

IN THE **CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI -DADE COUNTY, FLORIDA**

CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF  
FINANCIAL REGULATION,

Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION,  
a Florida corporation, M.A.M.C.  
INCORPORATED, a Florida corporation,  
DANA J. BERMAN, as Owner and Managing  
Member,

Defendants,

and,

DB ATLANTA, LLC, a Florida limited liability  
company, et al.,

Relief Defendants.

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**NOTICE OF HEARING**  
**(Motion Calendar)**

**YOU ARE HEREBY NOTIFIED** that we will call up for hearing before the  
**HONORABLE THOMAS WILSON, JR.**, Circuit/Civil Judge, in **Room 400** at the MIAMI-  
DADE COUNTY COURTHOUSE, 73 West Flagler Street, Miami, Florida 33130, on **WEDNESDAY,**  
**JULY 8, 2009 at 9:00 A.M.**, or as soon thereafter as the same may be heard:

**RECEIVER'S MOTION FOR ORDER DETERMINING RECEIVER'S STANDING AND**  
**AUTHORIZING RECEIVER TO BRING CLASS ACTION**  
**ON BEHALF OF MAMC, INC. LENDERS AGAINST DANA BERMAN AND**  
**MITCHELL MORGAN NUNC PRO TUNC TO MAY 29, 2009**

*PLEASE BE GOVERNED ACCORDINGLY.*

**BERGER SINGERMAN**  
attorneys at law

*Boca Raton Fort Lauderdale Miami Tallahassee*

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-755-9500 Facsimile 305-714-4340

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this **11th day of June 2009**, to the attached service list.

Respectfully submitted,

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cc: The Honorable Thomas Wilson, Jr. *(via Hand-Delivery)*  
Michael Goldberg, Esq., as Receiver *(via e-mail)*  
The Investor(s)/Lender(s) Group *(via e-mail)*  
Posted to the Berman Mortgage Website

2156812-1

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI -DADE COUNTY, FLORIDA

CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF  
FINANCIAL REGULATION,

Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION,  
a Florida corporation, M.A.M.C.  
INCORPORATED, a Florida corporation,  
DANA J. BERMAN, as Owner and Managing  
Member,

Defendants,

and,

DB ATLANTA, LLC, a Florida limited liability  
company, et al.,

Relief Defendants.

THE ORIGINAL  
FILED ON:  
JUN 10 2009  
IN THE OFFICE OF  
CIRCUIT COURT DADE CO. FL.

**RECEIVER'S MOTION FOR ORDER DETERMINING RECEIVER'S STANDING AND  
AUTHORIZING RECEIVER TO BRING CLASS ACTION  
ON BEHALF OF MAMC, INC. LENDERS AGAINST DANA BERMAN AND  
MITCHELL MORGAN NUNC PRO TUNC TO MAY 29, 2009**

Michael I. Goldberg ("Receiver"), the court-appointed receiver for Defendants, Berman Mortgage Corporation ("B.M.C."), and M.A.M.C. Incorporated ("MAMC"), and the Relief Defendants, file this Motion for an Order Determining Receiver's Standing and Authorizing Receiver to Bring Class Action on Behalf of MAMC Lenders Against Dana Berman and Mitchell Morgan *Nunc Pro Tunc* to May 29, 2009. In support of the Motion, the Receiver states:

1. Prior to receivership, B.M.C. and M.A.M.C. were in the business of lending money to high credit-risk borrowers, including single purpose real estate L.L.C.s owned by M.A.M.C. principal, Dana Berman.

BERGER SINGERMAN  
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

2. To fund its operations and the loans made to its borrowers, B.M.C. and M.A.M.C. raised funds from approximately 640 individuals ("Lenders").

3. Each Lender obtained a pro-rata share of each of the notes and mortgages based on the Lender's investment contribution to the respective loans.

4. In order to participate in the investment opportunities offered, each Lender signed a loan servicing agreement designating M.A.M.C. as attorney-in-fact in a limited capacity in the areas specified in the loan servicing agreement.

5. This Court has appointed the Receiver to seek compensation on behalf of the Lenders who lost money as a result of B.M.C. and M.A.M.C.'s actions, which appointment vests the Receiver with the specific power to bring actions such as the class action that is the subject of this Motion.

6. Pursuant to this Court's December 11, 2007 Receivership Order, the Receiver is authorized to take control of the Receivership entities, manage their operations and assets, wind up their business affairs, and exercise all rights afforded under Florida law and as set forth by the Receivership Order, including the prosecution and compromise of claims on behalf of the Receivership entities, Relief Defendants, and Lenders.

7. The Court's April 22, 2009 Order approving the settlement between the Receiver and Dana Berman and barring the Lenders from prosecuting claims against Dana Berman expressly carved out an exception for claims by the Lenders against Dana Berman for any wrongdoing which is or may be covered by B.M.C. or M.A.M.C. professional liability errors and omissions or other insurance policies ("E & O Policies"). See April 22, 2009 Order attached hereto as **Exhibit A** at ¶¶ 9(c) and 10.

8. Pursuant to his authority under the Receivership Order and the Loan Servicing Agreement, the Receiver through special counsel, David and Joseph, P.L., made demand upon a certain errors & omissions insurance carrier to pay under certain E & O Policies. For the past year, Receiver's special counsel has been in negotiations with a certain E & O carrier, during

which time the carrier was advised that claims were being made on behalf of the Lenders, not B.M.C. or M.A.M.C. Negotiations pursuant to the Receiver's demand for payment of policy limits did not resolve the claims raised by the Receiver. After multiple opportunities and extensions of time were provided to the carrier to tender the limits proved to be unsuccessful, the demand for the tender of the policy was withdrawn. Subsequently, the E & O carrier initiated a declaratory action in federal district court raising the issues of a) the Receiver's standing on behalf of the Lenders with respect to claims under the E & O Policies; and b) whether there was adequate notice to the E & O insurance carrier during the policy period of the acts giving rise to the claims under the policy.<sup>1</sup>

9. On May 29, 2009, pursuant to the powers granted to the Receiver under the Receivership Order dated December 11, 2007, the Receiver, on behalf of Lenders,<sup>2</sup> filed a class action against the former principals of B.M.C. and M.A.M.C., Dana Berman and Mitchell Morgan, for damages suffered by the Lenders as a result of the defendants' negligence in the operations of B.M.C. and M.A.M.C.(hereinafter "Class Action"). A copy of the Complaint in the Class Action is attached hereto as **Exhibit B**.

10. Prosecution of the Class Action to judgment is a prerequisite for the Lenders having an entitlement to recovery under the Errors and Omissions Policies.

11. The Receiver believes that he has standing to bring the Class Action on behalf of the Lenders and that the above-described Class Action is in the best interest of the Lenders and the Receivership estate.

**WHEREFORE**, the Receiver, Michael I. Goldberg, respectfully requests this Court to enter an Order, *nunc pro tunc* to May 29, 2009:

(a) granting the Receiver's instant motion;

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<sup>1</sup> The Receiver believes that the declaratory action violates this Court's Receivership Order requiring that actions against the Receiver be brought in this Court, which issue the Receiver will bring before this Court pursuant to separate motion, including a request for appropriate sanctions.

<sup>2</sup> The Receiver was joined as putative class representative plaintiff by Jerilynn Gidney.

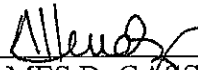
- (b) finding that the Receiver has standing to bring and prosecute the Class Action on behalf of the Lenders;
- (c) authorizing the Receiver to bring and prosecute the Class Action on behalf of the Lenders;
- (d) awarding all such other and further relief this Court deems just and proper.

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this **10th day of June 2009**, to the attached service list.

Respectfully submitted,

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cc: The Honorable Thomas Wilson, Jr. *(via Hand-Delivery)*  
Michael Goldberg, Esq., as Receiver *(via e-mail)*  
The Investor(s)/Lender(s) Group *(via e-mail)*  
Posted to the Berman Mortgage Website.

2154120-1

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT,  
IN AND FOR MIAMI-DADE  
COUNTY, FLORIDA

STATE OF FLORIDA, OFFICE OF  
FINANCIAL REGULATION,

Plaintiff,

CASE NO. 07-43672 CA.09

vs.

BERMAN MORTGAGE CORPORATION,  
a Florida corporation, M.A.M.C.  
INCORPORATED, a Florida corporation,  
and DANA J. BERMAN, as Owner and  
Managing Member,

Defendants,

and

DB ATLANTA, LLC, a Florida Limited  
Liability Company, *et al.*

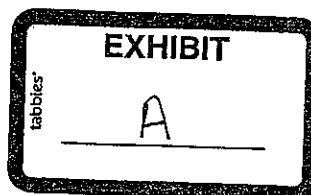
Relief Defendants.

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**ORDER GRANTING RECEIVER'S MOTION FOR APPROVAL  
OF SETTLEMENT AGREEMENT AND ENTRY  
OF BAR ORDER CONDITIONALLY ENJOINING LENDERS FROM  
PROSECUTING CLAIMS AGAINST DANA J. BERMAN**

This matter came before the Court on March 31, 2009, upon the hearing on the Motion for Approval of Settlement Agreement and Entry of Bar Order Conditionally Enjoining Lenders From Prosecuting Claims Against Defendant Dana J. Berman (the "Motion"), filed by Michael I. Goldberg, as State Court Appointed Receiver over Defendants Berman Mortgage Corporation ("BMC") and M.A.M.C. Incorporated

{FT576873;2}



("MAMC") and Relief Defendants DB Atlanta, LLC, *et al.*<sup>1</sup> The Court, having reviewed the Motion and the Settlement Agreement, heard argument of counsel, finding good cause exists for the entry of this Order, and being otherwise fully advised in the premises, the Court makes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. By Order dated December 11, 2007 (the "Receivership Order"), Michael I. Goldberg was appointed as Receiver over the assets of BMC, MAMC and the Relief Defendants (hereinafter, the "Receivership Defendants").

B. Dana J. Berman ("Berman") was the principal of the Receivership Defendants.

C. There are approximately 700 individual investors (the "Lenders") who allege that their monies were used by the Receivership Defendants to fund the acquisition and construction of commercial real estate projects.

D. The Court finds that the Receiver has the authority to enter into the Settlement Agreement with Berman.

E. The Court finds that the Settlement Agreement, a copy of which is attached to the Motion as Exhibit A, is in the best interest of the Receivership Defendants and the Lenders.

F. The Court finds that notice of the Motion, Settlement Agreement and the proposed entry of the Order Permanently Enjoining Prosecution of Claims Against Dana

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<sup>1</sup> The Relief Defendants are DB Atlanta, LLC, DB Durham, LLC, Normandy Holdings II, LLC, Normandy Holdings III, LLC, Acquisitions, LLC, DBKN Gulf Incorporated, Oceanside Acquisitions, LLC, DB Biloxi, LLC, DB Biloxi II, LLC, DB Biloxi III, LLC, DBDS Vero Beach, LLC, DB Tampa, LLC, DB Simpsonville, LLC, DBDS North Miami, LLC, Redlands Ranch Holdings, LLC, DBDS Biscayne Park, LLC and DB Carroll Street, LLC.

J. Berman (the "Bar Order") have been provided to the Lenders who would be enjoined pursuant to the Bar Order (collectively, the "Noticed Parties").

G. The Court finds that prior to approval of the Motion and entry of this Order, the Lenders had an opportunity to review the Motion and the relief requested therein, discuss the matters addressed in the Motion with their attorney, attend the Court hearing on approval of the Motion and provide the Court with their comments and/or objections.

H. The Court finds that this Order is necessary and appropriate in order to achieve the finality and repose that is contemplated and an essential term of the Settlement Agreement and that good cause therefore exists for the entry of this Order.

I. Accordingly, the terms of the Settlement Agreement as modified herein and this Order are binding on the Receiver, Berman and the Lenders, and inure to the benefit of the employees, agents, registered representatives, associated persons, predecessors in interest, successors in interest, heirs and assigns of the Receiver, Berman and the Lenders and it is

**ORDERED and ADJUDGED that:**

1. The Motion is GRANTED. The Settlement Agreement, as modified by this Order, is approved and ratified and its terms are incorporated herein.
2. The Receiver is further authorized to execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.
3. Pursuant to the Settlement Agreement, Berman shall turn over to the Receiver all assets listed on the Financial Affidavit attached to the Settlement Agreement, which Berman shall update through the date of this Order, including Berman's interest in

any and all real estate investments in any real estate projects related to the BMC and MAMC.

4. Berman shall also sit for a polygraph examination by a qualified examiner to be mutually selected by the Receiver (in consultation with the creditors' committee) and Berman, pursuant to which Berman shall be examined with respect to the truthfulness and completeness of his financial disclosure.

5. Should Berman pass this examination so that the examiner concludes that Berman has no other assets other than those listed on the Financial Affidavit or that no third person or entity is holding assets for his legal or equitable benefit, Steve Berman shall receive \$35,000 from the bank account holding \$100,000 which was previously frozen by this Court ("Frozen Account") and the Receiver shall receive \$65,000 from the Frozen Account, together with any excess funds.

6. Additionally, if Berman passes the polygraph examination, the Receiver shall provide Berman with a limited release of any and all claims he has against Berman, in the form attached to the Settlement Agreement as Exhibit 2, and this Court shall enter the Bar Order in the form attached to the Motion as Exhibit D.

7. Within five business days after Berman passes the polygraph examination, the Receiver shall file an Affidavit of Compliance and shall submit the Bar Order for execution by the Court without further notice or hearing. If Berman fails the polygraph examination, Berman shall not receive a release and the Bar Order shall be null and void. Moreover, in such event, the Receiver shall retain ownership of all of the assets disclosed on the Financial Affidavit, and all of the funds (\$100,000 plus interest) in the Frozen Account.

8. The implementation of the Bar Order is conditioned upon Berman fulfilling all of his obligations under the terms of the Settlement Agreement.

9. Nothing contained in this Order or any other order entered in connection with the Receiver's Motion for Approval of Settlement Agreement and Entry of Bar Order Conditionally Enjoining Lenders from Prosecuting Claims Against Defendant Dana Berman shall bar or preclude the following claims:

a) Contribution and/or indemnification claims asserted against any settling party by a non-settling party that is sued for any reason by either the Receiver, the Lenders or any other party based on claims arising out of or in way related to the activities of Berman Mortgage, MAMC or any related entity. Such contribution and indemnity claims are in no way affected by this Order and are expressly preserved;

b) Civil or criminal claims of the government or any of its agencies including any restitution claims subsequently awarded in any criminal proceeding in favor of the government or any victim;

c) Any claims of wrongdoing against Berman which are or may be covered by the insurance policies of MAMC Incorporated (Insurance policy No. 1008-00084188C (and its preceding policies)) and/or Berman Mortgage Corp. (Insurance policy 629641 (and its preceding policies));

d) Any claims by parties other than Lenders including but not limited to the claims of Atlantic Lending, LLC, Financial Markets, LLC, Turnberry Bank, Hobo's Marina and Johns Manville Corporation or Mallah Furman; and

e) Any non-Lender claims of Deborah Berman arising out of the dissolution of her marriage to Dana Berman.

10. Nothing in this Order is intended in any way to affect the Receiver's or Lenders' claims against BMC's or MAMC's insurers or against Mallah Furman.

11. The Court reserves jurisdiction to enforce and interpret the Settlement Agreement and enter any other related Orders.

**DONE AND ORDERED** in Chambers on this \_\_\_\_\_ day of \_\_\_\_\_,  
2009. *Conformed Copy*

APR 21 2009

Circuit Court Judge

Thomas S. Wilson, Jr.  
Circuit Court Judge

Copies:

Michael I. Goldberg, Receiver

Charles Throckmorton, Counsel to Dana Berman

The Receiver shall serve a copy of this Order to all attorneys of record and to all parties defined herein as the Noticed Parties and shall file a Certificate of Service of this order in the court file.



IN THE CIRCUIT COURT OF THE 11<sup>th</sup> JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

MICHAEL GOLDBERG, AS COURT-APPOINTED  
RECEIVER FOR THE BENEFIT OF INVESTORS  
IN PROJECTS MORTGAGED THROUGH BERMAN  
MORTGAGE CORPORATION and MORTGAGE  
ASSET MANAGEMENT CORPORATION,  
and  
JERILYNN GIDNEY, individually, as Trustee, and/or  
Through Power-of-Arrowney,  
and on behalf of all other Lenders similarly situated,

Plaintiffs.

vs.

DANA BERMAN, individually, and  
MITCHELL MORGAN, individually,

Defendants.

CASE NO.:

09-41833 CA23

CLASS REPRESENTATION

THE ORIGINAL FILED  
ON MAY 29 2009  
IN THE OFFICE OF  
CIRCUIT COURT DABE CO.  
CIVIL DIVISION

CLASS ACTION COMPLAINT

Plaintiff Michael Goldberg, as Court-Appointed Receiver for the Benefit of Investors in Projects Mortgaged Through Berman Mortgage Corporation and Mortgage Management Asset Corporation, and Plaintiff Jerilynn Gidney, individually, as Trustee, and/or Through Power-of-Arrowney, and on behalf of all other Lenders similarly situated, hereby sue Dana Berman ("Berman") and Mitchell Morgan ("Morgan") for damages on behalf of all Lenders of Projects, and as grounds asserts as follows:

General Overview

1. Dana Berman and Mitchell Morgan were at all material times the principal officers of Berman Mortgage Corporation ("BMC"), a Florida corporation that engaged in providing mortgage services. Dana Berman and Mitchell Morgan were at all material times the

EXHIBIT

B

*Goldberg and Gidney vs. Berman and Morgan*  
Case No.:

principal officers of Mortgage Assets Management Corporation ("MAMC"), a Florida corporation that engaged in providing mortgage services and is affiliated with BMC. BMC and MAMC provided mortgage services for several projects discussed in more detail below. Through BMC's and/or MAMC's mortgage efforts, over \$197,000,000 was loaned for the purchase and/or development of several real property projects. As a result of Messrs. Berman's and Morgan's negligence in the mortgage operations of BMC and MAMC, the Lenders in the projects lost virtually all of their investment. The respective Lenders' losses to date on principal alone are \$168,115,255.96. This lawsuit seeks to recover the losses suffered by the Lenders as a result of Messrs. Berman's and Morgan's negligence.

**JURISDICTION AND VENUE**

2. This is an action for damages in excess of \$15,000, exclusive of interest, attorneys' fees and costs.
3. Defendant Dana Berman ("Berman") is an individual that resides in Miami-Dade County, Florida. Berman is *sui juris*.
4. Defendant Mitchell Morgan ("Morgan") is an individual that resides in Miami-Dade County, Florida. Morgan is *sui juris*.
5. Berman Mortgage Corporation ("BMC") was at all material times a corporation organized and existing under the laws of the State of Florida. BMC maintained its principal place of business in Miami-Dade County.
6. Mortgage Assets Management Corporation ("MAMC") was at all material times a corporation organized and existing under the laws of the State of Florida. MAMC maintained its principal place of business in Miami-Dade County with BMC.
7. The causes of action arose or accrued in Miami-Dade County, Florida.

**CLASS REPRESENTATION ALLEGATIONS**

8. Plaintiff Michael Goldberg ("Goldberg") is the Receiver appointed by Court Order in Case No.: 07-43672 CA (09) (11<sup>th</sup> Jud. Cir., Miami-Dade County, Florida) (the "Receivership Action"), and has been vested with the specific power to bring an action such as this lawsuit in order to collect monies owed to the respective Lenders.

9. Plaintiff Jerilynn Gidney is an actual Lender in Projects wherein BMC and/or MAMC provided mortgage services, and further, is the attorney-in-fact (through powers-of-attorney) to bring causes of action on behalf of her relatives, including Robert Revitz, Robert Revitz Trust, Iris Osborn, Zenia Revitz, and Marc Gidney and Marilyn Horween as Trustees for Mildred Gidney as Trustee for Mildred Gidney Rev Trust), all of whom are substantial Lenders in Projects wherein BMC and/or MAMC provided mortgage services. Jerilynn Gidney (and those for whom she has power of attorney to bring this action) has lost substantial sums of money as a direct and proximate result of the negligence of the Defendants, as more fully set forth herein.

10. This suit is properly brought as a class action due to the number of Lenders having suffered losses in each Project. The total number of Lenders having suffered losses is approximately 640.

11. The claims are maintainable as a Class Action pursuant to Fla.R.Civ.P. 1.220(b)(1). Specifically, because of the number of Lenders, the prosecution of separate claims or defenses by or against individual members of the class would create a risk of inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct. Alternatively, adjudications concerning individual members of the class would, as a practical matter, be dispositive of the interests of the other members of

*Goldberg and Gidney vs. Berman and Morgan*  
Case No.:

the class. Indeed, the Receiver has in fact been tasked with the responsibility of bringing claims for the benefit of all such Lenders.

12. The questions of both fact and law asserted in this action are common to all members of the Class. The defenses, if any, would be identical if asserted in an individual action brought by members of the Class.

13. The facts giving rise to this action are common to all Lenders. The Defendants engaged in the acts of negligence described herein to all members of the Class.

14. There are approximately 640 members comprising the Class. The exact members of the class are ascertainable as the members have generally been granted mortgages in the Properties set forth in the Complaint. The Class is defined as all Lenders who invested in the Projects set forth in the Complaint.

15. Goldberg will fairly and adequately protect and represent the interests of each member of the class. Indeed, Goldberg has already been appointed as the Receiver tasked with the responsibility of protecting and representing the interests of the Lenders. In addition, the Receiver has the means and procedures to communicate with Lenders as promulgated by the Court in the Receivership Action.

16. In the event Goldberg is for some reason not adjudged to be capable of fairly and adequately protecting and representing all members of the Class, Jerilynn Gidney is an actual Lender that has suffered substantial losses as a direct and proximate result of the negligence of the Defendants as set forth below. Moreover, Jerilynn Gidney has been vested with the power-of-attorney to bring this action on behalf of her relatives, all of whom have suffered substantial losses as a direct and proximate result of the negligence of the Defendants as set forth below.

*Goldberg and Gidney vs. Berman and Morgan*  
Case No.:

17. Because the questions of fact and law are common to each member of the Class as well as to the Defendants, this Class Action is appropriate.

**COMMON FACTS**

18. At all material times BMC was duly licensed by the State of Florida to provide mortgage services, which included taking applications, obtaining verifications and appraisals, loan originations, processing, closing, accounting, warehousing, marketing and counseling and communications with the borrower and lender.

19. At all material times MAMC was duly licensed by the State of Florida to provide mortgage services, which included taking applications, obtaining verifications and appraisals, loan originations, processing, closing, accounting, warehousing, marketing and counseling and communications with the borrower and lender.

20. At all material times, Berman was the President and Director of BMC and MAMC, and personally was responsible with overseeing and managing all aspects of the mortgage services provided by BMC and MAMC.

21. At all material times, Morgan was the Chief Financial Officer of BMC and MAMC, and together with Berman was personally responsible for, among other things, ensuring that all mortgage services provided by BMC and MAMC complied with State laws, reviewing the financial aspects of each transaction, preparing and distributing loan summaries, monitoring the performances of each of the respective loans, and implementing internal controls to ensure compliance with all aspects of the mortgage operations.

22. BMC and MAMC, through the direct participation and efforts of Defendants, performed the mortgage services for the following Borrowers (herein referred to as the "Projects"):

*Goldberg and Gidney vs. Berman and Morgan*  
Case No.:

1. Normandy Holdings II Investment, Inc.
2. Normandy Holdings II, LLC
3. DBDS Melbourne, LLC
4. DBDS Vero Beach, LLC
5. DB Tampa, L.L.C.
6. DB Islamorada LLC
7. DB Key Largo, LLC
8. DBDS North Miami, LLC
9. DBDS Biscayne Park, LLC
10. Cape Haze Windward Partners, Inc.
11. Redlands Ranch Holdings, LLC Promissory Note
12. DBKN Gulf Incorporated
13. Oceanside Acquisitions, LLC
14. DB Biloxi, LLC
15. DB Biloxi, II LLC
16. DB Biloxi III, LLC
17. DB Simpsonville, LLC
18. DB Durham, LLC
19. DB Atlanta Investment, Inc.
20. DB Atlanta, LLC
21. DBA Investments, LLC
22. Brickell Yacht Club at the Four Ambassadors, LLC
23. Top Two Development, Inc.
24. Top Two Development, LLC
25. 903 Duvall Street, LLC
26. Gulf Island Resorts, LP
27. Florida's Sport Dance Federation of America, Inc. (Royalty Thtr)
28. Desert Inn Hotel Management - Bayview
29. Bella Vista Del Mar, LLC
30. Airport Executive Commerce Park, LLC
31. Southchase Commerce Center, LLC
32. Rene & Matilde Melendez
33. Guillermo Felipe Moran
34. Bay Estates at Pinetree Drive, LLC
35. V Strategic Group, Inc.
36. Atlantic Beach Oceanfront, LLC
37. Emerald Cay Investments, LLC
38. Miami Health District Holdings, LLC
39. The Project Managers Group, LLC
40. IBEX Cheoah, LLC
41. 515 Seabreeze, LLC

23. Through BMC's mortgage efforts, the Lenders loaned the total sum of \$197,630,690.77 with funds to be used by the Borrowers in the respective Projects.

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24. Berman and Morgan owed a duty to the Lenders to ensure that the mortgage services provided by BMC and/or MAMC were performed in a manner consistent with the ordinary skill of a provider of mortgage services.

25. Berman and Morgan breached their duties owed to the Lenders by engaging in one and/or all or a combination of the following breaches of duties:

- a. Neglecting to: (i) obtain the necessary verifications and appraisals required in each transaction; (ii) advise Lenders of superior liens in certain properties, (iii) provide Lenders with title insurance insuring investors against the unmarketability of the Lender's interest; (iv) ensure necessary disclosures were provided to Lenders; and/or (v) supervise BMC's and MAMC's officers, directors, and employees to ensure that each mortgage services provided to Lenders were performed within the standard of conduct required of BMC and MAMC.
- b. Neglecting to ensure that proper industry-standard safeguards were in place to ensure that the loans met industry-standard requirements.
- c. Negligently processing the loans.
- d. Neglecting to disclose to Lenders that appraisals used were "as-built" projections as opposed to actual, industry-accepted appraisals.
- e. Neglecting to ensure that minimum accounting safeguards were in place.
- f. Neglecting to ensure the implementation of industry-standard checks and balances for the mortgage services provided, or alternatively, neglecting to follow such checks and balances.
- g. Neglecting to engage in fundamental due diligence required by minimum industry standards.

26. As a direct and proximate result of Defendants' negligence, the Lenders suffered the aggregate damages of an amount equal to the loss of principal in the amount of \$168,115,255.96, plus loss of interest, plus the court costs of this action.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants, jointly and severally, in an amount equal to \$168,115,255.96 (or such other amount

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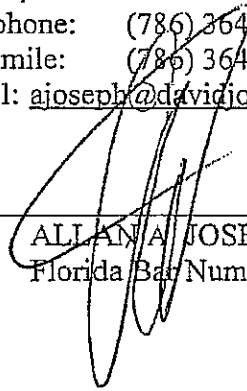
as may be presented at trial), plus lost interest, plus prejudgment interest, plus post-judgment interest, plus costs of this action, and such further relief as this Court deems just and proper.

DATED: May 28, 2009.

Respectfully submitted,

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By: \_\_\_\_\_

  
ALLAN A. JOSEPH  
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