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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHH MORTGAGE CORPORATION

Defendant.

Civil Action No. 19-4767

COMPLAINT

Plaintiff, the United States of America (the “United States”), by its undersigned attorneys, files this Complaint and alleges as follows:

INTRODUCTION

1. The United States brings this action under the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, against PHH Mortgage Corporation (hereinafter referred to as “Defendant”) for violating the SCRA by completing foreclosures, without court orders, of homes owned by servicemembers who took out mortgage loans prior to entering military service. *See* 50 U.S.C. § 3953. These servicemembers had either received orders to report for active duty, were on active duty, or had recently completed active duty at the time of the foreclosures and, therefore, were protected by the SCRA.

2. The purpose of the SCRA is to provide servicemembers with protections to enable them to devote their entire energy to the defense needs of the Nation and to protect their civil rights during military service. *See* 50 U.S.C. § 3902. One of those protections is that, for mortgage obligations that originated before the period of the servicemember’s military service, the servicemember’s home may not be sold or foreclosed upon for breach of that obligation during, or within one year after, the period of the servicemember’s military service, unless there is a court order or valid waiver of SCRA rights. *See* 50 U.S.C. § 3953.

3. A person or entity who forecloses, without a court order, on property owned by a servicemember protected under Section 3953(a) of the SCRA violates that servicemember’s federally protected rights under the SCRA. This lawsuit is brought to vindicate the rights of servicemembers whose homes were wrongly foreclosed upon by Defendant, to vindicate the public interest, and to protect servicemembers from future violations of their rights. *See* 50 U.S.C. § 4041(b).

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1345, and 50 U.S.C. § 4041.

5. Defendant is a New Jersey corporation, administered from, and with a principal place of business at, 1 Mortgage Way, Mount Laurel, New Jersey.

6. Venue is proper in this district under 28 U.S.C. § 1391(b) because Defendant's principal place of business is in the District of New Jersey, and Defendant conducts business within the District of New Jersey.

DEFENDANT

7. Defendant is a stand-alone mortgage company that originates, sells, services and subservices residential mortgage loans. PHH is one of the United States' largest mortgage loan servicers, operating nationwide. Defendant's last reported annual sales (as of December 31, 2017) were \$456 million.

FACTUAL ALLEGATIONS

8. From January 1, 2010 through April 4, 2012, Defendant initiated and completed six foreclosures, without court orders or valid waivers of SCRA rights, of real property owned by SCRA-protected servicemembers.

9. At the time of the foreclosures, the individuals who owned the properties were servicemembers who were in military service, as defined by 50 U.S.C. § 3911(1) and (2), had completed a period of military service within the past year (or nine months for foreclosures before February 2, 2013), *see* 50 U.S.C. § 3953(c), or were members of a reserve component who had been ordered to report for military service, as defined by 50 U.S.C § 3917(a).

10. Defendant conducted non-judicial foreclosures even when it knew or should have known that the borrowers were SCRA-protected servicemembers.

11. The Department of Defense provides those seeking to comply with the SCRA an automated database run by the Defense Manpower Data Center (“DMDC database”) to check whether individuals are SCRA-protected servicemembers. While its foreclosure protocols did include some efforts to verify military status, Defendant failed in practice to take adequate steps to identify protected servicemembers.

12. On May 6, 2016, the Department of Justice (“DOJ”) received a complaint through its Servicemembers and Veterans Initiative website at www.servicemembers.gov, alleging an unlawful foreclosure without a court order in violation of the SCRA, among other claims. The United States did not learn, and reasonably could not have known, about Defendant’s alleged violation of the SCRA until after it received the complaint.

13. On February 2, 2017, DOJ notified Defendant that it was opening an investigation into Defendant’s foreclosure practices, and obtained documents from Defendant, including its SCRA policies and procedures, a list of all mortgage foreclosures it had conducted without obtaining a court order at any time since January 1, 2010, and documents related to any complaints alleging violations of the SCRA. DOJ compared the DMDC database with the foreclosure list, which revealed that Defendant had conducted unlawful foreclosures against six protected servicemembers.

SERVICEMEMBER CIVIL RELIEF ACT VIOLATIONS

14. The SCRA provides that, for an “obligation on real or personal property owned by a servicemember that – (1) originated before the period of the servicemember’s military service and for which the servicemember is still obligated; and (2) is secured by a mortgage, trust deed, or

other security in the nature of a mortgage,” 50 U.S.C. § 3953(a), “[a] sale, foreclosure, or seizure of property for a breach of [such] an obligation...shall not be valid if made during, or within one year after,¹ the period of the servicemember’s military service except – (1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or (2) if made pursuant to an agreement as provided in section 3918 of this title.” 50 U.S.C. § 3953(c); *see also* 50 U.S.C. § 3918 (setting forth requirements for a waiver of SCRA rights).

15. Defendant’s violations of Section 3953 of the SCRA, 50 U.S.C. § 3953, raise issues of significant public importance.

16. The servicemembers whose homes were foreclosed upon without court orders or valid waivers of SCRA rights in violation of the SCRA are “person[s] aggrieved” pursuant to 50 U.S.C. § 4041(b)(2) and have suffered damages as a result of Defendant’s conduct.

17. Defendant’s conduct was intentional, willful, and taken in disregard for the rights of servicemembers.

RELIEF REQUESTED

WHEREFORE, the United States requests that the Court enter an ORDER that:

1. Declares that Defendant’s conduct violated the Servicemembers Civil Relief Act, 50 U.S.C. § 3901, *et seq.*;
2. Enjoins Defendant, its agents, employees, and successors, and all other persons and entities in active concert or participation with them, from:

¹ Between July 30, 2008 and February 2, 2013, servicemembers were protected for nine months after the period of military service, rather than one year.

- a. selling, foreclosing upon, or seizing the real property of SCRA-protected servicemembers without court orders, in violation of the SCRA, 50 U.S.C. § 3953;
 - b. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, each identifiable victim of Defendant's illegal conduct to the position he or she would have been in but for that illegal conduct; and
 - c. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any illegal conduct in the future and to eliminate, to the extent practicable, the effects of Defendant's illegal conduct; and
3. Awards monetary damages to each identifiable victim of Defendant's violations of the SCRA, pursuant to 50 U.S.C. § 4041(b)(2).

The United States further requests such additional relief as the interests of justice may require.

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CRAIG CARPENITO
United States Attorney

ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division

/s/ Michael E. Campion
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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

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

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

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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):

Brief description of cause:

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 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.