

IN THE COMMON PLEAS COURT OF MAHONING COUNTY, OHIO

Sharon Wilborn  
3492 Westpoint Drive  
Columbus, OH 43232,

and

Todd R. Campbell  
734 Hollander Street  
Newark, Ohio 43055,

and

Traci Campbell  
411 Washington Street, Apt. D.  
Newark, Ohio 43055,

and

Delores Huff  
930 W. Indianola Avenue  
Youngstown, Ohio 44511,

and

Daud Obsiyeh, fka  
Abdullahi Jama, by and through his  
legal guardian, Amran Mohamed  
3718 Caracas Drive  
Westerville, Ohio 43081,

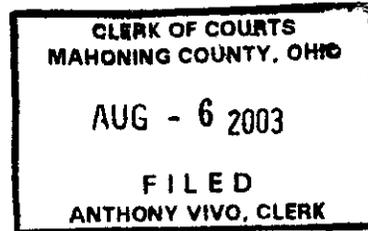
and

Shirley Wright  
22669 Railroad Avenue  
Alliance, Ohio 44601,

and

William J. Wymer  
9395 Cincinnati Zanesville Rd.  
Amanda, Ohio 43102,

and



Case No.: 03 CV 02674  
Judge: Robert G. Lisotto

Julie Wymer  
9395 Cincinnati Zanesville Rd.  
Amanda, Ohio 43102,

and

Darin Distel  
1436 3<sup>rd</sup> Street  
West Portsmouth, Ohio 45662,

and

Amy Beth Distel  
1436 3<sup>rd</sup> Street  
West Portsmouth, Ohio 45662,

and

Bruce D. Beers  
30 North Glenellen Avenue  
Youngstown, Ohio 44509,

Plaintiffs,

vs.

Bank One Corporation  
c/o Statutory Agent  
CT Corporation System  
1300 E. 9<sup>th</sup> Street  
Cleveland, OH 44114

and

Ameriquist Mortgage Company  
A Delaware Corporation  
110 Town and Country Road  
Orange, CA 92868,

and

Chase Manhattan Mortgage Corporation  
c/o Statutory Agent  
CT Corporation System  
1300 E. 9<sup>th</sup> Street  
Cleveland, Ohio 44114,

and

Fidelity Bank,  
c/o Resident Agent  
Clay Bastian  
100 East English  
P.O. Box 1007  
Wichita, Kansas 66202-3747

and

Principal Residential Mortgage, Inc.  
c/o Statutory Agent  
CT Corporation System  
1300 E. 9<sup>th</sup> Street  
Cleveland, Ohio 44114,

and

Wells Fargo Home Mortgage, Inc.  
fka Norwest Mortgage Inc.  
c/o Statutory Agent  
Csc-Lawyers Incorporating Service  
50 West Broad Street  
Columbus, Ohio 43215

and

Washtenaw Mortgage  
c/o Statutory Agent  
Robert Huffman  
3767 Rancho Dr.  
Ann Arbor, Michigan 48108

and

Mortgage Electronic Registration  
System, Inc.  
c/o Statutory Agent  
CT Corporation System  
1300 East Ninth Street  
Cleveland, Ohio 44114

and

Lerner, Sampson & Rothfuss  
A Legal Professional Association  
120 E. Fourth Street, 8<sup>th</sup> Floor  
Cincinnati, Ohio 45201-5480,

Defendants.

**CLASS ACTION COMPLAINT**  
**(Jury Demand Endorsed Hereon)**

**Preliminary Statement**

1. This class action lawsuit involves the illegal collection of attorneys' fees by Defendants, home mortgage lenders and their attorneys (collectively, "Defendants."). For over a century, Ohio law has prohibited the collection of attorneys' fees in connection with a default on, or foreclosure of, a mortgage. Defendants have, nonetheless, for at least the last fifteen years, flouted this rule of law and have had, and continue to have, a standardized practice and procedure of collecting attorneys' fees in connection with mortgage foreclosures. This practice is particularly egregious for it wrongfully deprives – generally poorer – Ohio citizens of thousands of dollars when they are in the most severe financial straits. This action is brought to obtain monetary recovery for those Ohio residents from whom attorneys' fees have been unlawfully collected in connection with mortgage foreclosures and to obtain injunctive relief to halt the practice hereafter.

2. The case is brought pursuant to Ohio Civ. R. 23(A) and (B) on behalf of a Class of individuals (the "Class") consisting of all persons in the State of Ohio who have paid

attorneys' fees to Defendants in connection with a foreclosure on a home mortgage during the last fifteen (15) years (the "Class Period"). Excepted from the Class are Defendants, their affiliates and subsidiaries, and their officers, directors, partners, employees, and agents.

### **The Parties**

3. Plaintiffs bring this action individually, on their own behalf, and on behalf of all persons similarly situated in the State of Ohio. Plaintiff and all members of the Class reside in the State of Ohio.

4. Plaintiff Sharon Wilborn resides at 3492 Westpoint Drive, Columbus, Ohio, a residence for which she is the title owner. On or about, May 28, 1989, Plaintiff Wilborn entered into a home equity loan secured by her residence with Defendant Bank One.

5. Plaintiff Todd Campbell resides at 734 Hollander Street, Newark, Ohio, a residence for which he is the title owner. On October 24, 1997, Plaintiff Todd Campbell entered into a mortgage loan secured by his residence with Defendant Principal Residential Mortgage.

6. At all relevant times hereto, the Plaintiff Traci Campbell resided with her now ex-husband, the Plaintiff Todd Campbell, at 734 Hollander Street, Newark, Ohio, a residence for which she also was a title owner. On October 24, 1997, Plaintiff Traci Campbell entered into a mortgage loan secured by her residence at 734 Hollander Street, Newark, Ohio, with Defendant Principal Residential Mortgage.

7. Plaintiff Delores Huff resides at 930 West Indianola Avenue, Youngstown, Ohio, a residence for which she is the title owner. Plaintiff Delores Huff entered into a mortgage loan secured by her residence with Defendant Ameriquest Mortgage Company.

8. Plaintiff Daud Obsiyeh fka Abdullahi Jama resided at 787 E. Weber Road, Columbus, Ohio, a residence for which he was the title owner. Plaintiff Daud Obsiyeh fka

Abdullahi Jama entered into a mortgage loan secured by his residence with Liberty Mortgage Corporation, which subsequently assigned its interest in the mortgage to the Defendant Fidelity Bank.

9. Plaintiff Shirley Wright resides at 22669 Railroad Street, Alliance, Ohio, a residence for which she is the title owner. On February 26, 1998, Plaintiff Shirley Wright entered into a mortgage loan secured by her residence with Defendant Bank One.

10. Plaintiffs William J. Wymer and Julie Wymer reside at 9395 Cincinnati Zanesville Road, Amanda, Ohio, a residence for which they are the title owners. On April 2, 2001, Plaintiffs William J. Wymer and Julie Wymer entered into a mortgage loan secured by their residence with Jericho Investments Company, which subsequently assigned its interest in the mortgage to the Defendant Chase Manhattan Corporation.

11. Plaintiffs Darin Distel and Amy Beth Distel reside at 1436 3<sup>rd</sup> Street, West Portsmouth, Ohio 45663, a residence for which they are the title owners. On November 12, 2001 Plaintiffs Darin Distel and Amy Beth Distel entered into a mortgage loan secured by their residence with Jericho Investment Co., which subsequently assigned its interest in the mortgage to the Defendant Washtenaw Mortgage Company.

12. Plaintiff Bruce Beers resides at 30 N. Glenellen Ave., Youngstown, Ohio, a residence for which he is the title owner. On March 31, 1998, Bruce Beers entered into a mortgage loan secured by his residence at 30 N. Glenellen Ave., with the Defendant Wells Fargo Home Mortgage, Inc. fka Norwest Mortgage, Inc.

13. Defendant Bank One Corporation, is a corporation incorporated under the laws of the State of Delaware and having its principal place of business at 1 Bank One Plaza, Chicago, Illinois 60670.

14. Defendant Ameriquest Mortgage Company is a corporation incorporated under the laws of the State of Delaware and having its principal place of business at 110 Town and Country Road, Orange, California 92868.
15. Defendant Principal Residential Mortgage is a corporation incorporated under the laws of the State of Delaware and having its principal place of business at 711 High Street, Des Moines, Iowa 50392.
16. Defendant Chase Manhattan Mortgage Corporation is a corporation incorporated under the law of the State of Delaware and having its principal place of business at 270 Park Ave., New York, New York.
17. Defendant Fidelity Bank is a corporation incorporated under the laws of the State of Kansas and having its principal place of business at 100 E. English St, Wichita, Kansas.
18. Defendant Wells Fargo Home Mortgage, Inc. fka Norwest Mortgage, Inc. is a corporation incorporated under the laws of the State of Delaware and having its principal headquarters at 420 Montgomery Street, San Francisco California.
19. Defendant Washtenaw Mortgage Company is a corporation incorporated under the laws of the State of Michigan and having its principal place of business at 3767 Ranchero Drive, Ann Arbor, Michigan.
20. Defendant Mortgage Electronic Registration Systems, Inc. is a corporation incorporated under the laws of the State of Delaware and having its principal place of business at 1595 Spring Hill Rd., Suite 310, Vienna, Virginia.
21. Defendant, Lerner, Sampson & Rothfuss ("Lerner"), is a law firm located in Ohio with its place of business at 120 E. Fourth Street, 8<sup>th</sup> Floor, Cincinnati, Ohio 45201. Lerner is a law firm that has been hired by Defendants Bank One, Chase Manhattan Mortgage Corporation

and Principal Residential Mortgage to bring, and has acted as counsel for, and in coordination with Defendants Bank One, Chase Manhattan Mortgage Corporation, and Principal Residential Mortgage in bringing, mortgage foreclosure actions against Ohio homeowners, including the Plaintiffs Sharon Wilborn, Todd and Traci Campbell, Shirley Wright, and William and Julie Wymer, and Defendant Lerner has also acted as counsel for, and in coordination with, other lenders in bringing mortgage foreclosure actions against Ohio homeowners.

22. As used herein, the term Defendants, or any variation thereof, refers to the specifically named Defendants in this Complaint and any of their affiliates and/or subsidiaries and their officers, directors, partners, employees, or agents.

### **Factual Allegations**

#### **A. Plaintiff Sharon Wilborn**

23. On or about May 25, 1989, the Plaintiff Sharon Wilborn obtained a home equity line of credit from the Defendant Bank One. This loan was secured by a recorded mortgage on her residence. A copy of the mortgage agreement is attached hereto as Exhibit 1.

24. In or about April 2001, the Plaintiff Sharon Wilborn began to fall behind on her mortgage payments. Defendant Bank One instituted collection proceedings against the Plaintiff, and on November 15, 2001 filed a Complaint in Foreclosure, demanding unpaid mortgage payments, interest, attorneys' fees and unaccounted for costs.

25. At Plaintiff Sharon Wilborn's request, the Defendants Lerner and Bank One each provided her pay off statements.

26. Included in the payoff statement provided by Defendant Bank One are attorneys' fees in the amount of Two Thousand Three Hundred and Seventy Five Dollars (\$2,375.00).

27. Defendant Lerner's payoff statement intentionally, recklessly, and knowingly failed to disclose the attorneys' fees incurred in connection with the foreclosure. Plaintiff

believes that the attorneys' fees are included in the "Principal balance, Interest & Net f/c expenses".

28. Plaintiff paid the demanded amounts on the pay-off statement which included the Two Thousand Three Hundred and Seventy Five Dollars (\$2,375.00) as an attorneys' fee. Accordingly, in conjunction with Defendant Lerner, Defendant Bank One assessed the Plaintiff Sharon Wilborn an attorneys' fee in connection with a foreclosure on a mortgage.

**B. Plaintiffs Todd and Traci Campbell**

29. On or about October 24, 1997, the Plaintiffs Todd and Traci Campbell obtained a home mortgage loan from the Defendant Principal Residential Mortgage. This loan was secured by a recorded mortgage on their residence. A copy of the mortgage is attached here to as Exhibit 2.

30. Early in 2000, the Plaintiffs Todd and Traci Campbell began to fall behind on their mortgage payments. Defendant Principal Residential Mortgage instituted collection proceedings against the Plaintiffs, and on September 18, 2000 filed a Complaint in Foreclosure, demanding unpaid mortgage payments, interest, attorneys' fees and unaccounted for costs.

31. At Plaintiffs' request, the Defendant Lerner provided a pay off statement that included "Foreclosure Fees/Costs" of Two Thousand Two Hundred and Twenty-Five Dollars (\$2,225.00). Plaintiffs believe this amount includes, in its entirety or in part, attorneys' fees and, as with Plaintiff Sharon Wilborn's pay off statement from Defendant Lerner, Defendant Lerner's payoff statement for Plaintiffs Todd and Traci Campbell, intentionally, recklessly, and knowingly failed to disclose the attorneys' fees incurred in connection with the foreclosure.

32. Plaintiffs paid the demanded amounts on the pay-off statement, an amount that included the Two Thousand Two Hundred and Twenty-Five Dollars (\$2,225.00), which included, either in part or in its entirety, attorneys' fees. Accordingly, in conjunction with Defendant Lerner, Defendant Principal Residential Mortgage assessed Plaintiffs attorneys' fees in connection with a foreclosure on a mortgage.

**C. Plaintiff Delores Huff**

33. On or about July 23, 1999, the Plaintiff Delores Huff obtained a home mortgage from Ameriquest Mortgage Company. This loan was secured by a recorded mortgage on her residence at 930 W. Indianola Avenue, Youngstown, Ohio. A copy of the mortgage is attached here to as Exhibit 3.

34. In or about the summer of 2000, the Plaintiff Delores Huff began to fall behind on her mortgage payments. On July 21, 2000, Defendant Ameriquest Mortgage Company filed a Complaint in Foreclosure against Plaintiff, demanding unpaid mortgage payments and interest.

35. At Plaintiff's request, a pay off statement was provided to her that included, among other things, attorneys' fees of Eight Hundred Dollars (\$800).

36. On April 2, 2001, Plaintiff entered into a Forebearance Agreement with Defendant Ameriquest Mortgage Company pursuant to which she paid previously unpaid mortgage payments, late charges, appraisal fees, inspection fees, and "Foreclosures Fees & Costs" of Two Thousand Six Hundred Thirty and 10/100 Dollars (\$2,630.10), an amount that Plaintiff believes included the previously separated out payment of attorneys' fees. Accordingly, Defendant Ameriquest Mortgage Company assessed the Plaintiff Delores Huff an attorneys' fee in connection with a foreclosure on a mortgage.

**D. Plaintiff Daud Obsiyeh fka Abdullahi Jama**

37. On or about January 2, 1997, the Plaintiff Daud Obsiyeh fka Abdullahi Jama obtained a home mortgage loan from Fidelity Bank. This loan was secured by a recorded mortgage on his residence at 787 E. Weber Road. A copy of which is attached hereto as Exhibit 4.

38. Early in 2001 the Plaintiff Daud Obsiyeh fka Abdulahi Jama began to fall behind on his mortgage payments. Defendant Fidelity Bank instituted collection proceedings against the Plaintiff, and on September 10, 2001 filed a Complaint in Foreclosure, demanding unpaid mortgage payments, interest, attorneys' fees and unaccounted for costs.

39. On or about September 6, 2002, Plaintiff's home was sold at Franklin County Sheriff's sale.

40. The balance of the proceeds of the sale, less court costs and Sheriff's fees of Six Hundred and Ninety Seven Dollars (\$697.00), were paid to the Defendant Fidelity Bank, and a deficiency judgment was awarded. Included in the amount due and owing was the unpaid principal and interest in the sum of Sixty Six Thousand Nine Hundred Forty One and 81/100 Dollars (\$66,941.81), together with advances for taxes, insurance and "protection" in the amount of Two Thousand One Hundred and Seventy Four and 23/100 Dollars (\$2,174.23), for a total sum due and owing of Sixty Nine Thousand One Hundred Sixteen and 04/100 Dollars (\$69,116.04). Plaintiff believes that the amount set forth above as "protection" includes, in its entirety or in part, attorneys' fees. Accordingly, Defendant Fidelity Bank assessed the Plaintiff Daud Obsiyeh fka Abdulahi Jama an attorneys' fee in connection with a foreclosure on a mortgage.

**E. Plaintiff Shirley Wright**

41. On or about February 26, 1998, Plaintiff Shirley Wright obtained a home mortgage loan from Defendant Bank One, N.A., secured by a recorded mortgage on her residence. A copy of the Mortgage Deed is attached hereto as Exhibit 5.

42. In or about the spring of 2003, the Plaintiff began to fall behind on her mortgage payments and on April 1, 2003, Defendant Bank One, through the law firm of Defendant Lerner, filed a Complaint in Foreclosure, demanding unpaid mortgage payments and interest.

43. At Plaintiff's request, the Defendant Lerner provided a pay off statement that included "Foreclosure Fees and Costs" of One Thousand Seven Hundred and Seventy Five dollars (\$1,775.00). Plaintiff believes this amount includes, in its entirety or in part, attorneys' fees and, as with Plaintiffs Sharon Wilborn and Todd and Traci Campbell's pay off statement from Defendant Lerner, Defendant Lerner's payoff statement for Plaintiff Wright intentionally, recklessly, and knowingly failed to disclose the attorneys' fees incurred in connection with the foreclosure.

44. On or about May 13, 2003, Plaintiff sent to Bank One's servicing agent an amount that included the full One Thousand Seven Hundred and Seventy Five dollars (\$1,775.00) in "Foreclosure Fees and Costs," which included, either in part or in its entirety, attorneys' fees. Accordingly, in conjunction with Defendant Lerner, Defendant Bank One assessed Plaintiff attorneys' fees in connection with a foreclosure on a mortgage.

**F. Plaintiffs William and Julie Wymer**

45. On or about April 2, 2001, Plaintiffs William and Julie Wymer obtained a home mortgage loan from Jericho Investments Corporation, which mortgage was subsequently assigned to the Defendant Chase Manhattan Mortgage Corporation. This loan was secured by a recorded mortgage on their residence. A copy of the note and mortgage agreement is attached hereto as Exhibit 6.

46. In or about June of 2002, the Plaintiffs began to fall behind on their mortgage payments. Defendant Chase Manhattan Mortgage Corporation instituted collection proceedings against the Plaintiffs, and on October 23, 2002 filed a Complaint in Foreclosure, demanding unpaid mortgage payments, interest, attorneys' fees and unaccounted for costs.

47. At Plaintiff's request, the Defendant Lerner provided a pay off statement that included "Foreclosure Fees/Costs" of Two Thousand Two Hundred and Seventy-Three and 23/100 Dollars (\$2,273.25).

48. On or about November 21, 2002, Plaintiffs paid the demanded amounts on the pay-off statement to Defendant Lerner, an amount that included the Two Thousand Two

Hundred and Seventy-Three and 23/100 Dollars (\$2,273.25) as an attorneys' fee. Plaintiffs January 2003 loan statement specifically sets forth this amount as "attorney fees". Accordingly, in conjunction with Defendant Lerner, Defendant Chase Manhattan Mortgage Corporation assessed Plaintiffs attorneys' fees in connection with a foreclosure on a mortgage.

**G. Plaintiff Bruce Beers**

49. On or about March 31, 1998, the Plaintiff Bruce Beers obtained a home mortgage loan from the Defendant Wells Fargo Home Mortgage, Inc. fka Norwest Mortgage, Inc. This loan was secured by a recorded mortgage on his residence. A copy of the mortgage is attached here to as Exhibit 7.

50. During the fall of 2000, the Plaintiff Bruce Beers began to fall behind on his mortgage payments. Defendant Wells Fargo Home Mortgage, Inc. fka Norwest Mortgage, Inc., instituted collection proceedings against the Plaintiff, and on April 20, 2001 filed a Complaint in Foreclosure, demanding unpaid mortgage payments and interest.

51. On February 22, 2002, Plaintiff entered into a Loan Modification Agreement with Defendant Wells Fargo Home Mortgage, Inc., for the modified unpaid principal balance of \$52,435.56, which amount Plaintiff believes includes "attorney costs" of Nine Hundred and Seventeen Dollars (\$917.00). Accordingly, Wells Fargo Home Mortgage fka Norwest Mortgage, Inc. assessed Plaintiff attorneys' fees in connection with a foreclosure on a mortgage.

**H. Plaintiffs Darin and Amy Beth Distel**

52. On or about November 21, 2001, Plaintiffs Darin and Amy Beth Distel obtained a home mortgage loan from Jericho Investments Corporation, which mortgage was subsequently assigned to the Defendants Washtenaw Mortgage Company and Mortgage Electronic Registration System, Inc. This loan was secured by a recorded mortgage on their residence. A copy of the note and mortgage agreement is attached hereto as Exhibit 8.

53. In or about December of 2002, the Plaintiffs began to fall behind on their mortgage payments. Defendant Mortgage Electronic Registration System, Inc., as nominee for Washtenaw Mortgage Company, instituted collection proceedings against the Plaintiffs, and on

May 13, 2003 filed a Complaint in Foreclosure, demanding unpaid mortgage payments, interest, and costs.

54. At Plaintiff's request, a pay off statement was provided which included "Attorney Fees/Costs" of One Thousand Three Hundred and Fifty Dollars (\$1,350.00).

55. On or about November 21, 2002, Plaintiffs paid the demanded amount that included the One Thousand Three Hundred and Fifty Dollars (\$1,350.00) as an attorneys' fee. Accordingly, in conjunction with Defendant Lerner, Defendant Chase Manhattan Mortgage Corporation assessed Plaintiffs attorneys' fees in connection with a foreclosure on a mortgage.

**Defendants' Collection of Attorneys' Fees Is Wrongful**

56. Defendants' actions in collecting attorneys' fees from Plaintiffs and others in connection with mortgage foreclosures violated long-established Ohio law prohibiting the charging of attorneys' fees in connection with the enforcement of a debt upon which a default has occurred. This rule is grounded in Ohio public policy and has specifically been applied to charging attorneys' fees in connection with mortgage foreclosures. Defendants knew or should have known of the rule.

57. The charging of Plaintiffs attorneys' fees in connection with the foreclosure on their mortgages is part of a standardized practice and procedure by Defendants. Defendants routinely act together and in concert in imposing such fees and collecting them from their mortgagors. Defendants Bank One, Ameriquest Mortgage Company, Chase Manhattan Mortgage Corporation, Fidelity Bank, Principal Residential Mortgage, Wells Fargo Home Mortgage, Inc., Washtenaw Mortgage, and Mortgage Electronic Registration System, Inc., have in the past either (A) collected, and today continue to collect, such charges themselves and paid or pay them over to Defendant Lerner or other in-house or outside legal counsel, or (B) these lenders' legal counsel (including Defendant Lerner) have collected and continue today to directly collect such fees themselves from the mortgagors, either when a judgment of foreclosure is obtained or when a reinstatement of the mortgage takes place.

58. Upon information and belief, Defendant Lerner, has also collected, and continue today to collect from mortgagors, attorneys' fees in connection with home mortgage foreclosures for which it acts as counsel for financial institutions other than Defendant Bank One, Defendant Principal Residential Mortgage and Defendant Chase Manhattan.

59. Defendants' practice of collecting attorneys' fees in connection with mortgage foreclosures has wrongfully, and in violation of Ohio law, deprived numerous Ohio mortgagors, who usually are in the most dire of financial straits, of thousands of dollars, and has wrongfully enriched Defendants in the aggregate by millions of dollars. The total amount of damages suffered by Plaintiffs and members of the Class as a result of Defendants' unlawful conduct has not as yet been fully ascertained but will be proven at trial.

60. Unless restrained, Defendants will continue their practice of taking advantage of financially impecunious Ohioans, like Sharon Wilborn, Todd and Traci Campbell, Delores Huff, Daud Obsiyeh fka Abdullahi Jama, Shirley Wright, William and Julie Wymer, Darin and Amy Beth Distel, and Bruce Beers through Defendants' flouting of Ohio law.

61. Plaintiffs seek compensatory damages and/or disgorgement and restitution, as well as injunctive relief on behalf of themselves and all Class members.

#### Class Allegations

62. Plaintiffs bring this action as a Class Action on behalf of themselves and the Class, as defined above, of all persons similarly situated.

63. The Class is so numerous that joinder of all members is impracticable. It is anticipated that the Class consists of more than one thousand (1,000) Ohio consumers. The Class is ascertainable from records maintained by Defendants. Thus, the Class members can be located and notified of the pendency of this action using techniques and a form of notice customarily used in class action litigations.

64. There are questions of law and/or fact common to all Class members. These common questions include, but are not limited to, the following:

- a. Whether Defendants have had a standard practice and procedure of assessing and collecting attorneys' fees from mortgagors in connection with home mortgage foreclosures;
- b. Whether the collection of attorneys' fees in connection with a home mortgage foreclosure is prohibited by Ohio law;
- c. Whether Defendants have acted singly and/or in concert in connection with the collection of attorneys' fees in connection with home mortgage foreclosures;
- d. Whether Defendants Bank One, Ameriquest Mortgage Company, Chase Manhattan Mortgage Corporation, Fidelity Bank, Principal Residential Mortgage, Wells Fargo Home Mortgage, Inc., Washtenaw Mortgage, and Mortgage Electronic Registration have had a practice of assessing and collecting attorneys' fees from mortgagors in connection with home mortgage foreclosures in which they have used counsel other than Defendant Lerner;
- e. Whether Defendant Lerner has assessed and collected attorneys' fees from mortgagors in connection with home mortgage foreclosures where they have acted as counsel for lenders other than Defendants Bank One, Ameriquest Mortgage Company, Chase Manhattan Mortgage Corporation, Fidelity Bank, Principal Residential Mortgage, Wells Fargo Home Mortgage, Inc., Washtenaw Mortgage, and Mortgage Electronic Registration System; and
- f. Whether Ohio law prohibits charging homeowners the attorneys' fees incurred during a foreclosure action and, if so, (i) under what cause(s) of actions can relief be obtained and (ii) whether plaintiffs and the Class are entitled to declaratory and/or injunctive relief in order to cease Defendants' activities in charging homeowners attorneys' fees in connection with foreclosures.

65. The claims of the representative Plaintiffs are typical of the claims of the Class inasmuch as all Plaintiffs are asserting common legal theories of liability based on nearly identical facts.

66. The named Plaintiffs will fairly and adequately assert and protect the interests of the Class pursuant to Civ. R. 23(A) and the named Plaintiffs further claim:

- a. Counsel for the representative party will adequately represent the interests of the Class since Class counsel are experienced in both class actions and consumer litigation and are fully capable of representing the Class;
- b. The representative parties have no conflict of interest in the maintenance of the Class Action; and
- c. The representative party has, or can acquire, adequate financial resources to assure that the interests of the Class will not be harmed.

67. Questions of law and fact common to the members of the Class predominate over questions affecting only individual members of the Class. The predominance of common questions of law and fact and the relative ease with which damages payable to each plaintiff may be computed reduce to a minimum the difficulties likely to be encountered in the management of a class action.

68. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the monetary damages suffered by individual Class members may be relatively small, although significant in the aggregate, the expenses and burdens of individual litigation make it impossible or highly unlikely for the individual members of the Class to redress separately the wrongs which Defendants have done to them.

69. Prosecution of separate actions by individual members of the Class would create a risk of both (a) inconsistent or varying adjudications with respect to individual members of the Class which would confront Defendants with incompatible standards of conduct, and (b) adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members of the Class not party to the adjudications, or substantially impair or impede their ability to protect their interests.

70. To the best of counsel's knowledge, there is presently pending no similar class action lawsuit in Ohio against Defendants for their actions.

**First Cause Of Action (Violation of Ohio Common Law)**

71. The allegations of paragraphs 1-70 are incorporated by reference herein.
72. Plaintiffs bring this claim pursuant to the common law of Ohio.
73. As alleged herein, Defendants have, either singly or in concert, assessed and received, and continue to assess and receive, attorneys' fees from Ohio residents, including Plaintiffs and other members of the Class, in connection with residential home mortgage foreclosures.
74. Defendants' actions are and have been in violation of the public policy of Ohio as expressed in its well-established common law.
75. As a direct and proximate result of Defendants' conduct, Plaintiffs and the other members of the Class have suffered economic loss and, unless enjoined, Defendants will continue to violate Ohio law.
76. This Court is empowered to, and should restore to, Plaintiffs and the other members of the Class all monies wrongfully acquired by Defendants by virtue of their violation of Ohio law and to enjoin Defendants from continuing to violate Ohio law hereafter.

**Second Cause of Action (Unjust Enrichment)**

77. The allegations of paragraphs 1-76 are incorporated by reference herein.
78. By virtue of obtaining attorneys' fees in connection with home mortgage foreclosures in violation of Ohio law, Defendants have been unjustly enriched to the detriment of Plaintiffs and the other members of the Class, as more fully set forth hereinbefore.
79. Defendants' retention of the monies gained through their illegal acts and practices would be unjust considering the circumstances under which they obtained those monies.

80. This Court is empowered to, and should, restore to Plaintiffs and to the members of the Class all monies which Defendants wrongfully acquired by their illegal acts and practices and the Court should enter an order awarding damages in an amount necessary to accomplish complete justice between the parties.

**Third Cause of Action (Civil Conspiracy)**

81. The allegations of paragraphs 1-80 are incorporated by reference herein.

82. In active cooperation with one another, Defendant Lerner combined with Defendants Bank One, Principal Residential Mortgage, and Chase Manhattan Mortgage Corporation conspired to obtain attorneys' fees from Ohio residential mortgage holders whose mortgages these financial institutions held. The activities of these Defendants were deliberate and malicious and designed to deprive Ohio residents of monies to which the Defendants were not legally entitled.

83. Defendants' actions were without a reasonable and lawful excuse.

84. As a direct and proximate result of Defendants' illegal conduct, the Plaintiffs have suffered economic loss and are entitled to compensation for the same from Defendants.

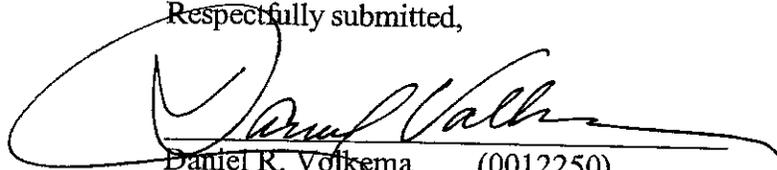
**Prayer for Relief**

**WHEREFORE**, Plaintiffs, on their behalf and on behalf of others similarly situated, pray for judgment against Defendants, jointly and severally, as follows:

- (1) For an Order certifying the Class under the appropriate provisions of Ohio Rule 23;
- (2) For injunctive relief enjoining Defendants from continuing to charge Ohio residents attorneys' fees in connection with residential mortgage foreclosures;
- (3) For compensatory damages in excess of Twenty Five Thousand Dollars (\$25,000.00);

- (4) For Defendants to disgorge to Plaintiffs and the Class the monies which Defendants have illegally obtained;
- (5) For punitive damages in excess of Twenty Five Thousand Dollars (\$25,000.00);
- (6) For pre- and post-judgment interest;
- (7) For attorneys' fees and the cost of this action; and
- (8) For such other and further relief as the Court deems just and proper.

Respectfully submitted,



Daniel R. Volkema (0012250)

Craig P. Scott (0041405)

Janet L. Larkin (0073610)

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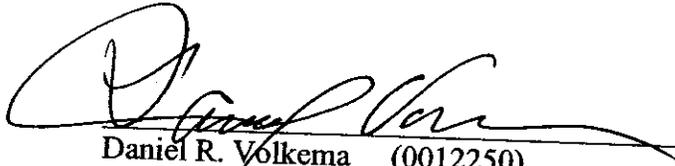
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E-mail : [rossman@nclc.org](mailto:rossman@nclc.org)  
[www.nclc.org](http://www.nclc.org)

*Of Counsel*

Attorneys for Plaintiffs

**JURY DEMAND**

Plaintiffs respectfully demand a trial by a jury of eight (8) persons as to all issues contained herein.



Daniel R. Volkema (0012250)  
Craig P. Scott (0041405)  
Janet L. Larkin (0073610)