

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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Steven Gewecke and Tamara Gewecke,  
on behalf of themselves and all others  
similarly situated,

Case File No.: 09-cv-01890  
Hon. John R. Tunheim  
Magistrate Judge Leo I. Brisbois

Plaintiffs.

vs.

US Bank, N.A., as trustee for CitiGroup  
Mortgage Loan Trust 2007-AMC1;

CitiGroup Mortgage Loan Trust 2007-  
AMC1; and

Countrywide Home Loans, Inc.;

John Does 1 through 100;

Defendants.

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**THIRD AMENDED CLASS ACTION COMPLAINT**

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**INTRODUCTION**

1. Plaintiffs, Steven and Tamara Gewecke (“Geweckes” or “Plaintiffs”), bring this case on behalf of themselves for their individual claims, and on behalf of a similarly situated class of individuals for their class claims, challenging Defendants’ wrongful and illegal foreclosure practices.

2. This Complaint seeks an Order from the Court to avoid the pending notice of foreclosure by advertisement on the Geweckes' home, and further seeks a declaration from this Court that the Assignment of Mortgage, for the subject property, dated August 11, 2008, is invalid. Plaintiffs also bring this Complaint for breach of contract, violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §1961-1968, slander of title and violations of RESPA and the Minnesota Mortgage Servicing Act. Plaintiffs seek appropriate declaratory and injunctive relief from the Court, as well as contract damages, statutory damages, costs and attorneys' fees as appropriate.

3. It has become clear that Defendants' conduct in this matter is not unique to the Geweckes. Every foreclosure in every state must be initiated by a person who has actual authority to either foreclose by advertisement or authority to foreclose by action. This authority is given to the person who is the mortgagee of record. When such authority is premised upon an assignment of mortgage that is facially invalid, the subsequent collection efforts stemming from that recorded and facially invalid assignment are illegal.

4. Plaintiffs seek class certification in order to assert the rights of all other similarly situated individuals and declare such assignments void. Since the Geweckes initiated their own individual litigation, a broad pattern of fraud, deception, and deficient documentation by these parties processing residential mortgage foreclosures has come to public light.

5. Significantly, many homeowners facing foreclosure, or whose properties have already been foreclosed on, are not aware of the fraudulent, illegal and/or invalid

foreclosure documentation (including assignments of their mortgage, affidavits regarding ownership of the mortgage loan, fees and amounts claimed, or similar documents). Most homeowners simply do not have the expertise or knowledge necessary to recognize deficiencies in the documentation required for a legal foreclosure. Even if homeowners know about the illegal foreclosures, and facts involved in their particular foreclosure, most are not in an economic position to hire knowledgeable counsel to litigate their claims against Defendants. As a result, without a class action, most class members' rightful claims against Defendants will not be brought and the illegal practices will go unchallenged, all to the class members' detriment.

6. Jurisdiction of this Court exists pursuant to 12 U.S.C. §2614 as to claims under RESPA, and supplemental/pendent jurisdiction over the remaining claims that have common parties and/or arise out of the same common nucleus of facts. This Court has further jurisdiction to render the declaratory judgment Plaintiffs seek pursuant to 28 U.S.C. §2201. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 over the federal claims, including claims for violations of RICO, 18 U.S.C. §1961-1968.

7. Venue lies in this District pursuant to 28 U.S.C. §1391(b).

### **PARTIES**

8. Plaintiffs are individuals residing in the State of Minnesota. They are a married couple who reside at 3013 15th Street North, St. Cloud, Minnesota 56303. The legal description of the property is Lot Eight (8), Block One (1) in Northway Plat 5.

9. US Bank, N.A. is the trustee for CitiGroup Mortgage Loan Trust 2007-AMC1 ("US Bank as Trustee"). It is the entity that purports to be the trustee for the

owner of the mortgage and note related to 3013 15<sup>th</sup> Street North, St. Cloud, Minnesota 56303. US Bank, N.A. is headquartered in Minneapolis, Minnesota.

10. CitiGroup Mortgage Loan Trust 2007-AMC1 (“the Trust”) is the trust that purports to own the mortgage and note related to 3013 15<sup>th</sup> Street North, Saint Cloud, Minnesota 56303.

11. Countrywide Home Loans, Inc. (“Countrywide”) is a New York corporation. Countrywide’s registered agent is CT Corporation, 100 S 5th Street #1075, Minneapolis, MN, 55402.

12. Defendants Does 1 through 100 are persons or entities whose true names and identities are now unknown to Plaintiffs, and who therefore are sued by such fictitious names. Plaintiffs will amend this Complaint to allege the true names and capacities of these fictitiously named Defendants when they are ascertained. Each of the fictitiously named Defendants is responsible for the conduct alleged in this Complaint, and Plaintiffs' damages and the damages of the Plaintiff Class were also actually and proximately caused by the conduct of the fictitiously named Defendants.

## **BACKGROUND ALLEGATIONS**

### ***The Mortgage Securitization Process and Industry Practices***

13. Financing a home mortgage, at a fundamental level, has not changed much in over a hundred years. Each mortgage loan consists of two parts: (1) a note, evidencing the debt owed; and (2) a mortgage, evidencing the security interest or collateral.<sup>1</sup> If a

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<sup>1</sup> For the purpose of this Complaint, “mortgage loan” refers to both the mortgage and the note, unless otherwise specified.

homeowner does not pay the debt, the creditor may seek the collateral through the foreclosure process dictated by an individual state's foreclosure statutes.

14. Some states require a foreclosure by action, meaning the creditor must file a lawsuit. Other states allow a foreclosure by advertisement, meaning an extra-judicial proceeding that requires no lawsuit and is not overseen by a judge.

15. Regardless of whether it is a foreclosure by action or foreclosure by advertisement, the entity initiating the foreclosure process must be the mortgagee of record. If the mortgage loan has been assigned, a proper assignment of mortgage must be recorded that accurately reflects the owner of the mortgage loan.

16. After the Great Depression, the government began purchasing mortgage loans from financial institutions in order to inject more liquidity into the housing market and encourage financial institutions to use that money to make additional mortgage loans.

17. More recently there was the development of the government sponsored securitization market, primarily through Fannie Mae and to a lesser extent Freddie Mac. This was followed by the development of the private non-government sponsored securitization market called "private label" securitization.

18. By pooling thousands of mortgages together, the securitization process transforms relatively locked 30-year financial instruments into very dynamic and liquid financial instruments. Bonds or Mortgage Backed Securities are issued based upon the income stream generated by the pool of mortgages, and then the Mortgage Backed Securities are sold to investors all over the world. Meanwhile, the underlying mortgage loans are held in a trust for the benefit of these various investors.

19. Although many entities and persons may be involved in the securitization process and there may be slight variations, the broad framework of the securitization process is always the same. It always includes four distinct actors: (1) the mortgage loan Originator; (2) the Aggregator; (3) the Depositor; and (4) the Issuer/Trust.

20. The mortgage loan Originator is the lender which originally lent the homeowner money. The mortgage loan Originator is the mortgagee of record and, by statute, has the initial authority to begin foreclosure proceedings.<sup>2</sup>

21. The Aggregator is a separate and distinct legal entity that purchases the mortgage and note from the mortgage loan Originator, all without recourse, and it then aggregates or pools the hundreds/thousands of mortgage loans.

22. Then, the Aggregator sells the pool of mortgage loans, again without recourse and again including the security interests or mortgages, to the Depositor.

23. The Depositor is a major financial institution which is, or is often working closely with, a Wall Street investment firm, such as Bear Stearns, Lehman Brothers, or Goldman Sachs.

24. The Depositor purchases the pool of mortgage loans, again without recourse and again including the security interests or mortgages, and then sells the pool to the Issuer or Trust.

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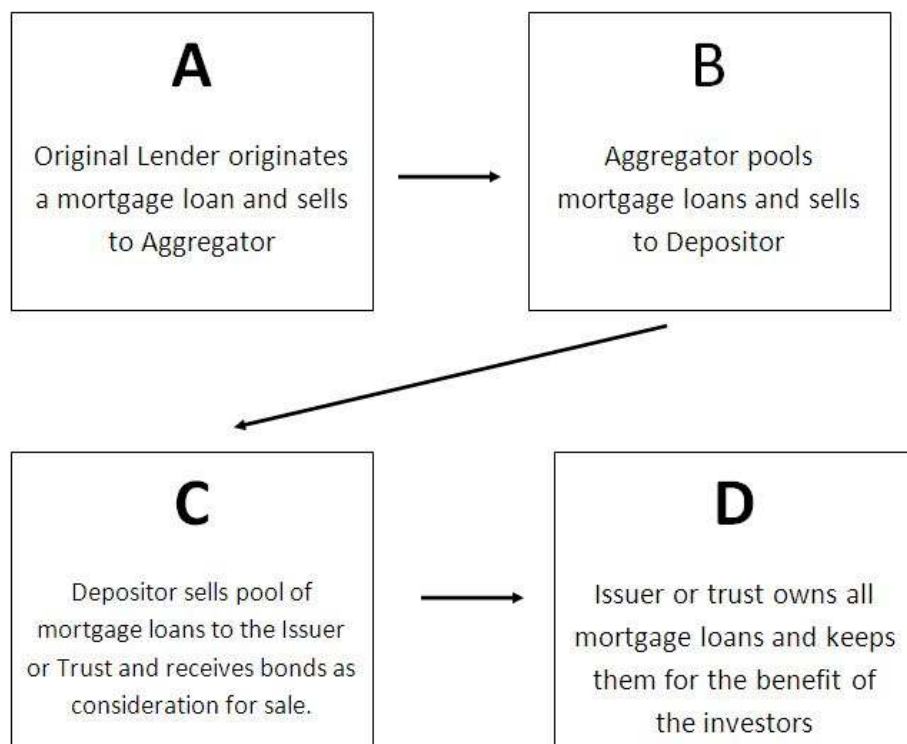
<sup>2</sup> This lawsuit does not include mortgage loans in which Mortgage Electronic Registration Systems, Inc. ("MERS") was ever made the mortgagee of public record as nominee for the original lender's successors and assigns.

25. As consideration for the sale, the Issuer or Trust pays the Depositor by giving the Depositor certificates or bonds that the Depositor then sells to investors throughout the world.

26. The mortgage and the note are never split.

27. The mortgage and the note are sold together, without recourse, at each stage of the securitization process.

28. Again, this is a standard process and the contractual language contained in the Pooling and Servicing Agreements (“PSAs”) varies little among the transactions. The standard process described above is summarized by the following flow-chart:



29. The problem arises when an entity which is hired by the Issuer/Trust to service the pool of mortgage loans decides to initiate foreclosure proceedings, whether by action or by advertisement.

30. There is no absolute legal requirement that an assignment of mortgage be recorded within a certain period of time. An entity which seeks to assert its right to foreclose, however, must have publicly recorded all assignments of the mortgage. Absent a publicly recorded and valid assignment, the entity cannot initiate foreclosure proceedings.

31. Here, Defendants recorded a false assignment of mortgage to paper over gaps in the chain of title, and then used that assignment to initiate foreclosure proceedings and charge a myriad of fees to the homeowner.

32. The false assignment recorded by Defendants is an assignment from the original lender (A) directly to the Issuer/Trust (D), skipping assignments A to B, B to C, and C to D. This is commonly known as an “A to D assignment.”

33. At the time of the false assignment, the original lender (A) no longer had any right or interest in the mortgage or note. No authority to conduct such an assignment was retained by the original lender. Indeed, the terms of the standard PSA state just the opposite---all title and interest in the mortgage loans, including the security interests, were sold.

34. The Issuer/Trust also never paid the original lender any consideration for such a transfer. Pursuant to the express terms of the PSA, the consideration paid by the



Issuer/Trust for the pool of mortgage loans was the certificates or Mortgage Backed Securities that the Depositor then sold.

35. The only thing known, for sure, is that at the time that foreclosure proceedings were initiated, the A to D assignment was false and any actions or fees charged pursuant to the foreclosure were invalid.

36. The foreclosure process and fees charged by the mortgage industry are standard. Once a mortgage loan servicer decides to initiate foreclosure proceedings, a homeowner is charged attorneys' fees related to the foreclosure and filing or publication costs related to the foreclosure proceedings. The act of initiating foreclosure proceedings also automatically triggers inspections and Broker Price Opinions, relating to the value of the home, which are also charged to the homeowner.

37. Here, none of these fees were authorized or valid because the underlying foreclosure proceedings were invalid and based on a false assignment of the mortgage.

38. The homeowner is damaged by the fees identified above. The homeowner is liable for such fees, and receives multiple demands for their payment. The homeowner must pay all of these fees in order to cure the purported default or in order to redeem the property after the Sheriff's Sale. The larger the amount of the fees added to the outstanding balance, the higher the amount the homeowner has to pay to cure or redeem. Some homeowners that would otherwise be able to cure or redeem are rendered unable due to the addition of such fees. If a foreclosure occurs, the fees are paid out of the homeowner's equity, if any. The homeowner will also continue to be liable for these

improper fees if there is a deficiency judgment because they will have been added to the homeowner's total amount of debt.

***The Securitization Process for the Loans in the Citigroup Mortgage Trust***

39. The securitization process that the loans in the Trust went through was the same standard process as described in the paragraphs above.

40. Loans were aggregated by CitiGroup Global Markets Realty Group Corp. ("CitiGroup Global" or "the Aggregator") by purchasing them from the loan originator, Argent (as well as another originator; however, the loans originated by the second originator are not the subject of this class action).

41. CitiGroup Mortgage Loan Trust, Inc., a Delaware corporation, is the "Depositor" of assets in the Trust, pursuant to the PSA, as well as the registrant for these securities with the Securities and Exchange Commission.

42. The purchase agreement between CitiGroup Global and CitiGroup Mortgage Loan Trust, Inc. contains an assignment of all rights and interests, including the security interests (mortgages):

Seller [CitiGroup Global] does hereby sell, transfer, assign, set over and convey to purchaser [CitiGroup Mortgage Loan Trust, Inc.], without recourse but subject to the terms of this Agreement, ***all of its right, title and interest in, to and under the Mortgage Loans.***

43. All assets in the Trust were purchased by CitiGroup Mortgage Loan Trust, Inc. directly from CitiGroup Global by the Close Date. These assets were then purchased by the Trust from CitiGroup Mortgage Loan Trust, Inc. None of the securitized mortgage pool's assets were purchased by the Trust directly from Argent.

44. Defendant US Bank, as Trustee for the Trust, issued to CitiGroup Mortgage Loan Trust, Inc. certificates or bonds as consideration for the mortgage loans that were deposited in the Trust.

45. The conveyance from Depositor/CitiGroup Mortgage Loan Trust, Inc. to the issuer/Trust, further stated that it was assigning all interests, including the security interests (mortgages):

The Depositor [CitiGroup Mortgage Loan Trust, Inc.], concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee [of the Trust] ***without recourse for the benefit of the Certificateholders all the right, title and interest of [CitiGroup Mortgage Loan Trust, Inc.], including any security interest*** therein for the benefit of the Depositor, in and to the Mortgage Loans identified on the Mortgage Loan Schedule, the rights of the Depositor [CitiGroup Mortgage Loan Trust, Inc.] under the Mortgage Loan Purchase Agreement . . .

46. According to the Agreement, which was filed with the Securities and Exchange Commission on January 23, 2007, the “closing date” for the securitized Mortgage Backed Securities Pool was March 9, 2007.

47. All mortgage loans that were intended to be included in the Mortgage Backed Securities Pool had to have been conveyed or assigned to the trust by March 9, 2007.

48. On March 9, 2007, the securitized pool of mortgages was, in essence, and by the terms of the PSA, frozen and additional mortgages could not be transferred into the pool.

49. The PSA specifically states that after the Closing Day and REMICs Startup Day, the “Servicer, the Trustee and the Trust Administrator *shall not accept* any contributions of assets to any Trust REMIC....” (emphasis added).<sup>3</sup>

50. The chain of purchases (and thus assignments of mortgages) for the pool of loans in the Trust can be summarized as follows:

- a. From Argent (Originator) to CitiGroup Global (Aggregator), i.e., A to B assignment of the mortgage;
- b. From CitiGroup Global (Aggregator) to CitiGroup Mortgage Loan Trust, Inc. (Depositor), i.e., B to C assignment of the mortgage;
- c. From CitiGroup Mortgage Loan Trust, Inc. (Depositor) to the Trust, i.e., C to D assignment of the mortgage.

***Characteristics of the Loans Owned by the CitiGroup Mortgage Loan Trust***

51. The PSA for the loan pool which includes the Gewecke loan, and the class member loans, is the agreement dated February 1, 2007 between Citigroup Mortgage Loan Trust Inc. as Depositor, Countrywide as Servicer, Citibank, N.A., Trust Administrator and U.S. Bank as Trustee, which relates to Asset-Backed Pass-Through Certificates Series 2007-AMC1. This agreement is available at Docket No. 77 of this case. *See* Goerlitz Affidavit, Ex. 2.

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<sup>3</sup> A REMIC is a “Real Estate Mortgage Investment Conduit,” created pursuant to the Internal Revenue Code §860, that generally shelters transfers of a mortgage pool’s assets from tax liability as the pool is transferred from one trust to another.

52. Each of the mortgages held/owned by the Trust encompassed by this PSA are identified in Schedule 1 to the PSA (“Schedule”). In reference to the list of mortgages in the pool, the Schedule states “[a]s previously filed on March 12, 2007.”

53. A search of the U.S. Securities and Exchange Commission’s EDGAR<sup>4</sup> database of all company filings by “Citigroup Mortgage Loan Trust 2007-AMC1” results in a document called “Free Writing Prospectus” which was filed on March 12, 2007. This is the only result for this Trust with a filing date of March 12, 2007.

54. The Free Writing Prospectus (“Prospectus”) is a list of loans with very specific data for each loan in the Trust.

55. According to the Schedule, the Trust held/owned 7,433 mortgage loans. According to the Prospectus, of this total number of loans, 6,624 were loans originated by Argent Mortgage Company, LLC (“Argent Loans”).

56. According to the data contained in the Prospectus, the significant majority of the Argent Loans were loans that were originated in September 2006, just like the Gewecke loan was. A lesser number of these loans were originated in the several months prior to September 2006 and some in October 2006.

57. According to the data contained in the Prospectus, all of the Argent Loans were serviced by Countrywide.

58. According to the data contained in the Prospectus, of the 6,624 Argent Loans, 3,489 were loans made to borrowers with FICO scores less than 620. A FICO

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<sup>4</sup> EDGAR, the Electronic Data Gathering, Analysis, and Retrieval system, performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with the U.S. Securities and Exchange Commission (“SEC”).

score of less than 620 denotes a riskier, or subprime, borrower, which means a loan with a higher risk of foreclosure. The average FICO score for all of the Argent Loans was 613.903. According to the data contained in the Prospectus, of the 6,624 Argent Loans, 4,667 were adjustable rate mortgages (“ARMs”). Of these ARM loans, 2,427 were subprime (higher risk) loans, and 2,240 were prime loans.

59. According to the data contained in the Prospectus, of the 6,624 Argent Loans, 1,957 loans were fixed rate loans. Of these fixed rate loans, 1,000 were subprime (higher risk) loans, and 957 were prime loans.

60. According to the data contained in the Prospectus, of the 6,624 Argent Loans, 4,667 of them started with a short term “teaser” rate which was a lower rate than the rate for the remaining term of the loan. Loans with teaser rates generally are higher risk because the borrower may not be able to make the higher payments that start a year or two after the closing date of the loan.

61. According to the data contained in the Prospectus, the average interest rate for the Argent Loans was 8.39%, a relatively high interest rate given the historically low mortgage loan interest rates for the time period of the origination of these loans.

62. The characteristics described above for the Argent Loans in the Trust show that this loan pool was a higher risk loan pool and more susceptible to default and foreclosures.

63. Utilizing the Mortgage Bankers Association (MBA) foreclosure statistics for Quarter 1 of 2007 through Quarter 1 of 2011, and based on matching characteristics of the Argent Loans outlined above to the MBA foreclosure statistics for loans of the

same type of characteristics (i.e. risk), of the 6,624 Argent Loans, approximately 2,430 have been foreclosed upon, or are in the process of foreclosure.

64. The above described foreclosures involved the recording of invalid and illegal A to D assignments similar to the invalid and illegal assignment in the Gewecke foreclosure. Attached as Exhibit A are three examples of A to D assignments recorded by Defendants in the Twin Cities metro area in mortgage loans that are part of the Trust, that are or were in foreclosure, and that are class members in this action. Each of these assignments purport to assign a mortgage directly from Argent to U.S. Bank as Trustee for the Trust. Furthermore, each of these assignments is dated after the Close Date of the Trust.

***Origination of Geweckes' Mortgage Loan and Disclosures***

65. The origination of the Geweckes' loan follows the standard pattern and process described above.

66. On or about June 7, 2005, Plaintiffs obtained a refinance loan for the subject property from Argent, in the principal amount of \$135,000. The loan was secured by a mortgage against the Plaintiffs' home and was payable on its face to Argent.

67. Argent is identified as the "lender" on the Mortgage.

68. Approximately one year later, on September 5, 2006, the Plaintiffs refinanced with another loan from Argent. The loan was secured by a mortgage against the Plaintiffs' home and was payable on its face to Argent.

69. Argent is identified as the "lender" on the Mortgage.

***Foreclosure of the Gewecke Mortgage by Advertisement***

70. On or about September 10, 2008, in Stearns County, Minnesota, a representative of U.S. Bank National Association, as Trustee for the Certificateholders CitiGroup Mortgage Loan Trust, Inc. Asset-Backed Pass-Through Certificates Series 2007-AMC1, filed an Assignment of Mortgage dated August 11, 2008, concerning the subject property.

71. No representative or agent of U.S. Bank National Association, as Trustee for the Certificateholders CitiGroup Mortgage Loan Trust, Inc. Asset-backed Pass-Through Certificates Series 2007-AMC1, signed that August 11, 2008 Assignment of Mortgage.

72. On or about October 7, 2008, a foreclosure notice was published in the newspaper stating that the Mortgagee of Plaintiffs' mortgage loan was Argent, and that on August 11, 2008, Argent had assigned the mortgage to U.S. Bank National Association as Trustee for the Certificateholders CitiGroup Mortgage Loan Trust, Inc. Asset-Backed Pass-Through Certificates Series 2007-AMC1.

73. Similarly, on or about October 7, 2008, Defendants personally served Plaintiffs with a copy of a Notice of their intent to foreclose by advertisement. The Notice that was personally served upon the Plaintiffs also stated that the Mortgagee of Plaintiffs' mortgage loan was Argent, and that on August 11, 2008, Argent had assigned the mortgage to U.S. Bank National Association as Trustee for the Certificateholders CitiGroup Mortgage Loan Trust, Inc. Asset-backed Pass-Through Certificates Series 2007-AMC1.



74. The statements made by Defendants in the Assignment of Mortgage dated August 11, 2008 were false.

75. Argent had no interest in Plaintiffs' mortgage loan at the time of its assignment on August 11, 2008.

76. Argent had no interest in Plaintiffs' mortgage loan that it could assign on August 11, 2008.

77. Argent received no valuable consideration on or about August 11, 2008 for the assignment from U.S. Bank National Association as Trustee for the Certificateholders CitiGroup Mortgage Loan Trust, Inc. Asset-Backed Pass-Through Certificates Series 2007-AMC1.

78. CitiGroup Mortgage Loan Trust, Inc. Asset-Backed Pass-Through Certificates Series 2007-AMC1 did not provide any valuable consideration to Argent on or about August 11, 2008.

79. CitiGroup Mortgage Loan Trust, Inc. Asset-Backed Pass-Through Certificates Series 2007-AMC1 does not exist and has never been the name of any actual legal entity.

80. CitiGroup Mortgage Loan Trust, Inc. Asset-Backed Pass-Through Certificates Series 2007-AMC1 is a conflation of two distinct legal entities.

81. CitiGroup Mortgage Loan Trust, Inc. is a Delaware Corporation. It is the "depositor" of assets in the trust, pursuant to the PSA, as well as the registrant for these securities with the Securities and Exchange Commission.

82. CitiGroup Mortgage Loan Trust 2007-AMC1 is the name of the trust, which currently holds a pool of securitized mortgage assets.

83. The Asset-backed Pass-Through Certificates is not a legal entity or part of the name of any legal entity.

84. The sale of both the Geweckes' Mortgage and Note was expressly set forth in the PSA.

85. For example, the purchase agreement between CitiGroup Global and CitiGroup Mortgage Loan Trust, Inc. detailed the assignment of all rights and interests, including the security interests (mortgages):

Seller [CitiGroup Global] does hereby sell, transfer, assign, set over and convey to purchaser [CitiGroup Mortgage Loan Trust, Inc.], without recourse but subject to the terms of this Agreement, ***all of its right, title and interest in, to and under the Mortgage Loans.***

86. The conveyance from depositor/CitiGroup Mortgage Loan Trust, Inc. to the issuer/Trust, further states that it was assigning all interests, including the security interests (mortgages):

The Depositor [CitiGroup Mortgage Loan Trust, Inc.], concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee [CitiGroup Mortgage Loan Trust 2007-AMC1] ***without recourse for the benefit of the Certificateholders all the right, title and interest of [CitiGroup Mortgage Loan Trust, Inc.], including any security interest*** therein for the benefit of the Depositor, in and to the Mortgage Loans identified on the Mortgage Loan Schedule, the rights of the Depositor [CitiGroup Mortgage Loan Trust, Inc.] under the Mortgage Loan Purchase Agreement . . .

87. Even if Argent owned the mortgage on the date of the purported assignment and CitiGroup Mortgage Loan Trust, Inc. Asset-backed Pass-Through Certificates Series

2007-AMC1 were a real legal entity, such an assignment was prohibited by the underlying PSA.

88. According to the Agreement, which was filed with the Securities and Exchange Commission on January 23, 2007, the “closing date” for the securitized Mortgage Backed Securities Pool was March 9, 2007.

89. All mortgage loans that were intended to be included in the Mortgage Backed Securities Pool must have been conveyed or assigned to the trust by March 9, 2007. Therefore, the purported assignment was about a year and a half too late to be valid.

90. On March 9, 2007, the securitized pool of mortgages was, in essence, and by the terms of the PSA, frozen. Additional mortgages could not be transferred into the pool.

91. The PSA specifically states that after the Closing Day and REMICs Startup Day, the “Servicer, the Trustee and the Trust Administrator *shall not accept* any contributions of assets to any Trust REMIC....” (emphasis added).

92. If Plaintiffs’ mortgage loan is a part of the Trust, then Argent had no interest to assign and could not, in fact, assign Plaintiffs’ mortgage loan directly to the Trust.

93. All assets in the Trust were purchased by CitiGroup Mortgage Loan Trust, Inc. directly from CitiGroup Global by the Close Date of March 9, 2007. These assets were then purchased by the Trust from CitiGroup Mortgage Loan Trust, Inc. None of the securitized mortgage pool’s assets were purchased by the trust directly from Argent.

94. If Plaintiffs' mortgage loan is owned by the Trust, then there have to be multiple unrecorded and unnoticed assignments of Plaintiffs' mortgage loan.

95. There is no endorsement on Plaintiffs' mortgage loan that reflects a transfer of interests in the mortgage loan from Argent to another entity.

***Challenging U.S. Bank's Status As A Creditor***

96. U.S. Bank, as trustee for a purported entity called Mortgage Loan Trust, Inc. Asset-backed Pass-Through Certificates Series 2007-AMC1, has not established that it owns any interest in Plaintiffs' mortgage loan.

97. The Assignment of Mortgage that was filed with Stearns County is a sham for the reasons stated in the above paragraphs and incorporated herein by reference, including, but not limited to, failure to have all parties to the assignment of real property sign the written agreement, lack of consideration, and/or the assignor did not have any interest in the property at the time of the assignment.

98. Until U.S. Bank as Trustee can produce executed copies of all assignments demonstrating the proper chain of title and all ownership interests in Plaintiffs' mortgage loan as well as explain the direct contradictions between the Pooling and Servicing Agreement and the assignment recorded by the foreclosing attorney, it has not satisfied the statutory prerequisites to foreclose by advertisement.

***Joint Venture***

99. A joint venture is created when two or more persons combine their money, property, time, or skill in a particular business enterprise and agree to share jointly, or in

proportion to their respective contributions, in the resulting profits and, usually, in the losses.

100. In this case, all four elements of a joint venture are present between U.S. Bank as Trustee, the Trust, and Countrywide.

101. First, Argent, U.S. Bank, the Trust, and Countrywide all contributed their money, time, and skill in the common undertaking of originating mortgage loans, pooling these mortgage loans, and securitizing these loans.

102. Second, there is a proprietary interest and right of mutual control over the process and procedure originating and securitizing these mortgage loans, and ultimately servicing the mortgage loans.

103. The rules and mutual collaboration are articulated in the underlying PSA.

104. Third, there is a direct sharing of profits as part of the agreement. Everybody gets paid for their role, and, if something goes wrong, they all will lose money or be forced to buy back a mortgage loan.

105. Countrywide does not simply get paid a flat fee. Instead, Countrywide, in exchange for servicing the mortgage loans, receives a percentage of the performing loans that it is servicing. It has a direct stake in maintaining the performance and profit from the pool of mortgage loans.

106. Fourth, as stated above, the Pooling and Servicing Agreement is an express broker agreement among the parties.

***RICO Allegations***

107. Each Defendant used an enterprise or enterprises distinct from itself to deprive Plaintiffs and the class of money through a pattern of racketeering activity.

108. For instance Defendant U.S. Bank used the Trust, Countrywide, and Argent as enterprises to deprive Plaintiffs and the class of money through mail and wire fraud. Defendant CitiGroup Mortgage Loan Trust 2007-AMC1 (the Trust) used U.S. Bank, Countrywide, and Argent as enterprises for the same purpose. Defendant Countrywide used U.S. Bank, the Trust, and Argent as enterprises for the same purpose. All of the enterprises described in this paragraph are an “individual, partnership, corporation, association, or other legal entity” and are therefore valid enterprises within the definition of § 1961(3) of the RICO Act.

109. In the alternative, the three Defendants formed an association in fact enterprise. The three Defendants have functioned as a unit together for years for the common, lawful purpose of servicing mortgage loans and initiating mortgage foreclosures. Unfortunately, the three Defendants have also used this arrangement to deviate into the common purpose of initiating foreclosure proceedings through false assignments and obtaining fees and money that they are not entitled to through such foreclosure proceedings, as described herein.

110. Each Defendant was and is responsible for operating and managing the business affairs of the enterprises described herein.

111. For instance, as alleged herein, Defendant U.S. Bank as Trustee directed and authorized the Trust to foreclose against unwitting victims, such as Plaintiffs, through

improper means (described herein.) U.S. Bank also directed Countrywide, as servicer of the loans, to impose and collect improper fees in connection with the false foreclosures. U.S. Bank itself was responsible for filing the false mortgage papers to effectuate the false foreclosures, and directed Argent to falsely assign mortgage rights it did not have.

112. Defendant CitiGroup Mortgage Loan Trust 2007-AMC1 (the Trust) directed Countrywide as the servicer of its mortgages and Argent as the sham “owner” of the mortgage rights to file false papers and collect money from unwitting victims, such as Plaintiffs. Defendant CitiGroup Mortgage Loan Trust 2007-AMC1 also collected proceeds of the scheme and distributed the money to participants.

113. Defendant Countrywide directed Argent, as its representative, to execute false documents and Defendant Countrywide then imposed and collected substantial fees in connection with and premised upon false documents.

114. These activities, described above, also describe the manner with which each Defendant conducted the affairs of the association in fact enterprise enumerated herein.

115. In order to foreclose on property belonging to the Plaintiffs and the class, Defendants employed a system that asserted demonstrably false claims, namely, the documentation that Defendants relied upon to effectuate the foreclosure did not show a viable chain of title.

### ***Predicate Acts***

116. Section 1961(1) of RICO provides that “racketeering activity” includes any act indictable under 18 U.S.C. §1341 (relating to mail fraud) and 18 U.S.C.

§1343(relating to wire fraud). As set forth below, Defendants have engaged, and continue to engage, in conduct violating each of these laws to effectuate their scheme.

**Violations of §1341 and §1343, Mail and Wire Fraud**

117. For purposes of executing and/or attempting to execute the above described scheme to fraudulently foreclose upon Plaintiffs' and the class members' property, the Defendants, in violation of 18 U.S.C. §1341, placed or caused to be placed in post offices and/or in authorized repositories matter and things to be sent or delivered by the Postal Service, caused matter and things to be delivered by commercial interstate carrier, and received matter and things from the Postal Service or commercial and interstate carriers, including but not limited to falsified, fraudulent, and legally defective documents.

118. For the purposes of executing and/or attempting to execute the above described scheme to fraudulently foreclose upon Plaintiffs' and class members' property by means of false pretenses, representations or promises, Defendants, also in violation of 18 U.S.C. § 1343, transmitted and received by wire, and caused to be transmitted and received by wire, matter and things which include but are not limited to falsified documents.

119. The practices described in this complaint could not have occurred without the use of the U.S. Mail and various wires including telephones and the Internet. The overwhelming majority of the evidence of these mailings and wires are in the possession of the Defendants and are not public documents. However, specific instances of such fraudulent mails and/or wires regarding the Geweckes' mortgage include the following:



- a. On August 9, 2008, Countrywide in Texas contacted its attorneys at Peterson, Fram and Bergman in Minnesota and directed its attorneys to draft a false Assignment.
- b. Upon information and belief, based upon the electronic loan file, on or about August 23, 2008, Countrywide in Texas sent a foreclosure letter to Plaintiffs by U.S. Mail.
- c. Shortly after August 11, 2008, upon Countrywide 's request and direction, Peterson, Fram and Bergman caused to be sent from Minnesota to Texas a draft Assignment of Mortgage to Countrywide in Texas.
- d. On August 19, 2008 an unknown employee or agent of Countrywide executed the Assignment of Mortgage as a representative of Argent, and then the executed Assignment of Mortgage was caused to be sent by overnight mail from Countrywide in Texas to Peterson, Fram and Bergman in Minnesota on August 21, 2008.
- e. On or about March 7, 2008, March 24, 2008, May 1, 2008, June 2, 2008, June 26, 2008, August 4, 2008, August 25, 2008, October 7, 2008, October 30, 2008, December 2, 2008, January 1, 2009, January 22, 2009, and March 6, 2009 Countrywide in Texas contacted a property inspector in Minnesota , which caused an inspection to occur and fees to be charged Plaintiffs based upon a fraudulent assignment and improper foreclosure. Each inspection

was \$14 to \$15, and it is believed that these inspection fees continue to be charged to the Plaintiffs' account.

f. On or about the following dates, Countrywide in Texas directed the following foreclosure conduct to occur in Minnesota which caused fees to be charged to Plaintiffs' account based upon a fraudulent assignment and improper foreclosure:

- i. On March 12, 2009, an attorney/trustee fee was charged to Plaintiffs' account in the amount of \$560 based upon a fraudulent assignment and the initiation of an improper foreclosure by advertisement;
- ii. On March 12, 2009, foreclosure costs in the amount of \$92 were charged to Plaintiffs' account based upon a fraudulent assignment and the initiation of an improper foreclosure by advertisement; it is unclear what work was done that warranted a \$92 charge;
- iii. On March 12, 2009, Countrywide in Texas contacted a process server in Minnesota to serve Plaintiffs with foreclosure documents based upon a fraudulent assignment and then charged Plaintiffs \$100 in fees;
- iv. On or about March 12, 2009, Countrywide in Texas caused to be published a notice of foreclosure based upon a fraudulent

assignment and then charged Plaintiffs \$2,304 in fees for these foreclosure costs.

- g. On or about August 21, 2008, Countrywide executed a notice of pendency and power of attorney to foreclose based upon a false and fraudulent assignment and sent these documents by overnight mail from Texas to Minnesota.
- h. On or about March 25, 2009, Countrywide had an affidavit signed by Marsh Iokepa that contains false statements related to the ownership and transfer of the mortgage loan, and then Countrywide caused that affidavit to be sent from Texas to Countrywide's counsel in Minnesota.

120. Other matter and things Defendants sent or caused to be sent through or received from the Postal Service, commercial carrier, or interstate wire transmission include information or communications in furtherance of or necessary to effectuate the scheme.

121. The Defendants' misrepresentations, acts, or omissions and failures to disclose were knowing and intentional, and made for the purpose of deceiving the Plaintiffs, the class and others, and obtaining fees in relation to processing as many foreclosure proceedings as possible, as well as obtaining interest in, and possession of, the subject properties, whether those proceedings were proper and valid or not.

122. Defendants either knew or recklessly disregarded the fact that the misrepresentations and omissions described above were material, and Plaintiffs, the

Class, and others relied on the misrepresentations and omissions as set forth herein. By way of example only, the county registers and other bureaus where Defendants filed and caused to be filed false mortgage papers relied on Defendants' misstatements that the papers were genuine and accurate.

123. As a result of the misconduct described herein, the Defendants have deprived Plaintiffs of approximately \$3,100 in fees and costs associated with the false foreclosure proceedings against the Plaintiffs' property.

***Pattern of Racketeering Activity***

124. Defendants' predicate activity has formed an open ended pattern, which began in approximately 2004, continues to this day, and threatens to continue indefinitely into the future. Defendants engaged in a "pattern of racketeering activity," as defined by 18 U.S.C. §1961(5), by committing at least two acts of racketeering activity, i.e., indictable violations of 18 U.S.C. §1341 and §1343 as described above, within the past ten years. Each of these acts of racketeering activity was related, had a similar purpose, involved the same or similar participants and methods of commission, had similar results and impacted similar victims, including Plaintiffs and Class members. Defendants' predicate acts were all related in that they had the same purpose of advancing improper foreclosures through a similar means and modality (described herein). Defendants' predicate acts also targeted the same types of victims, largely unwitting homeowners, such as Plaintiffs, who were unsophisticated with the foreclosure process and lacked the understanding and/or means to challenge the process.

### **CLASS ACTION ALLEGATIONS**

125. Plaintiffs bring this action against Defendants pursuant to Rule 23(a), 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all other persons similarly situated. Plaintiffs seek to represent the following Class:

All individuals in the United States of America who have or had a mortgage loan originated by Argent related to a residential property, and (1) the mortgagee of public record immediately prior to the initiation of foreclosure proceedings was Argent, and (2) the mortgage loan is or was serviced by Countrywide Home Loans, Inc., and (3) the foreclosure by action or advertisement was initiated at any time prior to the conclusion of this action based upon a recorded assignment from Argent directly to CitiGroup Mortgage Loan Trust 2007-AMC1 (the Trust).

Excluded from the above definition are mortgage loans in which Mortgage Electronic Registration Systems, Inc. ("MERS") was ever made the mortgagee of public record as nominee for the original lender's successors and assigns.

### **NUMEROSITY**

126. The individual Class members are so numerous that joinder of all members is impracticable. The Class, upon information and belief, consists of thousands of homeowners, who can be identified in the business records maintained by the Defendants. The precise number of Class members can be obtained through discovery but the number is clearly more than can be consolidated in one complaint and impractical for each injured homeowner to bring suit individually.

127. According to the information contained in Schedule 1 of the PSA, the Trust owns 7,434 loans in its portfolio. Of these loans, 6,624 are Argent Loans.

128. Based on publicly available industry data regarding foreclosures in the United States, and based on matching risk characteristics of the Argent Loans to the data available for loans with the same type of risk characteristics (see ¶¶ 55-63) approximately 2,430 loans have been foreclosed upon or are in the process of foreclosure.<sup>5</sup> This number will continue to grow.

129. Because all of the loans in the Trust went through the same securitization process, each of those mortgage loans followed the same securitization process as the Geweckes' mortgage loan.

130. All of the mortgage loans in the Trust were treated the same way when they were transferred from Originator to Aggregator to Depositor to the Trustee of the Trust.

131. Upon information and belief, a false and illegal A to D assignment was created for each of the mortgage loans in the Trust for which foreclosure has been initiated.

132. For example, in a few counties alone (and only looking at a short period of time), Plaintiffs have identified three of these illegal and invalid assignments of mortgage related to the foreclosure of mortgages of class members other than the Geweckes. *See* ¶ 64 and Exh. A.

133. Joinder of several thousand class members is impracticable.

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<sup>5</sup> Plaintiffs are not aware of any loans in the Trust where MERS was the mortgagee of public record. However, even if 50-60% of these loans were MERS loans, that would still leave over 1,000 loans in the class definition. Joinder of over 1,000 loans is impracticable and a class action is appropriate.

134. Plaintiffs do not anticipate any difficulties in the management of the action as a class action. Each of the mortgages involve the same Originator, the same securitization process into the same Trust, and the same illegal foreclosure scheme.

### **COMMONALITY**

135. This case raises common questions of law and fact. These common questions predominate over any questions that go particularly to any individual member of the Class. Among such common questions of law and fact are the following:

- a. Whether A to D assignments, such as the assignments of mortgage described above, are incorrect, false, illegal and/or invalid;
- b. Whether a foreclosure that is premised upon the recording of an A to D assignment is invalid or illegal;
- c. Whether fees Defendants charged in connection with illegal or invalid foreclosures are themselves illegal and therefore could not be charged;
- d. Whether Defendants participated in a scheme to defraud or obtain Plaintiffs' and the Plaintiff Class's property by means of false pretenses, representations or promises, in violation of 18 U.S.C. §1341 and 18 U.S.C. §1343;

### **TYPICALITY**

136. Plaintiffs are members of the Class. They have been subjected to the same illegal acts of the Defendants as the rest of the class. Plaintiffs' claims are typical of the claims of the Class because of the similarity, uniformity, and common purpose of the

unlawful conduct of the Defendants. The Geweckes' mortgage loan was one of 6,624 Argent Loans held by the Trust. Each mortgage loan was securitized in the same way, as described above. Each mortgage loan was sold from Argent to CitiGroup Global to CitiGroup Mortgage Loan Trust, Inc., and finally to the Trust.

137. In order to foreclose upon any of these loans, the servicer recorded an assignment from Argent to U.S. Bank as Trustee of the Trust, just as was done in the Gewecke foreclosure .

138. Each of these foreclosure proceeding were premised upon a false, illegal and invalid assignment.

139. Each class member was charged fees in violation of their mortgage loan contracts in foreclosure proceedings arising out of such false, illegal and invalid assignments of mortgage.

140. The Geweckes are typical of every other class member.

#### **ADEQUACY OF REPRESENTATION**

141. Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in litigation of this nature, to represent them. There is no hostility between Plaintiffs and the unnamed Class members.

142. Plaintiffs have participated fully in the litigation of this action and will continue to do so.



143. Plaintiffs have chosen the class action law firms of Crowder Teske, PLLP, Gustafson Gluek PLLC, and Zimmerman Reed, PLLP along with the Housing Preservation Project, to represent them in this matter. Crowder Teske, PLLP, Gustafson Gluek PLLC and Zimmerman Reed, PLLP are very experienced in class action litigation. They also have the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation. The Housing Preservation Project has extensive expertise with consumer and foreclosure law.

**REQUIREMENTS OF FEDERAL RULE OF CIVIL PROCEDURE RULE 23(b)(2)**

144. Defendants have acted or refused to act on grounds that apply generally to the Plaintiff Class, so that final injunctive relief and/or corresponding declaratory relief are appropriate for the class.

145. Defendants have engaged in, and continue to engage in, the scheme described throughout this Complaint of initiating foreclosure proceedings and foreclosing on property through the use of invalid, illegal, and/or incorrect assignments of mortgages, utilizing A to D assignments, recorded in the county recorder's offices, as well as the use of other documentation and/or affidavits that contain incorrect and invalid information and/or attestations. Corresponding injunctive or declaratory relief is appropriate in this regard, too.

146. Without declaratory or injunctive relief, each class member will be subjected to the same illegal actions of the Defendants and will have to litigate the same issues and claims in each of their foreclosures.

147. Judicial economy and efficiency are served by providing for declaratory or injunctive relief in this case.

**REQUIREMENTS OF FEDERAL RULE OF CIVIL PROCEDURE 23(b)(3)**

148. The questions of law and fact common to the claims of Plaintiff and the Class predominate over any questions of law or fact affecting only individual members of the Class. All claims by Plaintiffs and the Class members are based on the same basic scheme as described in this Complaint.

149. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there may be some individual damage determinations. Once the predominant legal and fact questions are decided, for example the legality of an A to D assignment, each class member can decide whether to seek further individual relief, apart from this lawsuit, in the courts of his or her state. Also, the amount of illegal fees that were charged can be determined for each mortgage loan file.

150. Where, as in this case, the liability issue is common to the Class, common questions predominate over individual questions.

**SUPERIORITY**

151. A class action is superior to thousands of individual actions in part because of the following non-exhaustive factors:

- a. Joinder of all Class members would create extreme hardship and inconvenience for the affected persons as they reside all across the country.

- b. Individual claims by the Class members are impractical because the overwhelming majority of the class members do not have the opportunity to obtain legal representation in regard to the issues involved in this case due to economic hardship and inability to retain counsel on a contingency or pro bono basis. Upon information and belief, over 90% of homeowners in foreclosure are not able to retain counsel to investigate and bring their claims against Defendants to light. Low-cost or free legal services organizations have been overwhelmed by the unprecedented need for their services by homeowners across the country. Due to the above reasons the majority of homeowners affected by Defendants' illegal actions will not be able to challenge those illegal actions in a court of law. The interests of justice will be well served by resolving the common disputes of potential Class members in one forum.
- c. Even if class members were able to find legal representation, individual suits would not be cost effective or feasible.
- d. The action is manageable as a class action. There are identical parties, common illegal practices, and a limited number of class members (who can be readily identified).

**LEGAL CLAIMS**

**CLASS LEGAL CLAIMS**

**COUNT I**

**VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT  
ORGANIZATIONS (RICO) ACT  
18 U.S.C. §§ 1961-1968**

152. Plaintiffs incorporate all other paragraphs in this Complaint by reference herein.

153. In violation of 18 U.S.C. §1962(c), Defendants have, as set forth above, conducted, or participated in the conduct of an enterprise through a pattern of racketeering activity and through the use of wire and mail.

154. In violation of 18 U.S.C. §1962(d), Defendants have, as set forth above, conspired to violate 18 U.S.C. §1962(c) by conducting, or participating directly or indirectly in the conduct of the affairs of the Enterprise through a pattern of racketeering activity through the use of wire and mail.

155. As a direct and proximate result, Plaintiffs and class members have been injured in their business or property by both the predicate acts which make up the Defendants' patterns of racketeering activity and their investment and reinvestment of income therefore to operate, expand, and perpetuate their scheme through the use of the wires and mail.

156. Plaintiffs and the plaintiff class request the following relief:

- a. All damages provided under RICO;
- b. Costs and attorneys' fees;

- c. Declaratory, equitable and injunctive relief; and
- d. Such other and further relief as this Court deems appropriate.

**COUNT II  
INVALID AND LEGALLY INEFFECTIVE ASSIGNMENTS,  
DOCUMENTATION, AFFIDAVITS  
DECLARATORY RELIEF**

157. Plaintiffs incorporate all other paragraphs in this Complaint by reference herein.

158. 28 U.S.C.A §2201 et seq., the Declaratory Judgment Act, provides that “any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

159. Defendants engaged in, and continue to engage in, the scheme described throughout this Complaint of initiating foreclosure proceedings and foreclosing on property through the use of invalid, illegal, and/or incorrect assignments of mortgage, including A to D assignments, recorded in the county recorder’s offices, as well as the use, in the foreclosure process, of other documentation and/or affidavits that contain incorrect and invalid information and/or attestations.

160. Said scheme and practices of Defendants utilizing illegal, invalid, and/or incorrect assignments of mortgage, and other similar documents or affidavits, result in depriving homeowners of their property and Plaintiffs ask that the herein described incorrect and/or invalid assignments, affidavits and similar documentation be declared illegal and of no force.

161. Plaintiffs request declaratory relief as described above and all other relief deemed appropriate by the Court.

**COUNT III  
BREACH OF CONTRACT**

162. Plaintiffs incorporate all other paragraphs in this Complaint by reference herein.

163. In this case, a contract existed between Plaintiffs and Argent, and its successors and assigns, including, but not limited to, Defendants U.S. Bank as Trustee and Countrywide Home Loans, Inc. as its agent and servicer.

164. A contract requires an offer, acceptance, and consideration. In this case, the offer, acceptance and consideration were memorialized in the Mortgage and Note, as well as any riders or addenda between Plaintiffs and Argent.

165. The contract provides that Plaintiffs are only liable for fees “in connection with Borrower’s default, for the purpose of protecting Lender’s interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys’ fees, property inspection and valuation fees.”

166. Upon information and belief, the contracts of the plaintiff class contain similar, if not the same, provisions in regard to the type of fees that may be charged by Defendants.

167. Upon information and belief, Defendants U.S. Bank as Trustee and Countrywide Home Loans, Inc. as its agent and servicer charged Plaintiffs and the class

attorneys' fees, property inspection and valuation fees that were not only illegal, but also were not bona fide and reasonable.

168. In further breach of the contract, Defendants U.S. Bank as Trustee and Countrywide Home Loans, Inc. as its agent and servicer, charged Plaintiffs and the class attorneys' fees, property inspection and valuation fees that were not for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument.

169. Instead, the alleged default was used as a pretext to charge Plaintiffs and the class fees and simply provide a revenue stream and profit for the servicer, Countrywide Home Loans, Inc.

170. Defendants also charged the above described fees in connection with foreclosures that were invalid and illegal, thereby breaching their contracts with Plaintiffs and the class members.

171. As a result of Defendants U.S. Bank as Trustee and Countrywide Home Loans, Inc. breach of contract, Plaintiffs request the following relief as against these parties:

- a. Actual and consequential damages sustained by Plaintiffs;
- b. Attorneys' fees and costs; and
- c. Such other and further relief as this Court deems appropriate.

172. Upon information and belief, the class endured the same excessive fees and/or illegal fees in connection with illegal foreclosures.

**GEWECKES' INDIVIDUAL CLAIMS**

**COUNT IV  
AVOID THE NOTICE OF SHERIFF'S SALE  
DECLARATORY RELIEF**

173. Plaintiffs reallege all prior paragraphs of this Complaint.

174. Minnesota Statute §582.25 sets forth the various grounds that a homeowner can use to set aside a foreclosure by advertisement, provided that the action to set aside is taken within one year of the end of the six month redemption period. These grounds to set aside the foreclosure by advertisement include, but are not limited to, the following:

- a. The Defendants failed to state the names of one or more of the assignees of the mortgage and described the subscriber thereof as mortgagee instead of assignee;
- b. The Defendants failed to state or incorrectly stated the name of the mortgagee, or assignee of mortgagee; and/or
- c. The date of the mortgage or any assignment thereof or the date, the month, the day, hour, book, and page, or document number of the record or filing of the mortgage or any assignment thereof, in the office of the county recorder or registrar of titles is omitted or incorrectly or insufficiently stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments.

175. In this matter, the Sheriff's Sale has not occurred, but a Notice to Foreclose by Advertisement was published in the newspaper and served on Plaintiffs.



176. Plaintiffs state that this notice, both served and published, failed to state the names of one or more of the assignees; failed to state or incorrectly stated the name of the mortgagee or assignee of mortgagee; failed to state the proper amount due; and/or the assignment of the mortgage loan is omitted from or misstated in the notice of sale, foreclosure papers, affidavits and/or instruments.

177. Defendants also failed to satisfy the statutory prerequisites for foreclosure by advertisement, specifically recording all assignments and, upon information and belief, failure to state the proper amount due.

178. As a result of Defendants' failure to comply with Minnesota's Foreclosure by Advertisement statute, Plaintiffs request the following relief:

- a. Set aside the previous publication of the intent to foreclose;
- b. Injunctive relief; and
- c. Such other and further relief as this Court deems appropriate.

**COUNT V  
STANDING AND STATUS AS A CREDITOR  
DECLARATORY RELIEF**

179. Plaintiff incorporates herein the above paragraphs by reference.

180. Minnesota Statute §555.01 provides the court authority to:

[D]eclare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

181. Minnesota Statute § 555.02 and 555.03 further expressly grants the court the right to construe contracts and the rights and duties under each contract, either before or after a breach has occurred.

182. Plaintiffs request that the Court declare the Assignment of Mortgage dated August 11, 2008 as void. Argent did not have any interest to assign on August 11, 2008, and/or no valuable consideration was given to Argent in exchange for the mortgage loan. The Assignment of Mortgage is also not endorsed or signed by both parties to the transaction.

183. The Assignment of Mortgage dated August 11, 2008 was a document filed to make it appear as though there was a clear chain of title, but the information contained in the document was not true.

184. As a result of Defendant's conduct, Plaintiffs request injunctive relief from the Court, holding that Defendant US Bank as Trustee shall file a release with the Stearns County Recorder as it relates to the August 11, 2008 Assignment of Mortgage and cease any further collection efforts based upon that assignment.

**COUNT VI**  
**FAILURE TO RECORD ALL ASSIGNMENTS**  
**DECLARATORY RELIEF**

185. Plaintiff incorporates herein the above paragraphs by reference.

186. Minnesota Statute §555.01 provides the court authority to:

[D]eclare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect;

and such declarations shall have the force and effect of a final judgment or decree.

187. Minnesota Statute §555.02 and §555.03 further expressly grants the court the right to construe contracts and the rights and duties under each contract, either before or after a breach has occurred.

188. Upon information and belief, there are two or more unrecorded assignments related to Plaintiffs' mortgage loan.

189. Plaintiffs request that the Court declare that Defendants have not satisfied the pre-requisites to foreclose by advertisement, pursuant to Minnesota Statute §580.02. Specifically, Minnesota Statute §580.02(3) states that no foreclosure by advertisement may be commenced without first recording the mortgage and "if it has been assigned, that all assignments thereof have been recorded; provided, that, if the mortgage is upon registered land, it shall be sufficient if the mortgage and all assignments thereof have been duly registered."

190. Defendants have not complied with Minnesota Statute § 580.02(3), and, therefore, the Plaintiffs further request that the Court enjoin Defendants from commencing a foreclosure by advertisement.

## **COUNT VII SLANDER OF TITLE**

191. Plaintiff incorporates herein the above paragraphs by reference.

192. A claim for slander of title exists if:

- a. That there was a false statement concerning the real property owned by the plaintiff;

- b. That the false statement was published to others;
- c. That the false statement was published maliciously;
- d. That the publication of the false statement concerning title to the property caused the plaintiff pecuniary loss in the form of special damages.

193. In this case, Defendants made a false statement concerning the real property owned by Plaintiffs. Specifically, Defendants entered into a joint venture and partnership with one another to originate, securitize, and service mortgage loans.

194. As part of Defendants' joint venture, the Defendants conspired to create a false chain of title through the fraudulent assignment of Plaintiffs' mortgage loan. Defendants created this false chain of title because it was easier and less expensive than recording, tracking, and properly assigning the billions of dollars of mortgage loans that were being securitized.

195. Attached as Exhibit B is an assignment of Plaintiff's mortgage loan, dated August 11, 2008.

196. Exhibit B is not attached to Plaintiff's actual mortgage or note.

197. The information contained in Exhibit B, the August 11, 2008 assignment of Plaintiffs' mortgage loan, is not and was not true at the time it was filed by Defendants.

198. The false assignment was then published maliciously. Specifically, the assignment was publicly recorded even though it was not valid and in disregard to the facts. At best, the assignment was sloppily and carelessly prepared without regard to the law.

199. Indeed, Defendants Countrywide, US Bank, and the securitized Trust's own electronic loan file clearly contradicts their own assertion that Argent had the right to assign the mortgage when the electronic file states that the previous owner of the mortgage loan was CitiGroup Global not Argent.

200. Attached as Exhibit C are the first two pages of the Plaintiffs' electronic loan file, which was produced by Defendant US Bank in the prior bankruptcy proceedings. On the top of the second page of Exhibit C, the Plaintiffs' loan file states: "Previous Owner Name: CITIGROUP GLOBAL"

201. The false claims made within the assignment, namely that Argent assigned a mortgage loan directly to the securitized trust, was also published in the newspaper as part of a foreclosure action.

202. Attached as Exhibit D is a copy of an assignment of Plaintiffs' mortgage loan dated September 11, 2006.

203. Exhibit D states that Argent ceased having any interest in the property on September 11, 2006. Therefore, it could not have assigned the mortgage as stated in Exhibit B or received consideration for such an assignment from the securitized trust.

204. Argent purportedly already received payment of \$10 on or about September 11, 2006 from CitiGroup Global.

205. Moreover, Defendants Countrywide, US Bank, and the securitized Trust then used Exhibit B, the fraudulent assignment, to collect inflated and unsubstantiated fees in pursuing an unlawful foreclosure.

206. The publication of the fraudulent and false assignment, dated August 11, 2008, has caused the Plaintiffs pecuniary loss in the form of special damages. Specifically, Plaintiffs have:

- a. Incurred costs and liabilities associated with this pending declaratory judgment action/quiet title action, such as filing fees, service of process fees, and potentially expert witness fees;
- b. Incurred travel costs to attend meetings with their counsel, court hearings, and time away from work; and
- c. Incurred medical costs associated with Mrs. Gewecke's stress-related illnesses. Mrs. Gewecke had few, if any, medical issues prior to Defendants US Bank, Countrywide Home Loans, Inc. and the securitized Trust's attempt to foreclose on Plaintiffs' house. Their conduct caused and/or exacerbated Mrs. Gewecke's medical issues.

207. As a result of Defendants' slander of title, Plaintiffs request the following relief:

- a. Special damages;
- b. Injunctive relief; and
- c. Such other and further relief as this Court deems appropriate.

**COUNT VIII**  
**REAL ESTATE SETTLEMENT PROCEDURES ACT**  
**12 U.S.C. § 2605(e)**

208. Plaintiffs incorporate the above paragraphs by reference herein.

209. 12 U.S.C. § 2605(e) provides that:

If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 20 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

210. 12 U.S.C. § 2605(e)(2)(C)(i) provides that:

Not later than 60 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall—

....  
(C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes—

- (i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and
- (ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

211. Plaintiffs sent a Qualified Written Request, attached as Exhibit E, containing information that allowed Countrywide to identify Plaintiffs and their account.

212. The letter was signed by Plaintiffs attorney, and placed in the United States Mail by a paralegal at the Housing Preservation Project on April 10, 2009.

213. The letter was stamped received by the Customer Service Department at Defendant Countrywide on April 14, 2009.

214. The letter that Plaintiffs sent Countrywide also included a statement providing sufficient detail to the servicer regarding the information sought by Plaintiffs.

215. Defendant Countrywide failed to respond to Plaintiffs Qualified Written Request as proscribed by the Real Estate Settlement Procedures Act.

216. Defendant Countrywide's actions represent multiple, separate violations of 12 U.S.C. § 2605(e) and its related regulations.

217. Defendant Countrywide's conduct, as alleged in this Third Amended Complaint, is part of a pattern and practice of violating 12 U.S.C. § 2605(e).

218. As a result of Defendant Countrywide's violation of the Real Estate Settlement Procedures Act, Plaintiffs request the following relief:

- a. Actual damages in an amount to be determined at trial, 12 U.S.C. § 2605 (f)(1)(A);
- b. Statutory damages in the amount of \$1,000 per violation, because such conduct was part of a pattern and practice of noncompliance, 12 U.S.C. § 2605 (f)(1)(B);
- c. Costs of this action, including reasonable attorney fees as provided under 12 U.S.C. § 2605 (f)(3); and
- d. Such other and further relief as this Court deems appropriate.

**COUNT IX**  
**MINNESOTA MORTGAGE SERVICING STATUTE**  
**MINN. STAT. § 47.205**

219. Plaintiffs incorporate the above paragraphs by reference herein.

220. Minnesota Statute § 47.205, subd. 2(3) provides that a servicer:

[R]espond within 15 business days to a written request for information from a mortgagor. A written response must include the telephone number of the company representative who can assist the mortgagor.



221. Attached as Exhibit E is a true and correct copy of a written request for information to Defendant Countrywide by Plaintiffs.

222. Defendant Countrywide failed to acknowledge receipt of Plaintiffs' written request for information within fifteen (15) days or provide the name and telephone number of the person who could provide the requested information.

223. Defendant Countrywide's actions represent a violation of Minn. Statute § 47.205, subd. 2(3), and were due to its failure to exercise reasonable care.

224. As a result of Defendant Countrywide's violation of Minn. Stat. § 47.205, Plaintiffs request the following relief as a result of the aforesaid violations:

- a. Statutory damages in the amount of \$ 500, Minn. Stat. § 47.205, subd. 4;
- b. Actual damages in an amount to be determined at trial, Minn. Stat. § 47.205, subd. 4;
- c. Costs of this action, including reasonable attorney fees as provided under Minn. Stat. § 58.13, subd. 1(a)(8) and Minn. Stat. § 58.18; and
- d. Such other and further relief as this Court deems appropriate.

**RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request the following relief from this Court:

1. Certify this case as a class action on behalf of the proposed Class as defined herein;

2. Appoint Steven and Tamara Gewecke as class representatives;
3. Appoint the undersigned counsel as counsel for the Class;
4. Grant judgment on all counts herein;
5. Award all damages and remedies allowed under the RICO Act.
6. Award the Class prejudgment interest at the applicable rate for all damages;
7. Award the Class all direct and consequential damages allowed by law;
8. Award the Plaintiff Class all appropriate declaratory, equitable, and injunctive relief;
9. Award the Plaintiff Class their reasonable costs and attorney fees on all claims; and
10. Grant any other further relief that the Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff and the Plaintiff Class demand a jury trial in this action for all claims so triable.

Dated: July 13, 2011

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