

IN THE SUPERIOR COURT OF RICHMOND COUNTY  
STATE OF GEORGIA

IRENE CANADA, individually )  
and as representative of a )  
Class of all others similarly )  
situated )

Plaintiff, )

v. )

LIBERTY LENDING SERVICES dba )  
LIBERTY SAVINGS BANK, F.S.B., )

Defendant. )

CIVIL ACTION FILE  
NO. 2001-RCCV-966

CLERK OF SUPERIOR, STATE  
AND JUVENILE COURT  
FILED FOR RECORD  
10 JAN 22 PM 2:47  
ELAINE C. JOHNSON, CLERK  
RICHMOND COUNTY, GA.

**SECOND AMENDED COMPLAINT**

COMES NOW the Plaintiff, Irene Canada, individually and as representative of a class of similarly situated persons, and amends the Complaint to show the following:

**VENUE AND JURISDICTION**

1.

Plaintiff is an individual who resides in Richmond County, Georgia and submits to the jurisdiction of this Court.

2.

Defendant, Liberty Lending, is a corporation doing business in Richmond County, Georgia. Personal jurisdiction lies pursuant to the Georgia Long Arm Statute. Liberty Lending can be served by certified mail to Liberty Lending Services, Inc., Attn: Corp. Officer, 2251 Rambach Avenue, Wilmington, OH 45177 or through counsel Larry W. Johnson, Morris Schneider & Prior, 3300 N.E. Expressway, Building 8, Atlanta, Georgia 31341, (770) 234-9181.

## GENERAL ALLEGATIONS

3.

Defendant Liberty is a mortgage servicing company with its operations located in the State of Ohio. This action arises out of Liberty's standard practice of assessing against its mortgagors, after the filing of a petition in bankruptcy and without bankruptcy court approval, attorney fees that it incurs in the course of the bankruptcy and charges for monthly curbside inspections that it routinely accrues once a homeowner files a petition for relief in bankruptcy.

4.

Defendant Liberty has a mortgage servicing business that services home mortgages from all over the country that are for the most part owned by other investors. Its portfolio included 22,000 loans as of July 31, 2007.

5.

The term "agency paper" describes mortgages that contain standard terms required by the Federal National Mortgage Association. For a mortgage lender to be able to bundle and sell home mortgages, the terms must be essentially uniform and meet the agency standards. The mortgages serviced by Defendant Liberty have been bundled and sold.

6.

Defendant Liberty asserts a right to assess inspection fees that comes from standard mortgage language. Defendant Liberty asserts a right to assess attorney fees derived from standard language in mortgages. Defendant Liberty routinely assesses the attorney fees and inspection fees at issue in this case without any review of the specific debt and security instruments for the borrower against whom the fees are being assessed.

7.

If a borrower, whose loan is serviced by Liberty, files a bankruptcy petition, the borrower's loan is transferred to the Defendant's Office of Consumer Default Administration even if the payments on the loan are current. Files in Liberty's Office of Consumer Default Administration are coded by state and by the fact of a bankruptcy filing.

8.

Once a bankruptcy proceeding of a debtor whose mortgage is being serviced by Defendant Liberty is discharged or dismissed, Liberty seeks to collect from the borrower all inspection fees and attorney fees that it has accrued on its books during the course of the bankruptcy. This is a standard, uniform practice of Defendant Liberty without regard to the state in which the secured property is located.

9.

Liberty does not provide the borrowers whose mortgages are being serviced by Liberty with any prior notice of inspections or of incurrence of "attorney fees," nor is any detailed information provided as what was done to justify these newly assessed charges.

10.

Liberty does not seek bankruptcy court approval to incur charges or accruals for inspection fees or "attorney fees" during the pendency of bankruptcy proceedings brought by its borrowers. Defendant Liberty routinely accrues monthly charges against its borrowers without making an independent assessment of a factual basis to support the need for each inspection. Instead, Defendant Liberty asserts that it accrues monthly charges for "curbside" inspections based upon the terms of servicing agreements between it and the holders of the mortgages that it is servicing. The borrowers whose loans are being serviced by Liberty are not parties to these loan servicing

agreements nor are the terms of these servicing agreements provided to the borrowers.

11.

Plaintiff filed a Chapter 13 Bankruptcy petition in the United States Bankruptcy Court for the Southern District of Georgia on April 1, 1996.

12.

At the time the Debtor in the above-captioned case filed her Chapter 13 Bankruptcy petition she was indebted to the Defendant pursuant to a security deed and note dated July 31, 1984. (Exhibit "A").

13.

This debt secured by the Debtor's primary residence location at 3632 Jamaica Drive, Augusta, Richmond County, Georgia.

14.

The Defendant filed a proof of claim in the bankruptcy case as a secured claimant for all pre-petition arrearage through February 1, 1996 in the amount of \$5,772.48. (Exhibit "B").

15.

Said proof of claim reflected a principal balance owing in the amount of \$62,013.33.

16.

Defendant was paid \$5,772.48 of arrearage in the Chapter 13 Trustee.

17.

Plaintiff's case was confirmed on October 7, 1996. (Exhibit "C").

18.

On or about October 16, 1996, Defendant filed a Motion for Relief from Stay alleging Plaintiff was in default. (Exhibit "D").

19.

On January 7, 1997, an Order was entered by the US Bankruptcy Court reciting that given Plaintiff's recent payment of \$5,104.80 she was current.

20.

Plaintiff was ordered to remain current.

21.

On or about January 25, 1999, Defendant again filed a Motion for Relief from Stay. Said Motion recited a principal balance of \$54,256.77 (Exhibit "E").

22.

An Order was entered reciting a post-petition arrearage of \$657.50 less \$210.01 being held in suspense by Defendant. Plaintiff was required to pay \$447.49 on April 1, 1999. (That amount represented the regular payment of \$637.03 plus the late charge of \$20.47 minus \$210.01 being held in suspense). (Exhibit "F").

23.

It was further ordered that Plaintiff make her regular payment of \$637.03 plus \$141.66 to be applied toward reimbursement of attorney's fees in the amount of \$425.00. Plaintiff was ordered to pay an extra \$141.66 in June and July at which time Defendant's attorney's fees would be paid in full.

24.

In 1999, Plaintiff made the following payments in accordance with the aforementioned Order:

April 1999	\$447.49
April 1999	\$637.03
May 1999	\$141.66

May 1999	\$637.03
June 1999	\$141.66
June 1999	\$637.03
July 1999	\$141.66
July 1999	\$637.03
August 1999	\$637.03
September 1999	\$637.03
October 1999	\$637.03
November 1999	\$637.03
December 1999	\$637.03

(Exhibit "G")

25.

In 2000 payment came due to Defendant in the amount of \$7,644.36 ( $\$637.03 \times 12$ )

26.

Plaintiff made payments totaling \$7,741.45.

27.

These payments were calculated according to a payment history provided to Plaintiff by an agent of Defendant. (Exhibit "H").

28.

In 2001 payments have come due to Defendant through August in the amount of \$5,282.16 ( $\$660.27 \times 8$ ).

29.

Plaintiff made payments totaling \$ 5,311.89.

30.

Beginning September 7, 2001, Defendant began threatening Plaintiff with foreclosure proceedings. (Exhibit "T").

31.

Fees and expenses allegedly incurred by Defendant during Plaintiff's Chapter 13 were subsequently charged to Plaintiff even though Defendant Liberty did not seek or obtain approval for such fees from the bankruptcy court nor did it give any prior notice to Plaintiff before "accruing" the charges.

32.

Defendant added attorney's fees and other expenses incurred by Defendant to the account of the Debtor, the Plaintiff herein, even though Defendant did not obtain approval from the United States Bankruptcy Court for the Southern District of Georgia.

33.

The Defendant charged to Plaintiff's account expenses not authorized by the security deed and note.

34.

The Defendant used post-petition payments of Plaintiff to apply toward the payment of attorney's fees and expenses, including "inspection fees," without notice or prior approval of the Court and have thus caused the account of the named Plaintiff to allegedly be in default when in would not otherwise be in default. These mis-allocations of payments were made at Defendant's offices in the State of Ohio.

35.

The Defendant charged Plaintiff's account for attorney's fees without notice as required by

O.C.G.A. § 13-1-11 and by the security deed and note.

36.

According to the Trustee's report of disbursement, the Trustee paid Defendant all funds requested in their proof of claim, which sums have not been properly credited to the indebtedness owed by the named Plaintiff.

37.

In 1996, Liberty claimed that Ms. Canada had defaulted on the security deed and commenced foreclosure proceedings. In order to save her home, Ms. Canada filed for Chapter XIII bankruptcy protection on April 1, 1996.

38.

During the course of her Chapter XIII, Plaintiff Ms. Canada brought her loan current, paying all arrearages and making her regular monthly payments. On August 5, 2001, Ms. Canada was discharged by the bankruptcy court. According to Liberty's own records, the unpaid principal balance owing on Ms. Canada's loan as of August 14, 2001, was \$48,817.09.

39.

On September 6, 2001, counsel for Liberty sent Ms. Canada a preforeclosure letter asserting that her loan was in default and demanding immediate payment from Ms. Canada of \$54,256.77.

40.

In order to save her house, Ms. Canada brings this action to enjoin the foreclosure, and to challenge Liberty's right to assess the charges at issue and to thereby deem her in default.

41.

If the Defendant had not improperly diverted payments toward fees and expenses incurred

in and out of the Bankruptcy Court without obtaining prior Court approval, the Plaintiff's account would not be in arrears and her note would not be in default.

42.

As a direct result of the Defendant's wilful and intentional conduct, the Plaintiff has been and is being harmed and is suffering irreparable harm in that the property which the Plaintiff uses as her homeplace is currently under the threat of foreclosure. The Defendant has wrongfully taken monies of the named Plaintiff, charged Plaintiff unauthorized fees and expenses, over-charged Plaintiff for unauthorized attorney's fees and expenses and not properly applied said payments toward the payment of principal and interest on the Plaintiff's loan.

43.

Defendant's practice of charging Plaintiff for unauthorized fees and expenses amounts to conversion of Plaintiff's monies.

44.

Plaintiff is being charged for "attorney's fees" and inspection fees allegedly incurred during Plaintiff's Chapter 13.

45.

Defendant has charged Plaintiff's account for other fees and expenses that were improperly charged to Plaintiff and that Plaintiff did not owe.

46.

Defendant is in the business of servicing mortgages secured by residential homes. The homes that secure these mortgages serviced by Defendant are located throughout the United States.

47.

Defendant has adopted uniform practices, procedures and guidelines for the servicing of

mortgages secured by residential homes that it applies uniformly regardless of the state in which the homes securing the mortgages are located.

48.

Defendant and other companies in the business of servicing mortgages secured by homes loans require that lenders who originate these loans use forms for notes and mortgages that contain language that is functionally the same regardless of whether the title of the instruments may vary from state to state. For example, in Georgia, the document by which a residential home is pledged as security for debt is entitled "Security Deed," but is commonly called a "mortgage," meaning the document by which real property is pledged as security for a loan. The term "mortgage," as used herein, includes all instruments used to pledge real property for security for a loan, regardless of the title that is placed on the document.

49.

Defendant and other companies in the business of servicing large numbers of home mortgages require that instruments used to pledge property be in form substantially the same as what is called "agency paper" in the business, meaning forms for home mortgages approved by the Federal National Mortgage Association, an entity commonly known as "Fannie Mae."

50.

In the course of servicing mortgages secured by residential houses, Defendant has adopted uniform practices, procedures and guidelines to be followed by its employees whenever a person whose mortgage is serviced by Defendant files a bankruptcy proceeding in a United States Bankruptcy Court. These practices, procedures and guidelines are substantially the same regardless of the state in which the property that secures the mortgage is located.

51.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "attorney fees" that have not been approved by a U.S. Bankruptcy Court.

52.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "inspection fees" that have not been approved by a U.S. Bankruptcy Court.

53.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "attorney fees" without giving prior notice to the borrower that the attorney fees will be accrued as charges owed by the borrowers.

54.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "inspection fees" without giving prior notice to the borrower that the inspection fees will be accrued as charges owed by the borrowers.

55.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "attorney fees" even though the services being charged to borrowers are for work done for Defendant by persons who are not licensed to practice law.

56.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "inspection fees" without first determining that there is an objective

factual basis for ordering the inspections.

57.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "inspection fees" that are not, in fact, *bona fide* inspections of the improvements located on the premises that secure loans serviced by Defendant, but are only monthly "drive-by" inspections ordered to create charges to increase the debt allegedly owed by borrowers.

58.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "inspection fees" regardless of whether the borrower is currently making payments on the loan being serviced by Defendant.

59.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "inspection fees" and "attorney fees" which Defendant is not authorized to charge in good faith and fair dealing.

60.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "inspection fees" and "attorney fees" which Defendant is not authorized to charge by the terms of the mortgages being serviced by Defendant.

61.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "inspection fees" and "attorney fees" without any employee of Defendant having reviewed the terms of the individual mortgage for the borrower being charged.

62.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "inspection fees" and "attorney fees" without any determination being made that the terms of the mortgage at issue authorized the charges for "attorney fees" and "inspection fees" that Defendant was accruing against the borrower.

63.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "inspection fees" and "attorney fees" without any employee of Defendant having reviewed the law of the state where the mortgage property is located to determine whether provisions of that state's laws were being followed.

64.

In the course of servicing the loans of borrowers who have filed for bankruptcy protection, Defendant accrues charges for "inspection fees" and "attorney fees" without any determination being made that the laws of the state where the mortgaged property is located authorize the "attorney fees" and "inspection fees" that Defendant was accruing against the borrower.

65.

The Defendant has acted in bad faith in the manner in which it has accrued, assessed and collected charges for inspection fees and attorney fees in the course of servicing the loans of borrowers who have filed for bankruptcy protection.

#### **CLASS ACTION ALLEGATIONS**

66.

This action is brought by the named Plaintiff individually and on behalf of others similarly situated under the provisions of O.C.G.A. §9-11-23.

67.

The class of Plaintiffs for whose benefit the named Plaintiff brings this action is defined as follows:

All persons whose home loans were serviced by Defendant and:

- 1) who have filed a Chapter VII or Chapter XIII bankruptcy proceeding, and
- 2) who have, since May 1, 1999, been charged fees for inspections and/or attorney fees without having been given written prior notice before the assessment of each inspection fee and each attorney fee; and
- 3) the assessed fees were not approved by a bankruptcy court.

The Georgia subclass is defined as follows:

All persons whose home loans were secured by residential property located in the State of Georgia, whose home loans were serviced by Defendant and:

- 1) who have filed a Chapter VII or Chapter XIII bankruptcy proceeding, and
- 2) who have, since May 1, 1999, been charged fees for inspections and/or attorney fees without having been given written prior notice before the assessment of each inspection fee and each attorney fee; and
- 3) the assessed fees were not approved by a bankruptcy court.

68.

The membership of the class of Plaintiffs is so numerous that joinder of all members is impractical. While the exact size of the class is not now known, that information is readily ascertainable from the Defendant's business records. The Plaintiff reasonably anticipates that the class will number in the thousands and the subclass at least in the hundreds. It is impractical to bring all such members of the class before this Court.

69.

There are questions of law and fact common to all members of the class and subclass. These

common issues predominate over any individual issues.

70.

The claims of the named Plaintiff are typical of the claims of each member of the class and subclass. The named Plaintiff will fairly and adequately protect the interests of each member of the class.

71.

Common questions of law and fact that predominate over any questions affecting only individual members include but are not limited to:

- (a) The procedures followed by Defendant to accrue and collect charges for "inspection fees."
- (b) The procedures followed by Defendant to accrue and collect charges for "attorney fees."
- (c) Whether the Defendant's "property inspection" fees were authorized.
- (d) Whether the Defendant's "property inspection" fees were excessive.
- (e) Whether the Defendant accrued charges for "inspection fees" without prior notice to the mortgagor.
- (f) Whether the Defendant's "attorney fees" were authorized.
- (g) Whether the Defendant's "attorney fees" were excessive.
- (h) Whether the Defendant accrued charges for "attorney fees" without prior notice to the mortgagor.
- (i) Whether the Defendant's application of the various fees toward the payment of principal and interest was proper.
- (j) Whether the Defendant violated O.C.G.A §13-1-11 and other similar state laws by

failing to give the notice before accruing charges for “attorney fees” against the Plaintiff and members of the Class and Georgia Subclass.

- (k) Whether the Defendant wrongfully accrued charges for “inspection fees” and “attorney fees” that Defendant was not authorized to charge under the terms of the Defendant’s form loan documents.
- (l) Whether the Defendant wrongfully accrued charges for “inspection fees” and “attorney fees” that were not authorized under applicable state law.

72.

A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

73.

The prosecution of separate actions by individual members of the class would create adjudications that, as a practical matter, would be dispositive of the interests of the other members not parties to the adjudication.

74.

Without a class action mechanism, members of the class and subclass will be substantially impaired or impeded in their abilities to protect their interests.

75.

The prosecution of the claims of individual class members outside of a class action will not be economical or efficient.

76.

The claims of the named Plaintiff are meritorious. The named Plaintiff reasonably believes that he will prevail on the merits.

77.

A final judgment on the merits of the Plaintiff's claims and the liability issues with regard to causation would be dispositive of the claims and interests of those similarly situated who are not specifically named herein as Plaintiffs.

## COUNT I

### INSPECTION FEES

78.

The allegations of paragraphs one through seventy-seven above are incorporated herein by reference.

79.

Defendant has accrued, assessed, attempted to collect and collected charges that it labels "inspection fees" from the Plaintiff and members of the Class that had not been approved by order of a United States Bankruptcy Court.

80.

The charges that are labeled "inspection fees" that Defendant has accrued, assessed, attempted to collect and collected from the Plaintiff and members of the Class were accrued without giving prior notice to each respective borrower of the "inspections" for which charges were to be rendered, and without making an objective determination that any inspection was, at that time, needed as to that borrower because of some objective reason to be insecure about the condition of the collateral for the borrower's loan.

81.

The Defendant breached its duty of good faith and fair dealing to the Plaintiff and members of the Class in its accrual, assessment, attempts to collect and collection for charges that it labeled

“inspection fees.”

82.

The Defendant is liable to the Plaintiff and members of the Class for all “inspection fees” wrongfully collected from Plaintiff and members of the Class, together with prejudgment interest from the date of collection.

83.

The Defendant has acted deceptively and in bad faith in its accrual, assessment, attempts to collect and collection of “inspection fees.” The Defendant is liable to the Plaintiff and members of the Class for their expenses of litigation, including reasonable attorney fees pursuant to O.C.G.A. § 13-6-11.

84.

The Defendant is liable to the Plaintiff and members of the Class for exemplary damages sufficient to punish the Defendant and to deter the Defendant from further like wrongful conduct.

## **COUNT II**

### **ATTORNEY FEES**

85.

The allegations of paragraphs one through seventy-seven above are incorporated herein by reference.

86.

Defendant has accrued, assessed, attempted to collect and collected charges that it labels “attorney fees” from the Plaintiff and members of the Class that had not been assessed by order of United States Bankruptcy Court.

87.

The charges that are labeled "attorney fees" that Defendant has accrued, assessed, attempted to collect and collected from the Plaintiff and members of the Class were accrued without giving prior notice to each respective borrower of the charge for "attorney fees" and the reason said "attorney fees" were being charged.

88.

The charges that are labeled "attorney fees" that Defendant has accrued, assessed, attempted to collect and collected from the Plaintiff and members of the Class were accrued without Defendant making any independent determination based upon facts known to it that services at issue had actually been performed by a licensed attorney, were reasonable and necessary, or that the charge being assessed was reasonable.

89.

The Defendant breached its duty of good faith and fair dealing to the Plaintiff and members of the Class in its accrual, assessment, attempts to collect and collection for charges that it labeled "attorney fees."

90.

The Defendant is liable to the Plaintiff and members of the Class for all "attorney fees" wrongfully collected from Plaintiff and members of the Class, together with prejudgment interest from the date of collection.

91.

The Defendant has acted deceptively and in bad faith in its accrual, assessment, attempts to collect and collection of "attorney fees." The Defendant is liable to the Plaintiff and members of the Class for their expenses of litigation, including reasonable attorney fees pursuant to O.C.G.A. § 13-

6-11.

92.

The Defendant is liable to the Plaintiff and members of the Class for exemplary damages sufficient to punish the Defendant and to deter the Defendant from further like wrongful conduct.

### COUNT III

#### VIOLATION OF O.C.G.A. § 13-1-11

93.

The allegations of paragraphs one through seventy-seven above are incorporated herein by reference.

94.

The Defendant accrued, assessed, attempted to collect and collected "attorney fees" from the Plaintiff and members of the Georgia Subclass without first giving antecedent notice as commanded by O.C.G.A. § 13-1-11.

95.

The Defendant is liable to the Plaintiff and members of the Georgia Subclass for all charges for "attorney fees" that it collected from them without first giving notice in the manner and form required by O.C.G.A. § 13-1-11, together with prejudgment interest from the date of collection.

96.

The Defendant has acted in bad faith in its accrual, assessment, attempts to collect and collection of "attorney fees." The Defendant is liable to the Plaintiff and members of the Georgia Subclass for their expenses of litigation, including reasonable attorney fees pursuant to O.C.G.A. § 13-6-11.

97.

The Defendant is liable to the Plaintiff and members of the Georgia Subclass for exemplary damages sufficient to punish the Defendant and to deter the Defendant from further like wrongful conduct.

#### COUNT IV

#### GEORGIA RICO

98.

The allegations of paragraphs one through seventy-seven above are incorporated herein by reference.

99.

The Plaintiff and the Georgia Subclass bring this count pursuant to O.C.G.A. § 16-14-1, *et seq.*

100.

In its servicing of the mortgages of the Plaintiff and members of the Georgia Subclass and in its assessment of charges for “inspection fees” and “attorney fees” to which it is not entitled, Defendant has acted as an enterprise within the meaning of O.C.G.A. § 16-4-3(6).

101.

In its servicing of the mortgages of the Plaintiff and members of the Georgia Subclass and in its assessment of charges for “inspection fees” and “attorney fees” to which it is not entitled, Defendant has committed repeated and related acts of Theft by Deception, O.C.G.A. § 16-8-3, in that it obtained property from the Plaintiff and members of the Georgia Subclass by intentionally representing to the Plaintiff and the Georgia Subclass that they owed money for charges for “inspection fees” and “attorney fees” when they did not, in fact, owe such charges.

102.

In its servicing of the mortgage of the Plaintiff and members of the Georgia Subclass and in its assessment of charges for "inspection fees" and "attorney fees" to which it is not entitled, Defendant has committed repeated and related acts of Theft by Conversion, O.C.G.A. § 16-8-4, in that it obtained money from the Plaintiff and members of the Georgia Subclass that were payments due on their respective home mortgages, but Defendant wrongfully converted and applied such payments to charges for "inspection fees" and "attorney fees" that were not legitimately owed to Defendant.

103.

In the course of servicing the loans of the Plaintiff and members of the Georgia Subclass, the Defendant has engaged in a pattern of racketeering by engaging in multiple acts of theft by conversion and theft by deception in furtherance of its scheme to collect from the Plaintiff and members of the Georgia Subclass monies to which Defendant was not legitimately entitled, such acts occurring after July 1, 1980, and continuing until the present, all in violation of O.C.G.A. § 16-14-4.

104.

Pursuant to O.C.G.A. § 16-14-6(c), the Plaintiff and members of the Georgia Subclass are entitled to recover from the Defendant three times their actual damages and prejudgment interest, together with attorney fees and all costs of the investigation and litigation.

105.

The Defendant has acted deceptively and in bad faith in its accrual, assessment, attempts to collect and collection of "attorney fees" and "inspection fees." The Defendant is liable to the Plaintiff and members of the Georgia Subclass for their expenses of litigation, including reasonable attorney fees pursuant to O.C.G.A. § 13-6-11.

106.

The Defendant is liable to the Plaintiff and members of the Georgia Subclass for exemplary damages sufficient to punish the Defendant and to deter the Defendant from further like wrongful conduct.

**COUNT V**

107.

The allegations of paragraphs one through seventy-seven and eighty-five through nine-two are incorporated herein by reference.

108.

The loans of the members of the Class are serviced by the Defendant at its offices in Wilmington, Ohio.

109.

Mortgage payments made to Defendant are received by Defendant and allocated by Defendant at its offices in the State of Ohio.

110.

The Defendant's determinations to assess "attorney fees" and "inspection fees" against class members whose loans are serviced by Defendant are made in the State of Ohio.

111.

Notices sent by Defendant to attempt to collect "attorney fees" from members of the Class are sent from the State of Ohio.

112.

Defendant makes allocations of mortgage payments received from members of the Class to pay "attorney fees" and "inspection fees" rather than applying these funds toward principle and

interest on the class members' debts. Defendant makes and has made these allocations without express direction or approval by Plaintiff or members of the Class.

113.

These wrongful mis-allocations of payments from members of the Class are made by the Defendant in the State of Ohio.

114.

The operations and actions of the Defendant in the State of Ohio are subject to the laws of the State of Ohio.

115.

Defendant collects "attorney fees" from members of the Class even though Defendant has actual knowledge that it is unlawful in the State of Ohio to collect "attorney fees" in addition to consumer debt in the State of Ohio.

116.

The Plaintiff and all members of the Class are entitled to recover from Defendant all funds that it has collected from them that it attributes to "attorney fees" unless those fees were expressly approved and authorized by order of a United States Bankruptcy Court.

117.

The Plaintiff and all members of the Class are entitled to recover prejudgment interest on all sums wrongfully collected from them by Defendant.

WHEREFORE having stated his amended complaint, the Plaintiff prays as follows:

a) That this case be certified to proceed as a class action with a Class and Georgia Subclass as defined herein;

b) That the Plaintiff and members of the Class and Georgia Subclass recover from the Defendant all sums collected by Defendant for alleged "inspection fees" and "attorney fees." together with prejudgment interest;

c) That the Plaintiff and members of the Georgia Subclass recover three times their actual damages, together with expenses of litigation and exemplary damages;

d) That the Plaintiff and members of the Class and Georgia Subclass recover exemplary damages from the Defendant sufficient to punish the Defendant and to deter the Defendant from further like wrongful conduct;

e) That the Plaintiff and members of the Class and Georgia Subclass recover their expenses of litigation, including reasonable attorney fees;

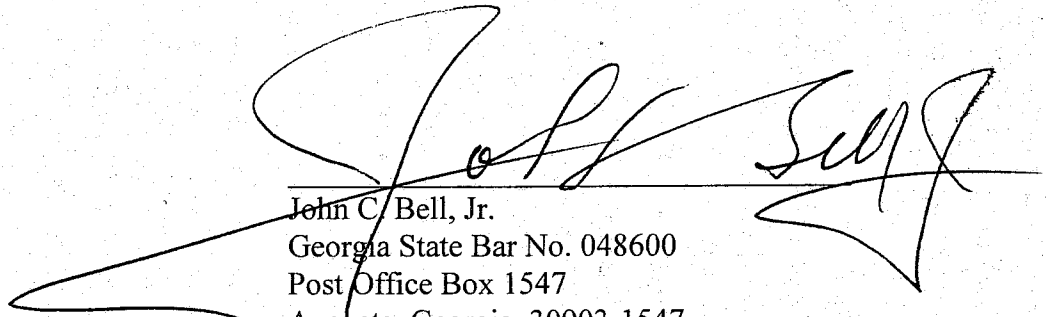
f) That the Plaintiff and members of the Class and Georgia Subclass have trial by jury; and

g) That the Plaintiff and members of the Class and Georgia Subclass have such other and further relief as the Court may deem just.

This 22<sup>nd</sup> day of January, 2010.

Respectfully submitted,

BELL & BRIGHAM



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CERTIFICATE OF SERVICE

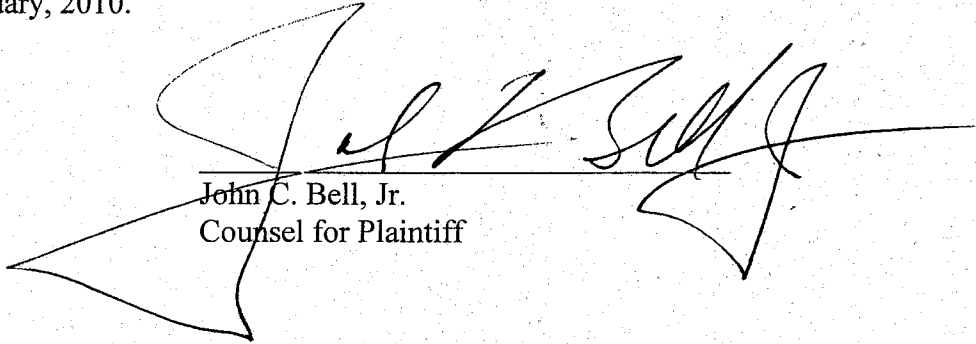
This is to certify that I have served a copy of the foregoing **SECOND AMENDED COMPLAINT**, upon opposing counsel by depositing same in the United States mail with proper postage affixed thereto and addressed as follows:

Lori L. McGowan, Esquire  
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This 22<sup>nd</sup> day of January, 2010.



John C. Bell, Jr.  
Counsel for Plaintiff