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IN THE CIRCUIT COURT OF THE  
17<sup>th</sup> JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION a/k/a FANNIE MAE, a  
corporation organized under the laws of the  
United States,

Plaintiff,

vs.

BEN-EZRA & KATZ, P.A., a Florida  
corporation,

Defendant.

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**EMERGENCY COMPLAINT**

Plaintiff Federal National Mortgage Association a/k/a Fannie Mae Corporation ("Fannie Mae") files this Emergency Complaint for specific performance and injunctive relief against Defendant Ben-Ezra & Katz, P.A. (the "Ben-Ezra") and alleges:

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FEDERAL RECORDS  
CLERK OF DISTRICT COURT  
BROWARD COUNTY FLORIDA

**PARTIES, VENUE, AND JURISDICTION**

1. This is an emergency action for specific performance and injunctive relief.
2. Plaintiff Fannie Mae is a corporation organized under the laws of the United States with its principal place of business in Washington, D.C. Fannie Mae is a government-sponsored enterprise, which operates under a federal charter and which requires it to channel its efforts into increasing the availability and affordability of homeownership for low-, moderate- and middle-income Americans. In 1968, the government amended Fannie Mae's charter and, today, it is also a shareholder-owned corporation.

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3. Defendant Ben-Ezra is a Florida corporation with its principal place of business in Ft. Lauderdale, Florida. At all times material, Ben-Ezra was operating as a law firm.

4. Venue is proper in this Court pursuant to Section 47.011, Florida Statutes.

5. Ben-Ezra is subject to the jurisdiction of this Court under Section 48.193, Florida Statutes, by “[o]perating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state,” “[b]reaching a contract in this state by failing to perform acts required by the contract to be performed in this state,” and “engag[ing] in substantial and not isolated activity within this state.”

6. All conditions precedent to initiating this action have been performed, have occurred, or have been waived.

### **GENERAL ALLEGATIONS**

#### **The Engagement Agreement and Its Obligations**

7. On July 25, 2008, Fannie Mae and Ben-Ezra entered into an Engagement Letter regarding the retention of Ben-Ezra to represent Fannie Mae for the provision of services in connection with, among other things, foreclosure proceedings in the State of Florida (the “Agreement,” a redacted copy of which is attached as **Exhibit “A”**).<sup>1</sup> Marc Ben-Ezra, an attorney admitted to practice law in the State of Florida, executed the Agreement on behalf of Ben-Ezra, as President, on July 25, 2008. (Ex. A).

8. Exhibit 1 to the Agreement comprises Fannie Mae’s Attorney Network Guidelines, which were incorporated by reference into the Agreement. (Ex A at Exhibit “1”).<sup>2</sup>

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<sup>1</sup> The Agreement has been redacted to avoid releasing information protected by the attorney-client privilege, the work product doctrine, or other applicable privileges and immunities. The Agreement has also been redacted to preserve other proprietary information.

<sup>2</sup> The remaining exhibits to the Agreement are not relevant to the case but can be produced upon request.

The Attorney Network Guidelines state, among other things, that the term of the Agreement shall continue until Fannie Mae or Ben-Ezra terminates the relationship. (*Id.* at ¶ 21.A). The Guidelines allow Fannie Mae to terminate the Agreement at any time, with or without cause.

9. To that end, Paragraph 21 of the Attorney Network Guidelines provides:

**B. Suspension and Termination:** Fannie Mae retains the right to terminate the Engagement Letter at any time, with or without cause, as to one or more or all cases on written notice. Fannie Mae also reserves the right to suspend your law firm from accepting any new Fannie Mae case referrals on a temporary or interim basis for any reason. . . .

**At any time, upon request from Fannie Mae, you must return or transfer any or all files as Fannie Mae may identify to Fannie Mae or its designee. In addition, you acknowledge that any legal files your firm develops relating to a Fannie Mae-owned or Fannie Mae-securitized mortgage or a Fannie Mae REO belong to Fannie Mae and agree that your firm will not assert any lien rights against the files at any time.**

**Upon termination of your firm's Services with Fannie Mae, you will deliver to Fannie Mae or Fannie Mae's designated legal representative (upon request), all documents, records, and work products created and/or compiled hereunder, in electronic format and in paper format if available.**

(*Id.* at ¶ 21.B) (emphasis added).

10. On February 10, 2011, Fannie Mae terminated the Agreement with Ben-Ezra, as provided for in Paragraph 21 of the Attorney Network Guidelines. A copy of the termination letter to Ben-Ezra is attached as **Exhibit "B"**.

11. On February 10, 2011, Fannie Mae also made a demand on Ben-Ezra for Ben-Ezra to immediately begin transferring all documents, records and related work products created and/or compiled under the Agreement (the "Case Files") to other law firms or servicers as directed by Fannie Mae.

**Ben-Ezra's Failure to Turn Over the Fannie Mae Case Files**

12. At present, there are approximately 15,000 cases which Ben-Ezra is handling on behalf of Fannie Mae. Fannie Mae must transfer the matters as quickly as possible to successor counsel so that the parties and properties related to the 15,000 cases are not prejudiced by any delay in the proceedings.

13. To date, Ben-Ezra has refused to deliver the Case Files, which Fannie Mae stands ready, willing, and able to accept.

14. Significantly, the Case Files contain original, executed Promissory Notes and Mortgages securing Fannie Mae's interests. These documents cannot be reproduced or replaced by money damages.

15. Without the Case Files, and in particular, the original, executed Promissory Notes and Mortgages, Fannie Mae is unable to confirm the status of or proceed with the cases, transfer the cases to successor counsel, or conclude any of the cases.

16. Accordingly, Fannie Mae seeks (i) to immediately obtain all of the Case Files which Ben-Ezra has relating to cases in which Ben-Ezra was retained to represent Fannie Mae, and (ii) assurance, until that occurs, that the Case Files will not be altered, lost or destroyed and that Ben-Ezra shall preserve and protect such documents, records, and work products, including the applicable attorney-client privilege, until the same can be delivered to Fannie Mae.

17. Fannie Mae has retained the undersigned law firm to bring this action and has agreed to pay counsel reasonable attorneys' fees for its services.

**COUNT I: SPECIFIC PERFORMANCE**

18. Fannie Mae incorporates paragraphs 1 through 17 as if fully set forth herein.

19. Fannie Mae is entitled to specific performance of the Agreement, namely Paragraph 21 of the Attorney Network Guidelines, because Ben-Ezra is required to deliver to Fannie Mae or its designated legal representative all “documents, records, and work products created and/or compiled” upon the termination of the Agreement. (Ex. A at Ex. 1 ¶ 21.B).

20. Fannie Mae terminated the Agreement and made a demand for the Case Files, on February 10, 2011. (Ex. B).

21. Fannie Mae has complied in all respects with its covenants and obligations reflected in the Agreement. Justice requires that this Court exercise its equitable power to enforce the terms of the Agreement.

22. Fannie Mae is also entitled to issuance of an injunction mandating that Ben-Ezra deliver the Case Files to Fannie Mae or Fannie Mae’s designated legal representative.

23. Fannie Mae has no adequate remedy at law for Ben-Ezra’s nonperformance, as the Case Files contain original documents – including original, executed Promissory Notes and Mortgages – pertaining to Fannie Mae’s interests. Money damages, therefore, are insufficient and are not a suitable substitute for the Case Files.

24. Fannie Mae has a clear right to the relief requested. There is no basis for Ben-Ezra to withhold the Case Files from Fannie Mae. Ben-Ezra agreed to deliver the Case Files to Fannie Mae upon termination of the Agreement and further agreed that it would not assert any lien rights against the Case Files at any time (assuming that it even had any such lien rights). (See Ex. A at Ex. 1 ¶ 21.B). Accordingly, Ben-Ezra’s failure to deliver the Case Files to Fannie Mae directly interferes with Fannie Mae’s rights under the Agreement and, as such, Fannie Mae

is undoubtedly going to prevail on the merits.

25. Fannie Mae will suffer irreparable harm if this Court does not grant specific performance and issue an injunction requiring Ben-Ezra to provide Fannie Mae with the Case Files and, until that occurs, precluding Ben-Ezra from altering, losing or destroying the Case Files and preserve the attorney-client privilege that applies to same.

26. An injunction will further the public interest under these circumstances.

WHEREFORE, Fannie Mae respectfully requests that the Court grant specific performance of Paragraph 21 of the Attorney Network Guidelines of the Agreement and require Ben-Ezra to (i) deliver all documents, records and work products created and/or compiled pursuant to the Agreement to Fannie Mae or its designated legal representative; (ii) preserve and protect such documents, records, and work products, including the attorney-client privilege applicable to these Case Files, until the same can be delivered to Fannie Mae; and (iii) any further relief that is just and proper.

#### **COUNT II: INJUNCTION**

27. Fannie Mae incorporates paragraphs 1 through 17 as if fully set forth herein.

28. Fannie Mae seeks the issuance of an injunction ordering Ben-Ezra to (i) deliver all documents, records and work products created and/or compiled pursuant to the Agreement to Fannie Mae or its designated legal representative; and (ii) preserve and protect such documents, records, and work products, including the attorney-client privilege applicable to these Case Files, until the same can be delivered to Fannie Mae.

29. Fannie Mae has a clear right to the relief requested and has a substantial likelihood of being successful on the merits. Ben-Ezra agreed to deliver the Case Files to Fannie Mae upon termination of the Agreement and further agreed that it would not assert any lien

rights against the Case Files at any time (assuming that it even had any such lien rights). (See Ex. A at Ex. 1 ¶ 21.B). Accordingly, Ben-Ezra's failure to deliver the Case Files to Fannie Mae directly interferes with Fannie Mae's rights under the Agreement.

30. Fannie Mae will suffer irreparable harm if this Court does not issue an injunction requiring Ben-Ezra to provide Fannie Mae with the Case Files and, until that occurs, precluding Ben-Ezra from altering, losing or destroying the Case Files.

31. Fannie Mae has no adequate remedy at law for Ben-Ezra's nonperformance, as the Case Files contain original documents – including original, executed Promissory Notes and Mortgages – pertaining to Fannie Mae's interests. Money damages, therefore, are insufficient and are not a suitable substitute for the Case Files.

32. No interested party will be injured by the issuance of an injunction requiring Ben-Ezra to turn over the Case Files to Fannie Mae.

33. An injunction will not further the public interest under these circumstances.

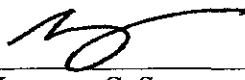
WHEREFORE, Fannie Mae respectfully requests that the Court enter an injunction compelling Ben-Ezra to (i) deliver all documents, records and work products created and/or compiled pursuant to the Agreement to Fannie Mae or its designated legal representative; (ii) preserve and protect such documents, records, and work products, including the attorney-client privilege applicable to these Case Files, until the same can be delivered to Fannie Mae; and (iii) any further relief that is just and proper.

Dated: February 11<sup>th</sup>, 2011

Respectfully submitted,

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