

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DOUGLAS A. AND ANDREA M. JONES,  
individually and on behalf of all those similarly  
situated,

Plaintiffs,

v.

ABN AMRO MORTGAGE GROUP, INC.,  
et al.,

Defendants.

Civil Action  
No. 2:07-cv-04328-JG

**OMNIBUS RESPONSE OF PLAINTIFFS DOUGLAS AND ANDREA JONES  
IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS<sup>1</sup>**

**I. INTRODUCTION**

In their memoranda supporting their motions to dismiss, Defendants' arguments ignore the elephant in the room: that *this was a mortgage servicing Ponzi scheme*. The Snyder Entities used the cloak of their apparently legitimate authority to assist the lenders in the mortgage loan origination and closing process. This enabled Snyder Entities to position themselves as the day-to-day loan servicers<sup>2</sup> on the Defendants' loans as a means to divert the initial loan funds and subsequent loan repayment funds to their illegal scheme. The central premise of this criminal

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<sup>1</sup> As requested by the Court, Plaintiffs have voluntarily dismissed, pursuant to Federal Rule of Civil Procedure 41, the claims of the non-Jones plaintiffs. Thus, this Response is made on behalf of Plaintiffs Douglas and Andrea Jones only.

<sup>2</sup> The Snyder Entities expressly disclaimed the role as agent for the homeowners and expressly identified themselves as the authorized loan servicer at or about the time of origination and closing of Defendants' loans.

scheme was that the Snyder Entities were able, by use of a number of deceptive acts,<sup>3</sup> to act as the a loan servicer on Defendants' loans from the very inception of those loans until the scheme collapsed in September of 2007. The reason that nearly forty million dollars of loan payments actually made by the homeowners is now missing and was not applied against Defendants' loans is because the Snyder Entities were able to position themselves as the *de facto* loan servicer over the many years that the loan payments were being diverted to their Ponzi scheme.

As the homeowners allege, no loan payments were ever sent directly to the Defendant lenders or to any non-Snyder loan servicing designee until the recent collapse of the scheme. Defendants' arguments ignore the allegations of the Complaint that the Snyder Entities performed a "huge number" of acts as loan servicer (Comp. ¶ 69), including communications with the borrowers and the lenders and the forwarding of monthly payments, all of which acts were accepted by the Defendants and were for their benefit. Without allowing Snyder to perform these services, and to usurp the servicing function, the mortgage service Ponzi scheme would not have been possible.

On these key issues and many others, Defendants' dismissal arguments go to great lengths to mischaracterize the allegations in Plaintiffs' Second Amended Complaint (the "Complaint") and to ignore the legal standards that apply to Defendants' motions. Defendants attempt to turn this Court's attention away from the asserted common law claims of *de facto* agency that follow inexorably from the well-pleaded allegations of the Complaint, and that form the basis of Plaintiffs' claims. Instead, Defendants argue for an unduly narrow focus on a few mortgage documents (while ignoring many others).

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<sup>3</sup> These acts are reflected in, among other things, numerous fraudulent and deceptive documents that several Defendants rely upon in their Rule 12 arguments and actually attach to their motion papers.

Of course, it is not proper to argue factual challenges to Plaintiffs' allegations in a motion to dismiss. To the contrary, it is undisputed that in evaluating the sufficiency of Plaintiffs' allegations, this Court must accept Plaintiffs' allegations as true and view them in the light most favorable to Plaintiffs. While Defendants acknowledge this well-settled principle, *see* Memorandum of Law in Support of Defendants' Consolidated Motion to Dismiss Plaintiffs' Second Amended Complaint ("Defs.' Consol. Mem.") at 4 n.3, they ignore it in favor of arguing the facts and prematurely referencing a distorted and incomplete record of their own creation. As discussed below, none of Defendants' arguments have merit. Accordingly, Defendants' motions to dismiss should be denied in their entirety.

## **II. STANDARD**

"The applicable inquiry under Federal Rule of Civil Procedure 12(b)(6) is well-settled. Courts must accept all well-pleaded allegations in the complaint as true and draw all reasonable inferences in favor of the non-moving party." *In Re Hypodermic Products Antitrust Litig.*, 2007 WL 1959224, \*5 (D.N.J. June 29, 2007). For purposes of determining whether the claims asserted in an amended complaint should survive a motion to dismiss, the court is concerned solely with the sufficiency of pleadings, not the sufficiency of its evidence or the source of its factual allegations. *See Merrill Lynch Business Financial Services Inc. v. Plesco*, 859 F. Supp. 818, 825 (E.D. Pa. 1994). As set forth more fully below, in deciding a motion to dismiss, the court may only rely on documents that form the basis of a claim in the complaint. Where, as here, the claims at issue are not based on the documents submitted by a defendant in support of dismissal, such evidence (outside the allegations in the complaint) cannot be considered. *See Charleswell v. Chase Manhattan Bank*, 308 F. Supp. 2d 545, 558 (D.V.I. 2004) (Dubois, J.) (citing *Fralin v. County of Bucks*, 296 F. Supp. 2d 609 (E.D. Pa. 2004)).

Despite Defendants' contrary contention, the Supreme Court in *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1555, 1564 (2007), "did not alter the 'short and plain statement' requirement specified in Rule 8(a)(2)." See *Behrend v. Comcast Corp.*, 2007 WL 2221415, \*5 (E.D. Pa. Aug. 1, 2007).

*Twombly* only requires that the short and plain statement have "enough heft" to show entitlement to relief. *Id.* at 1565. The Court also noted that the line "between the factually neutral and the factually suggestive . . . must be crossed to enter the realm of plausible liability," *id.* at 1566 n.5, and that a complaint warranted dismissal only where it failed "*in toto* to render plaintiffs' entitlement to relief plausible." *Id.* at 1573 n.14.

*Id.* Thus, "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Hypodermic Products*, 2007 WL 1959225 at \*6 (quoting *Twombly*, 127 S. Ct. at 1559). "Ultimately, however, the question is not whether plaintiffs will prevail at trial, but whether they should be given an opportunity to offer evidence in support of their claims." *Id.* (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

### **III. ARGUMENT**

#### **A. Plaintiffs Have Alleged Sufficient Facts To Support Their Claims.**

Defendants contend that Plaintiffs fail to state claims for declaratory relief and for negligence because the pleadings do not support Plaintiffs' allegation that the Snyder Entities were "servicing agents" for each of the lenders and that other fact allegations contradict this assertion.<sup>4</sup> In this regard, Defendants first argue that there is no foundation for Plaintiffs'

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<sup>4</sup> The mortgage lending industry is highly regulated at both the state and federal levels. There are only a few possible roles between and among borrowers, lenders, originators and servicers, and these relationships are carefully defined by statute. One obvious purpose of the statutes and regulations is to protect consumers from having their mortgage payments stolen or misapplied.

As alleged in Plaintiffs' Complaint, the Snyder Entities acted as Defendants' "servicer" –

assertion that the Snyder Entities acted as “servicers” even though, as Defendants admit, Plaintiffs allege in a number of places that the Snyder Entities serviced the “loans at issue.” (Defs.’ Consol. Mem. at 11.) Remarkably, Defendants attempt to discount these allegations by arguing that Plaintiffs actually are referring to loans *that the Snyder Entities made* rather than the loans that the lenders made.<sup>5</sup> Defendants are wrong. Plaintiffs have alleged that only one “integrated mortgage transaction” existed and that no bona fide second loan was ever made by the Snyder Entities and no additional funds (other than those already obtained from the funding lender) were ever loaned to the homeowners. (Second Amended Complaint (“Compl.”) at ¶ 60.) Instead, a portion of the original loan proceeds (*i.e.*, the prepayment amount) was either withheld by Snyder from the loan proceeds, or (if the total proceeds were delivered to the borrower) paid back by the borrower to Snyder as a prepayment of the loan. (Compl. at ¶¶ 60-61.) Defendants’ arguments that the Snyder Entities were not their “servicing agents” are based on a characterization of the facts that is inconsistent with the facts alleged in the Complaint and must

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the person responsible for receiving periodic payments and prepayments of principal and interest from borrowers and making those payments to the lenders under the terms of the lenders’ notes. (Compl. at ¶ 58.) *See also Paslowski v. Standard Mortgage Corp.*, 129 F. Supp. 2d 793, 799 n.10 (W.D. Pa. 2000) (“Mortgage servicing consists primarily of collecting the borrower’s payments, maintaining all of the necessary accounts . . . and making the necessary disbursements.”). Plaintiffs further allege that Defendants permitted the Snyder Entities to perform a large number of acts that fit precisely and exclusively into the role of a servicing agent for the lenders. (Compl. at ¶¶ 55-57, 60-66.)

<sup>5</sup> In arguing that the Snyder Entities were servicing a second loan (which did not exist), and not the original (and only) loans made by the lenders, Defendants ignore the second part of the definition of “servicer” in RESPA, as alleged by Plaintiffs in their Complaint. The “servicer” is not only responsible for receiving payments from the borrower, but also for “making the payments of principal and interest” due. This is exactly what the Snyder Entities are alleged to have done – paid the lenders under the terms of the lenders’ loans. Their fraudulent loan documents notwithstanding, the Snyder Entities were not lenders, they never loaned any funds to any member of the putative Class and Defendants’ argument that the Snyder Entities were servicing loans never actually made by the Snyder Entities is ridiculous on its face.

be rejected.<sup>6</sup>

This Court also should reject Defendants' argument that the Snyder Entities cannot possibly be the "servicers" of the lenders' loans simply because an amount less than the full amount due under the notes was collected from the borrowers. (Defs.' Consol. Mem. at 8.) This argument purposely ignores the large principal reduction payments made by each of the homeowners at the outset of this integrated loan transaction. The obvious effect of the homeowners' pre-payment was a reduction in monthly payment amounts. Nevertheless, Defendants merely focus on two paragraphs in the Complaint and fail to acknowledge any of Plaintiffs' allegations of extra-contractual conduct that form the bases of their claims. As a result, Defendants treat Plaintiffs' allegations as if the initial prepayment of principal on the lenders' loans did not exist. Here, the Snyder Entities did, as part of the Mortgage Servicing Ponzi Scheme alleged in the Complaint, collect a large prepayment followed by smaller monthly payments. (Compl. at ¶¶ 60-61.)

Contrary to Defendants' arguments, Plaintiffs' have set forth detailed allegations of "servicing" by the Snyder Entities in the Complaint:

Each Defendant in this case employed one or more of the Snyder Entities to originate, close and service the mortgage loans at issue in this case.

Each Defendant in this case knew that they were sending all mortgage statements, including all required 1098 federal tax forms for all mortgage loans

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<sup>6</sup> Defendants' also complain that "Plaintiffs do not specifically allege the respective terms of their "Equity Slide Down" mortgages with the Snyder Companies (Defs.' Consol. Mem. at 4.) and that "Plaintiffs intentionally confuse their loan transactions with Defendants with their subsequent transactions with the Snyder Companies in an effort to state a claim." *Id.* These arguments again reflect Defendants' mischaracterization of the pleaded facts. There was no subsequent loan with Snyder or a separate mortgage loan extended by a Snyder entity. The Complaint alleges that that this was an integrated transaction that was in turn part of a criminally fraudulent scheme aimed at positioning the Snyder Entities as the servicer of Defendants' loans, thereby placing Snyder in the position to divert the loan payments.

involved in this case, to addresses owned and controlled by the Snyder Entities, not to the Plaintiffs or to any members of the proposed Class or Subclasses.

Each Defendant in this case also knew that all mortgage payments, including, without limitation, all payments and pre-payments of interest and principal were being paid to and serviced through the Snyder Entities, who received and processed all such payments on behalf of Defendants.

The Snyder Entities served as the Defendants' "servicer," defined by the Real Estate Settlement Protection Act ("RESPA") as the "person responsible" for "receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan...and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan." 12 U.S.C. § 2605(i)(2) and (3).

(Compl. at ¶¶ 55-58.)

Defendants ignore the above allegations as well as the standard of review applicable to them. Instead, they narrowly argue that the lenders themselves were the only entities receiving payments on the lenders' loans under the express terms of the loan documents, thus, precluding the Snyder Entities from qualifying as the servicers of those loans. Of course that argument ignores the fundamental fact that *the Snyder Entities were the ones making these payments* on account of the notes to the lender, precisely the role of a defined "servicer" under RESPA, 12 U.S.C. § 2605(i)(2) and (3).

Defendants also argue that, under the terms of their Notes, the borrowers were responsible to pay the lenders. (Defs.' Consol. Mem. at 8-10.) But, as the Complaint alleges (and Defendants cannot dispute), this is not what happened – the borrowers paid the Snyder Entities and the Snyder Entities paid the lenders. (Compl. at ¶¶ 62-65.) This is what a servicer does. Moreover, the Complaint alleges that the lenders allowed the Snyder Entities to act in this capacity, accepting all payments from the Snyder Entities (not the borrowers) and sending all notices to addresses of the Snyder Entities, not to the borrowers. *Id.* at ¶¶ 56-57. While the Defendants contend that the loan documents are controlling in this regard, this Court may only

rely on such documents to the extent that Plaintiffs' claims are based on those documents. *See Charleswell*, 308 F. Supp. 2d at 558 (declining to consider terms of mortgage documents in Rule 12(b)(6) context because plaintiffs' claims not based on the mortgages). Here, Plaintiffs' claims are based on extra-contractual conduct – the Snyder Entities' conduct as servicers of Defendants' loans, and Defendants' conduct in allowing them to do so – not the documents themselves. (Compl. at ¶¶ 55-66.) Defendants' argument, based solely on loan documents, is illogical and inconsistent with the obligation of this Court to consider only the allegations of the Complaint in deciding Defendants' motions to dismiss. *Charleswell*, 308 F. Supp. 2d at 558.

Defendants' challenge of Plaintiffs' *factual* allegations of “servicing” by the Snyder Entities in support of their motion to dismiss is not proper and must be rejected. In this regard, *Charleswell* is instructive. In that case, owners of properties severely damaged in a hurricane brought an action against mortgage holders that procured or provided hazard insurance coverage for mortgage properties and against an affiliated company that assisted with the administration of the property insurance program, alleging numerous causes of action, including tort, contract and RICO claims. In discussing the proper standard of review of motions to dismiss submitted by the defendants, Judge DuBois opined on the propriety of considering documents attached to the defendants' motion:

**Defendants in this case attached to their Motion to Dismiss copies of the mortgage contracts between Chase and plaintiffs Charleswell, Christian, Jeffries, Creque, Maynard, and Pierre, and argued that the Court should consider the mortgage contracts in deciding the Motion to Dismiss. . . . If plaintiffs' claims were based on the mortgages, the Court would do so, but they are not.** Plaintiffs' claims are based on oral agreements to provide or procure insurance that are separate from the mortgages. Thus, the Court will consider only the allegations of the Complaint in deciding the Motion to Dismiss.

*Charleswell*, 308 F. Supp. 2d at 558. (citations omitted and emphasis added). *See also*

*Committee of Unsecured Creditors v. DVI Business Credit (In re DVI)*, 326 B.R. 301, 309-310

(Bankr. D. Del. 2005) (rejecting motions to dismiss contesting the factual allegations of complaint); *In re: Urethane Antitrust Litig.*, 409 F. Supp.2d 1275, 1283 (D. Kan. 2006) (procedural mechanism by which defendant should have disputed plaintiffs' factual allegations was by way of motion for summary judgment, not motion to dismiss).

As in *Charleswell*, Defendants improperly argue the factual allegations made by Plaintiffs. Defendants wish the sole focus of this case to be on two sets of loan documents, as if there were two bona fide loans instead of a single integrated transaction that itself was planned and executed as part of an extensive and successful Mortgage Servicing Ponzi scheme. Instead, for purposes of determining whether the claims asserted in an amended complaint should survive a motion to dismiss, this Court should be concerned solely with the sufficiency of pleadings, not the sufficiency of its evidence or the source of its factual allegations. *See Merrill Lynch*, 859 F. Supp. at 825. Here, Plaintiffs' allegations amply lay the foundation that the Snyder Entities acted as "servicers," collecting payments and pre-payments from borrowers *for* the true and only lenders (even if they never contracted with the Snyder Entities for such services and simply accepted the payments and other benefits of that servicing for months and years). Accordingly, Defendants' motions should be denied on this basis.

**B. Plaintiffs Have Properly Alleged Sufficient Facts Establishing That The Snyder Entities Were The Lenders' Agents.**

Next, Defendants argue that Plaintiffs' allegations that the Snyder Entities were the Lenders' agents are not sufficient. Again, Defendants are wrong. Plaintiffs have alleged numerous specific and repeated acts that fall squarely under persuasive common law jurisprudence of agency in this loan servicing context. (Compl. at ¶¶ 55-57.) In addition to these numerous acts over many years and months, the Complaint further alleges, in the context of this

ongoing scheme, that the Defendants repeatedly accepted the benefits of having the Snyder Entities as their servicing agents during the terms of the mortgage loans at issue:

The Snyder Entities, on behalf of all Defendants for whom they were loan originators and servicing agents, offered to the Plaintiffs and members of the proposed Class and Subclasses an integrated mortgage product described as an “Equity Slide Down” mortgage.

In reality, the Snyder Entities, acting as servicing agents for the Defendants, were not properly crediting the Plaintiffs and members of the proposed Class and Subclasses with payments and pre-payments of interest and principal.

At the closing of all mortgage loans at issue, the Snyder Entities would dictate that all monthly payments were to be remitted to them — not to Defendants — and, in fact, provided monthly statements detailing same.

Immediately after closing, the Snyder Entities serviced the loans, with the full knowledge, consent, and/or acquiescence of the Defendants.

All class members’ payments went to the address of the Snyder Entities at all times.

All payments to the Defendants came from the Snyder Entities at all times.

The viability of the mortgage servicing Ponzi scheme was dependent upon the Defendants’ continued willingness to fund mortgage loans that were originated and serviced by the Snyder Entities.

(Compl. at ¶¶ 60-66.)

The case of *Dupuis v. Federal Home Loan Mortgage Corp.*, 879 F. Supp. 139 (D. Me. 1995), is well reasoned and closely on point. The *Dupuis* court determined that, under common law principles of agency, Fidelity properly was characterized as the agent of FHLMC for the purpose of servicing the mortgage loan at issue and was responsible for payments made by the plaintiffs to Fidelity:

[T]he common law has properly been responsive to the needs of commerce, permitting what older systems of law deny, namely a direct relation between the principal and a third person with whom the agent deals, even when the principal is undisclosed . . . It would be unfair for an enterprise to have the benefit of the

work of its agents without making it responsible to some extent for their excesses and failures to act carefully. It seems to be this last factor that justifies the result of the *Restatement* principles produced in this case. **As a matter of agency law, it would be unfair for FHLMC to have the benefit of Fidelity's servicing of the note and mortgage without also making FHLMC responsible for Fidelity's excesses and failures.** Dupuis has always had reason to believe that whatever default had been committed by Fidelity could be used by her in defense against any action Fidelity might bring against her. The surprise was FHLMC's appearance, arguing that it was free of the Fidelity albatross.

*Id.* at 144 (emphasis added).

This Court has recognized the same principles of agency articulated in *Dupuis*. In *Hawthorne v. Am. Mortgage, Inc.*, 489 F. Supp. 2d 480 (E.D. Pa. 2007), Judge Robreno analyzed the laws of agency in the context of a mortgage company and its servicing agent, and cited *Sands v. Granite Mut. Ins. Co.*, 331 A.2d 711, 716 (Pa. Super. 1974), for the proposition that an agency relationship may be created by virtue of allowing a broker to place a policy and collect premiums.<sup>7</sup>

The *Hawthorne* court quoted from a Pennsylvania Superior Court opinion issued in 1897 for the proposition that:

It requires no extended discussion or citation of authority to establish the proposition that a person authorized to deliver a policy of insurance and receive in receipt [sic] for the premiums is the agent of the company for that purpose, and the payment of the premium to him is a good payment.

*Hawthorne*, 489 F. Supp. 2d at 486 (citing *Sands v. Granite Mut. Ins. Co.*, 331 A.2d 711, 716 (Pa. Super. 1974)) (quoting *Thomas v. Western Ins. Co.*, 5 Pa. Super. 383, 389 (1897)).

In the present case, Defendants argue that Plaintiffs' allegations are insufficient to establish the existence of an agency relationship between the Snyder Entities and the lenders. Defendants' contention that Plaintiffs have failed to allege that the lenders communicated to

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<sup>7</sup> In conducting his analysis, Judge Robreno analogized the placement and servicing of a mortgage loan with the placement and servicing of an insurance policy. *Hawthorne*, 489 F. Supp. 2d at 486.

Plaintiffs – whether by words or action – that they had appointed the Snyder Entities to service their loans is belied by Plaintiffs’ allegations that: (1) each Defendant employed one or more of the Snyder Entities to originate, close and service the mortgage loans at issue<sup>8</sup>; (2) each Defendant knew that they were sending all mortgage statements and all required federal tax forms for all mortgage loans involved in this case to addresses owned and controlled by the Snyder Entities, rather than to the Plaintiffs or proposed Class members; (3) each Defendant knew that all mortgage payments, including all payments and pre-payments of interest and principal, were being paid to and serviced through the Snyder Entities; and (4) none of the Defendants ever demanded that the Plaintiffs make any direct payments or prepayments of interest or principal on the mortgage loans at issue until *after* the Snyder Entities filed for bankruptcy protection. (Compl. at ¶¶ 55-57, 70.)

Defendants should not be permitted to challenge the facts alleged by Plaintiffs concerning the history of the mortgage loans at issue, during which Defendants were aware that the Snyder Entities acted as Defendants’ servicing agents by, among other things, collecting and processing *all* payments and pre-payments of interest and principal made by the Plaintiffs.<sup>9</sup> In an effort to

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<sup>8</sup> Contrary to Defendants’ factual recitation (which cannot be accepted), discovery has revealed repeated instances where the lenders communicated with the borrowers in such a manner as to clothe the Snyder Entities with apparent authority to act on the lenders’ behalf. That evidence coupled with the Snyder Entities’ identification of themselves as the “servicers” of the loans is more than sufficient to create an issue of fact as to whether the Snyder Entities acted as Defendants’ agent with respect to the loans that Defendants seek to enforce.

<sup>9</sup> While discovery will reveal whether any written contracts exist between the Defendants and the Snyder Entities, the lenders will find no cover in any written disclaimers of agency, such as the Snyder Entities’ brochure that Defendants point to on pages 14 and 15 of their joint memorandum. *Triage, Inc. v. Prime Ins. Synd., Inc.*, 887 A.2d 303, 307-08 (Pa. Super. 2005)(“Significantly, we reach our conclusion even in the face of contractual language that, as here, attempted to deny an agency relationship: Despite the language in the Plan application which denied any agency relationship between the producer and the assigned insurer, [the insurer] knowingly permitted [the producer] to accept the premium payments and process [the insured’s] requests for changes in policy and renewal”) Under the law, actions speak louder than

refute Plaintiffs' allegations that an agency relationship existed between the Snyder Entities and Defendants, Defendants have offered documentary evidence in the form of blank authorizations of borrowers' changes of address, arguing that a borrower's right to designate another address for delivery of notices is commonplace. While Plaintiffs certainly do not agree that the manner and circumstances of the address change form managed and manipulated by the Snyder Entities as part of an ongoing scheme to defraud was commonplace, the broader point is that the proper inferences that can be drawn from the existence of these forms cannot be determined in the narrow context of a motion to dismiss.<sup>10</sup> Such evidence should not be considered by this Court in deciding Defendants' motions to dismiss, as it merely tells one side of the story and improperly challenges the facts that Plaintiffs allege in the Complaint. *See Charleswell*, 308 F. Supp. 2d at 558; *Merrill Lynch*, 859 F. Supp. at 825.

Based on the above, Defendants' argument that Plaintiffs' Complaint fails to sufficiently plead that an agency relationship existed between the Snyder Entities and Defendants should be rejected. *Cf. Curriden v. Innovative Mortgage Solutions (Matter of Curriden)*, 2007 WL

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words. The Defendants accepted the Snyder Entities as their "servicers," and now must face the consequences of their actions.

<sup>10</sup> Plaintiffs remain confident that these forms, and the way they were presented and communicated, will support their claims. Plaintiffs expect that, when they have an opportunity to present a record to a finder of fact, it will be abundantly clear that the manner and use of this form were extraordinary and unprecedented (rather than commonplace). First, these forms were signed by Plaintiffs with blank addresses (not to a particular lender) that were filled in by the Snyder Entities at a later time. Second, they came not from the borrowers, but from the Snyder Entities themselves, the mortgage loan originators. Third, the blank forms directed notices to be sent "care of" this loan originator, at a post office box. Fourth, in some cases, hundreds of such forms were received by a lender, all with directions to the same post office box. Fifth, the timing of the execution and receipt of the forms would undermine any conclusion that they reflected a legitimate change of address. While the forms were executed and sent almost simultaneously with the closing of the loan, the loan documents themselves showed what the borrower's principal residence was. In short, this was no ordinary and commonplace "change of address" form. Instead, Plaintiffs expect to prove that Defendant lenders violated internal policies and/or industry standards by treating them as such.

2669431, \*16 (Bankr. D.N.J. 2007) (employers who place mortgage solicitors in position enabling them to prey on financially distressed homeowners to their detriment must bear the loss).

**C. Plaintiffs Have Properly Alleged Wrongful Conduct That Was Systematic In Nature And Consistently Engaged In By All Defendants.**

Defendants also argue that Plaintiffs have failed to satisfy the pleading requirements of Rule 10(b) of the Federal Rules of Civil Procedure. Rule 10(b) provides that “[e]ach claim founded upon a separate transaction or occurrence . . . shall be stated in a separate count . . . whenever a separation facilitates the clear presentation of the matters set forth.” Fed. R. Civ. P. 10(b). According to Defendants, Counts 1 and II are deficient under Rule 10(b) because Plaintiffs’ allegations of agency are not specific as to the conduct of any of the Lenders and their involvement with the Snyder Entities.

Defendants fail to recognize the context in which Plaintiffs make their allegations. This is a class action. Plaintiffs have alleged that the transactions at issue all occurred in the same basic way as to all members of the Class. As to the Jones plaintiffs and each member of the putative class, the conduct of the Snyder Entities and the lenders funding and/or purchasing of the notes was essentially the same: all transactions centered around the “Equity Slide Down Mortgage,” the integrated mortgage transaction offered by the Snyder Entities; all payments by borrowers were made to the Snyder Entities; all payments to the lenders were made by the Snyder Entities; and all communications to all lenders came through the Snyder Entities. *Cf. LeGare v. Univ. of Pa. Med. Sch.*, 488 F. Supp. 1250, 1256-57 (E.D. Pa. 1980) (distinguishing particularity requirements for class action pleading). *See also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 975 F. Supp. 584, 596-97 (D.N.J. 1997) (particularity requirement for pleading fraud requires less specificity when complaint presents claims of proposed class and

individual identification of circumstances of fraud as to each class member would require voluminous pleadings).

Thus, Plaintiffs' allegations give Defendants fair notice of the claims alleged in the Complaint where, as here, the conduct is the same for each borrower and lender, as the Complaint so alleges. In addition, the Complaint specifically describes how the Snyder Entities acted as the unsupervised servicing agents of the Defendants along with certain communications, transactions and acts that occurred over the term of the mortgage loan transactions at issue. (Compl. at ¶¶ 54-86.) As a result, Defendants' arguments that a more definite statement is required for Counts I and II pursuant to Rule 10(b) should be rejected.<sup>11</sup>

**D. Plaintiffs' Estoppel Allegations Support The Existence Of An Agency Relationship Between The Snyder Entities And Defendants.**

Defendants also argue that Plaintiffs' estoppel allegations are inadequate because they fail to allege the requisite "manifestation" by the lenders that they had appointed the Snyder Entities as their agents. In support of this argument, Defendants rely on the supposed allegations of Plaintiffs that they had no contact with the Lenders until after the Snyder Companies filed for bankruptcy protection in September 2007. (Defs.' Consol. Mem. at 18, citing Compl. at ¶¶ 62, 70.) Defendants' reliance on their tortured interpretation of Plaintiffs' allegations is misplaced.

Here, all that Plaintiffs have alleged is that none of the Defendants ever demanded that the Plaintiffs directly make any payments or pre-payments of interest or principal to them until *after* the Snyder Entities filed for bankruptcy protection. (Compl. at ¶ 70.) That does not mean, however, that the Snyder Entities could not have been viewed by Plaintiffs and the Class as Defendants' agent prior to the bankruptcy. Indeed, the Complaint specifically alleges that the

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<sup>11</sup> In the event that this Court agrees with Defendants and finds that Plaintiffs' allegations are insufficiently pled in any respect, Plaintiffs respectfully request leave to amend their claims.

Defendants employed the Snyder Entities to originate and close these loans. *Id.* at ¶ 60. In this capacity, the Snyder Entities identified themselves to Plaintiffs as the servicers of the lenders' loans and directed Plaintiffs to remit the principal and interest on the loans to the Snyder Entities. *Id.* at ¶¶ 62-63. As noted in footnote 5 above, Defendants in fact communicated with the Plaintiffs in a manner so as to cause Plaintiffs to reasonably conclude that the Snyder Entities were acting with and at the behest of the lenders. Until September of 2007, the lenders failed to dissuade the Plaintiffs of this understanding, while accepting the payments from the Snyder Entities month after month and year after year. In short, Plaintiffs have specifically alleged that the Snyder Entities acted as the servicing agents of Defendants' loans and themselves engaged in actions or inaction that would lead Plaintiffs to reasonably conclude that the Snyder Entities were authorized to act on the lenders' behalf with respect to these loans. *Id.* at ¶¶ 55-70.

The most comprehensive definition of equitable estoppel or estoppel *in pais* is that it is the principle by which a party who knows or should know the truth is absolutely precluded, both at law and in equity, from denying, or asserting the contrary of, any material fact which, by his words or conduct, affirmative or negative, intentionally and through culpable negligence, he has induced another, who was excusably ignorant of the true facts and had a right to rely upon such words or conduct, to believe and act upon them thereby, as a consequence reasonably to be anticipated, changing his position in such a way that he would suffer injury if such denial or contrary assertion was allowed.

28 Am Jur 2d Estoppel and Waiver § 28.

Given Plaintiffs' allegations concerning the circumstances of origination and servicing of the mortgage loans at issue by the Snyder Entities, the Defendants' argument that Plaintiffs' estoppel allegations are insufficient lacks merit. To the contrary, based on the facts that will be proven in the case, this Court may very well determine that Defendants should be estopped from denying an agency relationship with the Snyder Entities, and this Court properly should declare that all payments and pre-payments of interest and principal made by the Plaintiffs and all

members of the Class and Subclasses were “good payment” to be credited against the remaining balance of the mortgage loans, if any.<sup>12</sup>

**E. Plaintiffs Have Properly Pled The Existence Of A Duty In Their Negligence Claim.**

With respect Plaintiffs’ negligence claim, Defendants contend that because Plaintiffs have failed to allege any basis for concluding that Defendants owed them any duty of care, that claim should be dismissed. Contrary to Defendants’ contention, Plaintiffs have, in fact, alleged a breach of Defendants’ duty to supervise the Snyder Entities’ servicing of Plaintiffs’ loans.

Under Pennsylvania law and traditional tort principles, a negligence cause of action requires proof of four elements: (1) A duty or obligation recognized by law, requiring the actor to conform to a certain standard of conduct for the protection of others against unreasonable risks; (2) A failure to conform to the standard required; (3) A causal connection between the conduct and the resulting injury; and (4) Actual loss or damage resulting to the interests of another. *In Re: TMI*, 67 F.3d 1103, 1117 (3d Cir. 1995) (citing *Griggs v. BIC Corp.*, 981 F.2d 1429, 1434 (3d Cir. 1992) (citations omitted); see also *Kleinknecht v. Gettysburg Coll.*, 989 F.2d 1360, 1366 (3d Cir. 1993); *Morena v. South Hills Health Sys.*, 501 Pa. 634, 462 A.2d 680, 684 n.5 (1983); W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 30, at 164-65 (5th ed. 1984)).

Here, Plaintiffs allege in the Amended Complaint that it was the Defendants’ unreasonable failure to adequately and properly supervise the Snyder Entities that allowed the mortgage servicing Ponzi scheme to grow and develop. (Compl. at ¶¶ 59, 136-144.) Among other things, the Defendants communicated exclusively through addresses owned and controlled by the Snyder Entities with respect to all issues involving the mortgage loans. *Id.* at ¶¶ 56, 69. Collectively, the Defendants sent statements and other communications, including, without

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<sup>12</sup> The evidence will demonstrate that certain Plaintiffs paid off their mortgage loans *entirely*, only to learn that the Snyder Entities had not forwarded the payments to the Defendant lenders and that the lenders were demanding payment of five or even six figure amounts following the Snyder Entity bankruptcy filings.

limitation, annual 1098 federal tax forms to a single post office box in Oley, Pennsylvania for more than 800 mortgage loans.<sup>13</sup> *Id.* at ¶¶ 56, 69, 85-86.

It was not until after some of the Snyder Entities filed for bankruptcy protection in September of 2007 that the Defendants first emerged from behind the curtain and made themselves known to the Plaintiffs and to members of the proposed Class and Subclasses. *Id.* at ¶ 70. All the while, over a course of years, the Defendants continued to fund the “Equity Slide Down” mortgages marketed by the Snyder Entities, thereby providing the life’s blood to the mortgage servicing Ponzi scheme. *Id.* at ¶¶ 60-68.

In *Clark Motor Co. v. Mfrs. and Traders Trust*, 2007 WL 2155528 (M.D. Pa. July 26, 2007), plaintiffs brought contract and tort claims alleging that the defendant provided financing for more than three-hundred automobiles without verifying collateral or receiving any documentation, such as titles or invoices for the vehicles, in violation of standard banking protocols and loan agreements. The defendants sought dismissal of plaintiffs’ negligence claim based on the gist of the action doctrine. The court denied the defendants’ motion to dismiss because the plaintiffs’ complaint alleged that the defendants’ actions violated banking protocols and therefore alleged a breach of a duty that was not imposed by the contract. *Id.* at \*6-8.

In the present case, as in *Clark Motor*, the duty alleged to have been breached by the Defendants – the duty to monitor and supervise the Snyder Entities as their servicing agents – was not imposed by the contracts, here the loan agreements, but existed nonetheless. Certainly, the Defendants knew or should have known that the entities they were allowing to originate and service the mortgage loans needed supervision. Defendants’ failure to do so constitutes a breach

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<sup>13</sup> As noted above, while not alleged in the Complaint, the evidence will show that Defendants violated their own internal policies when they accepted payments from and sent notices to a post office box in Oley, Pennsylvania.

of duty. *See Jairett v. First Montauk Sec. Corp.*, 153 F. Supp. 2d 562, 574-75 (E.D. Pa. 2001) (denying motion to dismiss investors' claim against securities brokerage firm for negligence under Pennsylvania law through allegations that firm breached its duty to supervise its registered agent, regardless of whether investors were customers of firm).

**F. Plaintiffs' Negligence Claim Is Not Barred By The "Gist Of The Action" Doctrine.**

Defendants' second basis for dismissing Plaintiffs' negligence claim is the "gist of the action" doctrine.

Under Pennsylvania law, the "gist of the action" doctrine bars tort claims that are "merely another way of stating [a] breach of contract claim." *Advanced Tubular Prod., Inc. v. Solar Atmospheres, Inc.*, 2004 WL 540019, at \*4 (E.D. Pa. March 12, 2004). Specifically, the doctrine bars tort actions that: (1) arise solely from a contract between the parties; (2) where the duties allegedly breached were created and grounded in the contract itself; (3) where the liability stems from a contract; and, (4) where the tort essentially duplicates a breach of contract claim or its success is wholly dependent on the terms of the contract. *eToll, Inc. v. Elias/Savion Adver., Inc.*, 811 A.2d 10, 19 (Pa. Super.2002). The purpose of the rule is to maintain the distinction between tort and contract; the gravamen of this distinction is whether the duty alleged to have been breached arises from social policy, in which case a tort action is appropriate, or merely from mutual consent, in which case the action arises under contract. *Id.* at 14; *Bohler-Uddeholm America, Inc. v. Ellwood Group, Inc.*, 247 F.3d 79, 103 (3d Cir. 2001).

*Taylor v. Creditel Corp.*, 2004 WL 2884208, \*7 (E.D. Pa. Dec. 13, 2004) (denying "gist of the action" challenge to tort claims alleging general matters outside and not incorporated into the related contracts). *See also U.S. Claims v. Saffren & Weinberg*, 2007 WL 4225536, \*11-12 (E.D. Pa. Nov. 29, 2007) (denying motion to dismiss fraud claims where court could not determine whether claims were collateral to or interwoven in the contract with defendants); *Markocki v. Old Republic Nat'l Title Ins. Co.*, \_\_\_ F. Supp. 2d \_\_\_, 2007 WL 4142757, \*6 (E.D. Pa. Nov. 19, 2007) (dismissal of company's negligence claim against agent was not warranted under gist-of-action doctrine). In this case, Defendants argue that because Plaintiffs' negligence

claim is based on the terms of their loan documents, they cannot maintain any claims in tort as a matter of law. This argument operates from a false premise and should be rejected.

Contrary to Defendants' position, Plaintiffs' negligence claim is not based on the terms of the loan documents, but, as described above, emanates from Defendants' breach of their duty (outside the four corners of the loan documents) to supervise the Snyder Entities servicing of Plaintiffs' mortgages to ensure that all payments and prepayments of principal and interest were properly credited against the loans at issue in this case. *See Taylor*, 2004 WL 2884208 at \*8 (denying motion to dismiss based on "gist of the action" ground where contractual claims appear secondary to larger complaint of scheme to defraud unsophisticated investors); *Otobai v. Auto Tell Servs.*, 1994 WL 249766, \*9-10 (E.D. Pa. June 1, 1994) (denying motion to dismiss negligence claim based on "gist of the action" doctrine where service component to parties' agreement existed). Based on the above, dismissal of Plaintiffs' negligence claim based on the "gist of the action" doctrine is not warranted.

**G. Plaintiffs' Claim For Declaratory Judgment Satisfies Statutory Requirements.**

"The power of a court to issue a declaratory judgment is of an equitable nature and is, therefore, discretionary. *Brillhart v. Excess Ins. Co.*, 316 U.S. 491, 494 (1942). The standards generally to be applied in this exercise of discretion are whether a declaratory judgment 'will settle the particular controversy and clarify the legal relations in issue.' *Sears, Roebuck & Co. v. Am. Mut. Liab. Ins. Co.*, 372 F.2d 435, 438 (7<sup>th</sup> Cir. 1967)." *Schauf v. Mortgage Bankers Serv. Corp.*, 2001 WL 1539051, \*2 (N.D. Ill. Nov. 29, 2001).

Defendants argue that Plaintiffs' claim seeking a declaratory judgment should be dismissed because the declarations sought by Plaintiffs would not terminate the controversy nor clarify the parties' rights and legal relations. In addition, Defendants argue that such a claim

serves no useful purpose. Neither of these arguments has merit.

“The [Declaratory Judgment Act] provides that, so long as an actual controversy exists, the Court may ‘declare the rights and other legal relations of any interested party seeking such declaration.’ 28 U.S.C. § 2201.” *Sheehan v. Mellon Bank*, 1996 WL 92090, \*2 (E.D. Pa. March 1, 1996). There is an actual controversy here between the parties regarding mortgage loan obligations (including the current principal balances and monthly payment schedules) and Plaintiffs have requested a declaration of their rights and legal relations. (Compl. at ¶¶ 123-125.) More specifically, Plaintiffs seek an Order declaring, among other things, that the Snyder Entities were the servicing agents of the Defendants for the mortgage loans at issue in this case and that all payments and pre-payments of interest and principal made to any of the Snyder Entities by the Plaintiffs and all members of the proposed Class and still must be credited against the remaining indebtedness, if any, on any note or mortgage currently held by any Defendant. (Compl. at p.22.) Despite Defendants’ contentions to the contrary, the above declarations sought by Plaintiffs would serve to clarify the relationship between the Snyder Entities and Defendants, and, in turn, the legal obligations at issue in this case. Accordingly, Plaintiffs’ declaratory judgment count states a claim upon which relief can be granted. *Sheehan*, 1996 WL 92090 at \*2; *Schauf*, 2001 WL 1539051 at \*3.

**H. Plaintiffs’ Have Properly Alleged A Claim Under The Real Estate Settlement Procedures Act.**

Defendants take the same approach in challenging Plaintiffs’ claim under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 (“RESPA”), as they have with Plaintiffs’ other claims. Here, Defendants argue that: (1) Plaintiffs failed to make allegations specific with respect to each lender defendant’s violation of RESPA; (2) Plaintiffs failed to allege that they incurred actual damages as a result of any statutory violations; and (3) each of the RESPA

theories alleged do not support relief. As with their other arguments, Defendants' attacks on Plaintiffs' RESPA allegations have no merit.

With respect to Defendants' contentions that Plaintiffs failed to properly plead actual damages, this Court need look no farther than the Complaint to find that Defendants are wrong. Indeed, Plaintiffs' Complaint specifically sets forth that they seek their actual damages and such additional damages as permitted under RESPA. (Compl. at ¶ 177.) Despite Defendants' contrary contentions, allegations that Defendants' RESPA violations resulted in Plaintiffs suffering actual damages is sufficient to state a claim under RESPA. *Hutchinson v. Delaware Savings Bank FSB*, 410 F. Supp. 2d 374, 383 (D.N.J. 2006).

Defendants' attacks on Plaintiffs' RESPA theories repeat their earlier arguments that Plaintiffs' claims rest on "the faulty assertion that the Snyder Companies were servicing the Lenders' loans up to the date they filed bankruptcy." (Defs.' Consol. Mem. at 28.) Again, Defendants insist on challenging the facts as Plaintiffs allege them in the Complaint, which is improper support for a motion to dismiss. *See Celimar Solar v. Millenium Fin.*, 2002 WL 1019047, \*3 (E.D. Pa. May 17, 2002) ("Plaintiff's allegations of false representations and failed disclosures must be taken as true and must be given the benefit of all inferences.").

Here, Plaintiffs' RESPA allegations meet the federal rule requirements of notice pleading. Plaintiffs specifically allege that: (1) prior to the commencement of the bankruptcy proceedings, the Snyder Entities were servicers of the mortgage loans at issue, as that term is defined in RESPA; (2) the Snyder Entities acted as the agents of the Defendants; (3) upon the commencement of the bankruptcy proceedings of the Snyder Entities, the servicing function was transferred to the Defendants, who thereafter immediately attempted, through communications directly with Plaintiffs and other members of the proposed Class and Subclasses to collect

payments from the borrowers pursuant to the terms of the mortgage loans at issue; (4) Defendants have violated RESPA by, among other things, failing to provide the notice required when the servicing of the mortgage loans at issue was transferred and failing to credit the Plaintiffs and other members of the proposed Class and Subclasses with timely payments received by the Snyder Entities in the period immediately preceding and following the transfer of servicing; (5) Defendants' RESPA violations came and continue to come in the wake of the stunning revelation that the Defendants' servicing agents had been operating a mortgage servicing Ponzi scheme; (6) Defendants have taken and continue to take improper and aggressive action against the Plaintiffs and members of the proposed Class and Subclasses in an attempt to foist the burden of the Defendants' own agents' misdeeds upon the shoulders of consumers; (7) Plaintiffs and members of the proposed Subclasses request judgment and seek relief in the form of actual damages and such additional damages as permitted under RESPA. (Compl. at ¶¶ 168-177.)

In *Hopkins v. First NLC Fin. Servs. (In re Hopkins)*, 372 B.R. 734 (Bankr. E.D. Pa. 2007), Chapter 13 debtors filed an adversary complaint against a loan originator, a loan assignee, and a loan servicer, alleging violations of the Truth in Lending Act and RESPA. In denying defendants' motions to dismiss the RESPA violations, the bankruptcy court analyzed the federal pleading requirements at issue:

[A] complaint should not be dismissed because a plaintiff has not pled all facts upon which his claim is based. *Williams v. United Credit Plan of Chalmette, Inc.*, 526 F.2d 713, 714 (5th Cir. 1976). Discovery rules are intended to reveal the details of a plaintiff's claim. See *In re Byrd*, 51 B.R. 649, 652 (Bankr. S.D. Ohio 1985) ("The availability of the several varieties of discovery common in federal practice, as well as the availability of pre-trial conference procedures, all may be resorted to by defendant in order to satisfy his desire for particularity."). Moreover, "[p]retrial procedures such as summary judgment (Fed. R. Civ. P. 56) and the motion for a more definite statement (Fed. R. Civ. P. 12(e)) are the

appropriate devices to narrow the issues and disclose the boundaries of the claim and defense.” *Id.*

In applying the liberal notice pleading standard of Rule 8, courts have generally required that plaintiff/borrowers provide enough information regarding the defendant's alleged violation of a consumer protection statute so that the defendant is on notice of the violation, but need not detail the specific violation.

*Id.* at 747. Plaintiffs have provided Defendants in this case with enough facts to give them notice of the claims being brought against them. *See Yates v. All American Abstract Co.*, 487 F. Supp.2d 579, 581 (E.D. Pa. 2007) (denying dismissal of mortgagor’s RESPA claim against providers of real estate settlement services). Accordingly, Defendants motions to dismiss Plaintiffs RESPA claims should be denied.

**I. In The Event That The Court Dismisses Any Or All Of Plaintiffs’ Claims, Leave To Replead Should Be Granted.**

To the extent that this Court determines that the allegations in the Complaint are not adequately pled, Plaintiffs request leave to replead their claims.<sup>14</sup> “Granting leave to amend a complaint is within the sound discretion of the district court judge, *Skehan v. Bd. of Trs. of Bloomsburg State Coll.*, 590 F.2d 470, 492 (3d Cir. 1978), *cert. denied*, 444 U.S. 832, 100 S. Ct. 61 (1979), and such leave should be granted freely, *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962).” *Stoner v. Antietam Sch. Dist.*, 1995 WL 428672, \*1 (E.D. Pa. July 14, 1995). *See also Allied Corp.*, 701 F. Supp. at 1092 (“The decision whether to allow an amendment is within this Court’s discretion.”). Indeed, ““unless the facts alleged in the complaint clearly show that the plaintiff has no legitimate claim, courts ordinarily will allow . . . plaintiff[s] leave to

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<sup>14</sup> Amendment of pleadings is governed by Rule 15 of the Federal Rules of Civil Procedure, allowing parties to amend their pleading once as a matter of course before any responsive of pleading is served, or within twenty days if no responsive pleading is permitted and the action has not been placed on the trial calendar. “Otherwise a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). *See also Allied Corp. v. Frola*, 701 F. Supp. 1084, 1092 (D.N.J. 1988).

amend the complaint.” *In re Hopkins*, 372 B.R. 734, 742 (Bankr. E.D. Pa. 2007) (quoting 2 *Moore's Federal Practice*, § 12.34 [5] at 12-77 (3d ed.1999)). *See also Progressive Cas. Ins. Co. v. PNC Bank*, 1999 WL 557292, \*6 (W.D. Pa. July 26, 1999) (dismissing claim in amended complaint without prejudice and allowing plaintiff to replead allegations with respect to that count).

As noted above, leave to replead should be liberally granted. *Rolf v. City of San Antonio*, 77 F.3d 823, 826 (5th Cir. 1996) (Rule 15(a) is biased in favor of granting leave to amend). “When a complaint is dismissed for failure to state a claim, leave to amend should ordinarily be given to allow the pleader to correct the deficiencies.” *Allied Corporation v. Frola, et al.*, 701 F. Supp. 1084 (D.N.J. 1988). The principal ground for denying leave is if granting such leave would unfairly prejudice the rights of defendants or other parties. *Id.*

If necessary, leave to amend would be warranted here. First, the Jones Plaintiffs have had only one substantive amendment, and in fact have pressed only one Complaint before this Court.<sup>15</sup> Should this court determine that there are deficiencies in this pleading, it should give the Jones Plaintiffs an opportunity to correct them. *See Allied Corp.*, 701 F. Supp. at 1092 (“When a complaint is dismissed for failure to state a claim, leave to amend should ordinarily be given in order to allow the pleader an opportunity to correct the deficiencies.”). In addition, Defendants cannot credibly argue that they would suffer any prejudice as a result of granting Plaintiffs leave to amend at this stage in the litigation. Discovery has just commenced and no depositions have been taken. *Cf. Allied Corp.*, 701 F. Supp. at 1092. *See also Pagan v. C.O.I. Salvi*, 1990 WL 50778, \*2 (E.D. Pa. April 20, 1990) (rejecting defendant’s argument of undue

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<sup>15</sup> The Jones Plaintiffs amended their complaint as of right after it was removed by Defendants to this Court. A Second Amended Complaint was filed a few days thereafter to correct a typo in the name of one of the Defendants.

delay in opposition to plaintiff's motion for leave to amend complaint). Accordingly, should this Court dismiss any or all of Plaintiffs claims, leave to amend should be granted.

**IV. CONCLUSION**

For all of the above reasons, Defendants' motions to dismiss Plaintiffs' Complaint should be denied.

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Respectfully Submitted,

s/ Michael J. Willner

William R. Kane  
Michael J. Willner  
Ellen Meriwether  
Timothy M. Fraser  
Cafferty Faucher, LLP  
1717 Arch Street  
Suite 3610  
Philadelphia, PA 19103  
(215) 864-2800

Joseph A. O'Keefe  
O'Keefe & Sher  
15019 Kutztown Road  
Kutztown, PA 19530  
(610) 683-0771

Francis J. Farina  
577 Gregory Lane  
Devon, PA 19333  
(610) 695-9007

Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of December, 2007, a copy of the Omnibus Response of Plaintiffs Douglas and Andrea Jones in Opposition to Defendants' Motion to Dismiss was served on all parties through the Court's electronic filing system.

STEVEN J. ADAMS  
DANIEL B. HUYETT  
JULIE E. RAVIS  
**STEVENS & LEE**  
111 NORTH SIXTH STREET  
P.O. BOX 679  
READING, PA 19603-0679

*Counsel for Defendants Sovereign Bank and Wachovia Mortgage Corporation*

SAMUEL W. BRAVER  
**BUCHANAN INGERSOLL & ROONEY**  
ONE OXFORD CENTRE  
301 GRANT STREET, 20TH FLOOR  
PITTSBURGH, PA 15219-1410

*Counsel for Defendant National City Mortgage Inc.*

JOSEPH F. YENOUSKAS  
THOMAS M. HEFFERON  
**GOODWIN PROCTER LLP**  
901 NEW YORK AVENUE, N.W.  
WASHINGTON, DC 20001

*Counsel for Defendant Countrywide Home Loans, Inc.*

MARK A. ARONCHICK  
JOSEPH A. DWORETZKY  
LESLIE A. KRAMER  
SHARON F. MC KEE  
**HANGLEY ARONCHICK SEGAL & PUDLIN**  
ONE LOGAN SQUARE  
27TH FLOOR  
PHILADELPHIA, PA 19103

*Counsel for Defendants ABN Amro Mortgage Group, Inc., Citicorp Home Mortgage Services, Inc. and Citimortgage, Inc.*

MICHAEL P. BROADHURST  
**BLANK ROME LLP**  
ONE LOGAN SQUARE  
130 NORTH 18TH STREET  
PHILADELPHIA, PA 19103-6998

*Counsel for Defendant Provident Funding Group, Inc.*

MARTIN C. BRYCE, JR.  
JOB MICHAEL ITZKOWITZ  
ALAN S. KAPLINSKY  
**BALLARD SPAHR ANDREWS & INGERSOLL LLP**  
1735 MARKET STREET, 51ST FLOOR  
PHILADELPHIA, PA 19103

*Counsel for Defendants Countrywide Home Loans, Inc., MorEquity Inc., SunTrust Mortgage, Inc., Washington Mutual Home Loans, Inc. and Wells Fargo Home Mortgage, Inc.*

MICHAEL CAVENDISH  
**GUNSTER, YOAKLEY & STEWART,  
P.A.**

550 WATER STREET, SUITE 941  
JACKSONVILLE, FL 32202

*Counsel for Defendant Florida Capital Bank  
N.A., d/b/a Florida Capital Bank Mortgage*

JOHN B. DEMPSEY  
LORI R. GRAMLEY  
**MYERS BRIER & KELLY LLP**  
425 SPRUCE STREET, SUITE 200  
SCRANTON, PA 18503-0551

*Counsel for Defendant Chase Home Finance,  
LLC*

BONNIE R. GOLUB  
SUSAN M. VERBONITZ  
**WEIR & PARTNERS LLP**  
THE WIDNER BLDG  
SUITE 500  
1339 CHESTNUT STREET  
PHILADELPHIA, PA 19107

*Counsel for Defendants Fifth Third Mortgage  
Company and Saxon Mortgage Services, Inc.*

CHAD COOPER  
THERESA E. LOSCALZO  
DAVID SMITH  
**SCHNADER HARRISON SEGAL &  
LEWIS LLP**

1600 MARKET STREET  
SUITE 3600  
PHILADELPHIA, PA 19103-7286

*Counsel for Defendant HSBC Mortgage  
Corporation (USA)*

TODD GALE  
RICHARD E. GOTTLIEB  
RENEE L. ZIPPRICH  
**DYKEMAS GOSSETT PLLC**  
10 SOUTH WACKER DRIVE  
SUITE 2300  
CHICAGO, IL 60611

SCOTT L. VERNICK  
AMY PURCELL  
**FOX ROTHSCHILD LLP**  
2000 MARKET STREET  
PHILADELPHIA, PA 19103

*Counsel for Defendant IndyMac Bank, F.S.B.*

ROBERT L. HODGES  
**MCGUIREWOODS LLP**  
ONE JAMES CENTER  
901 EAST CARY STREET  
RICHMOND, VA 23219-4030

*Counsel for Defendant Saxon Mortgage  
Services, Inc.*

s/ Timothy M. Fraser  
Timothy M. Fraser