required to "facilitate" the acknowledgment of over
4 700 foreclosure documents in a single week.
- 5 42. That while the Consent Order provides for an agreement wherein GMAC agrees to take
6 remedial measures to ensure that it implement procedures to remediate its unsafe and unsound
7 banking practices, the Consent Order does not limit Plaintiffs' right to a private cause of
8 action for equitable relief including a much needed purging of the public land records.
- 9 43. To date, said improperly acknowledged documents remain in the public record and
10 defendants continue to use these documents as *prima facie evidence* against the interests of
11 Plaintiffs.
- 12 44. Faced with such a work load and in an effort to save due diligence costs and maximize profit,
13 defendants have elected to institutionalize systemic violation of notary laws and standards.
- 14 45. Rather than incur the legitimate cost of doing business in the Loan Servicing Market,
15 Defendants have chosen to rely upon systematic improper notarization as the center piece of
16 its foreclosure practice.
- 17 46. To this end, defendants knowingly solicit, coerce and influence the performance of improper
18 notarial acts and have institutionalized the very practice of violating Notary laws and
19 professional standards. Defendants knowingly solicit, coerce and influence its notaries
20 through unrealistic productivity requirements and by intentionally mismanaging the
21 acknowledgment process.
- 22 47. Defendants knowingly solicit, coerce and influence its notaries and non-notary agents to
23 engage in improper notarial acts frequently and in wide variety, including but not limited to:
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1 soliciting, coercing and influencing acknowledgement of documents not in the presence of the
2 signer, acknowledgement of documents without proper identification, execution and
3 acknowledgement of documents by a notary, acknowledgement of documents by non-
4 notaries, use the notary stamps by non-notarizes, use of digital reproduction of notary stamps
5 and signatures, acknowledgement of documents where the notary has no personal knowledge
6 of a signer's corporate role, failure of the notary to record transactions in the notary
7 sequential journal, allowing access by non-notaries to the sequential journal, failure to obtain
8 the signature and thumbprint of the signer in the sequential journal at the time of
9 acknowledgement and the failure to secure the sequential journal in a safe and secure place.

10
11
12 48. Once these improperly notarized documents are entered into the public record they become
13 *prima facie evidence* that each document is truly the duly authorized act of the entity named
14 in the instrument (see Civil Code Section 1190). Defendants systemically use these
15 improperly acknowledged documents and the accompanying evidentiary presumption, against
16 borrowers in non-judicial foreclosure, bankruptcy and foreclosure litigation cases.

17
18 49. The Consent Order, which only applies to documents created in 2009 and 2010, provides no
19 provisions or specific relief for remedying the ongoing negative effects of these improperly
20 notarized documents on the Plaintiffs or for the purging and restoration of the integrity of the
21 statewide public land records.
22

23
24 **KRAL FACTS**

25 50. Plaintiffs incorporate these allegations into the claim below as though fully set forth herein.

26
27 51. On or about November 5, 2009, Plaintiff entered into a residential refinance loan with

28 AMERIGROUP MORTGAGE CORPORATION, A DIVISION OF MORTGAGE

1 INVESTORS CORPORATION, AN OHIO CORPORATION (“AMERIGROUP”) for
2 \$537,850.00 secured by a deed of trust.

3
4 52. Soon after origination, GMAC claimed that it was the authorized servicer of the KRAL MLN.

5 In reliance, KRAL began sending payments to GMAC. KRAL is informed and believes that
6 this is a Department of Veteran Affairs (“VA”) loan. As such, KRAL believes this loan must
7 be a securitized loan guaranteed by GINNE MAE, and therefore not “owned” by GMAC.

8 53. That the KRAL facts are a typical example of the implementation of defendants’ business
9 practice where a borrower files for Chapter 7 bankruptcy and defendants cause fraudulent and
10 improperly acknowledged Substitution of Trustee and Assignment of Deed of Trust as well as
11 a fabricated note endorsement to create the illusion that GMAC is the beneficiary of a
12 securitized VA MLN, rather than just a loan servicer.

13
14 54. So as to save costs, Defendants perpetrates the illusion that the sale of the KRAL MLN to
15 GMAC occurred after KRAL defaulted on the MLN. Defendants rely on the use of
16 improperly notarized documents to support the illusion that the Note and Deed of Trust was
17 transferred to GMAC and thereafter the power to appoint its own substituted trustee to
18 conduct a non-judicial foreclosure sale. The use of improperly notarized documents is a
19 crucial element to GMAC and other defendants’ business model which results in substantial
20 cost savings and increased profits.

21
22 55. KRAL defaulted on his loan obligations. Thereafter, on January 10, 2011, FRANCO
23 TORRES, an agent each defendant, executed an ASSIGNMENT OF DEED OF TRUST
24 (“KRAL ASSIGNMENT”), as the alleged Assistant Secretary of Mortgage Electronic
25 Registration Systems, Inc. (**EXHIBIT #1**).

- 1 56. The KRAL ASSIGNMENT purports to transfer all beneficial interest in the Deed of Trust
2 together with the Note to GMAC by MERS, and on behalf AMERIGROUP. The KRAL
3 ASSIGNMENT includes an acknowledgement executed by AMBER BARHAM, a Texas
4 notary and recorded in the RIVERSIDE County public land records on January 14, 2011.
- 5
6 57. That in consenting to the appointment of MERS as the nominee of his Deed of Trust,
7 KRAL's consent extended only to the rules, articles and bylaws of MERS itself. That in
8 transferring the KRAL NOTE to GMAC, MERS exceeded the scope of its agency powers and
9 authority.
- 10
11 58. That TORRE, BARHAM, MERS, ETS and DOE 1 were at all times herein acting as agents
12 and at the direction of GMAC. That GMAC and defendants published and recorded the
13 KRAL ASSIGNMENT document in contemplation of non-judicial foreclosure.
- 14
15 59. Purely to save costs and chill borrower opposition, defendants perpetrate the illusion that the
16 sale of KRAL's MLN from loan originator directly to GMAC occurred after loan default.
- 17
18 60. That the referenced KRAL ASSIGNMENT is a fabricated and "photo-shopped" document,
19 containing inaccuracies and misrepresentations, created to support the illusion that MERS had
20 any authority to transfer the KRAL NOTE to GMAC, that the NOTE was actually transferred
21 to GMAC for "value received", that GMAC was a new party in interest, that GMAC therefore
22 had standing to enforce the terms KRAL MLN, notwithstanding the rights of the as yet
23 unidentified Mortgaged Backed Security Trust insured by GINNIE MAE, in the KRAL
24 MLN.
- 25
26 61. That the KRAL ASSIGNMENT was improperly acknowledged. That BARHAM and DOE 1
27 have engaged in improper notarial acts: that DOE 1 improperly acted as a notary when she
28 signed the KRAL ASSIGNMENT, that BARHAM was not duly commissioned, that this

1 document was not actually executed by TORRE in the presence of BARHAM, that
2 BARHAM did not properly acknowledge this document, that BARHAM did willfully fail to
3 keep her notary seal under her direct and exclusive control, BARHAM did not duly record
4 this transaction in a sequential journal or keep said journal in a safe and secure place, that this
5 document was improperly acknowledged by DOE 1 in violation of California and Texas
6 notary laws and professional standards.

7
8 62. Those defendants GMAC, ETS, MERS and their agents solicited coerced and influenced
9 DOE 1 and BARHAM to engage in the aforementioned improper notarial acts when each
10 defendant knew these acts to be improper notarial acts.

11
12 63. On January 12, 2011, WILDER GOMEZ, as “AUTHORIZED OFFICER” of GMAC
13 executed a Substitution of Trustee (“SOT”) which purports to name Defendant ETS as the
14 TRUSTEE to the KRAL Deed of Trust, **EXHIBIT 2**. That the Substitution of Trustee
15 includes an acknowledgement executed by GINGER LEEANN HARRISON, a Texas Notary
16 and recorded in the RIVERSIDE County public land record on January 25, 2011.

17
18 64. That GOMEZ, HARRISON, ETS and DOE 2 were at all times herein acting as agents and at
19 the direction of GMAC. That GMAC and defendants published this SOT document in
20 contemplation of non-judicial foreclosure.

21
22 65. That the referenced KRAL Substitution of Trustee is a fabricated and “photo-shopped”
23 document, containing inaccuracies and misrepresentations, created to support the illusion that
24 GOMEZ was a duly authorized agent for GMAC, that GMAC was the “present beneficiary”
25 and therefore had standing to name ETS as new trustee to the KRAL Deed of Trust.

26
27 66. That the KRAL SOT was improperly acknowledged. That HARRISON and DOE 2 have
28 engaged in improper notarial acts: that DOE 4 improperly acted as a notary when she signed

1 the KRAL Substitution of Trustee, that HARRISON was not duly commissioned, that this
2 document was not actually executed by GOMEZ in the presence of HARRISON, that
3 HARRISON did not properly acknowledge this document, that HARRISON did willfully fail
4 to keep her notary seal under her direct and exclusive control, HARRISON did not duly
5 record this transaction in a sequential journal or keep said journal in a safe and secure place,
6 that this document was improperly acknowledged by DOE 2 in violation of California and
7 Texas notary laws and professional standards.
8

9
10 67. Those defendants GMAC, ETS and their agents solicited coerced and influenced DOE 2 and
11 HARRISON to engage in the aforementioned improper notarial acts when each defendant
12 knew these acts to be improper notarial acts.

13 68. KRAL began experiencing financial difficulties, defaulted on the MLN and filed for chapter 7
14 bankruptcy protections under Chapter 7 on or about May 19, 2011.

15
16 69. On July 28, 2011 GMAC filed a Notice of Motion and Motion for Relief of the Automatic
17 Stay regarding the KRAL PROPERTY.

18 70. GMAC went to great lengths to create the illusion of standing in the Motion for Relief
19 offering the KRAL ASSIGNMENT, previously recorded in public land records in
20 contemplation of the non-judicial foreclosure, as false declaration that supported the assertion
21 that the Note and the Deed of Trust had been duly transferred to GMAC for valuable
22 consideration and a fabricated blank endorsement. The Bankruptcy Court made no finding as
23 to the propriety of the notarized documents. The Court entered an Order denying GMAC's
24 motion for relief of stay on other grounds. That GMAC added attorney fees to KRAL's loan
25 balance for attorneys and other fees related to the motion for relief.
26
27
28

1 71. Thereafter, KRAL filed a Motion to Compel Chapter 7 Trustee's interest in mortgage related
2 claims against GMAC. A Proposed Order approving a compromise between KRAL and the
3 Chapter 7 Trustee is pending before the Court after the Chapter 7 Trustee elected not to
4 oppose the motion to abandon. As such, KRAL has standing to pursue his claims against
5 defendants.
6

7 72. It is defendants' business practice to rely on improperly notarized documents to establish a
8 false "chain of title". Defendants avoid the expensive process of establishing the true "chain
9 of title" of a typical securitized MLN which contemplates three true sales to create
10 bankruptcy remoteness.
11

12 73. Given the institutional scope of GMAC's improper notarial practice, as alleged herein and
13 further described in the CONSENT ORDER, it is impractical, repetitive and unnecessarily
14 expensive for Plaintiffs and those similarly situated, to individually prove allegations of
15 defendants' illegal business practices.
16

17 74. That Plaintiff KRAL intends pursue his individual claims outside of this Class Action and
18 does not seek a determination of his claims for Wrongful Foreclosure or the legal effect of
19 improper notarization of foreclosure documents affecting Plaintiff's property.
20

21 75. Rather, that Plaintiff seeks a determination of the scope of the systemic nature of the
22 defendants' improper notarial practice, a determination of the validity of all acknowledgments
23 published by defendants affecting Plaintiff's property, a determination of malice, a
24 determination of restitution as appropriate and a determination of the remedial measures
25 necessary to correct the public land records public land records for all.
26

27 76. Given the institutional scope of GMAC's improper notarial practice, as alleged herein and
28 further described in the CONSENT ORDER, it is impractical, repetitive and unnecessarily

1 expensive for individual Plaintiffs and those similarly situated, to each prove allegations of
2 defendants illegal business practices.
3
4

5 **STRICKER FACTS**

6

7 77. Plaintiffs incorporate these allegations into the claim below as though fully set forth herein.

8 78. On or about April 11, 2006, Plaintiff entered into a residential refinance loan with QUICKEN
9 LOANS, INC., (hereinafter referred to as “QUICKEN”) for \$260,000.00 secured by a deed of
10 trust on the condominium property commonly known as 2401 Chandler Avenue #5, Simi
11 Valley, California (“STRICKER PROPERTY”).
12

13 79. That soon after origination, GMAC claimed that it was the authorized servicer of the
14 STRICKER MLN. In reliance, STRICKER began sending payments to GMAC. STRICKER
15 defaulted on the MLN in 2010.
16

17 80. That the STRICKER facts are a typical example of the implementation of defendants’ business
18 practice where a defendants cause improperly acknowledged Substitution of Trustee and
19 Assignment of Deed of Trust to create the illusion that a Mortgage backed security trust actually
20 purchased the defaulted STRICKER MLN six years after the Mortgage backed security trust
21 was closed out. Defendants then use the evidentiary presumption of those recorded documents
22 to facilitate a non-judicial foreclosure and as needed, to obtain relief of stay and to cause the
23 *dismissal* of a Plaintiff’s wrongful foreclosure lawsuit.
24
25

26 81. So as to save costs its loan servicing business, defendants perpetrate the illusion that the sale of
27 the STRICKER MLN to a Mortgage backed security trust (US BANK, NATIONAL
28

1 ASSOCIATION, a federally chartered bank of the United States and as Trustee, successor in
2 interest to WACHOVIA BANK, N.A., as Trustee for MASTER ALTERNATIVE LOAN
3 TRUST 2004-09, hereinafter, the “US BANK MBST”) occurred as claimed in an improperly
4 notarized ASSIGNMENT of DEED of TRUST.
5

6 82. Defendants continue to rely on improperly notarized documents to support the illusion of
7 legitimate non-judicial foreclosure in California, including that MERS properly appointed ETS
8 as substituted trustee to conduct a non-judicial foreclosure sale and that the STRICKER Note
9 and Deed of Trust was transferred to US BANK MBST as claimed in the STRICKER
10 ASSIGNMENT.
11

12 83. The use of improperly notarized documents is a crucial element to GMAC and other
13 defendants’ business model which results in substantial cost savings and increased profits. The
14 improperly acknowledged foreclosure documents are prima facie evidence that the document is
15 the duly authorized act of the entity named in the instrument (see Civil Code Section 1190) even
16 when they are not. These improperly notarized documents continue to be used against
17 STRICKER and other Plaintiffs.
18

19 84. On April 21, 2010, DONNA FITTON , as “ASSISTANT SECRETARY” of MORTGAGE
20 ELECTRONIC REGISTRATION SYSTEMS, INC. (“MERS”) executed a Substitution of
21 Trustee (“SOT”) which purports to name Defendant ETS as the TRUSTEE to the STRICKER
22 Deed of Trust, **EXHIBIT 3**. That the Substitution of Trustee includes an acknowledgement
23 executed by DEE ORTEGA, a California Notary and recorded in the Ventura County public
24 land record on April 22, 2010.
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1 85. That FITTON, ORTEGA, ETS, MERS and DOE 3 were at all times herein acting as agents
2 and at the direction of GMAC. That GMAC and defendants published this SOT document in
3 contemplation of non-judicial foreclosure.
4

5 86. That the referenced STRICKER Substitution of Trustee is a fabricated and “photo-shopped”
6 document, containing inaccuracies and misrepresentations, created to support the illusion that
7 FITTON was a duly authorized agent for MERS, that MERS was the “present beneficiary” and
8 therefore had standing to name ETS as new trustee to the STRICKER Deed of Trust.
9

10 87. MERS was at all times and agent and never the beneficiary of the subject MLN. That in
11 consenting to the appointment of MERS as the nominee of her Deed of Trust with QUICKEN,
12 STRICKER’s consent extended only to the rules, articles and bylaws of MERS itself. That in
13 executing the SOT, MERS exceeded the scope of its agency powers and authority.
14

15 88. That the STRICKER SOT was improperly acknowledged. That ORTEGA and DOE 3 have
16 engaged in improper notarial acts: that DOE 3 improperly acted as a notary when she signed
17 the STRICKER Substitution of Trustee, that ORTEGA was not duly commissioned, that this
18 document was not actually executed by FITTON in the presence of ORTEGA, that ORTEGA
19 did not properly acknowledge this document, that ORTEGA did willfully fail to keep her notary
20 seal under her direct and exclusive control, ORTEGA did not duly record this transaction in a
21 sequential journal or keep said journal in a safe and secure place, that this document was
22 improperly acknowledged by DOE 3 in violation of California notary laws and professional
23 standards.
24
25
26
27
28

1 89. Those defendants GMAC, ETS and their agents solicited coerced and influenced DOE 3 and
2 ORTEGA to engage in the aforementioned improper notarial acts when each defendant knew
3 these acts to be improper notarial acts.
4

5 90. On September 29, 2010, defendants caused an ASSIGNMENT OF DEED OF TRUST
6 (“STRICKER ASSIGNMENT”) to be executed. The ASSIGNMENT was executed by
7 SANDY BROUGHTON as the alleged Assistant Secretary of MERS (**EXHIBIT #4**).
8

9 91. The STRICKER ASSIGNMENT purports to transfer all beneficial interest in the Deed of
10 Trust together with “the money due and to become due thereon with interest and all rights
11 accrued or to accrue under the instrument secured by the deed of trust”.
12

13 92. That said “instrument” refers to the STRICKER NOTE. That the STRICKER NOTE which is
14 the only instrument that evidences that STRICKER has an obligation for money due.
15

16 93. That the STRICKER ASSIGNMENT includes an acknowledgement executed by JOHN J.
17 CASTAGNA a Pennsylvania notary and recorded in the Ventura County public land records on
18 October 6, 2010.
19

20 94. That BROUGHTON, CASTAGNA, MERS, ETS and DOE 4 were at all times herein acting as
21 agents and at the direction of GMAC. That GMAC and defendants published and recorded the
22 STRICKER ASSIGNMENT document in contemplation of non-judicial foreclosure.
23

24 95. Purely to save costs and chill borrower opposition, defendants perpetrate the illusion that the
25 sale of STRICKER’s MLN transferred from loan originator directly to US BANK MBST for
26 value on September 29, 2010.
27
28

1 96. That the referenced STRICKER ASSIGNMENT is a fabricated and “photo-shopped”
2 document, containing inaccuracies and misrepresentations, created to support the illusion that
3 MERS had any authority to transfer the STRICKER NOTE to US BANK MBST, that the
4 NOTE was actually transferred to US BANK MBST for “value received”, that US BANK
5 MBST was a new party in interest and that US BANK MBST therefore had standing to enforce
6 the terms STRICKER MLN.
7

8
9 97. That the STRICKER ASSIGNMENT was improperly acknowledged. That CASTAGNA and
10 DOE 4 have engaged in improper notarial acts: that DOE 4 improperly acted as a notary when
11 she signed the STRICKER ASSIGNMENT, that CASTAGNA was not duly commissioned, that
12 this document was not actually executed by BROUGHTON in the presence of CASTAGNA,
13 that CASTAGNA did not properly acknowledge this document, that CASTAGNA did willfully
14 fail to keep her notary seal under her direct and exclusive control, CASTAGNA did not duly
15 record this transaction in a sequential journal or keep said journal in a safe and secure place, that
16 this document was improperly acknowledged by DOE 4 in violation of California and
17 Pennsylvania notary laws and professional standards.
18

19
20 98. Those defendants GMAC, ETS, MERS and their agents solicited coerced and influenced DOE 4
21 and CASTAGNA to engage in the aforementioned improper notarial acts when each defendant
22 knew these acts to be improper notarial acts.
23

24 99. STRICKER filed for chapter 7 bankruptcy protections under Chapter 7 on or about August 13,
25 2010. On November 1, 2010 GMAC caused a Notice of Motion and Motion for Relief of the
26 Automatic Stay to be filed in the name US BANK MBST regarding the STRICKER
27 PROPERTY.
28

1 100. GMAC went to great lengths to create the illusion of standing in the Motion for Relief
2 offering the STRICKER ASSIGNMENT, previously recorded in public land records in
3 contemplation of the non-judicial foreclosure, as false declaration that supported the assertion
4 that the Note and the Deed of Trust had been duly transferred to US BANK MBST for valuable
5 consideration and a copy of the Note with no endorsement.
6

7
8 101. The Bankruptcy Court entered an Order granting US BANK's and GMAC's motion for
9 relief of stay on other grounds but ordered that no foreclosure occur before February 16, 2011.
10 That GMAC added attorney fees to STRICKER's loan balance for attorneys and other fees
11 related to the motion for relief. Notwithstanding the Order, defendants conducted a foreclosure
12 sale on February 2, 2011.
13

14 102. Thereafter, STRICKER filed a Motion to Compel Chapter 7 Trustee's interest in
15 mortgage related claims against defendants and US BANK MBST. The Chapter 7 has indicated
16 to that STRICKER has standing to pursue her claims against defendants.
17

18 103. That Plaintiff STRICKER filed a Superior Court lawsuit based on wrongful foreclosure.
19 US BANK voluntarily rescinded the illegal sale before conducting another non-judicial
20 foreclosure sale and filing an Unlawful Detainer case.
21

22 104. STRICKER's individual state court claims for wrongful foreclosure were thereafter
23 dismissed after the Superior Court took Judicial Notice of the aforementioned recorded
24 foreclosure documents.
25

26 105. **EXHIBIT 5** purports to be the second DEED UPON TRUSTEE SALE which grants
27 the STRICKER property to the US BANK TRUST as the "Foreclosing Beneficiary" by way
28

1 of a credit bid that renders the sale tax exempt under CA Taxation and Revenue Code,
2 Section 480.3.

3 106. The DEED UPON TRUSTEE SALE is executed by LUIS RODRIGUEZ, Authorized
4 Officer of ETS. That the DEED UPON TRUSTEE SALE includes an acknowledgement
5 executed by SALLY BELTRAN, California Notary, and Commission #1777085 and recorded
6 in the Venture County public land on July 1, 2011.
7

8 107. That the referenced STRICKER DEED UPON TRUSTEE SALE is a fabricated and
9 “photo-shopped” document, containing inaccuracies and misrepresentations, created to
10 support the illusion that the non-judicial foreclosure sale was duly perfected and that US
11 TRUST MBST is the true party in interest and therefore standing to enforce the terms of the
12 STRICKER MLN and take title after a non-judicial foreclosure.
13

14 108. That RODRIGUEZ, ETS, BELTRAN and GMAC each lacked proper authorization to
15 name US BANK MBST as “foreclosing beneficiary” or to convey title as the ASSIGNMENT
16 and SOT are each improperly acknowledged.
17

18 109. That the STRICKER DEED UPON TRUSTEE SALE was improperly acknowledged.
19 That BELTRAN and DOE 5 have engaged in improper notarial acts in violation of California
20 notary laws and professional standards: That BELTRAN and DOE 5 have engaged in
21 improper notarial acts: that DOE 5 improperly acted as a notary when she signed the
22 STRICKER DEED UPON TRUSTEE SALE, that BELTRAN was not duly commissioned,
23 that this document was not actually executed by RODRIGUEZ in the presence of BELTRAN,
24 that BELTRAN did not properly acknowledge this document, that BELTRAN did willfully
25 fail to keep her notary seal under her direct and exclusive control, BELTRAN did not duly
26 record this transaction in a sequential journal or keep said journal in a safe and secure place,
27
28

1 that this document was improperly acknowledged by DOE 5 in violation of California notary
2 laws and professional standards.

3
4 110. Those defendants GMAC and ETS and their agents solicited, coerced and influenced
5 DOE 5 and BELTRAN to engage in the aforementioned improper notarial acts when each
6 defendant knew these acts to be improper notarial acts.

7
8 111. That STRICKER's bankruptcy case is pending as she pursues a claim for sanctions
9 against US BANK TRUST for the violation of the bankruptcy court's order not to sell the
10 property prior to the date specified by the bankruptcy judge. STRICKER is currently a
11 defendant in an Unlawful Detainer case versus US BANK TRUST.

12
13 112. That STRICKER does not seek to pursue her individual claims outside of this Class
14 Action nor does she seek a determination of her claims for Wrongful Foreclosure or the legal
15 effect of improper notarization of foreclosure documents affecting Plaintiff's property.

16
17 113. Rather, that Plaintiff seeks a determination of the scope of the systemic nature of the
18 defendants' improper notarial practice, a determination of the validity of all acknowledgments
19 published by defendants affecting Plaintiff's property, a determination of malice, a
20 determination of restitution as appropriate and a determination of the remedial measures
21 necessary to correct the public land records public land records for all.

22
23 114. It is defendants' business practice to rely on improperly notarized documents to establish
24 a false "chain of title". Defendants avoid the expensive process of establishing the true "chain
25 of title" of a typical securitized MLN which contemplates three true sales to create bankruptcy
26 remoteness.
27
28

1 115. That STRICKER's facts provide a prime example of how defendants continue to utilize
2 the evidentiary presumption created through improperly notarization of documents published in
3 contemplation of non-judicial foreclosure against the Class members in subsequent judicial
4 matters
5

6 116. Given the institutional scope of GMAC's improper notarial practice, as alleged herein
7 and further described in the CONSENT ORDER, it is impractical, repetitive and unnecessarily
8 expensive for Plaintiffs and those similarly situated, to individually prove allegations of
9 defendants' illegal business practices.
10

11 **CLASS ACTION ALLEGATIONS**

12
13
14 117. Plaintiffs incorporate the allegations above in this claim as though fully set forth
15 herein.
16

17 118. Plaintiffs seeks a determination of the scope of the systemic nature of the defendants'
18 improper notarial practice, a determination of the validity of all acknowledgments published
19 by defendants affecting Plaintiff's property, a determination of malice, a determination of
20 restitution as appropriate, the appropriate civil penalties for as yet un-joined municipalities
21 and a determination of the remedial measures necessary to correct the public land records
22 public land records for all.
23

24 119. Furthermore, Plaintiffs seeks a determination of the scope and damages for GMAC's
25 failure to provide the notices to borrowers required by 15 USC 1641g of the Truth in Lending
26 Act, following the execution of ASSIGNMENTS OF DEEDS OF TRUST that purport to
27 transfer all beneficial interest in Deeds of Trusts and Notes to GMAC.
28

1 120. That it is impractical, repetitive and unnecessarily expensive for Plaintiff and others
2 similarly situated to prove these allegations individually, as the allegations complain of
3 systemic and institutional practices. It is more efficient for these facts to be discovered and
4 the issues addressed in one class action case. Individual Plaintiffs would then be free to
5 pursue individual claims for wrongful foreclosure or other claims, as appropriate.
6

7 121. As GMAC and other defendants are engaged in the malicious practice of systemically
8 violating California and other state laws which forbid improper notarial acts, Class Plaintiffs
9 file this First Amended Complaint as private attorney generals seeking declaratory relief,
10 injunctive relief, restitution and damages.
11

12 122. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil Procedure, on
13 behalf of the themselves and on the following Classes:

14 (1) CLASS ONE: All California real property owners whose property is allegedly
15 encumbered by a Deed of Trust securing a Note in default owned or serviced
16 by GMAC or its agents AND where GMAC or its agents has caused any
17 document to be recorded in the public land records after January 1, 2008
18 which required an acknowledgment under California law.

19 (2) CLASS TWO: All California consumer borrowers who did not receive a 15
20 USC § 1641 Transfer Notice from GMAC within 30 days after GMAC became
21 the creditor of an MLN, as asserted in any ASSIGNMENT or other form of
22 transfer of an MLN.

23 **(3) Excluded from the Class are defendants, and their affiliates,
24 subsidiaries, current or former employees, officers, directors, agents,
25 representatives, and their family members. Stop friday**

26 123. Plaintiffs do not know the exact size or identities of the members of the proposed
27 classes, since such information is in the exclusive control of the Defendants.
28

1 124. As to Class One, mortgage industry statistics suggest that the national loan servicing
2 market is currently estimated to be \$7.846Trillion, of which California represents over 50%.
3 The top 10 loan servicers control over 78% of the Loan Servicing Market.
4

5 125. GMAC, the servicing arm of ALLY BANK is fifth among the largest servicers of
6 residential mortgages in the United States, services a current portfolio of 2,439,510 residential
7 mortgage loans worth \$382.8Billion and holds a Market Share of approximately 5%
8 nationally.
9

10 126. GMAC was third among loan servicers based on defaulted loans with 22% of its loans
11 in default in 2008. That number has declined as follows: 19.0% in 2009, 16.6% in 2010 and
12 7.8% in 2011. 1 in 283 homes in California are currently in some stage of non-judicial
13 foreclosure; approximately 5% of those loans are serviced by GMAC.
14

15 127. That the business practice complained of herein has allowed GMAC to steadily reduce
16 its defaulted loan ratio by resorting to the use of improperly acknowledged foreclosure
17 documents to increase the speed of wrongful foreclosures.
18

19 128. ETS plays a crucial role in creating, executing, publishing recording and improperly
20 notarizing thousands of foreclosure related documents. A conservative estimate suggests that
21 the Class size could approach 30,000 to 40,000 defaulted borrowers.
22

23 129. Therefore, the proposed Class is so numerous that joinder of all members is
24 impracticable. Furthermore, it is impractical for individual Plaintiffs to individually attempt
25 to discover the scope of GMAC and other defendants' systemic violations of state notarial
26 laws and would require repetitive efforts.
27

28 130. The Class Plaintiffs do not seem to litigate their individual wrongful foreclosure cases
here. Instead the Plaintiffs seek appropriate restitution, judicial determinations injunctive and

1 equitable remedies given GMAC and other defendants' institutionalization of a business
2 practice that is based on the intentional solicitation, coercing and influence on individuals to
3 commit improper notarial acts.
4

5 131. Under these circumstances, a class action is superior to other methods for the fast and
6 efficient adjudication of this controversy and to avoid the risk of disparate and inconsistent
7 rulings in different courts. A class action regarding the issues in this case does not create any
8 problems of manageability.

9 132. A pattern and practice of conduct by defendants exist in this case wherein common
10 questions of fact and law predominate over any questions affecting only individual members
11 including, but not limited to the following:
12

- 13 a. Whether GMAC and other defendants have engaged in the *unlawful and systemic*
14 *practice* of soliciting, coercing or influencing the performance of improper notarial
15 acts, including the creation, execution and publication of improper acknowledgments,
16 in violation of CA Government Code Section 8225 and other state laws;
17
18 b. Whether an out of state notarial acknowledgment executed in violation of other state's
19 notary laws, is sufficient for purposes of recording in California under Civil Code
20 Section 1189;
21
22 c. Whether the alleged creation, institution management and maintenance of the practice
23 of systemically violating state notarial laws for profit rises to the level of malice or a
24 reckless disregard of the rights of the Class members;
25
26 d. Whether the a systemic practice of soliciting, coercing or influencing the performance
27 of improper notarial acts so as to reduce the true cost of servicing defaulted loans
28 constitutes *unfair competition*;

- 1 e. Whether members of the public are likely deceived by the systemic practice of
2 soliciting, coercing or influencing the performance of improper notarial acts including
3 the recording of improper acknowledgments in the public land records;
4
- 5 f. Whether GMAC provided timely Notice to borrowers as required by **15 USC 1641g**
6 following the alleged transfers for value of Notes and Deeds of Trust to GMAC or
7 other alleged assignees;
- 8 g. The determination that any improperly acknowledged documents shall not constitute
9 *prima facie evidence* that said documents are the duly authorized act of the entity
10 named in the instrument.
- 11
- 12 h. The determination of the appropriate seek appropriate restitution, judicial
13 determinations injunctive and equitable remedies;
- 14
- 15 i. The determination of a method for correcting and/or removing and/or purging
16 improperly acknowledged documents from the public land records; and providing
17 proper notice to Class members, the affected public, bankruptcy courts, unlawful
18 detainer courts, Superior Courts, Federal District Courts and title companies of the
19 judicial determination as to each document;
- 20
- 21 j. The determination of the amount of restitution, costs and disgorgement appropriate for
22 defendants' violation of Cal B&P §17200;
- 23
- 24 k. The determination of the amount of cost savings benefiting defendants from the anti-
25 trust practices violating Cal B&P §17200;
- 26
- 27 l. Common questions of fact and law *do not include* the determination of the validly,
28 accuracy or veracity of the *content* of foreclosure documents recorded in the public
land records.

1 133. This is a matter of the important public policy because the fair treatment of distressed
2 borrowers and respect for the integrity of public land records is a county, state and national
3 policy priority.
4

5 134. The improper notarial claims of the individual named Plaintiffs are typical of the
6 claims of the Class and do not conflict with the interests of any other members of the Class.

7 135. The individually named Plaintiffs will fairly and adequately protect the interests of the
8 Class. They are committed to the vigorous prosecution of the Class' claims and have retained
9 attorneys who are qualified to pursue this litigation.
10

11 136. The putative class action meets the requirements of Federal Rules of Civil Procedure
12 23(a), 23(b) and/or 23(c).

13 137. The nature of notice to the proposed class required and/or contemplated is the best
14 practicable method possible and contemplated the defendant's list when disclosed would most
15 likely be media outlets, mailing to the property addresses affected by the filed foreclosures
16 and internet and other general notices are contemplated to ensure notice.
17

18 138. Defendants have acted or refused to act on grounds that apply generally to the Class
19 so that final injunctive relief or corresponding declaratory relief is appropriate respecting the
20 Class as a whole.
21
22
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1 **CLAIMS**

2
3 **FIRST COUNT**

4 **Unlawful, Unfair and Deceptive Business Practices**
5 **(Against All defendants and Does 1 through 10)**

6 139. Plaintiffs incorporate in this claim all of the allegations above as though set forth in
7 full herein.

8 140. Plaintiffs bring this claim on their own behalf and on behalf of each member of the
9 Class described above.

10 141. That California’s Unfair Competition Law (UCL) defines unfair competition to
11 include any “unlawful, unfair, or fraudulent” business act or practice. Cal Bus & Prof Code
12 §17200 et seq.

13 142. That Defendants’ standard operating procedure to solicit, coerce and influence
14 improper notarial acts, knowing those acts to be improper, in furtherance of a broader scheme
15 to process tens of thousands of California foreclosures at the lowest possible cost by
16 systemically misrepresenting standing and the chain of title of securitized MLNs.

17 143. That said broader scheme includes the crucial practice of improperly acknowledging
18 and recording *after-the-fact, as-needed* Assignments, Substitutions of Trustee and Deeds
19 upon Trustee Sale.

20 144. Defendants file other foreclosure documents such as endorsements, allonges, Notices
21 of Defaults and affidavits so as to create the *illusion* of valid mortgage transfers and standing
22 in tens of thousands of foreclosure matters, bankruptcy cases and civil matters. To the extent
23 those documents are not improperly acknowledged, they are beyond the scope of this case but
24 reserved in Plaintiffs’ individual wrongful foreclosure cases.
25
26
27
28

1 145. Plaintiffs' claims are by no means speculative but are supported by the findings of the
2 Office of Currency Comptroller, the Federal Reserve, the San Francisco assessor-recorder's
3 office, other independent governmental agencies, media reports, whistleblowers and courts.
4

5 146. As stated in the Consent Order entered into between GMAC and the United States
6 Department of Treasury's Office of the Comptroller of Currency (the "OCC") on April 13,
7 2011, the Comptroller found that GMAC

8 "(b) filed or caused to be filed in state and federal courts, or in local land records
9 offices, numerous affidavits or other mortgage-related documents that were not
10 properly notarized, including those not signed or affirmed in the presence of a notary"
11

12 147. That while the Consent Order provides for an agreement wherein GMAC agrees to
13 take remedial measures to ensure that it implement procedures to remediate its unsafe and
14 unsound banking practices, the Order does not limit Plaintiffs' right to a private cause of
15 action for equitable relief including a purging of the public land records.
16

17 148. That the "independent foreclosure review" included in the Consent Order and ending
18 in July 2012 is also a wholly inadequate device. It only applies to foreclosure practices from
19 2009 and 2010 and provides no device to cleanse the public record. It requires that
20 unsophisticated homeowners make a showing of "financial injury" but subject to no defined
21 standard of review. The allegedly "independent" auditors are chosen, controlled and
22 influence by defendants notwithstanding assertions to the contrary.
23

24 149. That the Consent Order does not constitute the Plaintiffs' sole remedy, especially for
25 borrowers who have or are about to lose their homes. That the Consent Order does not
26 address the defendants' criminal activity nor does it provide any equitable remedy to cleanse
27 the pollution of California public land records.
28

1 150. Whether Plaintiffs have suffered injury will vary greatly depending on individual
2 circumstances and what type of document has been improperly acknowledged. Whether a
3 Trustee Deed upon Sale versus a Substitution of Trustee or an Assignment of Deed of Trust is
4 improperly acknowledged, the damage to Class Members may range for minimal to extreme.
5 However, it is undeniable that the mass recording of improperly acknowledged documents
6 injures the integrity of the public recording system.
7

8 151. Here, Plaintiffs do not seek damages for individual financial injury but equitable relief
9 restitution for defendants' widespread pollution of public land records with improperly
10 acknowledged foreclosure documents.
11

12 152. The Office of the Comptroller of Currency has no jurisdiction to amend California
13 criminal, California Notary Laws or in any way inhibit Plaintiffs' right to pursue this private
14 cause of action on behalf of affected citizens. Plaintiffs reserve the right to pursue claims
15 based on the effect of improperly notarized documents but those issues need not be decided in
16 this case.
17

18 **THE INSTITUTIONALIZATION OF THE IMPROPER NOTARY PRACTICE**
19 **DEMONSTRATES MALICE AND A RECKLESS DISREGARD FOR THE RIGHTS OF**
20 **PLAINTIFFS AND THE INTEGRITY OF THE PUBLIC LAND RECORDS**
21

22 153. That by institutionalizing an improper notarial practice in the quest for profit,
23 Defendants has demonstrated its actual malice towards Plaintiffs and those similarly situated.
24

25 154. Those defendants are motivated by greed, contempt, hatred and ill will toward this class
26 of Plaintiffs. By institutionalizing this business practice, defendants have demonstrated herein
27
28

1 that it lacks any reasonable belief in the truth of matters asserted in tens of thousands of
2 acknowledgements attached to tens of thousands of false and misleading foreclosure documents.

3
4 155. Defendants have acted in reckless disregard of the rights of Plaintiffs, similarly situated
5 property owners, citizens, taxpayers and private investors in mortgage backed securities.

6
7 156. The improper notarial practice is designed to *enhance the illusion* created by fabricated
8 foreclosure documents, many which purport to transfer the rights to enforce the terms of tens of
9 thousands of non-negotiable promissory notes (the “MLNs”).

10
11 157. The improper notarial practice is designed to *enhance* defendants’ ability to play “hide-
12 and-seek” with class Plaintiffs, debtors, judges, bankruptcy trustees, investors and other affected
13 parties. That the Pooling and Servicing Agreements of every private Mortgage Backed Security
14 Trust (“MBST”) serviced by Defendants contemplates no less than THREE true sales of each
15 MLN from originator, to sponsor, to depositor and finally to the designated Trustee of the
16 MBST (the “Chain of Title”).

17
18 158. That the cost of properly transferring a single MLN to a MBST through the
19 contemplated “Chain of Title” is approximately \$1,500.00. That a typical MBST contemplates
20 a pool of 5,000 MLNs. To save money, Defendants refuse to produce or lack access to the
21 evidence of the actual transfers to MBSTs. The “technology” cost, processing and legal fees
22 associated with proving standing of the true “chain of title” is cost prohibitive given defendants’
23 volume of bankruptcy and litigation matters. Defendants misrepresent the “chain of title”
24 through the use of Assignments and other foreclosure documents by creating, executing and
25 improperly acknowledging fabricated “photo-shopped” foreclosure documents.
26
27
28

1 159. That defendants' network of attorneys is financially rewarded based on the speed in
2 which the attorneys complete non-judicial foreclosures, bankruptcy and litigation matters. Said
3 network attorneys incur a performance penalty based on the amount of correspondence with
4 defendants and the amount of evidence the attorney's require "prove-up" a matter. Defendants
5 impose "technology fees" through a complex web based interface platform for correspondence,
6 access and copies of the documentary evidence required in a matter. Such a practice relies on
7 the speed and deception, the implementation of which demonstrates malice and a reckless
8 disregard of Plaintiffs' rights.
9

10
11 160. Most egregiously, the network attorneys utilize the business practice to obtain attorney
12 fees awards from by the bankruptcy judges ranging from \$600-\$1000 for each successful
13 motion for relief of stay and allowed proofs of claim. Said awards allow GMAC to pad its
14 claims and add fees to the loan balances arrearage claims of class members.
15

16 161. Those defendants' manufactured and improperly acknowledged evidence is so
17 persuasive that 95% of motions for relief of stay are granted without opposition and over 95%
18 of GMAC's Proofs of Claims are allowed.
19

20 162. That the systemic use of the fabricated evidence has a chilling effect on class debtors
21 and their attorneys. Said business practice discourages bankruptcy players from offering
22 objections or from questioning the validity of GMAC's false claims based on standing.
23

24 163. That the improper acknowledgement of these manufactured documents is *the* crucial
25 element in creating the illusion of the legitimacy of the foreclosure documents.
26
27
28

1 164. Those defendants employ the improper notary practice to *support* the broader business
2 model of manufacturing and publishing foreclosure documents *as needed* and without regard
3 to the truth.
4

5
6 **DEFENDANTS' IMPROPER NOTARIZATION PRACTICE IS UNLAWFUL**

7 165. Those defendants have knowingly engaged in the systemic solicitation, coercion and
8 influence of individuals to commit improper notarial acts related to the execution of
9 acknowledgments of documents created in contemplation in non-judicial foreclosure in
10 violation of CA Government Code Section 8225 and other state laws.
11

12 166. Those defendants know are that said notarial acts are improper, deceptive and
13 fraudulent but solicit, coerce and influence such improper acts as part of a broader business
14 model that also incorporates the creation and publication of fabricated, misleading inaccurate
15 and fraudulent foreclosure documents in various incarnations described herein.
16

17 167. Defendants manufacture and publish chain of title transfer evidence and other
18 foreclosure documents on demand so as to falsely prove standing in thousands of matters.

19 168. That the utilization of this broader business model is driven by defendants' relentless
20 pursuit of cost savings. The broader business model results in widespread deception of
21 Plaintiffs, borrowers, other creditors, bankruptcy courts, bankruptcy trustees, title companies,
22 Federal courts, Superior courts, Unlawful Detainer courts and mortgage trust investors.
23

24 169. That the effective utilization of the broader model begins with the offensive practice
25 of institutionalizing a culture and practice of improper acknowledgment of those foreclosure
26 documents with are then published in land records in contemplation of non-judicial
27 foreclosure.
28

1 170. Beyond their contemplated use within the non-judicial foreclosure process, the
2 improper acknowledgements attached to foreclosure documents constitute *prima facie*
3 *evidence* that the document is the duly authorized act of the entity named in the instrument.
4

5 171. That where a Plaintiff files bankruptcy or attempt to litigate issues related to debt,
6 foreclosure or title, defendants assert the improperly acknowledged documents as *prima facie*
7 evidence that the subject document is duly authorized.

8 172. That in reality, no such presumption should exist. While the improperly notarized
9 documents are published in contemplation of non-judicial foreclosure, but they have a direct,
10 negative and burdensome effect Plaintiff's success in bankruptcy and litigation when they are
11 subsequently used in a deceptive manner.
12

13 173. That the practice of soliciting, coercing and influencing improper notarial acts is the
14 equally offensive as defendants' broader business model of creating Assignments and other
15 foreclosure documents that are inaccurate, fraudulent, not based on personal knowledge and
16 not what the purport to be. But the improper notarial practice is much more egregious as it is
17 based on the corruption of the Notary office.
18
19
20

21 **DEFENDANTS' IMPROPER NOTARIZATION PRACTICE IS UNFAIR**

22 174. That the improper notarization practice is implemented for the ultimate purpose of
23 maximizing Defendants' profit through the reduction of due diligence and foreclosure
24 processing costs.

25 175. Central to this *unfair* practice is the creation, execution and publication of tens of
26 thousands of improperly acknowledged foreclosure related documents in the public land
27 records since 2008. These illegal short cuts result in substantial cost savings to GMAC.
28

1 176. The Relevant Market is defined as residential loan servicing. The national loan
2 servicing market is currently estimated to be \$7.846Trillion of which California represents
3 over 50%. Defendant GMAC is in the top five among the largest servicers of residential
4 mortgages in the United States and California.
5

6 177. GMAC is fifth among the largest servicers of residential mortgages in the United
7 States, services a current portfolio of 2,439,510 residential mortgage loans worth
8 \$382.8Billion and holds a Market Share of approximately 5% in California.
9

10 178. That the business practice complained of herein has allowed GMAC to steadily reduce
11 its defaulted loan ratio from 22% in 2008 to 7.8% in 2011, by resorting to the use of
12 improperly acknowledged and deceptive foreclosure documents to reduce costs and increase
13 the speed of non-judicial foreclosures in California.
14

15 179. That Defendants realizes a tangible, measurable cost benefit from this improper notary
16 practice which results in a competitive advantage, especially over *default* loan servicing
17 companies in the California Market who do not engage in soliciting, coercing and influencing
18 improper notarial acts.
19

20 180. That the improper notary practice of facilitates quick and inexpensive non-judicial
21 foreclosure of California real property without any regard for the law or the rights of the
22 affected Class members. The Defendants improper notary practices cause increased
23 productivity, lower processing costs, lower litigation expenses, lower attorney fees and
24 increased foreclosure related revenue. The presumptive evidentiary value of these improperly
25 acknowledged documents has a chilling effect on borrowers' objections, litigation and
26 opposition which results in greater cost savings for defendants.
27
28

1 181. One court has said that an unfair business practice is one that "offends an established
2 public policy or when the practice is immoral, unethical, oppressive, unscrupulous or
3 substantially injurious to consumers" (*People v. Casa Blanca Convalescent Homes, Inc.*
4 *(1984) 159 Cal. App. 3d 509, 530 [206 Cal. Rptr. 164, 53 A.L.R.4th 661]*). While no clear test
5 to determine what constitutes *unfair* business practice has been established in California, the
6 improper notary practice is unfair by this definition.
7

8 182. That another court has stated that to determine whether a business practice is unfair,
9 courts must "'weigh the utility of the defendant's conduct against the gravity of the harm to
10 the alleged victim" (*State Farm Fire & Casualty Co. v. Superior Court (1996) 45 Cal.*
11 *App. 4th 1093, 1104 [53 Cal. Rptr. 2d 229]*.) The improper notary practice is unfair by this
12 definition.
13

14 183. The only utility for defendants is its own cost savings advantage over competitors.
15 Rather than treat the residential foreclosure process with the utmost care and strict liability,
16 Defendants maliciously utilizes the improper notary practice in combination with the
17 widespread use of false statements, misrepresentations and deception just to save money.
18

19 184. That since the foreclosure crisis began in 2008, this institutional business practice of
20 violating the Notary laws and professional standards has lead to increased profits through the
21 elimination of the otherwise time consuming and expensive process of ensuring proper
22 acknowledgement of foreclosure documents.
23

24 185. That in the context of this national mortgage crisis, a massive taxpayer bailout of
25 defendant GMAC and the general devastation caused by home foreclosures, the alleged
26 business practice is immoral, unethical, oppressive, unscrupulous *and* substantially injurious
27
28

1 to *all* consumers. That whether a consumer is a homeowner in financial distress or not, there
2 is a common interest in preserving the integrity of our public land records and court system.
3

4
5 **DEFENDANTS' IMPROPER NOTARIZATION PRACTICE IS DECEPTIVE**

6 186. Central to this *deceptive* business practice is the creation, execution and publication of
7 tens of thousands of improperly acknowledged foreclosure related documents in the public
8 land records since 2008.

9
10 187. In defense **15 USC 1641g** claims, Plaintiff fully expects GMAC to *deny* that the
11 KRAL ASSIGNMENT and others like it are not what they purport to be: *transfers for value*
12 *of Notes and Deeds of Trust to GMAC directly from the loan originator.*

13 188. The improper notarization of these presumptively authentic foreclosure documents are
14 the centerpiece of GMAC's deceptive business practice. Once improperly notarized, GMAC
15 uses these ASSIGNMENTS against the interests of homeowners in financial distress in a
16 variety of contexts not limited to non-judicial foreclosure and including bankruptcy matters
17 and wrongful foreclosure cases.
18

19 189. Said practice creates *prima facie evidence* that the ASSIGNMENTS are duly
20 authorized acts of the entity named in the instrument, when in reality, they are not. (see Civil
21 Code Section 1190).
22

23 190. That the improper notary practice of soliciting, coercing and influencing improper
24 notarial acts is *deceptive* by definition but not conducted in isolation. While no longer the
25 subject of this lawsuit, the false and misleading *content* contained in the foreclosure
26 documents is equally oppressive and demonstrative of defendants' blatant disregard for the
27 rights of homeowners in financial distress.
28

1 191. Notwithstanding that these and other foreclosure documents and contain false
2 assertions as to ownership of notes, transfers of notes, transfers of deeds of trusts and
3 transfers of the power to enforce the terms of California MLNs, only the improper notary
4 practice is the subject of this lawsuit.
5

6 192. The practice of creating improper acknowledgments restricts borrowers from
7 challenging the veracity of a document's assertions and the validity of any non-judicial
8 foreclosure sale.
9

10 193. The *illusory* certificates of acknowledgement attached to an executed instrument,
11 such as a Substitution of Trustee, Assignment or Deed Upon Trustee Deed, is *prima facie*
12 *evidence* that the document is the duly authorized act of the entity named in the instrument.
13 The deceptive effect of improper acknowledgement cascades throughout bankruptcy and civil
14 cases, in addition to non-judicial foreclosures.
15

16 194. Therefore, even where the party who executes a document lacks personal knowledge
17 or any agency relationship with the party entitled to enforce the terms of an MLN, an
18 *illusory* acknowledgement wrongfully obstructs borrowers from making legitimate
19 challenges to the validity of the foreclosure document.
20

21 195. That defendants have processed tens of thousands of non-judicial foreclosure
22 proceedings based on the purported validity of improperly notarized documents in addition to
23 failing to ensure that either the promissory note of deed of trust were properly endorsed or
24 assigned or in possession of the appropriate party at the appropriate time.
25

26 196. That while the content and attestations contained in the foreclosure documents are
27 themselves false, misleading and deceptive, it is the systemic use of these documents and
28

1 defendants' solicitation, coercion and influence of individuals to commit improper notarial
2 acts that is the subject of this action.

3
4 197. That the public, including Plaintiffs, Courts, bankruptcy trustees, new creditors, credit
5 reporting agencies, potential buyers and title insurance companies are likely to be *deceived* by
6 the improperly acknowledged foreclosure documents filed in the public land records,
7 notwithstanding the truth of the matters asserted in those documents.

8
9 198. That defendants have generated tens of millions of dollars in revenue through
10 premature or unjustified foreclosure fees, attorney fees, notary fees, insurance fees, Chapter
11 13 trustee distributions, broker service fees, late fees and servicing fees charged to borrowers.

12
13 199. Those defendants have wrongfully foreclosed and prevailed in bankruptcy motions,
14 Unlawful Detainer cases, Superior Court cases and Federal cases by offering improperly
15 notarized foreclosure documents as self-authenticating and presumptively valid evidence.

16
17 200. That until the public record is corrected, there is no reason to expect that these unjust
18 results accruing from defendants' improper notarization practice will ever cease.

19
20 201. As a proximate result of defendants' conduct, Plaintiffs and the public at large have
21 suffered injury in fact and will continue to suffer until this matter is resolved. Said injuries
22 vary from wrongful foreclosure to a degradation of the integrity of the public land records.

23
24 202. The improperly acknowledged documents are used against Plaintiffs' interest to
25 support the illusion of valid transfers of rights in MLNs including the right to foreclose, to
26 name trustees of deeds of trusts and to grant title in real property to buyers at non-judicial
27 foreclosure sales. The use of said documents has caused Plaintiffs collectively to suffer
28 actual injury, incur improper loan servicing fees, increased loan charges, a loss of personal
rights, and loss of property rights, decreased property values, lost costs, lost time, and

1 increased attorney fees combating the effect and cure the widespread publication of
2 improperly acknowledged documents.

3 203. The improperly acknowledged documents, while published in contemplation of non-
4 judicial foreclosure, are used against Plaintiffs' interests in bankruptcy cases, federal court
5 cases, civil court cases and unlawful detainer cases to support the illusion of valid transfers of
6 rights and the *prima facie* evidence of the validity of said documents.
7

8 204. The improperly acknowledged documents are used with such frequency and
9 abundance so as to degrade the integrity of the public land records system, the office of
10 notaries and our court system. As such, said practice is causing irreparable injury to members
11 of the general public.
12

13
14 **SECOND COUNT**
15 **Systemic 15 USC 1641g Notice Violations**
16 **(Defendant GMAC and Does 1 through 10)**
17

18 205. Plaintiffs incorporate the allegations above in this claim as though fully set forth
19 herein.

20 206. Plaintiffs are informed and believes and alleges thereon that GMAC has engaged in a
21 pattern and practice of violating 15 USC §1641g by failing to provide the required Transfer
22 Notice to class members, including KRAL, within 30 days of becoming the creditor of
23 thousands of MLNs.
24

25 207. Plaintiff KRAL brings this claim on their own behalf and on behalf of each member of
26 the Class described above.
27
28

1 208. That, notwithstanding his Chapter 7 bankruptcy filing, KRAL has standing to bring
2 this FIRST cause of action. That each cause of action in this First Amended Complaint is not
3 property of the estate; KRAL has filed a Motion to Compel Abandonment of any interest by
4 the Chapter 7 Trustee which will resolve this issue by way of Bankruptcy Court Order.
5

6 209. That pursuant to the plain language contained in the KRAL ASSIGNMENT and other
7 class assignments, GMAC is *estopped* from denying that it is a “creditor” as defined under
8 TILA and Federal Register rules and regulations.
9

10 210. That following execution of any class ASSIGNMENT, purporting to transfer MLNs to
11 GMAC for value, GMAC became the creditor and owner of the MLN.

12 211. As a new creditor of class MLNs, GMAC was required to notify the Plaintiffs in
13 writing of the transfer of the MLN within 30 days of said transfer to GMAC.
14

15 212. That pursuant to the plain language contained in each class ASSIGNMENT, the class
16 MLNs were not transferred for administrative convenience as contemplated in 15 USC §1641
17 to GMAC in the role as a servicer.

18 213. That each ASSIGNMENT purports to be a direct transfer for the Note and Deed of
19 Trust from the loan originator’s agent, MERS to GMAC and *for value received* and as the
20 direct successor of the loan originator.
21

22 214. That where GMAC claims it is just the servicer of the KRAL and other CLASS
23 MLNs, that the CLASS ASSIGNMENTS and the representations contained therein are
24 asserted against the interests of Plaintiff Class in the context of non-judicial foreclosure,
25 bankruptcy and civil matters. That the purpose of this practice is to intentionally bypass the
26 revelation of the identity of the true beneficiary of each MLN. Said practice eliminates the
27
28

1 need, necessity and cost to GMAC of establishing *how* a given MLN is transferred to a true
2 beneficiary, typically a mortgage backed security trust or government sponsored enterprise.

3
4 215. That GMAC could not be a loan servicer of a MLN on behalf of a mortgage backed
5 security trust or government sponsored enterprise until that mortgage backed security trust or
6 government sponsored enterprise actually acquires rights in an MLN.

7 216. That the 15 USC §1641 notification is required to include:

- 8 i) The identity, address, telephone number of the new creditor;
9 ii) The date of transfer;
10 iii) How to reach an agent or party having authority to act on behalf of the new creditor;
11 iv) The location of the place where transfer of ownership of the debt is recorded; and
12 v) Any other relevant information regarding the new creditor within 30 days of the transfer.

13
14 217. That GMAC has failed provide said TILA notice to Plaintiffs and those similarly
15 situated, within 30 days of each MLN transfer claimed in thousands of improperly notarized
16 ASSIGNMENTS recorded in the public land records and used against the interests of
17 Plaintiffs in contemplation of non-judicial foreclosure.

18
19 218. That pursuant to the plain language utilized, the representations contained in each
20 ASSIGNMENT establish that GMAC is a creditor and new owner of the MLN pursuant to
21 the language and policy of 15 USC §1641g.

22
23 219. That pursuant to the plain language and express the representations contained in each
24 ASSIGNMENT, a reasonable person would conclude that GMAC is a creditor effective on
25 the specified date of execution of each ASSIGNMENT.
26
27
28

1 220. That pursuant to the plain language utilized, the representations contained in each
2 ASSIGNMENT constitutes an admission that a transfer of the rights to enforce the terms of
3 the MLN to GMAC has occurred on the specified date.
4

5 221. Notwithstanding their content, because these documents appear to be properly
6 acknowledged, the documents are presumed by the public, citizens, title companies, judges,
7 trustees, buyers, attorneys and borrowers to be *prima facie evidence* that the document is the
8 duly authorized act of the entity named in the instrument (see Civil Code Section 1190).
9

10 222. That GMAC is estopped from denying that it became a Creditor pursuant to 15 USC
11 §1641g on the date each ASSIGNMENT was executed by a GMAC's MERS agent, notarized
12 and publically recorded.
13

14 223. That class members' TILA rights are violated and the policy of 15 USC §1641g
15 circumvented as a result of GMAC's business practices. That said information as to the
16 identity of the true beneficiary of Class member's MLNs has heightened value for a
17 homeowner in financial distress or facing foreclosure.
18

19 224. That as a result of GMAC's systemic violations of 15 USC §1641g, KRAL and other
20 similarly situated class members due process rights for notice and opportunity to be heard
21 were violated; each of them has incurred attorney's fees and expenses in attempting discover
22 the identity of the true creditor, the validity of GMAC's status as a creditor and/or loan
23 servicer.
24

25 225. Plaintiff is informed and believes and alleges thereon that GMAC's conduct was part
26 of a pattern and practice resulting in the same injury to a multitude of similarly situated
27 (former) homeowners.
28

1 226. That each of these class members is facing imminent foreclosure and desires to
2 negotiate in good faith and receive fair consideration under various government loan
3 modification programs, including the Home Affordable Mortgage Program.
4

5 227. That the withholding of the TILA transfer notice has caused additional actual damages
6 in the form of emotional suffering for class members already under extreme stress.

7 228. Furthermore, that the knowledge as to the true identity and contact information of the
8 true creditor of a class member's MLN is elusive in the current environment of mortgage
9 securitization. As such, this information is has tangible and provable financial value to a
10 homeowner facing financial distress. A loan modification has measurable real financial
11 value. Therefore, the CHANCE to successfully negotiate a loan modification has monetary
12 value.
13

14 229. That by withholding information required by TILA regarding the identity of the new
15 MLN creditor, GMAC has exasperated the hardships of class members and caused actual
16 financial damages.
17

18 230. That a showing of actual damages by KRAL or any class member is not a required
19 element under 15 USC §1641g. That notwithstanding a showing of actual damages, TILA
20 allows for statutory damages and attorney fees for GMAC's violations.
21

22 231. Those Plaintiffs have been damaged in a similar amount to be proven at trial,
23 including but not limited to actual damages resulting from said violation, statutory damages
24 of \$4,000.00 per homeowner, attorney fees and costs.

25 232. That 15 USC §1641g contemplates a limitation of \$500,000.00 in class action matters.
26
27
28

1 233. That given the size of the class and the availability of statutory damages in this cause
2 of action, a showing of actual damages will not likely be necessary to reach the class action
3 damage limit.
4

5
6 **DEMAND FOR JURY TRIAL**

7 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial
8 as to all issues triable by jury.
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for judgment against defendants, and each of them, as follows:
12

- 13
14 a. That the Court determine that this action may be maintained as a class action under Rule
15 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiffs KRAL and
16 STRICKER be certified as class representatives for CLASS ONE, that Plaintiff KRAL be
17 certified as class representative for CLASS TWO and that Plaintiffs' counsel be
18 appointed as counsel for each Class;
19
20 b. A determination whether defendant's improper notarial business practices, related actions,
21 failures to act, representations and assertions constitute violations of California Business
22 & Professions Code §17200;
23
24 c. An order compelling defendants, their successors, agents, representatives, employees, and
25 all persons who act in concert with them be permanently enjoined from committing any
26 acts of unfair competition, related to the filing of improperly acknowledged documents in
27 the public land records in violations of § 17200, including, but not limited to, the
28 violations alleged herein.

- 1 d. An determination of the scope of the nature and seriousness of the alleged misconduct, the
2 number of violations, the persistence of the misconduct, the length of time over which the
3 misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's
4 assets, liabilities and net worth.
- 5
- 6 e. A determination of as to which the scope of the nature and seriousness of the alleged
7 misconduct, the number of violations, the specific identification of each violation, the
8 persistence of the misconduct, the length of time over which the misconduct occurred, the
9 willfulness of the defendant's misconduct, and the defendant's assets, liabilities and net
10 worth.
- 11
- 12 f. A determination of the amount of cost savings benefiting defendants from the deceptive
13 practices violating Cal B&P §17200 in this context;
- 14
- 15 g. A determination of the amount of restitution and disgorgement of profits appropriate for
16 violations of Cal B&P §17200 in this context;
- 17
- 18 h. For an order requiring defendants to record in the public land records a “Notice of
19 Improperly Acknowledged Document”, or such similar Notice as the Court deems
20 appropriate, each of which shall correspond and identify each specific improperly
21 acknowledged document previously recorded in public land records.
- 22
- 23 i. For an order requiring defendants to record in the docket or claims register of each court’s
24 official record. a “Notice of Improperly Acknowledged Document”, or such similar
25 Notice as the Court deems appropriate, each of which shall correspond and identify each
26 specific improperly acknowledged document previously filed as an exhibit or referenced
27 within any pleading by defendants’ in any court’s docket or claims register;
- 28

- 1 j. Only where this matter is joined by the California Attorney General, any California
2 County District Attorney or City Attorney, a civil penalty not to exceed two thousand five
3 hundred dollars (\$2,500) for each act of recording of an improperly acknowledged
4 document or soliciting, coercing or influencing an improper notarial act;
5
6 k. A determination whether defendant GMAC has engaged in systemic violations of 15 USC
7 §1641g;
8
9 l. A determination of actual damages for GMAC's violations of 15 USC §1641g;
10
11 m. Statutory damages of \$4,000.00 per Class Two Members for GMAC's violations of 15
12 USC §1641g;
13
14 n. That Plaintiff and the Class recover their costs of suit, including attorney's fees as provided
15 by law; and
16
17 o. For such other and further relief, equitable or otherwise, as is just under the
18
19 circumstances.

20 Dated: April 19, 2012

LAW OFFICES OF J. ARTHUR ROBERTS

21
22

JOSEPH ARTHUR ROBERTS, ESQ.
23 Attorney for Plaintiffs
24 and all others similarly situated
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EXHIBIT 1

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EXHIBIT 3

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EXHIBIT 4

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EXHIBIT 5

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EXHIBIT 6

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EXHIBIT 7

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EXHIBIT 8

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EXHIBIT 9

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EXHIBIT 10

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EXHIBIT 11

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