

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHRISTOPHER SCHUH and DIANE SCHUH,

Plaintiffs,

-against-

DRUCKMAN & SINEL, LLP; FIDELITY NATIONAL FINANCIAL, INC.; FIDELITY NATIONAL INFORMATION SYSTEMS, INC.; FIDELITY NATIONAL FORECLOSURE SOLUTIONS, INC.; HSBC BANK USA, NA; HSBC MORTGAGE SERVICES, INC.; HSBC FINANCE CORPORATION; MERSCORP, INC.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; DORY GOEBEL; MARIA OLIVARI; HSBC-DOES-1 to 4; FIDELITY DOES 1-4; RICHARD ROE-1 to 10; the DOE and ROE names being fictitious names, the real names of said defendants being presently unknown to Plaintiffs, said fictitious names being intended to designate persons and/or entities who are acting in concert with the defendants,

Defendants,

AMENDED COMPLAINT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHRISTOPHER SCHUH and DIANE SCHUH,

Plaintiffs,

-against-

DRUCKMAN & SINEL, LLP; FIDELITY NATIONAL FINANCIAL, INC.; FIDELITY NATIONAL INFORMATION SYSTEMS, INC.; FIDELITY NATIONAL FORECLOSURE SOLUTIONS, INC.; HSBC BANK USA, NA; HSBC MORTGAGE SERVICES, INC.; HSBC FINANCE CORPORATION; MERSCORP, INC.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; DORY GOEBEL; MARIA OLIVARI; HSBC-DOES-1 to 4; FIDELITY DOES 1-4; RICHARD ROE-1 to 10; the DOE and ROE names being fictitious names, the real names of said defendants being presently unknown to Plaintiffs, said fictitious names being intended to designate persons and/or entities who are acting in concert with the defendants,

Defendants.

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Plaintiffs, complaining of defendants by their attorney JOHN C. KLOTZ, allege for their complaint:

A. INTRODUCTORY ALLEGATIONS APPLICABLE TO ALL COUNTS

I. Summary of Case

1. Plaintiffs bring this action for damages they have suffered by reason of the attempts of the defendants, their associates, and co-conspirators, to wrongfully eject them from their home of more than 15 years and/or realize unconscionable profits not justified by either Plaintiffs' mortgage or any judgment of the New York State ("NYS") courts.

Index No. 07-CV-366
(LAK)

AMENDED COMPLAINT

**PLAINTIFFS DEMAND
TRIAL BY JURY**

2. While ostensibly seeking to foreclose the mortgage they are in fact seeking to reap profits by obtaining Plaintiffs home at a fraction of its value and/or forcing Plaintiffs to pay legally unjustified claims for fees and expenses.. To accomplish this result they have engaged in extra-judicial misconduct and fraud subsequent to the judgment of foreclosure they obtained.

3. Plaintiffs allege violations of federal remedial statutes including the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 et seq; and state claims of which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

4. Among other things Defendants sought legal fees in excess of \$20,000 when the note, at issue, by its own terms limited attorney fees to 15% of the outstanding principal balance of the note which is no more than \$64,819.99. Therefore, no more than \$9,723 could be sought or awarded as reasonable attorney fees for according to the terms of the Plaintiff’s note.

5. In addition, the activities of the defendants were, and are, unlawful racketeering activity that gives rise to relief pursuant to the provisions of Section 1961 *et seq.* of Title 18 of the United States Code (“U.S.C.”), Chapter 96, popularly known as the Racketeer Influenced and Corrupt Organizations Act (“RICO”).

6. Plaintiffs do not dispute that they borrowed money secured by a mortgage on their home or that a judgment of foreclosure was obtained by defendant MERS on January 21, 2005. However, through extra-judicial means, defendants sought to prevent Plaintiffs from lawfully redeeming their mortgage and the amount due pursuant to the judgment of foreclosure as allowed by law and made claims greater than, and apart from, those contained in the judgment of foreclosure.

7. When Plaintiffs were finally able to obtain funds to discharge their mortgage pursuant to New York State law, they discharged their obligations to their purported mortgagee pursuant to the judgment of foreclosure by making sufficient deposits into the Court on December 15, 2006 and January 10, 2007.

8. This action was commenced on January 17, 2007.

9. By order entered March 6, 2007 the NYS Court ordered the Saratoga County Treasurer and the court-appointed referee who was holding certain funds in escrow to pay the deposited funds as directed by the attorneys for the NYS Plaintiff and return the balance of the funds to the Schuh’s who had over-deposited the required funds. See EXHIBIT A, annexed.

10. Said monies were in fact paid. However, Defendants have persisted in their attempts to collect monies from Plaintiffs to which they are not entitled to by reason of the foreclosure judgment. EXHIBIT B-1, annexed, is an account statement and demand dated April 4, 2007. EXHIBIT B-2, is a letter dated May 7, 2007 claiming Plaintiff's continuing liability for the debt they had paid in full by the NYS Court's order and enclosing a copy of Plaintiffs' Note and Mortgage which are marked EXHIBIT C, annexed..

11. As will be alleged infra, said statements constitutes violation of FDCPA and are racketeering acts pursuant to RICO.

II. Jurisdiction and venue

12. Jurisdiction of this action is founded upon the existence of a federal question arising under RICO, 18 U.S.C. §1964(c); FDCPA, 15 U.S.C. 1692k, 28 U.S.C. §1331 (Federal Question) and 28 U.S.C. § 1367 (Supplemental Jurisdiction).

13. Venue is founded upon 18 U.S.C. §1965(a) which provides that "Any civil action or proceeding under this chapter [RICO] against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs."

14. Druckman & Sinel, LLP (the "Druckman firm") transacts business within the Southern District of New York at an office located at 7 Penn Plaza, 8th Floor, New York, NY 10001.

15. Each of the defendants is either (a) a resident of the State of New York and/or (b) transacts business in the State of New York and/or (c) an individual or business organization that has committed tortious conduct intending that it have an impact within New York State.

III. Definitions

16. "Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery," are allegations that Plaintiffs believe to have a reasonable basis sufficient to meet the requirements of Rule 11(b)(3) based upon such information that is available. Documents that have been reviewed at least in part by the attorney for the Plaintiffs and the Plaintiffs' investigator/consultant run to thousands of pages and are too bulky to be included as

exhibits to the Amended Complaint. Included among other things are corporate records, litigation records, affidavits, depositions, E-Mails, web pages published by the defendants, investigative reports, Power Point Presentations, and SEC filings. Said information will be made available on computer disks as a part of Initial Disclosure pursuant to Rule 26(a)(1), or sooner, upon the request of the Court or any party, who will exchange similar relevant information.

17. “Subprime mortgage” means a mortgage that does not qualify for government sponsored mortgagee insurance because of a greater risk caused by poor credit or other conditions such as a default.

18. “BPO” means “Broker’s Price Opinion” and it is a charge to a mortgagee for having a broker estimate the value of mortgage property.

19. “MBS” means Mortgage Backed Securities and “RMBS” means Residential Mortgage Backed Securities.

20. “REO” means “Real Estate Owned” and is used in the mortgage industry to describe property that is purchased by the lender or its nominee at a mortgage foreclosure sale by bidding in the outstanding amount of the mortgage indebtedness.

21. “Mortgage Servicers” means companies that provide billing, escrow, accounting, collection, and management services to lenders, trusts and other entities including the collection of mortgage payments and other charges and fees claimed to due from borrowers of fund secured by a mortgage on real estate (“mortgagors”). Such servicers may be “Primary,” Master,” Special,” or “Sub” servicers.

22. “Trustee” means the business entity that holds legal title to the underlying security collateral for the benefit of the security holders in RMBS and MBS transactions..

23. “Administrator” which may, or may not, be the trustee is a bank or other business organization which administers a trust agreement, including supervision of mortgage servicers and their fees.

24. “Primary servicer” means a mortgage servicer that monitors loan Agreement compliance/asset performance.

25. “Special servicer” refers to sub-servicers of loans in default and who performs loan workouts, foreclosure management and non-performing asset dispositions.

26. “Sub-servers” are business entities who perform on-going servicing activities under agreements with the contractually responsible servicer. . There may be more than one sub-servicer that services a loan for a mortgagee.

27. “Private label servicing” means a sub-servicer who, inter alia, purports to act in the name of another servicer, concealing its identity from judicial process and mortgagors and may use the name and logo of the contracted servicer in customary and legal communications to the mortgagor and his/her legal representatives.

IV. Parties

a. Plaintiffs

28. At all pertinent times Plaintiffs Diane and Christopher Schuh resided at 20 Old River Road, Corinth, New York having a mailing address of P.O. Box 668, Lake Luzerne, New York 12846. Pictures of there home appear as EXHIBIT D, annexed.

b. Defendants

(1.) The Fidelity Group.

29. FIDELITY NATIONAL FINANCE (FNF-OLD) was, at pertinent times a publicly traded corporation which organized whose various affiliates, subsidiaries and divisions will be referred to herein as the FIDELITY GROUP.

30. Defendant FIDELITY NATIONAL FINANCE (FNF-NEW) is a successor corporation to FNF-Old.

31. Defendant FIDELITY NATIONAL INFORMATION SYSTEMS (FIS) was a wholly owned subsidiary of FNF-OLD which acquired the assets of FNF-OLD by a reverse acquisition in 2006.

32. Defendant FIS is a corporation having its offices and principal place of business in the offices of FNF in Jacksonville, Florida.

33. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, the acquisition of by FNF by FIS of assets and liabilities of FNF carried with it liabilities for the actions of FNF which are alleged hereinafter. Annexed hereto as EXHIBIT E, are

pages 5 and 39 from FNF's 2006 Form 10K filed with the SEC describing the 2006 financial manipulations including the acquisition of FNF-by FIS.

34. The reverse acquisition by its subsidiary and subsequent name change back to FNF, did not discharge any liabilities that FNF-OLD may have had. "FNF" as used in this Amended Complaint shall apply to the original FNF and the reversed merged FNF who is a successor in interest for the original FNF.

35. According to a press report published on or about March 16, 2005 under FNF aegis:

(a) The FIDELITY GROUP is the largest provider of products and outsourced services and solutions to financial institutions and the real estate industry.

(b) FNF is the nation's largest title insurance company, with nearly 32 percent national market share, and is also a provider of other specialty insurance products, including flood insurance, homeowners insurance, and home warranty insurance.

(c) Through FIS, the Company is a leading provider of technology solutions, processing services and information services to the financial services and real estate industries. FIS' software processes nearly 50 percent of all U.S. residential mortgages, it has processing and technology relationships with 45 of the top 50 U.S. banks and more than 3,600 small and mid-sized U.S. financial institutions and it has clients in more than 50 countries who rely on its processing and outsourcing products and services.

(d) FIS also provides customized business process outsourcing related to aspects of the origination and management of mortgage loans to national lenders and servicers.

(e) FIS offers information services, including property data and real estate-related services that are used by lenders, mortgage investors, and real estate professionals to complete residential real estate transactions throughout the U.S.

(f) More information about the FNF family of companies can be found at <http://www.fnf.com> and <http://www.fidelityinfoservices.com>

36. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, FNF, FIS and FNFS, are "alter egos" of each other in that they share common chief executive officers, offices and facilities, distribute services to customers among their various

subsidiaries and divisions and pursue common policies promulgated by their common inside directors, officers, clients, consultants, and advisors.

37. Fidelity National Default Solutions (FNDS) is a division of FIS, operating under the direction and control of FIS

38. Defendant FIDELITY NATIONAL FORECLOSURE SOLUTIONS, INC. (“FNFS”) is a subsidiary of FIS and functions as a division of FNDS. Annexed hereto as EXHIBIT F is the banner page of the Summit, an in-house publication of FNFS.

39. FIDELITY DOE-1 through 4, said names being fictitious because their identities are unknown, are business entities which by reason of their relations to FNF and FIS are paid for services rendered in various capacities to customers of FIS & FNF.

40. FNF, FIS, FNDS and FNFS and their various affiliates and subsidiaries designated FIDELITY DOE-1 through 4 will be collectively referred to as the “FIDELITY GROUP.”

41. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, the members of the FIDELITY GROUP are “alter egos” of each other in that they share common chief executive officers, offices and facilities, distribute services to customers among their various subsidiaries and divisions and pursue common policies promulgated by their common inside directors, officers, clients, consultants, and advisors.

42. Defendant DORY GOEBEL is manager of the document execution team of FNFS and/or FNDS overseeing a section of 17 individuals who claim to execute 1,000 legal documents a day for filing in state and federal litigation brought by FNF. Annexed hereto as EXHIBIT G is an article written by Ms. Goebel describing the operation of her office.

(2.) HSBC Defendants

43. Defendant HSBC BANK USA, NA (“HSBC USA”) is a bank headquartered in the United States and a subsidiary of HSBC BANK, PLC of London (“HSBC PLC”)

44. Defendant HSBC FINANCE CORPORATION (HSBC FINANCE) is a mortgage servicer which is indirectly affiliated with HSBC USA through HSBC PLC that perform mortgage servicing and other related services and also functions as a sponsor of public offerings of mortgage pools of trusts it services..

45. Defendant HSBC MORTGAGE SERVICES, INC. (HSBC MORTGAGE) is a corporation an a subsidiary of HSBC FINANCE.

46. It is a part of the business of HSBC USA to administer mortgage pool in which HSBC FINANCE serves as Master Servicer.

47. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, HSBC MORTGAGE is a sub-servicer and subsidiary of HSBC FINANCE which services mortgages in New York State.

48. HSBC DOES 1-4 are other affiliates and subsidiaries direct and indirect, of HSBC PLC which perform mortgage servicing and other related services.

49. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, HSBC MORTGAGE, HSBC USA, HSBC FINANCE and HSBC DOES 1-4 are “alter egos” of each other in that they share common chief executive officers, offices and facilities, distribute services to customers among their various subsidiaries and divisions and pursue common policies promulgated by their common inside directors, officers, clients, consultants, and advisors.

50. Defendants HSBC MORTGAGE, HSBC USA, HSBC FINANCE and HSBC DOES 1-4 are under common control as subsidiaries, affiliates or indirect affiliates of HSBC, PLC and will be referred to jointly as HSBC.

(3.) Other Defendants

51. Defendant DRUCKMAN FIRM is a law firm engaged in the practice of law including collection of debts as a debt collector for mortgage servicers and investors as well as the assistance in the transfer and disposition of Real Estate Owned (“REO”) property, obtained via mortgage foreclosure proceedings.

52. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, at pertinent times, the DRUCKMAN FIRM operated at all times under the direction and control of the FIDELITY GROUP in the foreclosure of the Schuh Mortgage and Note and may be described as a partner of the FIDELITY GROUP.

53. Defendant MARIA OLIVARI (“OLIVARI”) is an attorney admitted to practice in New York State and an associate of the DRUCKMAN FIRM who was principally in charge of the MERS foreclosure action brought against the Plaintiffs at pertinent times. .

54. Defendant MERSCORP is a corporation having its principal place of business at 1595 Spring Hill Road, Suite 310, Vienna, Virginia. MERSCORP owns operates Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS; INC. as a wholly owned subsidiary and or division of MERSCORP having its principal office at 1595 Spring Hill Road, Suite 310, Vienna, Virginia and operates executes policies established by MERSCORP..

55. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS; INC. is authorized to do business in New York and has brought law suits in New York State on behalf of undisclosed principals.

56. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS; INC. and MERSCORP are alter egos of each other and will hereinafter be referred to jointly as MERS.

57. Defendants RICHARD ROE-1 to 10; are fictitious names, the real names of said defendants being presently unknown to Plaintiffs, said fictitious names being intended to designate persons and/or entities who are acting in concert with the defendants.

V. The Fidelity Default Enterprise

a. Organization of Mortgage Financing

58. In today’s mortgage market, lenders, originators, and brokers quickly assign promissory notes and mortgages through a complex and opaque series of structured finance transactions involving as many as a dozen different companies many of which are designed as remote bankruptcy entities and incorporated offshore in countries known as tax havens and for their concealment of financial records.

59. According to industry source from 70% to 80% of all mortgage loans are securitized and transferred into large mortgage pools, the income such those loans being “structured” into different classes and tranches for different types of sophisticated and institutional investors, including hedge funds. This process is referred to as mortgage backed securitization (MBS).

60. Participation certificates in the MBS trusts are then offered and sold to institutional investors. Such trusts are under the direction and control of a trustee and/or administrator, which in many cases will be an affiliate or partner of an investment banking firm or bank.

61. Because the trusts have essentially no distinct organizational structure, the task of collecting the monies due for principal and interest are contracted to mortgage servicing companies, generally including a master servicer and other delegated servicers and sub-servicers who collect the payments from the mortgagors and disburse them to the mortgage trusts. Such servicers keep a small percentage, usually .005% as servicing fee **as well as collection of ancillary fees and income such as late fees.**

62. Servicing rights to the mortgage loans have become a major commodity subject to sale, barter, and trade.

63. EXHIBIT H is a page from a PowerPoint presentation by Standard and Poor that outlines the roles of the servicers. Attached as EXHIBIT I is a page 6 of said presentation which shows the complex flow of information and cash flows among the many various levels of servicers.

64. The existence of these various servicers and their relationships to the mortgage loan and control of information and data is opaque to the mortgagors of the individual loans and the Courts which are called upon to foreclose mortgages and judge complaints that were either complained or defended in the name of MERS or a servicer.

65. Defendant MERS was created by the financial community to facilitate the assignment and transfer of mortgages by creating an electronic mortgage assignment database. Mortgage assignments are recorded privately and electronically by MERS but not recorded in the traditional place for keeping such records – the local county clerk’s offices. In this way, MERS allows the financial community to escape recording fees for the frequent assignment of the mortgages and transfer and intangible taxes due in some jurisdictions.

66. The existence of these various servicers and their relationships to the mortgage loan and control of information and data is opaque to the mortgagors of the individual loans and the Courts which frequently are called upon to foreclose mortgages either in the name of MERS or a mortgage servicer.

67. In addition MERS concealment of the true note holder and beneficial owner prevents borrowers like the Plaintiffs from short paying their debt, repurchasing their note, rescinding their note or suing the note holder for various violations of law that may have occurred in the origination and servicing of their loan.

68. MERS does not acquire the mortgage note and only holds legal title to members' mortgages in a nominee capacity. MERS is contractually prohibited from exercising any rights with respect to the mortgages (i.e., foreclosure) without the authorization of its members. Furthermore, MERS does not own the promissory notes secured by the mortgages and has no right to payments made on the notes. MERS merely "immobilizes" the mortgage lien while transfers of the promissory notes and servicing rights continue to occur.

69. The payment of principal and interest due from mortgagors is often guaranteed by either government, government sponsored or private mortgage insurance and it is the presence of these guarantees which has until now made the mortgage pools a stable, insured investment.

70. Unconventional and sub-prime loans that do not meet the standards for guarantee by federal agencies such as FHA, HUD and Ginnie Mae and government sponsored enterprises such Fannie Mae and Freddie Mac are often pooled into private mortgage backed securitizations. To make such loans acceptable for pooling, private mortgage guarantee and pool insurance and credit enhancement are obtained.

b. *Default Mortgage Servicing*

71. A **lucrative** area of mortgage special servicing is default and private label special servicing.

72. After default, servicing rights and/or responsibilities are frequently transferred to specialized default mortgage servicers and/or special servicers.

73. The default and special servicer pass on the principal and interest to the true mortgage note holder, trustee, or master servicer. Special fees charged because of the default such as late fees, BPO fees, and other assessments, are often retained by the default or special servicer. Often, such fees are not legally recoverable from the mortgagor under the mortgage or promissory note, but are nonetheless assessed and collected from borrowers.

74. Intrinsic in the operation of the default, special servicing and private label servicing is the concealment of their identity and participation in the litigation process.

75. The default special servicer pass on the principal and interest to the true mortgage note holder. Special fees charged because of the default such as late fees, BPO fees and other assessments are retained by the default or special servicer mortgage servicer.

76. Intrinsic in the operation of the default special servicing and private label servicing is the concealment of their identity and participation in the litigation process.

77. Typically, if the property is purchased at a foreclosure sale by a default servicer, special servicer or MERS, any profit in excess of the net amount bid, often called the net liquidation proceeds, remains with the default or special servicer as part of their compensation. Such property then becomes a REO asset of the servicer whose identity may remain hidden.

78. The original principal and any accumulated interest or a percentage thereof is transferred to the true note holder/trust that has been concealed by the opaque veil created and maintained by the Defendants.

79. Identifying the actual holder of the note and mortgage after default is virtually impossible because of the complex relationship of trustee, administrator, trust pool, guarantor, and various servicers involved in each loan. If the guarantor has paid the defaulted sum, it may be subrogated to the right to collect on the default.

c. Mortgage Servicing Fraud

80. The immense profitability of default mortgage servicing has led to adoption of procedures and processes by the sub-prime, default and special mortgage servicing industry to intentionally trigger and maximize default potential and thus their annual net profits and the book value of their servicing contracts

81. "Mortgage Servicing Fraud" is committed when the lender or lender's servicer manipulates loans to falsely indicate a default by: such means as (a) Entering on-time payments as late, to exact illegal and unauthorized fees; (b) Falsely reporting a default to the credit bureaus when it is the *servicer* creating the default; (c) Refusing payments to guarantee default; (d) Adding thousands of dollars in unearned legal fees to create a default; (e) Ignoring customer complaints and "qualified written requests"; (f) Arrogantly violating numerous laws and regulations.; (g) Falsifying records; (h) Committing fraud upon the courts by stating they are the owner of the note and

mortgage when they are not; (i) Intentionally causing delays to run up legal expenses; (j) Forging documents; (k) Blatantly committing fraud upon the courts; (l) Not adhering to the terms of the loan documents; (m) Not applying payments to principal and interest; (n) Committing perjury through flagrant misrepresentations to the courts; (o) Conjuring up events that never happened and refusing to provide documentation to support these fallacies; (p) Placing funds into a suspense/unapplied account and not crediting borrower's funds; (q) Failing to respond in a timely manner to inquiries.

82. In addition, after obtaining judgments of foreclosure, servicers and the servicers often thwart redemption provisions of the laws of the various states by piling on unjustified and illegal charges and using the pendency of foreclosure sales to extort such unjustified and extortionate fees from mortgagees.

83. Such mortgage fraud practices are in fact a part of the Defendants conduct in their attempts to realize unjustifiable and illegal profits from the Schuh mortgage.

d. *The Fidelity Default Enterprise*

84. In order to capitalize on the high profitability of default mortgage servicing, FIDELITY GROUP organized and funded FNDS and FNFS.

85. FIDELITY GROUP further causes its divisions to enter into joint ventures, contractual relationships and partnerships with mortgage servicers, law firms and other providers of services in mortgage foreclosure actions as well as for the ultimate disposition of foreclosed real estate in the REO market whereby, expenses, fees, and profits are divided between members, partners, and affiliates.

86. FIDELITY GROUP marketed these services on the Internet on various web pages and described its operations as follows::

“The Total Default Solution

“Imagine how much easier your life would be - and how much more efficiently your company could operate - if you could have a single point of contact for processing all of your default title and closing orders, virtually anywhere in the U.S.

Now stop imagining. And start processing.

Because that's exactly what the Default Title and Closing Services division from industry leader Fidelity National Default Solutions (FNDS) gives you - seamless services and consistent quality control throughout the entire default cycle, from pre-

foreclosure through REO asset disposition. Our integrated solutions eliminate the hassle and errors that traditionally occur when multiple companies are used for default services.

We're committed to providing state-of-the-art, customized services combined with leading-edge technologies - at extremely competitive prices - providing title and closing services faster, easier and more cost-effectively than ever before possible.

Foreclosure Title

All foreclosure title is provided quickly and efficiently via electronic delivery. We also perform title curative work to avoid delays in the foreclosure process.

Our fast turnaround and accurate reporting enable FNDS to meet or exceed the strict servicer requirement demands placed on your company by investors such as Fannie Mae, Freddie Mac, HUD and VA. All foreclosure title work is issued at the lowest filed rate available.”

87. As a part of its default services, FIDELITY GROUP through its divisions contracts with, retains, and/or supervises law firms that are retained to represent mortgage servicers in foreclosure actions; prepares affidavits and affirmations which are executed on behalf of the mortgage servicers and MERS by FIDELITY GROUP employees and/or the attorneys who they have retained and/or supervise.

88. Another service offered by FIS to its customers is data cleaning which it advertised as:

“Data Cleanup”

“Nobody likes or has time for cleanup work; however, accuracy in a mortgage company’s portfolio is important. For this reason, FIS provides a wide range of data integrity reports and data cleanup services on the existing portfolio. FIS looks at all or part of the portfolio and provides reports that indicate missing, invalid, or inaccurate data. FIS then works with clients to clean up or adjust that data to fit their needs. Some examples include investor/pool consolidation, master file verification, tax and hazard payee consistency and alignment, default workstation template combinations or splits, header-to-loan validation and development of available loan numbers lists . In addition, FIS can look at clients’ requests and develop strategies that help meet their needs.”

89. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, based on an independent investigation, among the practices used by FIS in “cleaning-up the records” of its customers was reclassifying expenses and costs in categories not recoverable from the mortgagee pursuant to the terms of the mortgagee into recoverable categories.

90. As a matter of law, the resulting records cleaned-up by the FIDELITY GROUP are not records maintained in the regular course of business by the clients of the FIDELITY GROUP.

91. At pertinent times, the FIDELITY GROUP's provision of those services was as PLS, one tactic of which is to prepare and issue documents in the name of a master servicer and sub-servicer, concealing from the various courts in which the actions are pending and the pretense that the action is being maintained by the mortgage servicers or MERS is preserved. SEE EXHIBIT J, attached, an advertisement by FIS of its PLS.

B. THE SCHUH NOTE AND MORTGAGE

I. The mortgage loan and note

92. On or about September 16, 1994, Plaintiffs entered into a note in the principle sum of \$66,000 payable to PERSONAL MORTGAGE CORPORATION ("PMC") and secured by a mortgage of even date on their home. The Mortgage was a second mortgage junior lien. See EXHIBIT C, Mortgage & Note

93. The mortgage contained the following provision for the giving of notices by and between the Plaintiffs and the mortgagee:

. AGREEMENT ABOUT GIVING NOTICES REQUIRED UNDER THIS MORTGAGE":

"Unless the law requires otherwise, any notice that must be given under this Mortgage will be given by delivering it or mailing it **by certified mail** addresses to me [The Mortgagor] at the address stated in the section above titled "Description Of The Property". **A notice will be delivered or mailed to a different address if I give Lender a notice of my different address.**" Exh. C, p. 8

94. Because mail service to the physical address of the Plaintiffs' home was irregular and sometimes only seasonal, in 1994 when Plaintiffs executed their mortgage they promptly gave the required notice that their mailing address was: at "PO Box 668, Lake Luzerne, NY 12846".

95. The Schuhs' Mortgage Note contained a specific provision limited the amount of attorney's fee that could be collected in the event of a default to 15% of the outstanding principal of the note. (Exh. C, p. 3)

96. All correspondence received by Plaintiffs from any lender or servicer was properly addressed to "PO Box 668, Lake Luzerne, NY 12846" pursuant to section 15 of the Mortgage.

97. On September 16, 1994, PMC assigned the loan to BENEFICIAL FINANCE COMPANY. See EXHIBIT K annexed hereto.

98. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, the Schuh mortgage was securitized and/or otherwise collateralized and the beneficial interest in said note and mortgage were assigned by Beneficial to yet to be disclosed parties/investors/trusts.

99. Attached hereto as EXHIBIT L, is a copy of a purported spread sheet of the Schuh note credit and payments, supplied to Schuhs by defendant DRUCKMAN FIRM. (the “Druckman Spreadsheet”).

100. The Druckman Spreadsheet contains anomalous entries that in at least one instance is out of date order.

101. According to the Druckman Spreadsheet, on the following dates, the following events of default occurred and thereafter said mortgage and note were in default and subject to default servicing:

DATE	EVENT OF DEFAULT
6/17/97	Account debited for “forced placed insurance” purchased on behalf of the mortgagee when the Schuhs allegedly failed to provide insurance,
12/1/97	Payment skipped
2/1/98	Payment skipped and not made-up
8/22/98	Advance for taxes and insurance not paid by Schuhs
10/22/98	Foreclosure fee

102. The Schuh note and mortgage were in a default state from June 17, 1997 and thus subject to default servicing from that date.

103. On or about May 5, 2001, the Schuh note and mortgage was assigned by BENEFICIAL FINANCE to MERS as nominee of HOUSEHOLD FINANCIAL SERVICES INC.(“HOUSEHOLD FINANCIAL”), a subsidiary of HOUSEHOLD FINANCE CORPORATION (“HFC”) See EXHIBIT M, annexed.

104. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery defendant, at a pertinent times, the assets and liabilities of HOUSEHOLD FINANCE COMPANY (“Household”) were acquired by HSBC, PLC or one of its subsidiaries.

105. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, Defendant, HSBC MORTGAGE SERVICES and/or HSBC FINANCE CORPORATION obtained servicing rights to the Schuh Note and Mortgage subsequent to June 17, 1997 and subsequently further transferred said servicing rights.

106. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery HSBC Defendants utilized the services of the FIDELITY GROUP in seeking to foreclose the Schuh Note and Mortgage,

107. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, based upon the industry practices and subject to further disclosure, the interest being transferred by the assignment from BENEFICIAL to MERS as nominee was not the beneficial ownership of the Note and/or mortgage to MERS, but such servicing rights as were the property of BENEFICIAL.

108. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, at the time of said transfer, the Schuh Mortgage was subject to securitization and the beneficial interest thereof was held by a trustee for an undisclosed trust.

109. From an examination of the signatures of the executing officers of the assignment with other purported documents purportedly executed by the same individuals, the signatures of the officers who executed the assignment to MERS on behalf of Beneficial (EXHIBIT M) were forged and this allegation shall likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

110. On or about October 11, 2002, HOUSEHOLD entered into a consent decree with the Attorney General of the State of New York which inter alia awarded damages for misconduct. See EXHIBIT N, a press release by the New York State Attorney General.

111. Thereafter, on or about March 28, 2003, HSBC acquired HOUSEHOLD and operated it as a subsidiary and/or division of HSBC FINANCE. At that time, . HSBC had full and complete knowledge of various forms of alleged frauds and misconduct of HOUSEHOLD and its employees, agents and affiliates in the origination and servicing of mortgage notes.

112. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, servicing of the mortgagee was subject to various transfers to, in and among the

HSBC group of companies By reason of the intermingling of subsidiaries and affiliates of HOUSEHOLD and HSBC, the interconnected mortgage servicing divisions and subsidiaries will be referred to as “Household/HSBC.”

113. At time of such transfers among the division, subsidiaries and affiliates of Household/HSBC the Schuh Note and Mortgage were in default and such transferee entities were subject to the provisions of the FDCPA.

114. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, at the time of said transfers, the Schuh Mortgage was subject to securitization and the beneficial interest thereof was held by a trustee.

115. On or about January 2004, Plaintiffs had determined to pay-off the two mortgages on their home, the first mortgage have been reduced substantially by its monthly payments.

116. The Plaintiffs thereafter received from Household Mortgage Services, which had been acquired by HSBC the following statements showing the following amounts due or needed to cure:

EXHIBIT	DATE	AMOUNT CLAIMED
O-1	1/03/2004	1,168.34
O-2	2/05/04	8091.55
O-3	3/11/04	4543.17

117. Because of the confusion created by the disparate demands from Household/HSBC, on February 22, 2004 and March 18, 2004, Mr. Schuh wrote Household/HSBC Qualified Written Request pursuant to the Real Estate Settlement Procedures Act (“RESPA”)a letter requesting clarification and information from Household/HSBC. See EXHIBIT P.

118. On April 13, 2004, Household/HSBC in response to the RESPA Qualified Written Request letters from Mr. Schuh mailed to Mr. Schuh from the national offices of Household/HSBC Mortgage Services the letter which is attached hereto as EXHIBIT Q

119. In that letter, Household/HSBC falsely assured Mr. Schuh that no mortgage foreclosure action was contemplated.

120. At no time prior to May 2004 were the Plaintiffs informed of any interest by MERS in the note and/or mortgage they had executed on their home or the transfer of any servicing rights to MERS as required by RESPA.

II. The judgment of foreclosure and the use of the judgment to extort monies from the Plaintiffs

a. *The foreclosure action.*

121. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, at a point in time prior to May, 2004, but not later than June 30, 2004, Household/HSBC contracted with the FIDELITY GROUP to provide default servicing in the foreclosure of the mortgage on Plaintiffs' home.

122. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, among the services provided by FIDELITY were the supervision of local counsel (the DRUCKMAN FIRM), the maintenance and cleaning of financial records of the Schuh loan, and the preparation of affidavits and other documents in connection with the foreclosure action.

123. On May 4, 2004, Defendant DRUCKMAN FIRM filed an action to foreclose the mortgage on Plaintiffs' home on behalf of Defendant MERS as Plaintiff by filing a summons and complaint with the County Clerk of Saratoga County. See EXHIBIT R, annexed.

124. Said complaint contained numerous false statements and misrepresentations including, *inter alia*:

1 . At all times hereinafter mentioned plaintiff was and still is a corporation having an office or the conduct of business at 636 Grand Regency Boulevard, Brandon FL 33510 .

4. The plaintiff is still the owner and holder of the note and mortgage .

125. Said statements are objectively false in that NYS plaintiff (MERS) did not have an office in Bradenton Florida and that MERS was not the owner of a note and mortgage but on information and belief was the nominee of the holder of servicing rights to the mortgage and note.

126. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, the actual beneficial owner of the note and mortgage was at no time disclosed and has not been disclosed to this date and appears to be identified only as an "Investor" number on statements, pay-off letters and internal accounting documents issued by Household/HSBC..

127. Based upon an examination of documents supplied to Plaintiffs by defendant Household/HSBC, at least two different investors whose identity has been concealed from Plaintiffs acquired the beneficial interest in their note and mortgage at pertinent times.

128. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, because of industry-wide practices of the mortgage industry, the beneficial interest in Plaintiffs mortgage and note, were subject to more than two transfers of since September 16, 1994.

129. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, because of the standard practices of the mortgage industry, the servicing rights to Plaintiffs note and mortgage were transferred, bartered or sold among mortgage servicers more than two times since September 16, 1994.

130. After Plaintiffs discovered they had been sued, they mailed a written reply to the DRUCKMAN FIRM See EXHIBIT S, Plaintiffs' Reply, annexed.

131. Among other things, EXHIBIT S questioned the interest and status of Defendant MERS to be collecting the debt on the mortgage and reaffirmed Plaintiffs intent to pay all amounts due on his mortgage.

132. Thereafter, the Defendant DRUCKMAN FIRM moved for summary judgment on behalf of Defendants MERS.

133. An affidavit supporting said motion was executed by one CHRIS ANDERSON as "Foreclosure Representative of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (hereafter Plaintiff)" who purported .to have reviewed documents from "loan file at issue herein and kept in the ordinary course of business." See EXHIBIT T, annexed.

134. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, Ms. Anderson was at the time an employee of the FIDELITY GROUP who was making such affidavit in her capacity as an employee of the FIDELITY GROUP provision of Private Label Servicing to Household/HSBC in regards to the Schuh Mortgage.

135. . Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, Ms. Anderson's statement that she had reference to a "loan file maintained in the regular course of business" was not true in that she only had access to records maintained by the FIDELITY GROUP.

136. Plaintiffs were uniformed of the motions for summary judgment although they continued to correspond with Household/HSBC because despite having informed the mortgagee of the mortgage in 1994 of a post office box mailing address, and although having received statements and correspondence from Household/HSBC at his Post Office Box, the papers were directed to the physical address of the mortgaged premises which did not have regular mail service.

137. Defendant MERS was granted summary judgment and the court signed a boilerplate order that had been submitted by the DRUCKMAN FIRM at the time in filed the motion for summary judgment. (See EXHIBIT U, annexed)

138. Thereafter the DRUCKMAN FIRM applied for a judgment of foreclosure and in the application submitted an affidavit of defendant GOEBEL (EXHIBIT V) and EDWARD KLEIN (EXHIBIT W).

139. In her affidavit, GOEBEL represented that:

I am the attorney in fact of HOUSEHOLD FINANCIAL REALTY CORPORATION, the servicing agent for plaintiff in the within action and am in charge of all delinquent mortgage accounts, and affirm the figures contained in the following statement have been taken from records in my office.”

140. Said statement is objectively false in that the Plaintiff in the action was MERS, and as previously alleged, MERS does not acquire a mortgage or note and only holds legal title to members' mortgages in a nominee capacity and is contractually prohibited from exercising any rights with respect to the mortgages (i.e., foreclosure) without the authorization of the members.

141. Further, MERS does not own the promissory notes secured by the mortgages and has no right to payments made on the notes. MERS merely "immobilizes the mortgage lien while transfers of the promissory notes and servicing rights continue to occur.”

142. In his affirmation, KLEIN affirms that:

“None of the defendants have served an answer to the complaint, nor have they made any motion with respect thereto and none of the defendants have appeared, .except:

“(a) CHRISTOPHER SCHUH; DIANE SCHUH interposed and answer which answer was stricken by prior order of this court, and who appeared by their attorney ; and waived service of all papers upon this application.”

143. The above statement is objectively false, in that, (a) the reply of the Plaintiffs to the complaint was not submitted to the Court and thus could not have been stricken; and (b) at time of the KLEIN affirmation the Plaintiffs had not appeared by an attorney; and (c) the Plaintiffs had not waived service of any application.

144. Plaintiff had no notice of the application for the judgment of foreclosure by reason of Exhibit W.

145. Pursuant to the application of the defendant DRUCKMAN FIRM the court signed a judgment of foreclosure and sale, see EXHIBIT X, annexed.

146. When Plaintiffs returned from a vacation in February, 2005, they discovered that their home had been advertised for an imminent mortgage foreclosure sale. They retained an attorney, Frank Romano, Esq., to set aside the summary judgment and he obtained a stay of the sale.

147. Plaintiffs at all times desired to pay-off the mortgage. However, these efforts were frustrated by the confusion as just who the mortgagee was and that it was impossible to reconcile and resolve the contradictory pay-off figures given.

148. Annexed as EXHIBIT Y is a copy of letter, which on information and belief, was sent to HSBC by a mortgage broker who was attempting to arrange such a pay-off.

149. Attached as EXHIBIT Z is a letter sent by Mr. Romano to the court expressing frustration with HSBC's inability to arrive at a pay-off figure consistent with the pleadings in the case or the record of payments made.

150. The court denied the request by Mr. Romano for a conference and denied the motion to set aside the summary judgment without a hearing. Mr. Schuh served and filed a timely notice of appeal from that determination which is still pending.

151. Mr. Schuh then delayed the reschedule of the foreclosure sale by filing a Chapter 13 proceeding in the United States Bankruptcy Court but he withdrew that petition and the sale was scheduled and conducted.

152. At the sale, a purported representative of the NYS plaintiff appeared and bid \$118,216.95, which, based on the usual custom and practice in mortgage foreclosures, would represent the amount claimed due, was the purported amount due on the mortgage.

153. At the time of the foreclosure sale, the actual value of the Schuh home was in excess of \$300,000 and may have been as much as \$500,000.

154. At the foreclosure sale of his home, Mr. Schuh appeared and was successful with a bid of \$141,251 making a partial payment of \$14,126. See EXHIBIT AA, Terms of sale and EXHIBIT BB, receipt of partial payment.

155. Prior to the closing of the sale, Mr. Schuh made a motion by Order to Show Cause for a rehearing of the motion for summary judgment and obtained a temporary restraining order of the closing of the sale.

156. That motion was denied. An appeal of that denial was consolidated with the appeal of the motion denying the application to set aside the summary judgment and the judgment of foreclosure. Said appeal is still pending in NYS courts.

b. Defendants' frustration of Plaintiffs efforts to close the first foreclosure sale and pay-off the mortgage.

157. After the denial of Plaintiffs' motion for a rehearing, the DRUCKMAN FIRM mailed a letter to Plaintiffs attorney setting a closing date for the closing of the foreclosure sale and making time of the essence.

158. Plaintiffs again asked the assistance of Mr. Waters of Countrywide Mortgage for assistance in financing the purchase.

159. Mr. Waters obtained a commitment from Countrywide to finance the sale but needed a short adjournment to clear-up a flood insurance issue.

160. Mr. Waters office is in the state of Massachusetts and all his telephone conversations with Ms. Olivari in New York State were interstate wire communications within the purview of the Wire Fraud statute.

161. When he initially requested the adjournment, he was informed on the telephone by Ms. Olivari that such an adjournment would be granted only if the Plaintiffs and their attorney gave general releases to the Defendants. When, Mr. Waters asked that that the request be put in writing, Ms. Olivari replied by refusing to adjourn the closing for a few day as requested and directing the

referee to reschedule the sale. She notified interested parties of this determination by mail. See Exhibit CC, annexed.

162. By clear provisions of the Terms of the Foreclosure sale at which Mr. Schuh had bid, upon cancellation of the sale, the partial payment was to be paid to the mortgagee for the credit of the mortgagor. (Exh. AA)

163. From that day forward, the payment must be paid to the mortgage and a recalculation of the amortization of the principle and interest must occur. Such was not done.

164. The second sale was schedule for November, 2006. In October, 2006, Defendant DRUCKMAN FIRM delivered to the Plaintiffs a letter dated October 24, 2006 faxed to them by interstate wire, ostensibly by HSBC, stating the amount needed to discharge the mortgage. That amount was \$104,860 and included no credit for the partial payment the referee had received from Mr. Schuh. See EXHIBIT DD.

165. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, the said letter was prepared based upon records maintained by the FIDELITY GROUP as a part of its PLS.

166. Thereafter Mr. Schuh filed another Chapter 13 petition but he was required to apply for an extension of the automatic stay because of his prior filing.

167. In the meantime, Mr. Waters of Countrywide again sought to obtain financing to pay-off and discharge the mortgage.

168. On November 29, 2006, the DRUCKMAN FIRM sent by wire to THERESA GIANNAVOLA, an attorney for a title company to her office in the State of Rhode Island, a facsimile letter requiring that the mortgage be paid-off in two checks: one to HSBC Mortgage Services for \$111,938.55 and one to the DRUCKMAN FIRM for \$13,250 for a total pay-off of \$125,188.55. Said figure allowed no credit to the Plaintiffs for the partial payment made at the first sale. A copy of that Pay-off letter is annexed as EXHIBIT EE

169. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery page 2 of Exhibit EE, ostensibly from HSBC Mortgage Services, was in fact prepared by the FIDELITY GROUP.

170. On December 12, 2006, the Bankruptcy Court denied Mr. Schuh and extension of the automatic stay.

171. On December 15, 2006, there was deposited in NYS Court on behalf the Plaintiffs the sum of \$106,000 (EXHIBIT FF, annexed) and on January 10, 2007, an additional \$7,500 was deposited (EXHIBIT GG, annexed).

172. However, although \$127,660 was now being held to the credit of the Plaintiffs, New York courts did not yet cancel the sale by foreclosure of the premises which was then scheduled for January 22, 2007 despite the fact that Ms. Olivari, on behalf of MERS, filed an affirmation with the N.Y.S. Supreme Court in Saratoga County stating that on December 15, 2006, the amount needed to pay-off the mortgage was \$111,938.55

173. On Friday, January 19, 2007, over the objection of the DRUCKMAN FIRM, the NYS Court stayed the sale of the Schuh home scheduled for Monday, January 22, 2007.

174. Thereafter, the NYS Court found that \$106,887.04 was due on the mortgage for principal, interest, and fees and ordered the money paid to defendant HSBC. (See Ex. A)

175. Said amount, which contained a credit for the defaulted deposit of sale, was materially less than any of the demands made by the DRUCKMAN firm on behalf of MERS, HSBC and the FIDELITY GROUP.

176. The amount demanded EXHIBIT B-1, the letter of April 4, 2007 include fees and charges not allowable to a mortgagee awarded a judgment of foreclosure and are, in part, barred by the judgment of foreclosure.

177. On May 9, 2007, EXHIBIT B-2, HSBC MORTGAGE SERVICES further wrote the Plaintiffs claiming that the Schuh's remained indebted for its debt and mortgage.

178. The continued claims of the HSBC GROUP after the judgment of foreclosure had been paid by the deposit in Court and monies paid to HSBC Group by Court order, constitutes a repudiation of the judgment of foreclosure by the HSBC Group.

COUNT ONE: RICO:

I. The Commerce Enterprise

179. FIDELITY DEFAULT ENTERPRISE is a joint enterprise of purportedly unaffiliated economic units including the FIDELITY GROUP, attorney associations, mortgage servicers and others who maximize and capitalize on the profits to be made from mortgages in default and foreclosure proceedings.

180. FIDELITY DEFAULT ENTERPRISE is an “enterprise” as defined by 18 U.S.C. 1961(4)

181. In course of its operations, the FIDELITY DEFAULT ENTERPRISE makes use of the instrumentalities of Interstate Commerce including interstate wire communications and the mails.

182. The FIDELITY DEFAULT ENTERPRISE is controlled by the FIDELITY GROUP as a part of its provision of Private Label Services.

183. Each of the defendants participated in the FIDELITY DEFAULT ENTERPRISE in the manner hereinafter alleged.

II. The Scheme and Artifice to Defraud Plaintiffs.

a. The Scheme

184. The use of the mails (18 U.S.C. §1341) or interstate wire transmissions (18 U.S.C. §1343) (wire fraud) are prohibited in furtherance of “[a]ny scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises...”

185. There is at both common and statutory law, a implied covenant of fair dealing in any contract, including mortgages and mortgage notes.

186. The actions of the defendants in operating the FIDELITY DEFAULT ENTERPRISE, as alleged herein, to capitalize on Plaintiffs’ mortgage and note by (1) attempting to collect illegal fees and charges; (2) forcing them into foreclosure in order to profit from any unrealized equity; and (3) refusing to bargain in good faith for a pay-off of the mortgage note; is a scheme or artifice to defraud as defined by both Sections 1341 and 1343.(the “Fidelity Scheme”).

187. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. At pertinent times, defendant MERS was advised by communications from a private individual that gross mortgage fraud was being committed by the mortgage serving companies using the MERS system.

188. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, MERS took no action to remedy the situations brought to its attention and therefore ratified the actions committed in its name.

189. Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. At pertinent times, defendant HSBC USA performed services administering trusts in which the Schuh mortgage was pooled including the supervision of its affiliates who were acting as mortgage servicers.

b. *Impact on Interstate Commerce*

190. In implementing the Fidelity Scheme, the defendants made frequent and continuous use of the instrumentalities of interstate commerce including wire communications and the United States Postal Service.

191. Explicit and implicit in their communications with Plaintiffs were threats to damage their respective credit ratings.

192. Good credit ratings by credit reporting agencies are essential for the reasonable conduct of an individual's personal financial affairs and also for any entrepreneurial enterprise.

193. Individuals with a good or clean credit rating obtain credit at reduced interests rates at the savings of many thousands of dollars a year.

194. Individuals with a bad credit rating must pay exorbitant interest rates for credit they receive and may be denied the opportunity to purchase important household and family needs, including buying or renting a dwelling.

195. Certain transactions such as car rentals or travel are virtually impossible without access to a credit card for payment which for an individual with a bad credit record can be, if at all, at interest rates running to 25 and 30% or more.

196. Defendants' actions in threatening to and in fact damaging, Plaintiffs' credit ratings have a direct impact on interstate commerce.

197. Even though the mortgage was satisfied in full by the payments into Court, the defendants are refusing to correct the Plaintiffs' credit records. See Exh. B-2

III. Defendants' Specific Racketeering Acts

198. In furtherance of the Fidelity Scheme, the defendants caused to be transmitted by means of (1) the mails, (2) overnight delivery service, or (3) interstate wire communications, documents including account statements, responses to requests for information, boiler plate pleadings and affidavits, all in violation of. §1341 and/or § 1343 which make criminal such the use of mails, overnight delivery service or interstate wire communications in furtherance of a scheme or artifice to defraud.

199. The following Table identifies for each act of mail or wire fraud the complaint exhibit where applicable, the date of the act, the Sender:Receiver, the method of transmission and a description of the transmission. Where "Wire" is indicated, it means an interstate wire transmission in violation of 8 U.S.C. §1343. Where "Mail" is indicated, it means the use of the mails in violation 18 U.S.C. §1341.

Rack. Act	DATE	EXH	SENDER/ RECIPIENT	METHOD	DESCRIPTION
1	1/03/04	O-1	HSBC/SCHUH	Mail	Statement
2	2/05/04	O-2	HSBC/SCHUH	Mail	Statement
3	3/11/04	O-3	HSBC/SCHUH	Mail	Statement
4	4/13/04	Q	HSBC/ Plaintiff	Mail	Letter from Household
5	5/4/04	R	DRUCKMAN/ Plaintiffs	Mail	Misdirected Summons and Complaint. Mailed to physical address when HSBC corresponded to post office box pursuant t to notice
6	6/30/04	T	FIDELITY: DRUCKMAN	Mail or Wire	Affidavit for Summary Judgment
7	7/9/04	HH	MERS/DRUCKMAN/ SCHUH	Mail	Misdirected Motion for Summary Judgment. Mailed to physical address when HSBC corresponded to post office box pursuant t to notice
8	10/4/04	V	MERS/FIDELITY/HSBC/ DRUCKMAN	Mail or Wire	Dory Goebel Affidavit
9	3/22/06	AA	FIDELITY: DRUCKMAN	Wire	Terms of Sale
10	3/22/06	BB	FIDELITY/ DRUCKMAN	Wire	Receipt of sale
11	10/6/06		FIDELITY/HSBC/ OLIVARI: WATERS	Wire	2 Telephone conversations regarding rescheduling of closing
14	10/10/06	CC	FIDELITY/HSBC/ OLIVARI: COUNTRYWIDE	Wire	Cancel closing
13	10/24/06	DD	FIDELITY/HSBC: DRUCKMAN	Wire	Pay-off letter
14	11/28/06	EE-2	FIDELITY/HSBC: DRUCKMAN	Wire	Pay-off letter
15	11/29/06	EE-1	HSBC/FIDELITY/ DRUCKMAN: THERESA GIANNOVOLO	Wire	Pay-off letter
16	4/4/07	B-1	HSBC:SCHUH	Mail	Bill
17	5/9/07	B-2	HSBC:SCHUH	Mail	Letter stating still in debt

200. By reason of the foregoing, each defendant indicated violated Section 1341 and/or Section 1343 of Title 18 of the United States Code on more than two occasions.

201. In addition to the above specified Racketeering Acts, there were other Racketeering acts too numerous to specify herein.

202. By reason of the foregoing, said defendants conducted the affairs of the FIDELITY DEFAULT ENTERPRISE through a pattern of racketeering activity in violation of 18 U.S.C. §1962(c).

IV. Conspiracy

203. Each of the Defendants conspired to violate 18 U.S.C. §1962(c) with each other in order to effectuate the Fidelity Scheme and each of the racketeering acts set forth above constituted an overt act in furtherance of that conspiracy.

204. By reason of the premises aforesaid, each and every defendants have individually and severally violated 18 U.S.C. §1962(d).

V. Damages

205. By reason of the foregoing violations of 18 U.S.C. § 1962(c) and § 1962(d), each Plaintiff suffered damages to his property in such amount as may be determined but at least in the amount of \$1,000,000.

206. Said property damages include, but are not limited to, payments for fees and expenses in attempting to pay-off the note an mortgage; interest paid at excessive rates because the defendants refused to allow the mortgage to be paid-off; and damages to their credit.

207. Defendants offenses are ongoing and it can be reasonably anticipated that future damage to property may result.

208. By reason of the forgoing, Plaintiffs have suffered damages in the sum of \$1,000,000.

209. Pursuant to the provisions of RICO, said damages as are found due must be trebled and the Plaintiffs awarded reasonable attorney fees.

COUNT TWO: VIOLATIONS OF FDCPA

210. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs “1” to “197” with the same force and effect as though the same were hereinafter more completely set forth.

211. This Count is brought pursuant to the provisions of the FDCPA.

212. Jurisdiction of the Court for this claim existence of a federal question.

213. Each of the defendants are "debt collectors" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

214. Set forth in the following table are false representations made by the defendants to Plaintiffs in violation of the FDCPA, 15 U.S.C. § 1692e

EXHIBIT	DATE	FALSE REPRESENTATIONS	TRUE FACTS
R	6/30/04	That Household was the mortgage servicer for MERS and that amount claimed was due and owing	MERS had no interest in the Schuh Note and Mortgage. MERS did not appoint a mortgage servicer for said mortgage.
O	4/13/04	That no mortgage foreclosure was anticipated	Likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, the servicer(s) of the mortgage had already been contracted for the foreclosure proceeding.
P	4/28/04	That MERS owned the Note and Mortgage	MERS did not own the Note and Mortgage.
AA	10/26/06	That there was due and owing HSBC the amount claimed	The fees claimed were in excess of those allowed about the mortgage note.
BB	11/19/07	That there was due and owing the amount claimed	The fees claimed were in excess of those allowed about the mortgage note.
B-1	4/4/2007	That Plaintiffs were indebted to HSBC	By payment into court of more than the amount due, as well as the order of the Court directing payment, Plaintiffs were no longer indebted to HSBC.
B-2	5/9/2007	That Plaintiffs were indebted to HSBC	See above.

215. In violation of the FDCPA, Exhibit B-1 was sent to Mr. Schuh at a time he was represented, to the knowledge of HSBC, by an attorney.

216. There were other misrepresentations and violations of the FDCPA that will be specified during discovery.

217. By reason of the foregoing violations of the FDCPA, Plaintiffs have suffered damages to their property in such amount as may be determined but at least in the amount of \$1,000,000.

218. Said property damages include, but are not limited to, payments for fees and expenses in attempting to pay-off the note and mortgage; interest paid at excessive rates because the Defendants refusal to allow the mortgage to be paid-off; damages to their credit reputation.

219. Plaintiffs have also suffered emotional distress and strain, all to their damage in the sum of \$3,000,000.

220. Defendants offenses are ongoing and it can be reasonably anticipated that future damage to property may result.

221. By reason of the forgoing, Plaintiffs have suffered damages in the sum of \$4,000,000 and defendants are subject to punitive damages in such amount as a jury may find reasonable but not less than \$1,00,000 and their attorney fees.

COUNT THREE: COMMON LAW FRAUD

222. Plaintiffs repeat and reiterate each and very allegation contained in paragraphs “1” to “197” with the same force and effect as though the same were hereinafter more completely set forth.

223. The Court has supplemental jurisdiction of this claim pursuant to 28 U.S.C. § 1367

224. There is in every contract an obligation of good faith and fair dealing.

225. The actions of the Defendants alleged aforesaid pursuant to the Fidelity Scheme constitute common law fraud in which each and every Defendant is a joint tortfeasor.

226. By reason of the foregoing, Plaintiffs have suffered damages to their property in such amount as may be determined but at least in the amount of \$1,000,000.

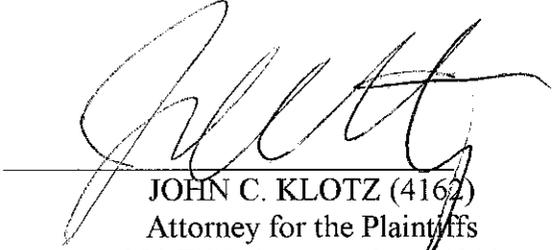
227. Said property damages include, but are not limited to, payments for fees and expenses in attempting to pay-off the note and mortgage; interest paid at excessive rates because the defendants refusal to allow the mortgage to be paid-off; damages to their credit reputation.

228. Plaintiffs have also suffered emotional distress and strain, all to their damage in the sum of \$3,000,000.

229. By reason of the forgoing, Plaintiffs have suffered damages in the sum of \$4,000,000 and Defendants are subject to punitive damages in such amount as a jury may find reasonable but not less than \$12,000,000.

WHEREFORE, Plaintiffs demands judgment as set forth in COUNTS ONE, TWO and THREE.

Dated: New York, New York
May 21, 2007



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