

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DOROTHY MAKONI On behalf of herself and  
all others so similarly situated,

*Plaintiff,*

vs.

OCWEN LOAN SERVICING, LLC,  
WELLS FARGO BANK, NATIONAL  
ASSOCIATION AS TRUSTEE FOR  
SECURITIZED ASSET BACKED RECEIVABLES)  
LLC TRUST 2005-FR2 MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2005-FR2

*Defendants.*

C.A. NO.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

**INTRODUCTION**

1. The Representative Plaintiff Dorothy Makoni, on behalf of herself and all others so similarly situated, brings this action as described in the paragraphs set forth herein. This class action complaint alleges that Defendants, Ocwen Loan Servicing, LLC and Wells Fargo Bank, National Association as Trustee for Securitized Asset Backed Receivables LLC Trust 2005-FR2 Mortgage Pass-Through Certificates, Series 2005-FR2, breached of the terms of those certain mortgages noted herein, given by Class Plaintiffs as secured by their real properties and in the case of the representative Plaintiff, secured by real property located at 128 Richards Avenue, Paxton, MA 01612 as well as the real properties of those Plaintiffs in the class. The Defendants breached the mortgage contracts in violation of Mass Gen Laws Ch. 244 § 14 as well as violated Mass. Gen. Laws Ch. 244 §35A by sending purported default notices in accordance with the mortgage contract and right to cure notices pursuant to Mass. Gen. Laws Ch. 244 §35A that

contained materially misleading statements. Defendants' breaches resulted in void default notices pursuant to the terms to the mortgages, void right to cure notices in accordance with Mass. Gen. Laws Ch. 244 §35A, void foreclosure notices, void foreclosure auctions pursuant to said mortgages, void foreclosure sales and void foreclosure deeds.

2. The Representative Plaintiff, on behalf of herself and all others so similarly situated, pray that this Honorable Court find that the Defendants breached the terms of the mortgages and further find said default notices are invalid and void. Further said Plaintiff prays that this Honorable Court find that the Defendants violated Mass. Gen. Laws Ch. 244 §35A and further find that the right to cure notices sent pursuant to said statute are null and void as well. In addition, said Plaintiffs ask that this Court find that any foreclosure sales conducted by the Defendants and foreclosure deeds granted subsequent to the invalid default notices be declared null and void regardless of whether or not said invalid foreclosure deeds were recorded. Representative Plaintiff asks that this Honorable Court declare that any such default notices sent to the Class Plaintiffs as described in this complaint be null and void, declare that any right to cure notices pursuant to Mass. Gen. Laws Ch. 244 §35A as described in this complaint be null and void, declare that any notice of mortgagee's foreclosure sale made to the Class Plaintiffs subsequent to such void default notices and void right to cure notices be null and void, enjoin the Defendants from conducting any foreclosure auction or conveyance of the subject properties and declare any foreclosure deed for said Class Plaintiffs null and void. Class Plaintiffs also seek declaratory relief, injunctive relief, actual, monetary, punitive and exemplary damages, restitution, an accounting, attorney's fees and costs, and all other relief provided by law for Defendants' wrongful acts.

### **JURISDICTION AND VENUE**

3. This Honorable Court has subject matter and original jurisdiction over this action and all Defendants pursuant to 28 U.S.C. § 1332, as this case arises between parties of diversity citizenship and the amount in controversy exceeds the sum or value of \$75,000.00.

4. Venue is proper in this Honorable Court in that the events or omissions giving rise to this claim have occurred, and the real properties that are subject of the action are situated within the District of Massachusetts pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391.

5. Venue is proper in this Honorable Court in that this Court has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. Rule 57.

6. Pursuant to Fed. R. Civ. P. Rule 23(a)(1), this complaint is a putative class action in which the class is so numerous that joinder of all members is impracticable.

7. Pursuant to Fed. R. Civ. P. Rule 23(b)(1), there are questions of law and fact common to the class.

8. Pursuant to Fed. R. Civ. P. Rule 23(a)(3), the claims or defenses of the Representative Plaintiff are typical of the claims or defenses of the class.

9. Pursuant to Fed. R. Civ. P. Rule 23(a)(4), the Representative Plaintiff will fairly and adequately protect the interests of the class.

10. Pursuant to Fed. R. Civ. P. Rule 23(b)(1)(A)&(B), prosecuting separate actions by or against individual class members would create a risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; and (B) adjudications with respect to



individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications and may substantially impair or impede their ability to protect their interests.

11. Pursuant to Fed. R. Civ. P. Rule 23(b)(2), the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

12. Pursuant to Fed. R. Civ. P. Rule 23(b)(3), the questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

### **PARTIES**

13. Representative Plaintiff Dorothy Makoni is a citizen of Massachusetts and the owner of the subject property located at 128 Richards Avenue, Paxton, MA 01612.

14. Defendant, Ocwen Loan Servicing, LLC (“Ocwen”), is a residential mortgage servicing company, located at 1661 Worthington Road, Ste 100, West Palm Beach, FL. Class Plaintiffs hereby challenge the validity all erroneous and potentially deceptive and misleading default/right to cure notices sent by Ocwen as described in this Complaint and all resulting foreclosures initiated and conducted subsequent to such notices.

15. Defendant, Wells Fargo Bank, National Association as Trustee for Securitized Asset Backed Receivables LLC Trust 2005-FR2 Mortgage Pass-Through Certificates, Series 2005-FR2 (Wells Fargo as Trustee), is the purported investor of the Representative Plaintiff’s mortgage. Wells Fargo as Trustee is located at 420 Montgomery Street, San Francisco, CA 94104.



**ALLEGATIONS OF THE REPRESENTATIVE PLAINTIFF**

16. Representative Plaintiff, Dorothy Makoni, resides at and claims to be the owner of real property located 128 Richards Avenue, Paxton, MA 01612, which is the subject property as referenced herein.

17. Representative Plaintiff Makoni brings this action on behalf of herself and all others so similarly situated.

18. On December 13, 2004, the subject property was granted to Representative Plaintiff Makoni. The Deed evidencing transfer of the ownership of the subject property was recorded in the Worcester Registry of Deeds in Book 35289 at Page 395 on December 13, 2004.

19. On December 13, 2004, Representative Plaintiff Makoni was granted a Mortgage loan, secured by the subject property, in the amount of \$268,000.00, which was recorded in the Worcester Registry of Deeds in Book 35290 at Page 1 on December 13, 2004. (the Makoni Mortgage) The Mortgage identified Fremont Investment & Loan as the Lender and Mortgage Electronic Registration Systems (“MERS”) as mortgagee.

20. The Makoni Mortgage states at paragraph 22 as follows;

“22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower’s breach of any covenant or agreement in this Security Instrument...The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the STATUTORY POWER OF SALE and any other remedies permitted by Applicable Law. Lender shall be entitled to

collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the STATUTORY POWER OF SALE, Lender shall mail a copy of a notice of sale to Borrower as provided in Section 15. Lender shall publish the notice of sale, and the Property shall be sold in the manner prescribed by Applicable Law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it."

21. Paragraph 22 of the Makoni Mortgage required that prior to acceleration and foreclosure the Defendants were required to send Representative Plaintiff Makoni a Default Notice which informed Representative Plaintiff Makoni that she had a "right to reinstate after acceleration". The "right to reinstate after acceleration" contained in the Makoni Mortgage is described in Paragraph 19 of the Mortgage as follows:

"19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before the sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred.



However this right to reinstate shall not apply in the case of acceleration under Section 18.”

(emphasis added)

22. On August 12, 2009, MERS assigned the Makoni Mortgage to Defendant, Wells Fargo as Trustee. Said assignment was recorded in the Worcester Registry of Deeds in Book 47269 at Page 328 on April 7, 2011.

23. On September 1, 2017, the Makoni Mortgage was again assigned to Defendant Wells Fargo as Trustee. Said assignment was recorded in the Worcester Registry of Deeds in Book 57675 at Page 372 on September 1, 2017.

24. Subsequent to the granting of the Makoni Mortgage, Defendant Wells Fargo as Trustee became the holder of the Note that was secured by the Makoni Mortgage.

25. On or about February 17, 2017 Defendant, Ocwen, allegedly sent to Representative Plaintiff Makoni a form default/ right to cure letter which stated “after 5/25/2017” (the right to cure date/ acceleration date), “you can still avoid foreclosure by paying the total past due amount before a foreclosure sale takes place . . . to avoid foreclosure”. This statement presents an affirmative misstatement in the default/ right to cure letter because Paragraph 19 of the mortgage only allows reinstatement of the mortgage after acceleration “*prior to the earliest of: (a) five days before the sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Defendant’s right to reinstate; or (c) entry of judgment enforcing this Security Instrument*”.

26. Since there is no Applicable Law specifying the termination of the right to reinstate and there is no entry of judgment enforcing the mortgage, the Representative Plaintiff Makoni’s right to reinstate and avoid foreclosure expired five days before the foreclosure sale in accordance with Paragraph 19 of the mortgage. Therefore, the default/ right to cure letter’s assertion that the



Representative Plaintiff Makoni could pay the “total past due amount before a foreclosure sale take place...to avoid foreclosure” is potentially misleading and deceptive because the letter omits the conditions of paragraph 19 of the mortgage.

27. In addition, the failure of the default/ right to cure letter to inform Representative Plaintiff Makoni that the right to reinstate expires 5 days before the foreclosure sale in accordance with paragraph 19 of the Makoni Mortgage, is a violation of Mass. Gen. Laws ch. 244 §35A(c)(2) which required the right to cure letter to inform Representative Plaintiff Makoni of “the date by which the mortgagor shall cure the default to avoid . . . a *foreclosure or other action to seize the home*”. (emphasis added).

28. Plaintiffs further allege that the right to cure letter failed to inform Plaintiffs that the right to reinstate after acceleration is to be done “prior to . . . five days before the sale” in violation of M.G.L. ch 244 §35A(c)(2) which requires the Defendants to notify the Plaintiffs of “the date by which the mortgagor shall cure the default to avoid . . . a *foreclosure or other action to seize the home*.” (emphasis added).

29. M.G.L. ch 244 §35A(d) also provides that “The Mortgagee, or anyone holding thereunder, may also provide for reinstatement of the note after the 90 day notice to cure has ended.”

30. Defendants failure to notify the Plaintiffs of the right to reinstate after acceleration prior to five days before the sale is also a violation of the notice provision provided in M.G.L. ch 244 §35A(d).

31. As such, the Defendants failed to provide the Plaintiffs proper Notice of Right to Cure in violation of M.G.L. c. 244 §35A(c)(2) and M.G.L. ch 244 §35A(d).

32. In taking account the record and discovery to date, Representative Plaintiff alleges in accordance with Paragraph 22 of their Complaint that the purported Default/ Right to Cure Letters fail to fully and “properly” describe the Plaintiff’ “right to reinstate after acceleration” as required by and detailed in Paragraph 19 of the Mortgage. Therefore, the Defendant’s failure to include such information is a breach of contract and a violation of the Statutory Power of Sale pursuant to M.G.L. ch. 244 §21 for failing to provide a “proper” default notice in accordance with Paragraph 22 of the Mortgage and a violation of Mass. Gen. Laws Ch. 244 §35A(c)(2) and 35A(d).

33. On February 4, 2019, the Defendants recorded an Order of Notice in accordance with the Servicemembers Relief Act in order to proceed with foreclosure proceedings against the Representative Plaintiff.

34. Representative Plaintiff alleges that the notice sent purporting to state compliance with paragraph 22 of the Makoni Mortgage failed to contain the required information as described in said paragraph 22, contained a misleading and potentially deceptive statement that claimed that the Representative Plaintiff could pay the “total past due amount before a foreclosure sale take place...to avoid foreclosure”, and further failed to state with specificity the conditions Representative Plaintiff are required to meet in order to exercise their right to reinstate the mortgage after acceleration pursuant to paragraph 19 of the Makoni Mortgage.

35. Representative Plaintiff further alleges that the default/right to cure letter failed to inform Representative Plaintiff that the right to reinstate after acceleration is to be done “prior to . . . five days before the sale” in violation of M.G.L. ch 244 §35A(c)(2) and 35A(d) which require the Defendants to notify the Representative Plaintiff of “the date by which the mortgagor shall cure

the default to avoid . . . *a foreclosure or other action to seize the home.*” And the right to reinstate after acceleration (emphasis added).

36. As such, the Defendants failed to provide the Representative Plaintiff proper Notice of Default in breach of the Mortgage contract and are in violation of G. L. c. 183, § 21 for failure to first comply with the terms of the mortgage prior to exercising the power of sale, rendering any acceleration, foreclosure, and sale void.

### **CLASS ALLEGATIONS**

37. The Representative Plaintiff repeat and re-allege every allegation above as if set forth herein in full.

38. The Representative Plaintiff bring this Action on behalf of herself and all others so similarly situated.

39. The Representative Plaintiff sue on behalf of herself and all homeowners or former homeowners who were sent default/ right to cure letters which state or imply that Class Plaintiffs could pay the “total past due amount before a foreclosure sale take place...to avoid foreclosure” is potentially misleading and deceptive because the letter omits the conditions of paragraph 19 of the mortgage

40. The Representative Plaintiff, on behalf of herself and all others so similarly situated, pray that this Honorable Court find that the Defendants breached the terms of the mortgages and further find said default notices are invalid and void.

41. The Representative Plaintiff, on behalf of herself and all others so similarly situated, pray that this Honorable Court find that the Defendants violated Mass. Gen. Laws Ch. 244 §35A and further find said right to cure notices are invalid and void.



42. Representative Plaintiff ask that this Court find that any foreclosure sales conducted by the Defendants and foreclosure deeds granted subsequent to the invalid default/ right to cure notices be declared null and void regardless of whether or not said invalid foreclosure deeds were recorded.

43. Representative Plaintiff, on behalf of herself and all others so similarly situated, ask that this Honorable Court declare that any such default/ right to cure notices sent to the Class Plaintiffs as described in this complaint be null and void, declare that any notice of mortgagee's foreclosure sale made on said properties of the Class Plaintiffs subsequent to such void default notices be null and void, declare that any foreclosure auction conducted subsequent to such void default notices be null and void, declare that any foreclosure deed granted subsequent to such void default notices be null and void, and enjoin the Defendants from conducting any foreclosure auction or conveyance of the subject properties.

44. Class Plaintiffs seek declaratory relief, injunctive relief, actual, monetary, punitive and exemplary damages, restitution, an accounting, attorney's fees and costs, and all other relief provided by law for Defendants' wrongful acts.

45. The Representative Plaintiff and members of the class suffered quantifiable damages such as loss of equity in their homes, money spent on funding bankruptcy, legal defense of foreclosure and eviction, and moving and relocation expenses.

46. The Representative Plaintiff and members of the class have suffered general damages such as loss of property interests, negative impact to credit ratings, loss of their homes, lost opportunities to rectify their situations through loss mitigation and mediation of their mortgage delinquencies, and extreme mental and emotional distress.

47. The Representative Plaintiff and members of the class seek actual, exemplary, punitive, and monetary damages.

**COUNT I**  
**DECLARATORY JUDGMENT**

48. Representative Plaintiff, on behalf of herself and all others so similarly situated, repeat and reincorporate by reference all paragraphs above as if fully articulated herein.

49. Representative Plaintiff, on behalf of herself and all others so similarly situated, allege that the notices sent purporting to state compliance with paragraph 22 of the Mortgages and Mass. Gen. Laws Ch. 244 §35A failed to contain the required information as described in said paragraphs of the mortgages and Mass. Gen. Laws Ch. 244 §35A, contained misleading statements that claimed that the Class Plaintiffs could pay the “total past due amount before a foreclosure sale take place...to avoid foreclosure”, and further failed to state with specificity the conditions Class Plaintiffs are required to meet in order to exercise their right to reinstate the mortgage after acceleration pursuant to paragraph 19 of the Mortgages.

50. As such, the Defendants failed to provide the Class Plaintiffs compliant Notices of Default/ Right to Cure in accordance with Mass. Gen. Laws Ch. 244 §35A in breach of their Mortgage contracts and are in violation of G. L. c. 183, § 21 for failure to first comply with the terms of the mortgage prior to exercising the power of sale, rendering any default or right to cure notice with the above described verbiage, as well as any acceleration, any foreclosure notice, any foreclosure auction, and any foreclosure deed made subsequent to said void default/ right to cure notices void.

51. Representative Plaintiff, on behalf of herself and all others so similarly situated, respectfully ask that this Honorable Court declare that any said default letter/ right to cure notices containing misleading statements that claim or imply that the Class Plaintiffs could pay

the “total past due amount before a foreclosure sale take place...to avoid foreclosure” are null and void.

52. Representative Plaintiff, on behalf of herself and all others so similarly situated, ask that this Honorable Court declare that any such default/ right to cure notices sent to the Class Plaintiffs as described in this complaint be null and void, declare that any notice of mortgagee’s foreclosure sale made on said properties of the Class Plaintiffs subsequent to such void default notices be null and void, declare that any foreclosure auction conducted subsequent to such void default notices be null and void, declare that any foreclosure deed granted subsequent to such void default notices be null and void, and enjoin the Defendant from conducting any foreclosure auction or conveyance of the subject properties.

53. The Class Plaintiffs are entitled to a declaratory judgment determining that the accelerations of all sums due under the notes, the attempted foreclosures, and the attempted mortgagee’s foreclosure sales of the subject property are all void.

54. The Class Plaintiffs are entitled to an injunction preventing the transfer of the right, title, and interest in their property.

55. The Class Plaintiffs are entitled to cancellation costs and fees assessed to them for wrongful foreclosure, together with additional damages.

56. The Class Plaintiffs are entitled to be returned to their status and circumstances prior to the wrongful foreclosures and sales.

57. The Class Plaintiffs are entitled to actual, monetary, punitive and exemplary damages, restitution, an accounting, attorneys’ fees and costs, equitable relief and all other relief as provided by state law.

**COUNT II**  
**MORTGAGE POWER OF SALE**



58. Representative Plaintiff, on behalf of herself and all others so similarly situated, repeat and reincorporate by reference all paragraphs above as if fully articulated herein.

59. Massachusetts permits non-judicial foreclosure under the statutory power of sale contained at G. L. c. 183, § 21, so long as the terms of the mortgage and the statutes related to the power of sale are strictly complied with. The statute states:

Section 21. The following “power” shall be known as the “Statutory power of Sale”, and may be incorporated in any mortgage by reference:

(POWER)

But upon any default in the performance or observance of the foregoing or other condition, the mortgagee or his executors, administrators, successors or assigns may sell the mortgaged premises or such portion thereof as may remain subject to the mortgage in case of any partial release thereof, either as a whole or in parcels, together with all improvements that may be thereon, by public auction on or near the premises then subject to the mortgage, or, if more than one parcel is then subject thereto, on or near one of said parcels, or at such place as may be designated for that purpose in the mortgage, **first complying with the terms of the mortgage and with the statutes relating to the foreclosure of mortgages by the exercise of a power of sale**, and may convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale shall forever bar the mortgagor and all persons claiming under him from all right and interest in the mortgaged premises, whether at law or in equity.

(Emphasis added).

60. As emphasized above, the foreclosure by power of sale requires that a foreclosing bank must “comply [] with the terms of the mortgage...” G.L. c. 183, § 21.

61. If a bank fails to strictly comply with the power of sale and the terms of the mortgage, then a foreclosure is void. U.S. Bank Nat’l Ass’n v. Schumacher, 467 Mass. 421, 428 (2014) (“Failure to comply strictly with the power of sale renders the foreclosure void.”).

62. The mortgages given by Class Plaintiffs, secured by the subject properties state at 22 as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument...The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the STATUTORY POWER OF SALE and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the STATUTORY POWER OF SALE, Lender shall mail a copy of a notice of sale to Borrower as provided in Section 15. Lender shall publish the notice of sale, and the Property shall be sold in the manner prescribed by Applicable Law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

63. Paragraph 22 of the Mortgages require that prior to acceleration and foreclosure the Defendant is required to send the Borrowers a Default Notice which informs the Borrowers that they have a "right to reinstate after acceleration". The "right to reinstate after acceleration" contained in the Mortgage are described in Paragraph 19 of the Mortgages as follows;

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before the sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and



valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However this right to reinstate shall not apply in the case of acceleration under Section 18."

(emphasis added)

64. Representative Plaintiff, on behalf of herself and all others so similarly situated, allege that the notices sent purporting to state compliance with paragraph 22 of the Mortgages failed to contain the required information as described in said paragraph, contained a misleading statement that claimed that the Class Plaintiffs could pay the "total past due amount before a foreclosure sale take place...to avoid foreclosure", and further failed to state with specificity the conditions Class Plaintiffs are required to meet in order to exercise their right to reinstate the mortgage after acceleration pursuant to paragraph 19 of the Mortgages.

65. As such, there was no compliance with the terms of the mortgage which would have allowed the Defendants to exercise the statutory power of sale as indicated above.

66. No proper Notices of Default were sent to Class Plaintiffs in accordance with the terms of the mortgage.

68. As a result, no acceleration letter could be sent to Class Plaintiffs, nor could the mortgagee exercise the statutory power of sale on said mortgages in the Class.



69. Pursuant to the terms of the Mortgages, compliance with the obligations of the Lender as set forth in paragraphs 19 & 22 of the Mortgages are condition precedents to the accelerations and the exercise of the statutory power of sale.

70. Class Plaintiffs thus never received an acceleration notice or Notice of Default pursuant to the terms of the Mortgages.

71. Due to this failure to comply with the terms of the mortgage, no entity was contractually authorized to exercise the statutory power of sale and foreclose on the Mortgages and sell the subject properties at mortgagee's foreclosure sale. These actions constituted a breach of contract, resulting in damages to the Class Plaintiff.

72. As a result of the above noted improper and invalid exercises of the statutory power of sale and purported foreclosure sales, Class Plaintiffs mortgage loan accounts were charged fees and costs and expenses for certified mail, advertising costs, legal fees, auctioneer costs and other charges which were reflected in their monthly mortgage statements.

73. The Class Plaintiffs have incurred damages in hiring attorneys, in regard to the improper actions of Defendants in sending Notices of Foreclosure Sale and conducting sales without first complying with the terms of the mortgages in violation of G. L. c. 183, § 21.

74. Class Plaintiffs have also incurred emotional injuries and damages due to the improper foreclosure of their home without Defendants first complying with the terms of the mortgages.

75. The Class Plaintiffs have incurred legal fees for the prosecution of this action as a result of Defendants' violation of G. L. c. 183, § 21 due to the breaches of contract by Defendants as noted herein.

76. Class Plaintiffs have suffered harm and are threatened with additional harm from Defendants' breach, including but not limited to losses of their property interest, higher principle

balances, improper negative reporting to credit bureaus; inappropriate fees and charges assessed to them, including broker price opinion fees, inspection fees, attorney's fees, "process management" fees, late fees and other charges associated with delinquency and default, and increased accrued interest.

77. The Defendants' breach of contract and failure to comply with terms of the mortgage as noted herein above, are the direct cause of the harms alleged herein and not Class Plaintiff failure to make their mortgage payments.

78. Therefore, Class Plaintiffs would not have suffered the harms as noted herein were it not for the Defendants' breach of the mortgage contract as noted herein.

79. The Defendants' failure to comply with the terms of the mortgage is in violation of G. L. c. 183, § 21. The foreclosures are therefore void. U.S. Bank Nat. Ass'n v. Ibanez, 458 Mass. 637, 647 (2011) ("the terms of the power of sale, G.L. c. 183, § 21, must be strictly adhered to"); See also Paiva v. Bank of New York Mellon, USDC Mass. 14-1453, August 11, 2015 (Burroughs, A.) ("Because the Court finds that Countrywide's notice ... did not strictly comply with the requirements of paragraph [22] of the mortgage, the foreclosure sale is void.").

80. The Class Plaintiffs are entitled to a declaratory judgment determining that the accelerations of all sums due under the notes, the attempted foreclosures, and the attempted mortgagee's foreclosure sales of the subject property are all void.

81. The Class Plaintiffs are entitled to an injunction preventing the transfer of the right, title, and interest in their property.

82. The Class Plaintiffs are entitled to cancellation costs and fees assessed to them for wrongful foreclosure, together with additional damages.

83. The Class Plaintiffs are entitled to be returned to their status and circumstances prior to the wrongful foreclosures and sales.

84. The Class Plaintiffs are entitled to actual, monetary, punitive and exemplary damages, restitution, an accounting, attorneys' fees and costs, equitable relief and all other relief as provided by state law.

**COUNT III**  
**BREACH OF CONTRACT AND FAILURE TO COMPLY WITH CONDITIONS  
PRECEDENT TO EXERCISE THE STATUTORY POWER OF SALE**

85. Representative Plaintiff, on behalf of herself and all others so similarly situated, repeat and re-allege every allegation above as if set forth herein in full.

86. As described above, the mortgage contract entered into by Representative Plaintiff constitutes a valid offer.

87. Upon Class Plaintiffs executing the mortgage contracts and giving it to their Lender, the Lender accepted that offer.

88. Alternatively, Class Plaintiffs execution of the mortgage contracts thereby giving a security interest in their properties to their Lender constitutes offers. Acceptance of those offers occurred when Defendants accepted payments made by Class Plaintiffs pursuant to the mortgage contracts.

89. The mortgage contracts were supported by consideration. Class Plaintiff payments to Defendants constitutes consideration.

90. Class Plaintiffs and Defendants thereby formed valid contracts and Class Plaintiffs were, are, and remain ready willing and able to perform under said contracts.



91. Defendants breached the mortgage contract of Class Plaintiffs by failing to keep its obligations pursuant to the terms as agreed to found at paragraphs 19 & 22 of the Mortgages which state in pertinent part;

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument...The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the STATUTORY POWER OF SALE and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the STATUTORY POWER OF SALE, Lender shall mail a copy of a notice of sale to Borrower as provided in Section 15. Lender shall publish the notice of sale, and the Property shall be sold in the manner prescribed by Applicable Law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before the sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in

the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However this right to reinstate shall not apply in the case of acceleration under Section 18."

(emphasis added)

92. In Massachusetts, a contract containing an obligation of the Lender is construed as a condition precedent, which requires strict compliance.

93. In Massachusetts, a mortgagee agreeing to abide certain obligations pursuant to the mortgage before acceleration, foreclosure, and sale, must adhere to those obligations, with the level of specificity as agreed.

94. In Massachusetts, the power to sell by foreclosure sale is derived from the mortgage and statute, and strict compliance with the requirements of paragraphs 19 & 22 of the mortgage is an obligation of the mortgagee. Failure send proper Notice of Default pursuant to paragraphs 22 & 19 as noted herein is a breach of mortgage contract renders any acceleration, attempted foreclosure, and sale of the subject property void.

95. Representative Plaintiff, on behalf of herself and all others so similarly situated, allege that the notices sent purporting to state compliance with paragraph 22 of the Mortgages failed to contain the required information as described in said paragraph, contained a misleading statement that claimed that the Class Plaintiffs could pay the "total past due amount before a foreclosure sale take place...to avoid foreclosure", and further failed to state with specificity the



conditions Class Plaintiffs are required to meet in order to exercise their right to reinstate the mortgage after acceleration pursuant to paragraph 19 of the Mortgages.

96. As such, there was no compliance with the terms of the mortgage which would have allowed the Defendants to exercise the statutory power of sale as indicated above.

97. No default letter was sent to Class Plaintiffs pursuant to the terms of the mortgage. As such the Defendants could not exercise the statutory power of sale on their properties.

98. Pursuant to the terms of the mortgages proper Notices of Default are a condition precedents to acceleration and the exercise of the statutory power of sale.

99. Class Plaintiffs thus never received default acceleration notices pursuant to the terms of their mortgages.

100. Due to these failures to comply with the terms of the mortgages, no entity was contractually authorized to exercise the statutory power of sale, foreclose, and sell the subject properties at mortgagee's foreclosure sale. These actions constituted breaches of the contracts, resulting in damages to the Class Plaintiff.

101. As a result of the above noted improper and invalid exercises of the statutory power of sale and purported foreclosure sales, Class Plaintiff mortgage loan accounts were charged fees and costs and expenses for certified mail, advertising costs, legal fees, auctioneer costs and other charges which were reflected in their monthly mortgage statements.

102. The Class Plaintiffs have incurred damages in hiring attorneys, in regard to the improper actions of Defendants in sending a Notices of Foreclosure Sale and seeking to conduct sales without first complying with the terms of the mortgages in violation of G. L. c. 183, § 21 and in breach of their contracts.



103. Class Plaintiffs have also incurred emotional injuries and damages due to the improper foreclosures of their homes without Defendants first complying with the terms of the mortgages and breaches of contracts.

104. Class Plaintiffs have incurred legal fees for the prosecution of this action as a result of Defendants' violation of G. L. c. 183, § 21 due to the breaches of contracts by Defendants as noted herein.

105. Class Plaintiffs have suffered harm and are threatened with additional harm from Defendants' breach, including but not limited to loss of property interests, higher principle balances, improper negative reporting to credit bureaus; inappropriate fees and charges assessed to their accounts, including broker price opinion fees, inspection fees, attorney's fees, "process management" fees, late fees and other charges associated with delinquency and default, and increased accrued interest.

106. The Defendants' breaches of contracts and failure to comply with terms of the mortgages as noted herein above, are the direct cause of the harms alleged herein and not Class Plaintiff failure to make their mortgage payments.

107. Therefore, Class Plaintiffs would not have suffered foreclosure, sale, or the harms as noted herein were it not for the Defendants' breaches of the mortgage contracts as noted herein.

108. The Defendants' failure to comply with the terms of the mortgages are a breaches of the mortgage contracts and also are in violation of G. L. c. 183, § 21. The foreclosure is therefore void. U.S. Bank Nat. Ass'n v. Ibanez, 458 Mass. 637, 647 (2011) ("the terms of the power of sale, G.L. c. 183, § 21, must be strictly adhered to"); See also Paiva v. Bank of New York Mellon, USDC Mass. 14-1453, August 11, 2015 (Burroughs, A.) ("Because the Court finds that

Countrywide's notice ... did not strictly comply with the requirements of paragraph [22] of the mortgage, the foreclosure sale is void.").

109. The Class Plaintiffs are entitled to a declaratory judgment determining that the acceleration of all sums due under the notes, the foreclosures, and mortgagee's foreclosure sales of the subject properties are in breach of contract and all void.

110. The Class Plaintiffs are entitled to an injunction preventing the transfer of the right, title, and interest in their properties.

111. The Class Plaintiffs are entitled to cancellation costs and fees assessed to them for wrongful foreclosures, together with additional damages.

112. The Class Plaintiffs are entitled to be returned to their status and circumstances prior to any wrongful acceleration, foreclosure and sale.

113. The Class Plaintiffs are entitled to actual, monetary, punitive and exemplary damages, restitution, an accounting, attorneys' fees and costs, equitable relief and all other relief as provided by state law.

**COUNT IV**  
**VIOLATION OF M.G.L. c. 244 §35A**

114. Representative Plaintiff, on behalf of herself and all others so similarly situated, repeat and reincorporate all paragraphs above as if fully articulated herein.

115. Pursuant to M.G.L. c. 244 §35A, Defendants were required to notify Plaintiff of "...the nature of the default claimed on such mortgage of such residential real property and of the mortgagor's right to cure the default by paying the sum of money required to cure the default...before...accelerat[ing] the maturity of the unpaid balance of such mortgage obligation or otherwise enforce[ing] the mortgage." (See: M.G.L. Ann. c. 244 §35A.). (Emphasis Added).

116. Furthermore, “[W]here a homeowner who is facing foreclosure claims that the mortgage holder has failed to provide timely and adequate written notice of the right to cure the default in payment of the mortgage, in violation of § 35A, the homeowner may file an equitable action . . . seeking to enjoin the foreclosure...[T]he foreclosure may not proceed if the mortgagor proves that the mortgage holder has failed to give the required notice...[In that case,] the mortgage holder must provide the proper notice required by § 35A and wait to see if the borrower will cure the default within the required time period before recommencing the foreclosure proceeding.” (See: U.S. Bank Nat. Ass’n v. Schumacher, 467 Mass. 421, 431 (2014)).

117. Defendants sent what they purported to be right to cure notices pursuant to M.G.L. c. 244 §35A. However, said notices materially misstated that the Class Plaintiffs could pay the “total past due amount before a foreclosure sale take place...to avoid foreclosure” in contradiction to paragraph 19 of the Mortgages.

118. Representative Plaintiff further alleges that the default/right to cure letter failed to inform Representative Plaintiff that the right to reinstate after acceleration is to be done “prior to . . . five days before the sale” in violation of M.G.L. ch 244 §35A(c)(2) and 35A(d) which require the Defendants to notify the Representative Plaintiff of “the date by which the mortgagor shall cure the default to avoid . . . *a foreclosure or other action to seize the home.*” And the right to reinstate after acceleration (emphasis added).

119. As such, the Defendants failed to provide the Class Plaintiffs compliant Notices of Default/ Right to Cure in accordance with Mass. Gen. Laws Ch. 244 §35A in breach of their Mortgage contracts and are in violation of G. L. c. 183, § 21 for failure to first comply with the terms of the mortgage prior to exercising the power of sale, rendering any default or right to cure notice with the above described verbiage, as well as any acceleration, any foreclosure notice, any



foreclosure auction, and any foreclosure deed made subsequent to said void default/ right to cure notices void.

120. Representative Plaintiff, on behalf of herself and all others so similarly situated, respectfully ask that this Honorable Court declare that any said default letter/ right to cure notices containing misleading statements that claim or imply that the Class Plaintiffs could pay the “total past due amount before a foreclosure sale take place...to avoid foreclosure” are null and void.

121. Therefore, said notice is inadequate, ineffective, and fails to comply with M.G.L. c. 244 §35A in such a manner as to render any and all foreclosure actions subsequent to such right to cure notice fundamentally unfair. As such, the acceleration and attempted foreclosure of the Class Plaintiff’ Mortgages and the attempted mortgagee’s foreclosure sales are invalid, void, and without force and/or effect.

122. Due to Defendants’ failure to comply with M.G.L. c. 244 §35A, no entity was contractually authorized to exercise the statutory power of sale and attempt to foreclose on the Class Plaintiff’ Mortgages and sell their properties at mortgagee’s foreclosure sale. These actions constituted breach of contracts, resulting in damages to the Plaintiff.

123. As a result of the above noted improper and invalid exercise of the statutory power of sale and purported foreclosure sale, Plaintiff’ mortgage loan accounts were charged fees and costs and expenses for certified mail, advertising costs, legal fees, auctioneer costs and other charges which were reflected in their monthly mortgage statements.

124. The Plaintiff have incurred damages in hiring attorneys, in regard to the improper actions of Defendant in failing to send Class Plaintiffs proper and accurate notices of right to cure

pursuant to M.G.L. c. 244 §35A, and seeking to conduct a foreclosures and sales without first complying with M.G.L. c. 244 §35A.

125. Class Plaintiffs have also incurred emotional injuries and damages due to the improper foreclosure and sale of their homes without Defendant first complying with M.G.L. c. 244 §35A.

126. The Class Plaintiffs have incurred legal fees for the prosecution of this action as a result of Defendant's violation of M.G.L. c. 244 §35A as noted herein.

127. Class Plaintiffs have suffered harm and are threatened with additional harm from Defendant's failure to abide by M.G.L. c. 244 §35A, including but not limited to potential loss of property interests, higher principle balances, improper negative reporting to credit bureaus; inappropriate fees and charges assessed to them, including broker price opinion fees, inspection fees, attorney's fees, "process management" fees, late fees and other charges associated with delinquency and default, and increased accrued interest.

128. The Defendant's failure to proper notice of Class Plaintiff' rights to cure as noted herein above, is the direct cause of the harms alleged herein and not Class Plaintiff' failure to make their mortgage payments.

129. Therefore, Class Plaintiffs would not have suffered the harms as noted herein were it not for the Defendant's failure to abide by statute as noted herein.

130. The Class Plaintiffs are entitled to a declaratory judgment determining that the acceleration of all sums due under the notes, the attempted foreclosures, and the attempted mortgagee's foreclosure sales of the subject properties are all void.

131. The Class Plaintiffs are entitled to an injunction preventing the transfer of the right, title, and interest in their properties.

132. The Class Plaintiffs are entitled to cancellation costs and fees assessed to them for wrongful foreclosure, together with additional damages.

133. Class Plaintiffs are entitled to be returned to their status and circumstances prior to the wrongful attempted foreclosures and sales.

134. Class Plaintiffs are entitled to actual, monetary, punitive and exemplary damages, restitution, an accounting, attorneys' fees and costs, equitable relief and all other relief as provided by state law.

Dated: March 12, 2019

Respectfully Submitted, Plaintiff,  
By their Attorney,  
Todd S. Dion, Esq.

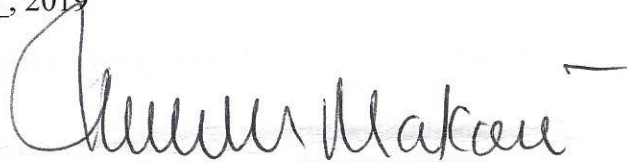
/s/ Todd S. Dion  
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[toddsdion@msn.com](mailto:toddsdion@msn.com)



**VERIFICATION OF COMPLAINT**

I, Dorothy Makoni, Plaintiff in the above-captioned action, hereby depose and state that I have read and subscribed to the foregoing complaint, and the facts set forth therein are based on my own personal knowledge and are true and correct.

Signed under the penalties of perjury on March 19, 2019

A handwritten signature in cursive script, appearing to read "Dorothy Makoni", written over a horizontal line.

Dorothy Makoni

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Dorothy Makoni

**DEFENDANTS**

OCWEN Loan Servicing, LLC and Wells Fargo Bank, NA as Trustee for Securitized Asset Backed Receivables LLC Trust 2005-FR2

County of Residence of First Listed Defendant Florida

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(b) County of Residence of First Listed Plaintiff Worcester  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Todd S. Dion, Esq.  
15 Cottage Ave Ste 202, Quincy, MA 02169

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY -</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332

Brief description of cause:  
Wrongful Foreclosure

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/22/2019

SIGNATURE OF ATTORNEY OR RECORD

Todd Dion

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Dorothy Makoni v. OCWEN Loan Servicing, LLC

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830\*, 835\*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820\*, 840\*, 895, 896, 899.
- III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?  
YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Todd S. Dion

ADDRESS 15 Cottage Ave, Ste 202, Quincy, MA 02169

TELEPHONE NO. 401-965-4131



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ocwen Loan Servicing, Wells Fargo Bank Sued Over Allegedly Improper Foreclosure Actions](#)

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