

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

LEIGH-ANNE FORD
1830 Van Buren Road
East Cleveland, OH 44112

Plaintiff

v.

NEW CENTURY
MORTGAGE CORPORATION
4910 Birch Street, Suite 100
Newport Beach, California 92660
Via Ohio Statutory Agent
OHIO SECRETARY OF STATE
180 East Broad Street
Columbus, Ohio 43215

and

GEAUGA SAVINGS BANK
10800 Kinsman Road
Newbury, OH 44065
Via Ohio Statutory Agent
JENNIFER L. BRICKMAN
10800 Kinsman Road
Newbury, OH 44065

Defendants

CASE NO. CV-10-

JUDGE

COMPLAINT WITH CLASS

ALLEGATIONS

(Jury Demand Endorsed Hereon)

Complaint

RONALD SUSTER
CV 10 723334

INTRODUCTORY AND BACKGROUND INFORMATION

1. This is a class action seeking relief from various predatory lending and loan servicing practices engaged in as a course of business conduct by Defendants. In the customary course of their business operations, the Defendants, individually and collectively, in conjunction with various mortgage originators, pursued unsophisticated borrowers, such as the Representative Plaintiff, and entrapped them with exploitative home equity loans, charged them illegal and exploitative

fees, refused to credit their payments, failed to provide proper disclosures, placed insurance on property that was sufficiently insured, and otherwise used their position of sophistication to make loans and continue practices that were illegal and unconscionable.

2. This Court has jurisdiction over claims herein arising under: the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq., (“FDCPA”); the Fair Credit Reporting Act (“FCRA”), and 15 U.S.C. Section 1681, et seq.; Sections 6 and 16 of the Real Estate Settlement Procedures Act of 1974 (“RESPA”), 12 U.S.C. Section 2605 and 2614; and Ohio common law.
3. Venue is proper in this matter because (a) Cuyahoga County, Ohio is the county in which the Defendants conducted the activity that gave rise to the claim for relief; and (b) the Representative Plaintiff resides in said county. Defendants are corporations organized under and existing by virtue of the laws of the State of California (New Century Mortgage Corporation) and the State of Ohio (Geauga Savings Bank) and are (Geauga), or were at all times pertinent herein (New Century), licensed to do business in Ohio. The Defendants are individually and collectively responsible for all loan originating, servicing, and collection practices alleged in this Complaint.
4. Defendants either transact or have transacted business in Ohio.
5. Defendants are corporations with their principal place of business in California and Ohio, respectively, and are responsible for all loan servicing and collection practices alleged.

6. The Defendants are “debt collectors” as defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6). Defendants are “persons” as that term is defined by Section 3(5) of RESPA, 12 U.S.C. § 2602(5), and subject to the requirements of RESPA and Regulation X promulgated thereunder.
7. In connection with the servicing and collection of mortgage loans, Defendants, individually and collectively, furnish information to consumer reporting agencies. As such, Defendants are subject to Section 623 of FCRA, 15 U.S.C. Section 1681s-2, which imposes a series of duties and prohibitions upon any person or entity that furnishes information to a consumer credit reporting agency.
8. There are questions of law and fact common to the members of the class, which questions predominate over any questions affecting only individual class members. The principal questions are:
 - a. Whether the Defendants, individually and collectively, are debt collectors with respect to the loans they acquired the right to collect;
 - b. Whether the Defendants’ individual and collective loan servicing practices and policies violate TILA, RESPA, and Ohio common law; and
 - c. Whether the Defendants, individually and collectively, in their practice of originating and servicing mortgages, committed the alleged violations, and/or whether they failed to perform required statutory and common law obligations in an appropriate manner.
9. The essential fact issues that link all putative class members and the Representative Plaintiff are whether the Defendants’ individual and collective customary practices violate various provisions of each of TILA, RESPA, and

Ohio common law. In reference to the Representative Plaintiff, who both originated and serviced her mortgage with the Defendants, certain federal, state, and common law statutes prohibit the illegal practices of the Defendants, both individually and/or collectively.

10. All of the claims in the present case arise from the same nucleus of operative facts.
11. The Representative Plaintiff alleges that the Defendants, individually and collectively, failed to give statutorily required notices and disclosures, failed to verify the amount of the debt when such verification was requested, and attempted to collect or collected fees and costs they were not legally entitled to collect.

FACTUAL ALLEGATIONS

Allegations with Respect to the Representative Plaintiff

12. The Representative Plaintiff has loans that were serviced by the Defendants, individually and collectively.
13. In the case of the Representative Plaintiff, the Defendants, individually and collectively, committed some or the entirety of the unlawful, deceptive, and unconscionable loan origination and servicing practices alleged herein.
14. In the case of the Representative Plaintiff, the Defendants, individually and collectively, failed to promptly post timely payment and then assessed the Representative Plaintiff with unwarranted late charges.

15. In the case of the Representative Plaintiff, the Defendants, individually and collectively, charged more than one late fee for a single delinquency and otherwise pyramided late charge(s).
16. In the case of the Representative Plaintiff, the Defendants, individually and collectively, posted payments made by the Representative Plaintiff as partial payments that were posted to "suspense accounts."
17. The Defendants, individually and collectively, also charged the Representative Plaintiff fees called "corporate advances."
18. The Defendants, individually and collectively, also charged or attempted to charge the Representative Plaintiff illegal fees as a condition to reinstatement of her supposedly defaulted mortgage.
19. In some cases, the Defendants, individually and collectively, force-placed insurance on the Representative Plaintiff. This insurance was unnecessary and/or purchased at exorbitant premiums. In addition, in the case of the Representative Plaintiff, the Defendants, individually and collectively, charged interest on sums it claimed to have advanced on behalf of the Representative Plaintiff.
20. In the case of the Representative Plaintiff, the Defendants, individually and collectively, engaged in abusive debt collection practices.
21. In the case of the Representative Plaintiff, Defendants, individually and collectively, deceptively included a deed in lieu of foreclosure as part of the loan modification package. See exhibits #1, #2, #3, and #4.
22. In the case of the Representative Plaintiff, Defendants, individually and collectively, used deceptive practices on an unsophisticated individual in order to

have her sign a waiver of her right to a jury trial regarding the amendments to the promissory note, forcing her to give up a right she was legally entitled to retain. See exhibits #5, #6, and #7.


23. In the case of the Representative Plaintiff, Defendants, individually and collectively, included a Home Equity Line of Credit (HELOC) in the modification agreement. This HELOC should not have been included within the loan modification package.
24. Among other things, the Representative Plaintiff was subjected by the Defendants, individually and collectively, to numerous and harassing contacts. The Defendants, individually and collectively, also failed to promptly verify amounts due, failed to resolve disputes, and failed to make the required disclosures in connection with their debt collection activities.

The Representative Plaintiff

25. Representative Plaintiff Leigh-Anne Ford is a natural person whose residence is located in Cuyahoga County at 1830 Van Buren Road East Cleveland, OH 44112.

Class Allegations

26. The Representative Plaintiff brings the claims herein set forth on behalf of a class consisting of all individuals who satisfy the following criteria:
 - a. They are residents of the State of Ohio; and
 - b. Their loans were originated and/or serviced by the Defendants, individually and collectively, at some time during the four years prior the filing of this action.
27. The class is so numerous that joinder of all members is impracticable.

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- a. Upon information and belief, the class has several thousand members spread across the State of Ohio, rendering joinder of all class members impracticable.
28. The Representative Plaintiff's claims are typical of the claims of the class members.
- a. The Representative Plaintiff's claims arise from a common course of conduct of the Defendants that impacts all members of the class in a similar manner.
 - b. The Defendants' origination practices impacted the Representative Plaintiff, who originated her loans with the Defendants. The Defendants' servicing practices impacted all class members in a similar manner.
29. The Representative Plaintiff is an adequate class representative.
- a. The Representative Plaintiff is a member of the class defined herein. She has been injured by the practices complained of, and her claims for damages do not conflict with the claims of unnamed class members.
 - b. The Representative Plaintiff is vigorously represented by competent counsel and will fairly and adequately represent and protect the interests of the class.
 - c. The Representative Plaintiff's interests are aligned with the interests of the unnamed class members. In pursuing her own claims, the Representative Plaintiff will advance the interests of the unnamed class members and will fairly and adequately represent the members of the class.

30. This action may properly be maintained under Civil Rule 23(B) because all prerequisites of the rule have been satisfied.
- a. The questions of fact and law common to class members predominate over questions affecting individual class members.
 - b. This case involves violations of FDCPA for which Congress provided a statutory right of class certification.
 - c. The class action is a superior means of adjudicating the claims of class members because the claims of individual class members may be too insignificant to provide an adequate incentive (in light of the cost and expense involved) for them to assert their individual rights.
 - d. The prosecution of separate actions by the members of the class would create a risk of:
 - i. Inconsistent or varying adjudications with respect to the individual members of the class, which would establish incompatible standards of conduct for the Defendants; or
 - ii. Adjudication with respect to individual members of the class would, as a practical matter, be dispositive of the interests of the class members not parties to the adjudication and would substantially impair or impede the ability of the non-party class members to protect their interests.

The Defendants' Business Practices

31. The Defendants, individually and collectively, together with their respective affiliates and subsidiaries, operate as part of a common enterprise and they are

financial services companies specializing in the acquisition, servicing, and collection of mortgage loans, primarily in the “subprime” market. The “subprime” market is comprised of persons who are considered to be greater credit risks than persons considered to be part of the preferred or typical market for credit and includes disproportionate numbers of persons from lower-income or minority neighborhoods. The Defendants, individually and collectively, are a part of the mortgage industry’s “subprime” market.

32. As mortgage originators and/or servicers, the Defendants, individually and collectively, originate mortgage loans. Further, they collect and processes loan payments from borrowers on behalf of the owner of the mortgage loans. Typically, the mortgage loans that are originated and/or serviced are held in a real estate investment trust (“REIT”), whose investment units are traded for the benefit of the investors owning the REIT, whose investment units are traded on the secondary market. For the benefit of the investors owing the REIT, Defendants individually and collectively, are paid a servicing fee by the REIT based on the unpaid principal balance of the loans in the REIT.
33. The Defendants, individually and collectively, also profit from myriad fees that it charges borrowers/consumers on the loans that they originate and service. Many of the fees and charges that Defendants, individually and collectively, assess and collect are illegal and/or excessive.
34. The Defendants, individually and collectively, operate in a manner that utilizes unconscionable practices designed to maximize illegal and excessive charges and

fees. These unconscionable practices apply both individually and/or collectively to the Defendants.

35. In the course and conduct of their loan origination, servicing and collection activities, Defendants and/or their authorized representatives, as standard business practices, have failed to properly post payments received from the Representative Plaintiff in a timely manner and they have assessed late fees and other charges as a result.
36. The Defendants', individually and collectively, and/or its agents, actions have caused and are likely to cause substantial continuing injury to the Representative Plaintiff.
37. In the course and conduct of its loan originating, servicing and collection activities, the Defendants, individually and collectively, in numerous instances, have represented, expressly or by implication that the Representative Plaintiff owes the amounts specified in their communications.
38. On numerous occasions, the Representative Plaintiff did not owe the amounts that have been specified in said communications. The Representative Plaintiff did not owe the amounts specified because (a) fees included in the amounts specified were a result of the Defendants', individually and collectively, failure to properly post payments; (b) fees included in the amounts specified are not allowed under the mortgage loan agreements or permitted by law; and/or (c) the amounts have been calculated incorrectly by the Defendants, individually and collectively.
39. In the course and conduct of their loan servicing and collection activities, the Defendants, individually and collectively, have represented, expressly or by

implication, that fees assessed and collected were (a) allowed under the applicable mortgage loan agreements, and (b) permitted by law.

40. On numerous occasions, the fees assessed and collected by the Defendants, individually and collectively, were (a) not allowed under the applicable mortgage loan agreement contracts, and (b) not permitted by law. Further, in many instances, the Defendants failed to make the appropriate statutory disclosures.

41. Defendants', individually and collectively, actions have caused and are likely to cause substantial continuing injury to the Representative Plaintiff.

42. As both a direct and proximate result of the Defendants' practices regarding charges and fees, the borrowers/consumers are forced into foreclosure.

43. Defendants, individually and collectively, operate schemes designed so that they will profit from these foreclosures and capture any equity the borrowers/consumers may have in the foreclosed property.

Scheme to Maximize Charges in Reference to Origination and Servicing Practices

44. Defendants, individually and collectively, operate schemes designed to maximize the fees and assessments imposed on borrowing consumers relative to the origination of the mortgage loans. Defendants, individually and collectively, operate schemes designed to maximize "late charges" imposed on borrowers/consumers. The mortgage loans serviced by them have due dates for payments and grace periods of time after which a loan payment is due but before the end of which a late fee may be assessed. In many instances, Defendants receive and deposit the borrowers'/consumers' timely-made payment, but do not promptly post the payment to the borrowers'/consumers' account so that they may

add late fees or additional interest to the borrowers'/consumers' account for failing to make their payments "on time."

45. In many instances, Defendants, individually and collectively, pyramid late fees, i.e., they charge more than one late fee for a single delinquency. In other instances, they charge late fees after a loan has been accelerated and there are no monthly payments due. As a result of these practices, borrowers/consumers fall further behind on their scheduled mortgage payments, according to the Defendants' records.
46. Once an impermissible fee is then posted to the account, even if it is disputed by the borrowers/consumers, the loan is "in default" or "delinquent" under Defendants', individually and collectively, practices. Once these consumers loans are categorized as "in default" or "delinquent," Defendants, individually and collectively, charge other unwarranted fees, including fees for unnecessary or bogus property inspections, brokers' price opinions and attorneys' fees.
47. Fraudulent late charges provide Defendants, individually and collectively, with a pretext to engage in other unfair and unconscionable practices. Once a late fee is imposed, subsequent agreed upon payments from the mortgagor are posted as partial payments because of the late fees, or the payments are not posted at all but instead the payment is held in a "suspense account." These practices are then repeated several times over the ensuing months.

Schemes to Impose Illegal and Fraudulent Fees and Charges

48. The Defendants, individually and collectively, also operate in a manner designed to maximize illegal, unfair, and unconscionable fees and charges it calls

“corporate advances.” These “corporate advances” include fees for property inspections, demand letters, brokers’ price opinions, foreclosure fees, and attorneys’ fees.

49. These “corporate advances” are then added to the loan balance, and Defendants, individually and collectively, profit from interest charged on the advances.
50. The Defendants’, individually and collectively, monthly billing statements do not itemize these corporate advances for consumers.
51. These charges and attorneys’ fees that the Defendants, individually and collectively, impose on debtors are illegal under Ohio law.
52. When borrowers/consumers request the amount of money necessary to “reinstate” (i.e., bring their account current) or payoff their loan, the Defendants’, individually and collectively, demands often contain fees that have been assessed by the Defendants, individually and collectively, including fees for property inspections, brokers’ price opinions, demand letters, payoff quotes, attorneys’ fees, and prepayment penalties.

Force-Placed Insurance

53. The Defendants, individually and collectively, also milk additional compensation from the consumers in the form of commissions or other designations, when it “force-places” casualty insurance on borrowers’/consumers’ homes. Under the terms of mortgage loans serviced by the Defendants, borrowers/consumers are required to maintain homeowners/fire (and, in some cases, flood) insurance on their homes. The Defendants, individually and collectively, “advance” money to the borrowers/consumers to pay for casualty

insurance that it places on the borrowers'/consumers' home when, according to the Defendants, individually and collectively, the consumers have allowed the insurance to lapse, or the consumers have not provided proof that the insurance has not lapsed.

54. Force-placed insurance is much more expensive than insurance purchased by the borrowers/consumers. In addition, the Defendants, individually and collectively, charge the borrowers/consumers interest on the money advanced for force placed insurance.
55. The Defendants, individually and collectively, have improperly force-placed casualty insurance on borrowers'/consumers' homes, including on borrowers/consumers who the Defendants knew or should have known already had insurance in place. As a result of the premiums for the force-placed insurance, borrowers'/consumers' regular mortgage payments have been deemed insufficient, the loan placed in default status, and fees improperly assessed by the Defendants.

Abusive Debt Collection Practices

56. In collecting late payments, Defendants, individually and collectively, use aggressive practices that threaten consumers with continuing collection calls, a negative credit rating, additional fees, and even foreclosure, to obtain consumers' agreement to forbearance agreements or other workout solutions that demand the "total amount due."
57. The total amount due includes all mortgage loan payments due and all fees assessed by the Defendants. The Defendants' collectors are trained not to give the

consumer a breakdown of the fees, but to insist upon the total amount due immediately and discourage consumer disputes and questions about fees.

58. The Defendants' standard forbearance agreements require consumers to pay all fees assessed by the Defendants and also to waive any and all claims they might have against the Defendants.
59. When consumers dispute any aspect of their loan servicing, such as the timely posting of their payments, fees, force placed insurance, or inaccurate credit reporting, in many instances, the Defendants have failed to timely and adequately acknowledge, investigate, and respond to the complaint.
60. In many instances, as a result of the Defendants' failure to post borrowers'/consumers' mortgage payments to their accounts in a timely manner, the Defendants have made payments late for casualty insurance, property taxes, and other charges from escrow accounts, and borrowers/consumers consequently are assessed unwarranted late fees and related charges. This practice puts borrowers/consumers into delinquency, creates the need for consumers to pay additional money for taxes and insurance, and harms their credit ratings. In many instances, the Defendants' failure to pay premiums for casualty insurance has resulted in lapse of coverage and then the imposition of force-placed insurance at higher costs to borrowers/consumers.

Unconscionable Collection and/or Foreclosure Practices

61. As part of their collection practices, the Defendants, individually and collectively, threaten the mortgagor with foreclosure and more charges. The Defendants contact the borrowers/consumers and claim that hundreds or thousands (usually

\$2,000 to \$4,000) must be paid immediately or the borrowers'/consumers' home will be sold. Many victims pay the extortionate charges to save their homes, but the fraudulent pattern simply begins again in the next payment cycle.

62. During the period of the pre-foreclosure dispute, the Defendants illegally add anywhere from hundreds to thousands of dollars to the actual amount due. The Defendants add amounts never contemplated by the original loan documents and illegal under state law.
63. When the consumer requests a written accounting of her or his payments and charges, the Defendants eventually send the victim a document called an "activity statement." These statements are incomprehensible and even the Defendants', individually and collectively, own employees explain them differently each time.
64. Regardless of how much money the victimized borrowers/consumers send to the Defendants, the outcome is almost always the same. The Defendants, individually and collectively, cash the checks and then make new and additional demands under threat of foreclosure. Well into the fraud in some cases, the Defendants mail a "forbearance agreement" to the victimized consumer. That document offers to allow the consumer to "pay late fees and other fees" under an "extended payment plan." Included in the "plan" is a paragraph that absolves the Defendants, individually and collectively, of any and all claims that the consumer may have "now or in the future."
65. Many unsophisticated homeowners, under duress and desperate to save the homes that they, their children, or even their elderly parents reside in, sign the totally one-sided "forbearance agreement." Often, within days, the Defendants,

individually and collectively, declare the “forbearance agreement” to be in default, even though it is not.

66. Without competent legal representation, the typical borrower/consumer defaults in the foreclosure proceedings that the Defendants file. The Defendants, individually and collectively, or their associates, are the only bidders on the property, and all of the equity ultimately accrues to the Defendants and their “REO” (Real Estate Owned) partners.
67. Upon foreclosure, the Defendants, individually and collectively, collect ridiculously exorbitant legal fees, “property-preservation” fees, late-fees, broker fees, appraisal fees, “pre-payment-penalty” fees, and any other illegal fees they can invent to help assure that in excess of the entire amount of the mortgagor’s equity is taken. The Defendants then often launder the property through a series of REO portfolios that they own or control, in an effort to create the appearance that the Defendants actually “lost thousands of dollars” on the foreclosure.

Allegations with Respect to Representative Plaintiff

68. The Representative Plaintiff has loans that were originated and serviced by the Defendants, individually and collectively.
69. In the case of the Representative Plaintiff, the Defendants, individually and collectively, committed some or the entire unlawful, deceptive, and unconscionable loan origination and servicing practices.
70. In the case of the Representative Plaintiff, the Defendants, individually and collectively, failed to promptly post timely payment and then assessed the Representative Plaintiff with unwarranted late charges.

71. In the case of the Representative Plaintiff, the Defendants, individually and collectively, charged more than one late fee for a single delinquency and otherwise pyramided late charge(s).
72. In the case of the Representative Plaintiff, the Defendants, individually and collectively, posted payments made by the Representative Plaintiff as partial payments that were posted to "suspense accounts."
73. The Defendants, individually and collectively, also charged the Representative Plaintiff fees called "corporate advances."
74. The Defendants, individually and collectively, also charged or attempted to charge the Representative Plaintiff illegal fees as a condition to reinstatement of her supposedly defaulted mortgage.
75. In some cases, the Defendants, individually and collectively, force placed insurance on the Representative Plaintiff. This insurance was unnecessary or purchased at exorbitant premiums.
76. In addition, in the case of the Representative Plaintiff, the Defendants, individually and collectively, charged interest on sums it claimed to have advanced on behalf of the Representative Plaintiff.
77. In the case of the Representative Plaintiff, the Defendants, individually and collectively, engaged in abusive debt collection practices.
78. In the case of the Representative Plaintiff, Defendants, individually and collectively, were deceptive when they included a deed in lieu of foreclosure within the loan modification package they presented to the Representative Plaintiff.

79. In the case of the Representative Plaintiff, the waivers signed by her were invalid. The signature obtained from her resulting in her waiver of her right to a jury trial was obtained through the deceptive practices of the Defendants. The Representative Plaintiff lacked the sophistication necessary to truly appreciate the legal consequences of signing the waiver; therefore, her signature was invalid.
80. Among other things, the Representative Plaintiff was subjected by the Defendants, individually and collectively, to numerous and harassing contacts. The Defendants, individually and collectively, also failed to promptly verify amounts due, failed to resolve disputes, and failed to make the required disclosures in connection with their debt collection activities.
81. The following claims apply to the illegal mortgage loan origination and servicing practices of the Defendants and/or their authorized agents and representatives (collectively "Representatives"):

COUNT ONE – TRUTH-IN-LENDING ACT

82. The Representative Plaintiff incorporates by reference each preceding paragraph as though fully pleaded whereat.
83. The Defendants, individually and collectively, are "creditors" as defined in the Truth-In-Lending Act, 15 U.S.C. Section 1602(f) and 12 C.F.R. Section 226.2(a)(17).
84. Each of the transactions between the Representative Plaintiff and the Defendants, individually and collectively, are "consumer credit transactions" as that term is defined in the Truth-In-Lending ("TILA") 15 U.S.C. Section 1602(h) and 12 C.F.R. Section 226.2(a).

85. Each of the transactions between the Representative Plaintiff and the Defendants, individually and collectively, are "closed end" transactions, as that term is defined in 12 C.F.R. Section 226.21(10) and are subject to the requirements for such transactions set forth in 15 U.S.C. Section 1638 and 12 C.F.R. Section 226.17 through Section 226.34.
86. Each of the transactions between the Representative Plaintiff and the Defendants, individually and collectively, are transactions in which a security interest was taken in the Representative Plaintiff's principal residence.
87. The Defendants, individually and collectively, failed to include in the finance charges shown on the Truth-in-Lending Disclosure Statement certain charges, which, upon information and belief, were imposed on the Representative Plaintiff by the Defendants, individually and collectively, incident to the extension of credit as required by 15 U.S.C. Section 1605 and Regulation Z Section 226.4, thus improperly disclosing the finance charge in violation of 15 U.S.C. §1601 et. seq., regulation Z Section 226.18(d).
88. The loan modification agreement between the Representative Plaintiff and Defendants changed the terms, monthly payment, and total amount owed on the loan, yet no required notices were provided to the Representative Plaintiff.
89. By calculating the annual percentage rate (APR) based upon improperly calculated and disclosed amounts for the annual percentage rate, the Defendants, individually and collectively, are in violation of 15 U.S.C. Section 1601 et. seq., regulation Z Section 226.18(c).

90. The Defendants', individually and collectively, failure to provide the required disclosures gives rise to the continuing right of rescission on the part of the Representative Plaintiff. The Representative Plaintiff has elected to rescind her transaction, which rescissions the Defendants, individually and collectively, have failed to honor.
91. This Complaint constitutes an additional notice of rescission to the Defendants, individually and collectively, by the Representative Plaintiff.

COUNT TWO – REAL ESTATE SETTLEMENT PROCEDURES ACT

92. The Representative Plaintiff incorporates by reference each preceding paragraph as though fully pleaded whereat.
93. As mortgage lenders, the Defendants, individually and collectively, are subject to the provisions of the Real Estate Settlement Procedures Act ("RESPA") contained at 12 USC Section 2601 et. seq.
94. In violation of 12 USC Section 2607, and in connection with the respective mortgage loans made to the Representative Plaintiff, the Defendants, individually and collectively, accepted fees for providing real estate settlement services when in fact those fees were for charges unrelated to real estate settlement services.
95. The fees charged by Defendants to the Representative Plaintiff were excessive and in violation of RESPA.
96. As a result of violating RESPA, and pursuant to 12 USC Section 2607(d)(2), the Defendants, individually and collectively, are liable to the Representative Plaintiff in an amount equal to three times the amount of charges paid for the settlement services by the Representative Plaintiff.

COUNT THREE – VIOLATIONS OF 12 U.S.C. SECTION 2605

97. The Representative Plaintiff incorporates by reference each preceding paragraph as though fully pleaded whereat.
98. In numerous instances, in connection with the servicing of mortgage loans and the administration of escrow accounts of the Representative Plaintiff, the Defendants, individually and collectively, have violated the requirement of Section 6 of RESPA, and 12 U.S.C. Section 2605, specifically including the failure to:
- a. promptly post payments received from the Representative Plaintiff in a timely manner;
 - b. timely apply payments to principal and interest on the Representative Plaintiff's accounts;
 - c. make timely payments of escrow funds for casualty insurance premiums and property taxes; and
 - d. timely and adequately acknowledge, investigate, and respond to the Representative Plaintiff's qualified written requests for information about the servicing of her loans and escrow accounts.

COUNT FOUR – NEGLIGENT AND INTENTIONAL MISREPRESENTATION

99. The Representative Plaintiff incorporates by reference each preceding paragraph as though fully pleaded whereat.
100. During the course of the Defendants', individually and collectively, dealings with the Representative Plaintiff, the Defendants, individually and collectively, entered into a relationship of trust and confidence with the Representative Plaintiff.

101. The Defendants, individually and collectively, and its representatives, jointly and severally, made negligent and intentional misrepresentations to the Representative Plaintiff on which the Representative Plaintiff reasonably relied. Further, the Defendants, individually and collectively, were negligent in dealing with the Representative Plaintiff. The Defendants', individually and collectively, negligence included, but was not limited to, the following: a) the Defendants, individually and collectively, failed to advise Representative Plaintiff that the Defendants, individually and collectively, would receive substantial fees in connection with their respective transactions; b) by providing the Representative Plaintiff with inaccurate and improper advice as to maximizing the value of the Representative Plaintiff's respective properties; c) failing to fully and completely disclose and explain the history and details of the Defendants', individually and collectively, relationship with all parties to each transaction; d) failing to clearly and unambiguously make the Representative Plaintiff aware of the consequences of waiver of the right to a jury trial; and e) by otherwise failing to take the utmost and/or reasonable care, caution, and diligence to protect the best interests of the Representative Plaintiff.

102. Throughout the course of the Defendants' collective and individual relationship with the Representative Plaintiff, the Defendants acted with the sole motivation of increasing their fees and compensation and with intentional and malicious disregard for the Representative Plaintiff's best interests.

103. As a direct and proximate result of the Defendants' collective and individual negligence and negligent misrepresentations, the Representative Plaintiff has

suffered damages in an amount, which, is not presently quantified with certainty, but which will be proven at trial.

COUNT FIVE – BREACH OF CONTRACT

104. The Representative Plaintiff incorporates by reference each preceding paragraph as though fully pleaded whereat.
105. Based on the terms of the written agreements, the Defendants, individually and collectively, were contractually obligated to provide the Representative Plaintiff statutorily legal loans and services as promised. The Defendants' collective and individual failure to comply with this contractual obligation constitutes a breach of contract.
106. Based on the breach of contract by the Defendants, individually and collectively, the Representative Plaintiff has been damaged in an amount that she is unable to determine with specificity at this time, but which will be proven at trial.

COUNT SIX – FRAUDULENT MISREPRESENTATION

107. The Representative Plaintiff incorporates by reference each preceding paragraph as though fully pleaded whereat.
108. The Defendants, individually and collectively, knowingly concealed from the Representative Plaintiff information which federal statutes and regulations require to be disclosed to her.
109. The Defendants, individually and collectively, entered into the mortgage loan transactions with the Representative Plaintiff knowing that she would not be able to repay her obligation in full.

110. The Defendants' collective and individual concealments and misrepresentations were made maliciously and negligently, and in the case of the misrepresentations, with knowledge of their falsity.
111. The Representative Plaintiff justifiably and detrimentally relied upon all of the Defendants' collective and individual false and fraudulent representations in entering into her loan agreement.
112. If the Representative Plaintiff had knowledge of the falsity of the Defendants', individually and collectively, representations, she would not have relied upon those representations. Further, if the Representative Plaintiff had knowledge of the falsity of the Defendants', individually and collectively, representations she would not have completed her transactions by signing for the unconscionable note and mortgage.
113. As a result of the fraudulent and unconscionable loan practices perpetrated by the Defendants, individually and collectively, the Representative Plaintiff is entitled to damages in an amount that she is unable to determine with specificity at this time, but is an amount believed to be at least Five Hundred Thousand Dollars (\$500,000.00).

COUNT SEVEN – RESPA SERVICING VIOLATIONS


114. The Representative Plaintiff incorporates by reference each preceding paragraph as though fully pleaded whereat.
115. As mortgage lenders, the Defendants, individually and collectively, are subject to the provisions of the Real Estate Settlement Procedures Act ("RESPA") contained at 12 USC Section 2601 et. seq.

116. In violation of 12 USC Section 2607, and in connection with the respective mortgage loans made to the Representative Plaintiff, the Defendants, individually and collectively, accepted fees for providing real estate settlement services when in fact those fees were for charges unrelated to the real estate settlement services.
117. As a result of violating RESPA, and pursuant to 12 USC Section 2607(d)(2), the Defendants, individually and collectively, are liable to the Representative Plaintiff in an amount equal to three times the amount of charges paid for the settlement services by the Representative Plaintiff.

WHEREFORE, the Representative Plaintiff, individually and on behalf of the proposed class, prays for judgment against New Century Mortgage Corporation and Geauga Savings Bank, jointly and severally, in an amount per Representative Plaintiff and each class member that is not presently quantified with certainty, but which exceeds Twenty-Five Thousand Dollars (\$25,000.00), such other amounts that will be proven at trial, for costs, for reasonable attorneys' fees, and for whatever other relief the Court deems appropriate under the circumstances.

JURY DEMAND

Representative Plaintiff hereby demands trial by jury of all claims herein triable to a jury and further request the maximum number of jurors permitted by law.


GARY COOK (0021240)
3655 Prospect Avenue East, 3rd Floor
Cleveland, Ohio 44115
Telephone: (216) 965-4410
Facsimile: (216) 391-5404
Email: gcookesq@yahoo.com