

IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

HOWARD N. BIERMAN,
Substitute Trustee, *et al.*,

Plaintiffs,

v.

Case No. 12C11000359

DONNA BOLLING,

Defendant,

DONNA BOLLING

Counter Plaintiff

v.

AMERICAN HOME MORTGAGE
SERVICING INC.

Serve on:
The Corporation Trust
Incorporated, Resident Agent
300 East Lombard Street
Suite 1400
Baltimore, MD 21202

And

HSBC BANK USA, NATIONAL
ASSOCIATION AS TRUSTEE
FOR DEUTSCHE ALT-B
SECURITIES MORTGAGE LOAN
TRUST/SERIES 2006-AB4

Serve on:
The Corporation Trust
Incorporated, Resident Agent
300 East Lombard Street
Suite 1400
Baltimore, MD 21202

Counter Defendants

CLERK OF CIRCUIT CT.
HARFORD COUNTY, MD

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DONNA BOLLING'S COUNTERCLAIMS

AND

JURY DEMAND

Counter-Plaintiff Donna Bolling ("Ms. Bolling"), through her undersigned counsel files these Counterclaims pursuant to the Maryland Rule 1-101(b), 2-331, Md. Code Ann., Real Prop. § 7-105.1(k)(3), and the common law of the State of Maryland and says in support:

I. INTRODUCTION

1. The underlying matter involves just one of several thousands of foreclosures now pending in the State of Maryland concerning new requirements of all secured parties and mortgage servicers in the State enacted by the General Assembly in 2010.
2. These counterclaims concern the utter failure of the counter defendants to comply with Federal and Maryland law related to Ms. Bolling's reasonable and appropriate requests to modify her mortgage loan subject to this action. In addition counter defendant American Home Mortgage Servicing Inc. ("AHMSI") has violated the good faith requirements of its license as a Maryland mortgage lender/servicer by commencing the underlying action based upon false and misleading statements to this Court and Ms. Bolling.
3. Many, but not all, Maryland homeowners facing foreclosure have reasonable and appropriate sustainable solutions to their mortgage situation. Ms. Bolling is one of the Maryland homeowner who *does* have a sustainable solution, yet the counter-defendants, by and through their authorized agents, are attempting wrongfully

foreclose Ms. Bolling's ability to resolve her situation despite her good-faith attempts to do so.

4. Further, if the Counter Defendants and their agents proceed to foreclosure sale of Ms. Bolling's home and property without having complied with Federal and Maryland law, she will sustain significantly more damages and losses as a result through further loss of equity of her home, emotional damages as a result of these proceedings and the Counter Defendant's illegal actions (directly and indirectly through their authorized agents).

II. The Parties

5. Defendant/Counter-Plaintiff Donna Bolling is an individual resident of Harford County who resides at 702 Henderson Road in Bel Air, Maryland 21014 ("the Property").
6. Counter-Defendant American Home Mortgage Servicing Inc. is a Maryland licensed Mortgage lender/servicer (license number 18137). The resident agent for AHMSI is The Corporation Trust Incorporated located at 300 East Lombard Street, Suite 1400 Baltimore, MD 21202. AHMSI is a proper counter-defendant to this action pursuant to Rule 2-331(c).
7. Counter-Defendant HSBC Bank USA, National Association as Trustee for Deutsche Alt-B Securities Mortgage Loan Trust/Series 2006-AB4 ("Deutsche Alt-B") is a mortgage backed security which *claims* to be the proper, legal owner of Ms. Bolling's loan subject to this action. Deutsche Alt-B has retained and expressly authorized AHMSI to service Ms. Bolling's mortgage loan subject to this action and these

Counter-Claims. Deutsche Alt-B rewards AHMSI with commissions and other payments based upon the income AHMSI collects on its behalf.

8. Not named as parties to these counterclaims, Howard Bierman, Jacob Geesing, and Carrie Ward were allegedly appointed on behalf of Deutsche Alt-B to commence the underlying action. Upon information and belief this appointment was in fact not done by AHMSI but instead was done by a third party vendor as part of its robo-signing operations (these issues are presently being litigated in Queens Anne County, Maryland to which Ms. Bolling is a potential class member of the class of Defendants).
9. Not named as parties to this action the following other entities were involved in the transfer and deposit of Ms. Bolling's into the Deutsche Alt-B trust: Deutsche Alt-A Securities Inc. and DB Structural Products Inc.

III. Jurisdiction

10. Jurisdiction is vested and proper in the Circuit Court for Harford County, Maryland, under MD. CODE ANN., CTS. & JUD. PROC. §§ 6-102 and 6-103.
11. Venue is vested and proper in the Circuit Court for Harford County, Maryland, under MD. CODE ANN., CTS. & JUD. PROC. §§ 6-201, 6-202, and 6-203.

IV. Facts

A. The Foreclosure Crisis

12. Over the last four years, Maryland and, indeed, the United States have been in a foreclosure crisis. Recent news reports have established that one in ten American homes is at risk of foreclosure.

13. The number of Maryland properties with foreclosure filings has increased substantially throughout the last four years.
14. Increased foreclosures have a detrimental effect not just on the borrowers who lose unique property and face homelessness, but also on the homes surrounding a foreclosure and, perhaps, neighborhoods that suffer decreased property values and municipalities that lose tax revenue.
15. The foreclosure crisis is far from over. Economists predict that interest rate resets on the riskiest of lending products will not reach their zenith until sometime in 2011 or beyond. *See* Eric Tymoigne, *Securitization, Deregulation, Economic Stability, and Financial Crisis*, Working Paper No. 573.2 at 9, Figure 30 *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1458413 (citing a Credit Suisse study showing monthly mortgage rate resets).
16. Since the commencement of the crisis, revelations of bogus, false, and deceptive “robo signing” have come to light involving national lenders and mortgage servicers. In Maryland the illegal “robo-signing” issue has even come to the forefront because attorneys and substitute trustees, including those acting on behalf of AHMSI have admitted that they filed bogus documents in hundreds of foreclosure cases filed in state courts.

B. MARYLAND’S RESPONSE TO THE FORECLOSURE CRISIS

17. In 2007 at the beginning of the crisis, Governor O’Malley convened a task force of representatives to address the crisis that was then underway. The Maryland

Homeownership Preservation Task Force produced a report which aptly summarized the devastating effect of foreclosures on the community as follows:

Foreclosures have a devastating effect on homeowners and the communities in which they live. Frequently, a homeowner who loses his or her home to foreclosure loses the accrued equity. A property sold in a foreclosure sale typically draws a lower price than it would in a regular market sale. In the first half of 2005, Maryland's "foreclosure discount" was 18.8 percent, according to the St. Ambrose Housing Aid Center, Inc. This is a tragedy for a growing number of Maryland families.

Extensive damage is felt in neighborhoods and communities across Maryland. Research shows that with every foreclosure on a single family home, the value of homes within an eighth of a mile declines by about nine-tenths of a percent. Property tax revenues decline proportionally, causing a negative impact on state and local governments. A study of foreclosures in Chicago in 2005 estimated that a single foreclosure costs city government up to \$5,000 or more.

Foreclosures also bring with them the potential for more violent crime. Research indicates that for every single percentage point increase in the foreclosure rate in a neighborhood, violent crime in that neighborhood increases by about two percent. Foreclosures can lead to vacant or neglected properties, which create an eyesore and become targets for vandalism. This can tip a community from one dominated by homeowners to one dominated by investors.

Of course, the lending industry and investors also take a hit from rising foreclosure rates. Some major lenders have closed their doors, declared bankruptcy or shuttered their subprime lending arms as a result of the waning demand for risky mortgage products in investor markets. Lenders typically lose \$50,000 or more on a single foreclosure, according to information from St. Ambrose Housing Aid Center, Inc. The banking industry cites a figure well over \$60,000.

Maryland Homeownership Preservation Task Force Report at 12 (November 29, 2007)

available at <http://www.gov.state.md.us/documents/HomePreservationReport.pdf>

(footnotes omitted).

18. To reasonably address and avoid some of the negative consequences of foreclosure,

the Task Force Report made nine general recommendations that are relevant to the issues before the Court. *See Id.* at 40-43. Included among these was a specific recommendation, which included the adoption of a good faith and fair dealing standard of care for Maryland licensed mortgage entities. *Id.* (recommendation 7.3).

19. In response to the expanding foreclosure crisis and the Task Force Report, the General Assembly introduced and passed several bills during the 2008 legislative session to change Maryland's foreclosure process and curb certain predatory real estate processes. These bills were passed with nearly complete bi-partisan support. As summarized in the General Assembly's 90 Day Report for the 2008 session:

Until [2008], Maryland's foreclosure process, from the first foreclosure filing to final sale, had been among the shortest in the nation. Maryland is a quasi-judicial State, meaning that the authority for a foreclosure sale is derived from the mortgage or deed of trust, but a court has oversight over the foreclosure sale process. Most mortgages or deeds of trust include a "power of sale" (a provision authorizing a foreclosure sale of the property after a default) or an "assent to decree" (a provision declaring an assent to the entry of an order for a foreclosure sale after a default). Under the Maryland Rules, it was not necessary to serve process or hold a hearing prior to a foreclosure sale pursuant to a power of sale or an assent to a decree. Consumer advocates contended that the short timeframes and weak notice provisions in State law seriously limited a homeowner's options to avoid foreclosure by, for example, working out a payment plan with the lender or selling the house. In addition, filing a request for an injunction to stop the sale is expensive, time consuming, and not a realistic option for most homeowners.

Senate Bill 216 (Ch. 1)/House Bill 365 (Ch. 2), emergency legislation that took effect April 4, 2008, make a number of significant changes to the foreclosure process in Maryland for residential real property. "Residential property" is defined under the Acts to mean real property improved by four or fewer single-family dwelling units. Except under specified circumstances, the Acts prohibit the filing of an action to foreclose a mortgage or deed of trust on residential property until the later of 90 days after a default in a condition on which the mortgage or deed of trust states that a sale may be made or 45 days after the notice of intent to foreclose required under the Acts is sent.

.....

Senate Bill 217/House Bill 360 define “mortgage fraud” as any action by a person made with the intent to defraud that involves:

- knowingly making, using, or facilitating the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that it will be relied upon by a mortgage lender, borrower, or any other party to the lending process;
- receiving any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from the aforementioned actions;
- conspiring to violate either of the preceding provisions; or
- filing or causing to be filed in the land records in the county where a residential real property is located any document relating to a mortgage loan that the person knows to contain a deliberate misstatement, misrepresentation, or omission.

Under the Acts, the “mortgage lending process” includes the solicitation, application, origination, negotiation, servicing, underwriting, signing, closing, and funding of a mortgage loan, as well as the notarizing of any document in connection with a mortgage loan.

Md. Dept. of Legislative Services, The 90 Day Report, A Review of the 2008 Legislative Session, F16-18 (April 11, 2008) *available at* <http://mlis.state.md.us/2008rs/90-Day-report/index.htm>.

20. The Maryland Court of Appeals recently adopted in October 2010 an emergency rule to deal with the robo-signing issue based upon the recommendation of the Standing Committee on Rules of Practice and Procedure. Writing for the Committee the Honorable Alan M. Wilner explained:

The need for these changes emanates from recent revelations regarding the filing in residential foreclosure actions of affidavits as to which the affiant either did not have sufficient knowledge of the facts stated in the affidavit to validly attest to their accuracy or did not actually read or personally sign the affidavit. Preliminary audits have shown that hundreds of such affidavits have been filed in Maryland circuit courts. Up to this point, courts, with good reason and really of necessity, have relied on the accuracy of affidavits, especially

when filed by attorneys, unless there is something on the face of the document to suggest otherwise or the validity of the affidavit is challenged. Evidence that has recently come to light, largely through admissions under oath by the affiants themselves, has shaken the confidence that the courts have traditionally given to those kinds of affidavits.

In the Committee's view, the use of bogus affidavits to support actions to foreclose liens on property, apart from prejudice to the homeowners, constitutes an assault on the integrity of the judicial process itself.

Letter from A. Wilner to the Court of Appeals, Oct. 15, 2010.

21. In further response to the foreclosure crisis, Maryland Commissioner of Financial Regulation required for its licensees, including AHMSI, "a duty of good faith and fair dealing in communications, transactions, and course of dealings with a borrower in connection with the...servicing...of any mortgage loan, including, but not limited to...(3) The duty when servicing mortgage loans to: (a) Promptly provide borrowers with an accurate accounting of the debt owed when borrowers request an accounting; (b) Make borrowers in default aware of loss mitigation options and services offered by the licensee; (c) Provide trained personnel and telephone facilities sufficient to promptly answer and respond to borrower inquiries regarding their mortgage loans; and (d) Pursue loss mitigation when possible." Md. Code Regs. 09.03.06.20.

C. Background on Ms. Bolling's Mortgage Loan Subject to this Action

22. Ms. Bolling is the owner of the Property. She purchased the Property on or about March 26, 2006.
23. At the time of her purchase, Ms. Bolling financed the transaction with a loan arranged by American Home Mortgage Corporation ("AHMC")—a company allegedly formed under the laws of the State of New York.

24. At the time she took out the loan to acquire the Property, Ms. Bolling was employed full-time and had sufficient income to make her mortgage payments and did in fact meet her obligations to do so. Unfortunately, like thousands of Harford County, Maryland, and United States citizens the economic downturn that commenced in 2007 and 2008 caused Ms. Bolling to lose her employment. However, on or about May 1, 2009, Ms. Bolling was able to secure new employment.
25. Further, Ms. Bolling is qualified to apply for new mortgage assistance from the Emergency Mortgage Assistance (EMA) program from the State of Maryland.
26. Along with two other lenders, by agreement AHMC transferred Ms. Bolling's loan almost immediately after settlement to a pre-arranged mortgage backed security, i.e. Deutsche Alt-B, of other similar loans. AHMC arranged approximately 37.5% of the loans that were bundled together into Deutsche Alt-B.
27. Incredibly, as of March 2010, more than 41% of the thousands of loans arranged and deposited into the Deutsche Alt-B trust, less than four years before, were either delinquent or had been foreclosed upon.
28. As a result of the toxic nature of the loans contained in the Deutsche Alt-B trust and the significant failure rate described in the preceding paragraph, the value of the securities sold by the depositor and its affiliates to different investors in the trust have plummeted and are unsellable on the secondary market. Further, by proceeding to foreclosure in the current market instead of modifying loans within the Deutsche Alt-B trust which have sustainable solutions, like Ms. Bolling's situation described herein, AHMSI actually increases losses for the Deutsche Alt-B trust investors by thousands of dollars since the trust will earn substantially less through a foreclosure sale than it

would through continued interest payments by homeowners like Ms. Bolling who can afford a reasonable modification within industry standards.

29. The allegations contained herein in ¶¶ 26-28 are based upon the judicial admissions of the parties involved in the matter captioned *Massachusetts Bricklayers and Masons Trust Funds v. Detsche Alt-A Securities Inc., et al.*, U.S. Dist. Ct. of NY, Civ. Case No. 2008-cv-03178 in which the toxic nature of the Deutsche Alt-B trust are at issue between the trust investors and the arrangers and managers of the trust. (See Amended Complaint and Answer as filed in *Massachusetts Bricklayers and Masons Trust Funds v. Detsche Alt-A Securities Inc., et al.*, U.S. Dist. Ct. of NY, Civ. Case No. 2008-cv-03178 attached hereto as EXHIBIT 1, specifically paragraph 7- paragraph 17)

D. Background on Ms. Bolling's Mortgage Modification Requests

30. On September 21, 2010, Ms. Bolling applied to AHMSI acting on behalf of Deutsche Alt-B to modify her loan. Ms. Bolling provided all the material AHMSI requested of her.
31. On January 14, 2011, Ms. Bolling sought the assistance of a Maryland housing counselor, Ms. Kim Cowie at the Home Partnership Inc.—a housing counseling agency recognized by the Maryland Department of Housing and Community Development based in Harford County.
32. AHMC actually encouraged Mr. Bolling to liquidate all of her retirement savings in order to keep her home, but, after her savings ran out, refused any further payments from Ms. Bolling.
33. On February 8, 2011, Ms. Cowie contacted AHMSI, on Ms. Bolling's behalf, and requested its consideration of Ms. Bolling's modification request. Ms. Cowie

provided AHMSI with all the information and documentation in support of the modification it requested. (See EXHBIT 2, Affidavit of Kim Cowie)

34. AHMSI has never provided Ms. Bolling with any written denial of her modification request.
35. AHMSI did provide Ms. Cowie on February 9, 2011 with an incomplete written denial of Ms. Bolling's modification request but that denial offered no reason for decision. Further, this denial came just 1 day after Ms. Cowie had submitted the modification request on behalf of Ms. Bolling and demonstrates little or no meaningful, good faith review was undertaken by AHMSI of Ms. Bolling's requests.
36. At the commencement of this action, Jacob Geesing, Carrie Ward, and Howard Bierman caused a purported "Final Loss Mitigation Affidavit" to be filed with this Court. (See EXHBIT 3)
37. A correct and truthful Final Loss Mitigation Affidavit is a mandatory condition precedent to proceeding to a foreclosure sale as established by the General Assembly last year. The filing of a correct and truthful Final Loss Mitigation Affidavit with the Court by persons appointed by lenders and servicers, like AHMSI and Deutsche Alt-B, also triggers homeowners' rights to mediation of their mortgage. Md. Code Ann., Real Prop. § 7-105.1.
38. Specifically, the Final Loss Mitigation Affidavit presented by the counter defendants agents to this Court falsely states, "The loan is owned by an investor or pool of investors that prohibits the servicer from entering into any loss mitigation with the borrower." (See EXHBIT 3)

39. Maryland regulations governing the foreclosure process and the contents of a truthful and correct Final Loss Mitigation Affidavit require the affidavit to “include proof, such as relevant portions of the contract” when secured parties aver, like AHMSI did in this instance on behalf of Deutsche Alt-B, that mortgages in foreclosure are “owned by an investor or pool of investors that prohibits the servicer from entering into any loss mitigation with the borrower.” MD COMAR 09.03.12.04.
40. Neither AMHMSI, Deutsche Alt-B, nor their agents Bierman, Geesing, or Ward provided any evidence to the Court that Deutsche Alt-B does not permit the servicer to enter into any loss mitigation. The reason no such proof was provided was because in fact there is no basis for the statement attested to in the Final Loss Mitigation Affidavit presented to the Court in this case.
41. The Pooling and Servicing Contract governing Deutsche Alt-B, attached hereto as EXHBIT 4, does not prohibit modifications or other loss mitigation options. In fact the contract indicates in multiple instances that separate agreements exist which do in fact permit modifications (however these separate agreements are not posted on the Security and Exchange Commission’s website). See <http://www.secinfo.com/d13f21.v1B7.d.htm>.
42. Ms. Bolling has been damaged by AMHMSI’s and Deutsche Alt-B’s direct and indirect actions, including those by its authorized substitute trustees and attorneys, employees, and sub-agents, described herein through the improper commencement and prosecution of this foreclosure action against Ms. Bolling which has damaged their credit, cost her legal fees and expenses, and emotional damages due to stress and

other physical manifestations.

**COUNT I -- VIOLATION OF THE EQUAL CREDIT
OPPORTUNITY ACT (15 U.S.C. §1691(d))**
(Against all Counter Defendants)

43. Ms. Bolling reiterates and incorporates every allegation above as if set forth herein in full and adds:
44. Ms. Bolling is an “applicant” as governed by ECOA, 15 U.S.C §1691a(b).
45. AMHMSI and Deutsche Alt-B were “creditors” as governed and defined by ECOA, 15 U.S.C. §1691(a)(e) at all times relevant hereto.
46. Deutsche Alt-B is also liable for the acts of its agent, AMHMSI, whose actions described herein, were on behalf of Deutsche Alt-B and completely within its delegated authority.
47. 15 U.S.C §(d)(1) provides that “within thirty days...after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.” 15 U.S.C. §1691(d)(1).
48. The accompanying Regulation B, issued by the Board of Governors of the Federal Reserve System pursuant to ECOA, further provides: “A creditor shall notify an applicant of action taken within: (i) 30 days after receiving a completed application concerning the creditor’s approval of, counteroffer to, or adverse action on the application.” 12 C.F.R §202.9(a)(1)(i).
49. Additionally, 15 U.S.C. §1691(d)(2) requires “that each applicant against whom “adverse action” is taken shall be entitled to a statement of reason for such action from the creditor.” 15 U.S.C. §1691(d)(2).

50. 15 U.S.C. §1691(d)(6) defines “adverse action” as a denial or revocation of “credit”, a change in terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or substantially the terms requested.” 15 U.S.C. §1691(d)(6)
51. The term “credit” means the right granted by a debtor to defer payment of a debt or to incur debts and defer its payment...and defer payment thereof. 15 U.S.C. § 1691a(d); 12 C.F.R. §202.2(j).
52. Ms. Bolling’s application for a loan modification, and in the alternative refinancing, was an application for “credit” as defined by 15 U.S.C. § 1691a(d) and 12 C.F.R. §202.2(j).
53. Ms. Bolling provided Defendant with a complete application for credit on or about September 27, 2010.
54. AMHMSI’s and Deutsche Alt-B failed to evaluate Ms. Bolling’s loan modification in good faith and a make any determination on Ms. Bolling’s application after receiving her completed loan modification application. AMHSI also failed to comply with its duty under Maryland as explained in Md. Code Regs. 09.03.06.20.
55. Instead, Defendant grossly ignored its responsibility to respond to Ms. Bolling’s loss mitigation request as proscribed in Md. Code Regs. 09.03.06.20 and proceeded to this illegal foreclosure action.
56. In failing to evaluate Ms. Bolling’s application for credit in a manner required by the Md. Code Regs. 09.03.06.20, AMHMSI’s and Deutsche Alt-B effectively denied her credit, and thereby took “adverse action” – as defined by ECOA – on Ms. Bolling’s application.

57. Ms. Bolling did not receive written notice from AMHMSI's, Deutsche Alt-B, or anyone else of the adverse action taken on her application for a loan modification.
58. Additionally, AMHMSI's and Deutsche Alt-B's notification dated February 9, 2011 to Ms. Cowie on behalf of Ms. Bolling denying Ms. Bolling's modification and was not in compliance with the notification requirements set forth in ECOA, 15 U.S.C. §1691(d)(2), as the notification failed to provide Plaintiff with a specific statement of reasons for the adverse action taken. (See Memos to Kim Cowie dated Feb 9, 2011 attached hereto as EXHBIT 5)
59. The above failure of AMHMSI and Deutsche Alt-B to notify Ms. Bolling of the adverse action taken on her application within thirty days from receipt of her completed application for credit as mandated by 15 U.S.C §1691(d)(1), §1691(d)(2) and 12 C.F.R §202.9(a)(1)(i) was a substantive violation of ECOA.
60. As a result of the above ECOA violation, Ms. Bolling has suffered substantial actual damages in the following:
- a. the loss of her rights to explain or quickly rectify and address any errors or problems in her application for credit;
 - b. the loss of the credit itself; and
 - c. frustration, anger, humiliation, fear, embarrassment and other emotional and mental anguish.
61. As a result of the above alleged ECOA violations, AMHMSI and Deutsche Alt-B are liable to Plaintiff for her actual damages pursuant to 15 U.S.C. §1691(e)(a), for punitive damages against AMHMSI and Deutsche Alt-B pursuant to 15 U.S.C.

§1691e(b) and for attorneys fees and costs pursuant to 15 U.S.C. §1691(e)(d) and 12 C.F.R. §202.16(b).

WHEREFORE, Ms. Bolling prays this Court to award the following relief against AMHMSI and Deutsche Alt-B for its violation of ECOA:

- A. Actual damages in the amount of no less than \$500 for attorney fees related to the representative of Ms. Bolling at foreclosure mediation as well as emotional and other compensatory damages in a sum of no less than \$20,000 pursuant to 15 U.S.C. §169 (e) (a)
- B. Punitive Damages in the amount of \$10,000 against AMHMSI and Deutsche Alt-B pursuant to 15 U.S.C. §1691e(b).
- C. Attorneys fees and costs pursuant to 15 U.S.C. §202.16(b).

WMs. Bolling is also entitled to equitable relief against AMHMSI and Deutsche Alt-B and asks this Court to:

- A. Enter an Order declaring that the Defendant's conduct is a violation of ECOA, insofar as it failed to provide notice to Ms. Bolling of its action on her completed application for credit within thirty day from receipt of her application for credit to modify her mortgage loan; and
- B. Require delivery of ECOA Complaint notices in all future instances.

COUNT II -- WRONGFUL FORECLOSURE & INJURIOUS FALSEHOOD

(Against Counter Defendant Deutsche Alt-B)

62. Ms. Bolling reiterates and incorporates every allegation above as if set forth herein in full and adds:

63. Deutsche Alt-B's attempt to acquire the Property through Maryland's quick foreclosure process through its appointed Trustees in this action, with full and actual

knowledge of Ms. Bolling's interests in the Property and protections offered to her through ECOA and state law as described in the succeeding claims, was either outside the boundaries of the foreclosure or taken for some purpose other than to just secure the alleged debt owed by the Ms. Bolling.

64. Deutsche Alt-B and its Trustees published a falsehood about their interests in the Property which tended to disparage and wholly ignore the quality, ownership, or rights of Ms. Bolling concerning the Property.

65. Deutsche Alt-B affirmatively chose not to pursue meaningful loss mitigation with Ms. Bolling because it expected the foreclosure process to allow it the greatest opportunity ignore Ms. Bolling's federal and state rights.

66. Deutsche Alt-B's actions were for some ulterior motive, such as a sale to a bona fide, third party purchaser, to prevent Ms. Bolling the opportunity to meaningfully prevent the loss of her Property unless and until she successfully objected to the foreclosure sale.

67. Deutsche Alt-B's ill motive for conducting the foreclosure sale was to expressly ignore Ms. Bolling's state and federal rights as demonstrated by several facts alleged herein including that (i) it neither considered Ms. Bolling's loss mitigation request, (ii) it's authorized servicer, AMHMSI, did not comply with the mandatory duty of good faith for servicers working with Maryland borrowers (Md. Code Regs. 09.03.06.20), or (iii) it failed to comply with ECOA when considering Ms. Bolling's loss mitigation request.

68. Deutsche Alt-B's ill motive is further demonstrated by the fact that nearly 40% or more of its original portfolio is in default or has gone through foreclosure in a less

than four years from the time the loans were originated. Deutsche Alt-B is the poster child of a toxic mortgage backed securities created by Wall Street in which servicers such as AMHMSI earn huge sums of money and homeowners like Ms. Bolling and investors like the plaintiffs in the matter known as *Massachusetts Bricklayers and Masons Trust Funds v. Deutsche Alt-A Securities Inc.* lose thousands and millions of dollars respectively.

69. Deutsche Alt-B by commencing and carrying out the underlying foreclosure action and scheduling the impending foreclosure sale through its agents and affiliates, at a time when it had actual notice of Ms. Bolling's rights pursuant to ECOA and state law intended to exercise dominion or control over title to the Property which was inconsistent with the rights and remedies of ECOA and state law described herein.
 70. Deutsche Alt-B's actions related to the foreclosure constitutes an interference with Ms. Bolling's control of the Property.
 71. Ms. Bolling has been damaged by Deutsche Alt-B's wrongful foreclosure action which has created a cloud over the Property and thereby has reduced the Property's fair market value in a sum of no less than \$40,000.
 72. Deutsche Alt-B acted with actual malice or with reckless disregard for the truth concerning Ms. Bolling's interests in the Property.
 73. As a result of Deutsche Alt-B's falsehood which played a material and substantial part in inducing others, including mortgage originators and lenders, not to deal with Ms. Bolling and that, as a result, Ms. Bolling has suffered special damages.
- WHEREFORE, Ms. Bolling prays for the following relief against Deutsche Alt-B's for its Wrongful Foreclosure and Injurious Falsehood:

- A. A money judgment of all damages caused by the Deutsche Alt-B's actions, directly or indirectly, of \$100,000;
- B. A money judgment of punitive damages in the sum of \$200,000;
- C. Her costs including attorneys' fees as well as pre- and post-judgment interest;
- D. Such other and further relief as the nature of their cause may require.

COUNT III – NEGLIGENCE AND GROSS NEGLIGENCE
(Against Counter Defendant Deutsche Alt-B)

- 74. Ms. Bolling realleges and incorporates by reference the foregoing allegations.
- 75. Deutsche Alt-B had a duty to exercise due diligence to determine that the actions of its authorized mortgage servicer of Ms. Bolling's loan, i.e. AMHMSI, described herein was not illegal in violation of ECOA, in violation of other law, or otherwise irregular. Deutsche Alt-B had a duty to inquire into the nature of loan and AMHMSI's efforts to convert defaulted loans into performing loans in order to protect the interests of its investors.
- 76. Deutsche Alt-B had significant indications of AMHMSI's improper and defective mortgage servicing practices due to its high foreclosure and delinquency performance in the trust loans.
- 77. Deutsche Alt-B breached its duties when it failed to conduct due diligence inquiries into the transaction between AMHMSI and Ms. Bolling to determine the legitimacy of the default and what alternatives to foreclosure could be determined and even whether AMHMSI complied with federal and state laws in the serving of its loans.
- 78. Deutsche Alt-B's breach of duty proximately caused damage to Ms. Bolling, including the potential equitable loss of title to the Property due to Deutsche Alt-B's impending

foreclosure sale, the equity taken from the Property, and the other fees taken in the transaction.

79. Deutsche Alt-B acted in wanton or reckless disregard for the rights of the Ms. Bolling pursuant to state and federal law.
80. Deutsche Alt-B's actions and silence concerning the facts known to it concerning the subject transaction implies a thoughtless disregard to the consequences of its actions upon Ms. Bolling. In other words Deutsche Alt-B was utterly indifferent to the rights of Ms. Bolling.
81. Deutsche Alt-B engaged in the acts and omissions described above, which caused injuries and damages to Ms. Bolling as described above.

WHEREFORE, Ms. Bolling prays for the following relief against Deutsche Alt-B for its Gross Negligence:

- A. A money judgment of all damages caused by the Deutsche Alt-B's actions, directly or indirectly, of \$100,000;
- B. A money judgment of punitive damages in the sum of \$250,000;
- C. Her costs including attorneys' fees as well as pre- and post-judgment interest;
- D. Such other and further relief as the nature of their cause may require.

**COUNT IV – VIOLATION OF THE MARYLAND
CONSUMER DEBT COLLECTION ACT
MD CODE, COMMERCIAL LAW, § 14-201 et seq.**
(Against All Counter Defendants)

82. Ms. Bolling realleges and incorporates by reference the foregoing allegations.

83. In this foreclosure action, Deutsche Alt-B and AMHMSI have acted as collectors through its Trustees, agents, and attorneys as that term is defined by § 14-201(b) of MD. CODE, COMM. LAW.
84. Ms. Bolling is a person as defined by § 14-201(d) of MD. CODE, COMM. LAW.
85. The underlying foreclosure action related to this complaint constitutes a “consumer transaction” as defined by § 14-201(c) of MD. CODE, COMM. LAW.
86. AMHMSI and Deutsche Alt-B claimed, attempted, or threatened to enforce a right with knowledge that its right did not exist under Maryland or Federal law in the manner it sought by maintaining the underlying foreclosure action.
87. Ms. Bolling’s damages as alleged herein were proximately caused by AMHMSI and Deutsche Alt-B’s actions including damages for emotional distress or mental anguish suffered with or without accompanying physical injury.
- WHEREFORE, Ms. Bolling prays for the following relief against AMHMSI and Deutsche Alt-B for its violation of the Maryland Consumer Debt Collection Act:
- A. A money judgment of all damages caused by the AMHMSI and Deutsche Alt-B’s actions, directly or indirectly, of \$250,000;
 - C. Her costs including attorneys’ fees as well as pre- and post-judgment interest;
 - D. Such other and further relief as the nature of their cause may require.

COUNT V – DECLARATORY JUDGMENT
(Against All Counter Defendants)

88. Ms. Bolling realleges and incorporates by reference the foregoing allegations.
89. This is a claim for declaratory judgment pursuant to § 3-406 of the Courts and Judiciary Proceedings Article of the Annotated Code of Maryland, for the purpose of

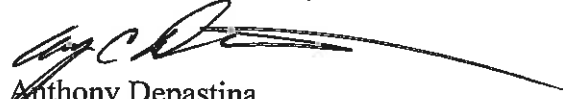
determining a question of actual controversy between AMHMSI, Deutsche Alt-B, and Ms. Bolling and to settle and obtain relief from uncertainty and insecurity with respect to the rights, status and legal relations under the mortgage loan subject to this action and the consumer protections embodied in Maryland and Federal law discussed herein.

90. AMHMSI and Deutsche Alt-B lack clean hands in the way it has carried out this transaction deigned to ignore Ms. Bolling's rights.

WHEREFORE, Ms. Bolling prays for the following declaratory relief against AMHMSI and Deutsche Alt-B as follows:

- A. A declaration that AMHMSI and Deutsche Alt-B by and through their agents have unclean hands in the underlying foreclosure action filed in violation of Federal and State law.
- B. A declaration that AMHMSI and Deutsche Alt-B lack clean hands necessary to receive equitable relief.
- C. Her costs including attorneys' fees;
- D. Such other and further relief as the nature of their cause may require.

Respectfully submitted,



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*Attorneys for Defendant/Counter-Plaintiff,
Donna Bolling*

DEMAND FOR JURY TRIAL

Donna Bolling demands a trial by jury on all causes of action set forth herein.

Respectfully submitted,



Anthony C. DePastina
Attorney for Donna Bolling

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Counterclaims and Jury Demand was served by U.S. mail, postage prepaid the 22nd day of April 2011, on the following:

Howard N. Bierman, Esquire
BIERMAN, GEESING, WARD & WOOD, LLC
4520 East-West Hwy, Ste 200
Bethesda, MD 20814


Anthony DePastina