

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.

RICHARD A. CASTORRI,
individually and on behalf of
others similarly situated,

Plaintiff,

v.

CLASS REPRESENTATION

FLORIDA DEPARTEMENT OF REVENUE,

Defendant.

_____ /

CLASS ACTION COMPLAINT

Plaintiff, Richard A. Castorri, for himself individually and on behalf of all others similarly situated (hereinafter "Plaintiff" or "Mr. Castorri"), by and through the undersigned counsel, brings this complaint (the "Complaint") against the Florida Department of Revenue ("FDOR" or "Defendant") and states as follows:

PRELIMINARY STATEMENT

1. In this class action complaint brought under Rule 1.220, Florida Rules of Civil Procedure, Mr. Castorri requests that the Court issue a declaratory judgment under Chapter 86, Florida Statutes, interpreting the rights and duties of the parties under Florida and federal law.

2. Florida, through FDOR, imposes documentary stamp taxes on documents transferring real property located in Florida and holds so-called non-exempt parties to such transactions responsible for payment.

3. On May 21, 2014, Mr. Castorri purchased real property located in Leon County, Florida, from the Federal National Mortgage Association ("Fannie Mae"), and as a so-called non-exempt party, was required to pay Florida's documentary stamp tax, which was remitted to FDOR.

4. Through his own investigation and that of his counsel, Mr. Castorri learned and thus has a good-faith belief that FDOR's imposition of the tax was and is unlawful.

5. Indeed, Mr. Castorri has now good cause to believe that FDOR has systematically administered and enforced the payment of documentary stamp taxes on deeds transferring Florida real property from Fannie Mae and like federal instrumentalities, including Fannie Mae's sibling, the Federal Home Loan Mortgage Corporation ("Freddie Mac"), which FDOR collected from the real estate purchasers, even though such real property transfers are *completely* exempt from "all [state] taxation" under federal and Florida law.

6. Based on his good-faith belief, Mr. Castorri applied for a refund from FDOR of the documentary stamp tax he paid in connection with the purchase of his home from Fannie Mae, which FDOR categorically denied as a matter of course.

7. FDOR's denial of Mr. Castorri's refund application was not based on the facts underlying his particular transaction. Instead FDOR denied Mr. Castorri's refund request, relying on its rules and standard policies, especially its public pronouncement in a Tax Information Publication ("TIP"), reflecting FDOR's standard interpretations, practices, and procedures of continually imposing the documentary stamp tax on private (non-governmental) parties purchasing real property from Fannie Mae and Freddie Mac, despite federal law prohibiting such taxation.

8. As detailed below, Plaintiff has a bona fide and immediate dispute and controversy with FDOR about his rights and obligations and those of similarly situated Class Members to pay documentary stamp taxes.

9. Accordingly, Plaintiff, on behalf of himself and others similarly situated, seeks a declaration interpreting state and federal law regarding the propriety of FDOR's imposition of documentary stamp taxes on deeds transferring real property owned by Fannie Mae or Freddie Mac and requiring payment of the documentary stamp taxes from the private (non-governmental) purchasers.

JURISDICTION, PARTIES AND VENUE

10. All conditions precedent to the filing of this action, if any, have been performed, have occurred, or have been waived.

11. Plaintiff is a citizen of Florida, and resides in Leon County, Florida.

12. Class Members are purchasers of Florida real property owned by Fannie Mae or Freddie Mac who were required to pay Florida's documentary stamp tax on the deeds they received from Fannie Mae or Freddie Mac transferring the real property.

13. Defendant Florida Department of Revenue ("FDOR") is a Florida Executive Branch Department created by Florida Statutes and is a citizen of Florida.

14. Venue is proper in this Circuit because FDOR maintains offices and representatives throughout Florida, including its headquarters in this Circuit, in Leon County, Florida.

15. This suit arises under Florida law.

16. Jurisdiction is proper in this Court pursuant to Sections 26.012(2)(e), 86.011, 86.051, and 86.101, Florida Statutes; and Article V, section 20 (3) of the Florida Constitution. The matter in controversy exceeds the sum of \$15,000, exclusive of interest, costs, and attorney's fees.

STATEMENT OF THE CASE AND FACTS

Fannie Mae and Freddie Mac

17. Fannie Mae and Freddie Mac are government-sponsored enterprises chartered by the United States Congress to “establish secondary market facilities for residential mortgages,” to “provide stability in the secondary market for residential mortgages,” and to “promote access to mortgage credit throughout the Nation.” 12 USC 1716 (Fannie Mae) and 12 USC 1451 (Freddie Mac).

18. To further their Congressional mandates and as a matter of routine practice, Fannie Mae and Freddie Mac purchase and guarantee (insure) mortgages of homebuyers throughout the United States including, Florida.

19. As a matter of course, Fannie Mae and Freddie Mac are required to foreclose on some of the residential mortgages they purchase and guarantee due to the homebuyers’ (mortgagors’) failure to honor certain material terms of these mortgages; namely failure to pay the periodic installments of principal and interest as set forth in the underlying promissory loans.

20. In Florida and elsewhere, when foreclosures occur on mortgages which Fannie Mae or Freddie Mac purchased and guaranteed, Fannie Mae or Freddie Mac takes title to the underlying residential real property which they subsequently sell in an effort to recover at least a portion of the unpaid principal and accrued interest outstanding at the time they foreclosed on the defaulted mortgage, along with the related foreclosure costs.

21. Alternatively, Fannie Mae or Freddie Mac may acquire ownership of Florida real property subject to mortgages they have purchased and guaranteed through a deed-in-lieu of foreclosure—a transaction in which the owner of a home subject to a defaulted mortgage owned by Fannie Mae or Freddie Mac deeds the home to Fannie Mae or Freddie Mac to avoid further accumulations of unpaid interest, penalties and foreclosure costs.

22. In response to the 2008 real estate mortgage crisis, Congress passed the Housing and Economic Recovery Act ("HERA") of 2008 which, among other things, created the Federal Housing Finance Agency ("FHFA") to supervise and regulate Fannie Mae and Freddie Mac by overseeing their operations and preserving and conserving their assets. *See* 12 § USC 4501, et. seq.

23. On September 6, 2008, the Director of FHFA placed Fannie Mae and Freddie Mac into FHFA's conservatorships for the purpose of "reorganizing, rehabilitating, or winding up [their] affairs." *See* 12 § USC 4671(a)(2). As of this date Fannie Mae and Freddie Mac remain under FHFA's conservatorships and continue to be the dominant purchasers and guarantors of residential real estate mortgages throughout the United States, including the State of Florida.

24. Since the financial crisis of 2008, and continuing through the date of this Complaint, both Fannie Mae and Freddie Mac have sold thousands of parcels of Florida residential real estate which they acquired through mortgage foreclosures.

FDOR and Documentary Stamp Taxes Generally

25. Subject to certain exceptions, the Florida documentary stamp tax is due when one party transfers an interest in Florida real property. *See* §§ 201.01, 201.02, 201.011, 201.08, Fla. Stat.

26. FDOR is the state executive agency in Florida charged with the responsibility and authority to administer and collect documentary stamp taxes. *See* §§ 20.21(1)(d), 201.11, Fla. Stat.

27. To these ends, FDOR has promulgated administrative rules contained in Chapter 12B-4 of the Florida Administrative Code, which purport to regulate the documentary stamp tax in Florida.

28. FDOR also issues Tax Information Publications (TIPs)¹ to inform and alert taxpayers about its interpretations of state tax statutes and regulations, including the rights and duties of taxpayers with regard to specific state taxes such as Florida's documentary stamp tax.² See e.g., **Exhibit A** (TIP 12B04-01).

Real Estate Transactions Involving Fannie Mae and Freddie Mac are Exempt from All State Taxation.

29. Under federal law, opinions of the Florida Attorney General, and precedent of the Florida Supreme Court, when governmental entities, including Fannie Mae, Freddie Mac and other similar federal instrumentalities, sell real property to either governmental or a non-governmental (private) parties, those transactions, including documents executed by the federal agency, are entirely exempt from Florida's documentary stamp tax.

30. To this point, the federal charters of the Fannie Mae and Freddie Mac provide collectively that the entities *and* their franchise, activities, capital, reserves, mortgages, surplus, and income, "*shall be exempt from **all taxation** now or hereafter imposed by any...State, county, municipality, or local taxing authority.*" 12 USC 1452(e) (Freddie Mac); 12 USC 1723a(c)(2) (Fannie Mae)(emphasis added).³

31. The foregoing scope and nature of exemption from state and local taxation also applies to FHFA as the conservator of Fannie Mae and Freddie Mac. See 12 USC 617G)(1), (2).

¹ See <http://dor.myflorida.com/dor/tips/> (accessed July 14, 2016).

² See <http://dor.myflorida.com/dor/tips/tip14b04-01.html> (accessed July 14, 2016).

³ Federal law specifically authorizes states and local governments to collect property taxes on the real estate to which Fannie Mae and Freddie Mac hold title as a result of a foreclosure or receipt of a deed-in-lieu-of-foreclosure occasioned by a defaulted mortgage. See 12 USC 1452(e) (Freddie Mac); 12 USC 1723a(c)(2). These permitted taxes, however, are *ad valorem* property taxes and not excise transfer taxes such as Florida's documentary stamp tax which among other things, is levied on deeds transferring legal title real estate located in Florida.

32. Relying on the U.S. Constitution's Supremacy Clause, state and federal courts have consistently held that Freddie Mac and Fannie Mae, as instrumentalities of the federal government, and all parties to a real estate transaction involving the transfer of real property to or from Freddie Mac and Fannie Mae are exempt under federal law from the imposition of state real-estate transfer taxes such as Florida's documentary stamp tax.

33. Citing a litany of federal and state cases, FHFA as the conservator of Fannie Mae and Freddie Mac has informed FDOR regarding the tax exempt status of real estate transactions involving transfers of real property to or from Fannie Mae and Freddie Mac, stating that not only are Fannie Mae and Freddie Mac exempt from documentary stamp taxes, but also the counterparties transferring real property to or purchasing real property from Fannie Mae and Freddie Mac. See **Exhibit A** hereto.

34. Taxing the counterparty to a real estate transfer from Fannie Mae or Freddie Mac is in effect taxing the federal instrumentality, inhibiting its activities and operations, which Congress has clearly said are completely immune and exempt from state taxation. As explained in the written directive to FDOR from FHFA's General Counsel, "the U.S. Supreme Court has uniformly ruled that a taxing authority cannot avoid *the effect of* the entity's exemption by collecting the tax from the entity's counterparties." **Exhibit A** at p. 3 (citing *Laurens Fed. Savs. & Loan Ass'n v. S.C. Tax Comm'n*, 365 U.S. 517, 522 (1961))(emphasis added).

35. Based on federal and state cases, including the cases from the Florida Supreme Court referred to in the FHFA's written directive to FDOR, imposition of Florida's documentary stamp tax on parties purchasing real property from Fannie Mae and Freddie Mac,

"[W]ould serve to frustrate their congressionally mandated missions to ensure the liquidity and stability of the Nation's mortgage markets by increasing transaction costs. This conclusion is supported by every relevant legal authority, including U.S. and Florida Supreme Court precedents."

Exhibit A at p. 5.

36. The Florida Attorney General has also opined that conveyances and documents *to and from* federal instrumentalities are not subject to state documentary stamp taxes. *See Exhibit B* hereto (AGO 061-84)(stating conveyances from instrumentalities of the federal government, as well as documents made and executed in behalf of the federal government, are not subject to taxation under Florida's documentary stamp taxing statutes).

FDOR Has Publically Stated it Will Systematically Impose Transfer Taxes on Private Purchasers of Real Properties from Fannie Mae and Freddie Mac.

37. Despite the foregoing prohibition, in TIP 14B04-01 (**Exhibit C**) and certain of its rules, FDOR has publically pronounced its practice, procedure, and continuing frustration of the constitutionally mandated missions of Fannie Mae and Freddie Mac through its ongoing imposition of Florida's documentary stamp tax on private (non-governmental) purchasers of real properties from Fannie Mae and Freddie Mac.

38. FDOR attempts to avoid the documentary stamp tax exemption by narrowly focusing on the documents and the non-governmental status of counterparties involved in a purchase of real property from Fannie Mae or Freddie Mac rather than the nature and purpose of the activities being performed which Congress has exempted completely from all such taxation. In TIP 14B04-01 (**Exhibit C**), FDOR declares in relevant part,

Unless the document is exempt, the tax is to be paid by the nonexempt party.

.....

Federal laws provide that FNMA [Fannie Mae] and FHLMC [Freddie Mac] are exempt from all tax imposed by any state. Therefore, under current federal law, the Department of Revenue considers FNMA [Fannie Mae] and FHLMC [Freddie Mac] to be exempt from Florida's documentary stamp tax[See Rule 12B-4.002(2), Florida Administrative Code (F.A.C)]. **However, these laws do not exempt the document from documentary stamp tax. When FNMA or FHLMC is a party to a document that transfers an interest in**

Florida real property, payment of documentary stamp tax would be the responsibility of the nonexempt party, unless the document is exempt under Florida Statute or Florida Administrative Code.

TIP 14B04-01 (**Exhibit C**) (emphasis in original).

39. In TIP 14B04-01, FDOR also provides examples clearly explaining that as a matter of course it will impose Florida's documentary stamp tax on the deeds transferring real property from Fannie Mae and Freddie Mac to private (non-governmental) purchasers and require such private purchasers to pay the documentary stamp tax, as follows:

Example 4: Florida real property is deeded from FNMA or FHLMC to a nonexempt party. The deed **is** subject to tax and the nonexempt party must pay the tax.

TIP 14B04-01 (**Exhibit C**) (emphasis in original).

40. To support TIP 14B04-01, FDOR does not cite any specific federal law or relevant tax exemptions. Instead, it cites subsections of Rule 12B-4.002(1)(a), Rule 12B-4.014(8), Rule 12B-4.014(9), Florida Administrative Code. *See Exhibit C.*

41. As with its TIP 14B04-01, FDOR's interpretations of the applicable rules it enforces essentially attempts to avoid the Congressionally mandated exemptions from "all taxation" by imposing the documentary stamp tax on the deeds Fannie Mae and Freddie Mac execute to transfer real property to private purchasers as necessary to carry out the congressional purpose for which they were created. For example, these rules state that "[t]ransactions between non-exempt [non-governmental] parties and the United States, its agencies or instrumentalities are taxable *unless such transactions are evidenced by documents which have been exempted by Congress.*" Rule 12B-4.002(2)(a)(emphasis added). Similarly, Rule 12B-4.014(8) states the required tax is the responsibility of the non-exempt party "*unless the instrument is exempted by any state or federal law...*" (emphasis added).

42. FDOR's interpretation totally misses the point of the federal exemptions and even of its own rules referring to it: The federal prohibition of "all taxation" relating to transfers of real property to or from Fannie Mae and Freddie Mac applies equally to the deeds necessary to complete those transactions and all the parties to those transactions, including the Plaintiff and Class Members as purchasers of Florida real property owned by Fannie Mae and Freddie Mac.

43. Under FDOR's view, it may impose the tax on documents transferring ownership of Florida real property from a federal instrumentality to a private (non-governmental) purchaser, pursuant to its congressionally mandated mission, unless Congress specifically identified *the precise document* itself as exempt from state tax. This makes no sense. Federal instrumentalities perform congressionally mandated missions which are exempt from state taxation through their representatives and the necessary documents they create or execute in performing their missions.

44. Congress has mandated that Fannie Mae and Freddie Mac and their operations are exempt from "all [state] taxation." All means all. Under FDOR's own rules, the Fannie Mae and Freddie Mac deeds it seeks to tax would be exempt because Congress has exempted them as part of its broad exemption of the congressionally mandated mission for which Fannie Mae and Freddie Mac were created.

Facts Relating To Mr. Castorri

45. On May 27, 2014, Mr. Castorri purchased a home in Tallahassee, Florida (Parcel ID # 2121510432369) from Fannie Mae, which executed a deed on its behalf, conveying title to Mr. Castorri. Pursuant to that purchase of real estate from Fannie Mae Mr. Castorri was compelled to pay documentary stamp taxes in the amount of \$238.00 to the local Clerk of Courts as recorded on the deed he received from Fannie Mae. *See Exhibit D* hereto. Documentary stamp taxes are typically paid to the local Clerk of Courts when deeds transferring title to real property are recorded

by the Clerk in the Official Records, who then electronically submits the funds to FDOR. *See* Rule 12B-4.004(1)(a), FAC.

46. At the time he paid the documentary stamp taxes Mr. Castorri was unaware of any facts and circumstances surrounding the tax exemption referenced above. He paid the tax, because he was compelled to do so.

47. On February 2, 2016, Mr. Castorri requested from FDOR a refund of the documentary stamp tax he paid in connection with his purchase of real property from Fannie Mae. He made the request to FDOR in writing, providing several supporting documents with his request including a fully executed FDOR Form DR-26, entitled "Application for Refund." *See Exhibit E* hereto; *see also* Rule 12B-4.004, FAC (describing in part the refund request process FDOR provides under § 215.26, Fla. Stat.).

48. Despite Mr. Castorri submitting to FDOR a properly executed FDOR Form DR-26, including supporting documentation, FDOR notified Mr. Castorri on or about May 11, 2016, that it intended to deny his refund request and re-stating, among other things, that Mr. Castorri owes the tax because unlike Fannie Mae, he is not an exempt governmental entity, thereby totally ignoring that Fannie Mae executed the deed as part of its Congressionally mandated tax exempt operations. *See Exhibit F*.

49. On May 20, 2016, Mr. Castorri sent FDOR more information to support his refund request and opposing FDOR's denial. *See Exhibit G* hereto.

50. On May 23, 2016, FDOR responded to Mr. Castorri via email, again refusing his tax refund request, with specific reference to certain of its tax information publications and rules as the basis for its insistence on imposing the tax at issue on him and other private parties

purchasing real property from Fannie Mae and Freddie Mac as pronounced in TIP 14B04-01. *See Exhibit H.*

51. On May 27, 2016, FDOR emailed Mr. Castorri, attaching form documents reiterating its proposed denial of his tax refund request and stating its proposed denial would become a final agency action in 60 days. Those 60 days have elapsed and Mr. Castorri has exhausted any administrative remedies he had to seek a refund.

Any Ostensible Administrative Remedies Are and Would Be Futile.

52. Mr. Castorri asserts, upon information and belief, that until a court settles this dispute, FDOR will continue to follow its public pronouncements and rules regarding transfers of Florida real property from Fannie Mae and Freddie Mac to private (non-governmental) purchasers being subject to Florida's documentary stamp tax, and that the private persons and entities purchasing the real property are responsible for paying the said document transfer taxes.

53. Mr. Castorri's encounter with FDOR and the rules and correspondence cited above exemplify the futility of private (non-governmental) purchasers having to request a refund from FDOR for the documentary stamp taxes they paid in connection with purchases of real property from Fannie Mae and Freddie Mac. Mr. Castorri provided FDOR with numerous citations to state and federal precedents and other relevant documents supporting his position that private (non-governmental) purchasers of real property from Fannie Mae and Freddie Mac are exempt from Florida's documentary stamp tax, as he now asserts in this Complaint. Nevertheless, FDOR denied his refund request.

54. FDOR has likewise ignored multiple official letters from the Federal Home Finance Administration informing FDOR that the imposition of Florida's documentary stamp tax with regard to deeds transferring real property to or from Fannie Mae and Freddie Mac, regardless

of the status of the counterparties involved in the transaction (i.e., private, non-governmental, public, governmental), violates controlling federal law, is contrary to state and federal precedents and directing FDOR to cease such actions and to amend its TIP 14B04-01 accordingly.

55. The information Mr. Castorri provided FDOR in support of his Application for Refund encompassed much of the same information FHFA previously provided to FDOR in its official correspondence dated April 18, 2014 directing FDOR to cease such taxation. *See Exhibit A.* On July 11, 2013, FHFA had sent FDOR an earlier missive on the same issues. *See Exhibit I.* Despite FHFA's directives to the contrary, FDOR has failed to properly amend its rules and or TIP 14B04-01 relating to documentary stamp taxes and has continued to require private persons and entities purchasing real property from Fannie Mae and Freddie Mac to pay Florida's documentary stamp taxes on the deeds they receive.

56. To be clear, FDOR's denial of Mr. Castorri's application for refund was not based on the facts underlying Mr. Castorri's particular transaction. Instead FDOR denied Plaintiff's refund request, relying (incorrectly) on certain of its rules, referencing its public pronouncement in TIP 14B04-01, reflecting FDOR's standard interpretations, practices, and procedures of imposing Florida's documentary stamp tax on private parties purchasing real property from Fannie Mae or Freddie Mac, despite such tax being prohibited under federal law.

57. FDOR continues to publish TIP 14B04-01 on its website,⁴ in which FDOR unambiguously states that it will impose the tax on private parties when they purchase real property from Fannie Mae and Freddie Mac. FDOR issued TIP 14B04-01 on January 13, 2014 to expand, correct and replace its TIP 12B04-01, dated May 10, 2012, as directed by FHFA. *See Exhibit I.* Remarkably, FDOR's TIP 14B04-01 failed to address its unlawful practice of subjecting private

⁴ See <http://dor.myflorida.com/dor/tips/tip14b04-01.html> (accessed July 14, 2016).

persons and entities purchasing real property from Fannie Mae and Freddie Mac to Florida's documentary stamp tax which prompted FHFA to again direct FDOR to amend its TIP. *See Exhibit A.*

58. FDOR has publically made clear it believes it has no obligation to refund documentary stamp taxes in Mr. Castorri's and other substantially similar circumstances, when a private purchaser buys real property from Fannie Mae or Freddie Mac and the private purchaser is compelled to pay documentary stamp taxes. Any refund request would therefore, be futile.

59. Mr. Castorri has good cause to believe that FDOR has systematically administered, enforced, and collected documentary stamp taxes from private purchasers on documents reflecting transfers of real property from Fannie Mae and Freddie Mac, even though those real estate transfers and the documents necessary to effect those transfers are *completely* exempt from "all [state] taxation" under federal and Florida law.

60. Upon information and belief, FDOR will continue to follow its public pronouncements and rules on documentary stamp taxes and deny any refunds until a court declares otherwise.

CLASS REPRESENTATION ALLEGATIONS

61. Plaintiff brings this class action against Defendant pursuant to Rule 1.220(a) and 1.220(b)(2) and/or 1.220(c)(4), individually and as class representative on behalf of a class of individuals and entities, the "Class Members" or "Class," defined as follows:

Rule 1.220(b)(2) Class: Since February 1, 2013, private individuals and entities who: (1) were named in public records as parties purchasing real property from Fannie Mae or Freddie Mac in Florida; and (2) paid documentary stamp taxes on documents relating to the sale.

62. Numerosity (Rule 1.220(a)(1)). Plaintiff alleges, on information and belief, that the number of Class Members is so numerous that joinder of them is impractical. Fannie Mae and

Freddie Mac have offered for sale and sold thousands of residential real properties in Florida since the real estate mortgage crisis began on or about at least September, 2008. The actual numbers and identities of Class Members can be easily ascertained from Circuit Court records and those of Fannie Mae and Freddie Mac.

63. Commonality (Rule 1.220(a)(2)). Common questions of law and/or fact exist as to all members of the Class. Each Class Member's claim is derived from the same standardized systematic practices of FDOR and its uniform procedures and publicized interpretation for imposing documentary stamp taxes—all applying equally to Plaintiff and all Class Members—namely:

- a. Whether and to what extent under Florida Statutes and Rules FDOR may impose documentary stamp taxes on documents evidencing the transfer of real property from Fannie Mae and/or Freddie Mac to a private individual or entity;
- b. Whether and to what extent federal law exempts private individuals and entities from state documentary stamp taxes, when those private individuals and entities purchase real property from Fannie Mac and Freddie Mac;
- c. Whether FDOR is permitted or prohibited under Florida and/or federal law from imposing documentary stamp taxes on documents evidencing the transfer of real property from Fannie Mae and/or Freddie Mac to private individuals or entities, including Plaintiff and Class Members; and,
- d. Whether declaratory relief is appropriate.

64. Typicality (Rule 1.220(a)(3)). The claims of Plaintiff are typical of the claims that would be asserted by other members of the Class in that, in proving Plaintiff's claims, Plaintiff will simultaneously advance the claims of all Class Members. Plaintiff and each Class Member

have purchased real property from Fannie Mac and Freddie Mac and been compelled to pay FDOR documentary stamp taxes. They each share the same legal interest in determining whether that tax is lawfully imposed on them. Based on the foregoing facts, Plaintiff and each Class Member has the same legal claim for a court to declare whether or not FDOR is permitted impose documentary stamp taxes on them.

65. Adequacy (Rule 1.220(a)(4)). Plaintiff will fairly and adequately protect the interests of the Class Plaintiff represents because it is in Plaintiff's best interests to prosecute the claims alleged herein to obtain a declaration determining his rights and obligations to pay the documentary stamp tax or not. Plaintiff has no interests that conflict with those of the members of the Class because one or more questions of law and/or fact regarding Defendant's liability are common to all Class Members and by prevailing on Plaintiff's own claims, Plaintiff necessarily will establish Defendant's liability to other Class Members.

66. Plaintiff has retained counsel experienced in litigating complex class actions. Plaintiff's counsel are long-standing members of the Florida Bar, whose practices focus on class litigation, public officials, and matters of great public concern. Counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to Class Members and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for the Classes defined above.

67. Rule 1.220(b)(2). The prerequisites for maintaining the Class for declaratory relief pursuant to Rule 1.220(b)(2), Florida Rules of Civil Procedure, are satisfied because Defendant has acted or refused to act on grounds generally applicable to the Rule 1.220(b)(2) Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole. It

would make no sense for court after court to determine the rights and responsibilities at issue here. Defendant's actions are generally applicable to the Class as a whole and make equitable remedies, including declaratory relief, with respect to the Class as a whole appropriate.

68. Rule 1.220 (c)(4): In the alternative, if the Court is not inclined to certify a declaratory or mandamus relief class, Plaintiff seeks certification of an issue class with respect to the Defendant's conduct on a class-wide bases. The Court may then proceed in accordance with the Florida Rules of Civil Procedure and employ other mechanisms at its disposal with respect to individual Class Members.

COUNT I **DECLARATORY RELIEF**

69. Paragraphs 1-68 are re-alleged and incorporated herein.

70. This is an action for declaratory relief brought pursuant to Chapter 86, Flat. Stat.

71. Federal statutes governing the activities and status of Fannie Mae and Freddie Mac, Florida Statutes Chapter 201, and provisions in the Florida Administrative Code promulgated, interpreted, and enforced by FDOR describe rights, obligations, and exemptions regarding state taxation.

72. Under Florida law, including FDOR rules contained in Title 12 of the Florida Administrative Code, FDOR administers, imposes, and collects documentary stamp taxes.

73. FDOR also issues Tax Information Publications (TIPs) to inform and alert taxpayers about its interpretations of tax laws and their rights and duties regarding specific taxes, including the documentary stamp tax at issue here.

74. FDOR unambiguously publically states that it will impose the documentary stamp tax on private (non-governmental) parties purchasing Florida real property from Fannie Mae and Freddie Mac.

75. FDOR has publically made clear it believes it has no obligation to refund documentary stamp taxes in Mr. Castorri's and other substantially similar circumstances, when a private purchaser buys real property from Fannie Mae or Freddie Mac and the private purchaser is compelled to pay documentary stamp taxes.

76. FDOR's standard interpretations, practices, and procedures have been to continually impose the tax on private parties purchasing real property from Fannie Mae or Freddie Mac, despite that federal law, the Florida Supreme Court and the Florida Attorney General indicates that imposition be unlawful.

77. Upon information and belief, FDOR will continue to interpret the documentary stamp tax as stated above and systematically impose the tax on private purchasers of real property from Fannie Mae and Freddie Mac unless and until a court rules otherwise.

78. There is a bona fide, actual, present, practical need for the Court to declare if FDOR's imposition of documentary stamp tax is lawful and proper and to construe the rights of Plaintiff, Class Members and Defendant under Florida law considering the federal law cited above.

79. Plaintiff and Class Members have actual, present, adverse and antagonistic interests to the interests of Defendant; and are in a state of controversy with Defendant regarding the subject matter of this complaint.

80. The declaration requested deals with a present ascertainable state of facts as presented in the allegations set forth above.

81. Plaintiff, individually, and on behalf of others similarly situated are before this Court by proper process or class representation and the relief requested is not merely a request for advice or to answer their curiosities.

82. Plaintiff and Class Members are sincerely in doubt about the extent of the rights of each party under the foregoing law and the common questions set forth above.

83. Plaintiff has retained the counsel set forth below and has agreed to reasonably compensate them for this action on his own behalf and on behalf of all Class Members.

WHEREFORE, Plaintiff for himself and on behalf of the Rule 1.220(b)(2) Class defined above, under Fla. R. Civ. P. 1.220, demands the following relief:

- a. An order certifying this complaint for class treatment under Rule 1.220(b)(2), Florida Rules of Civil Procedure, and appointing Plaintiff as class representative and Plaintiff's legal counsel to represent as Class counsel for the Class;
- b. A declaration under Chapter 86, Florida Statutes, interpreting whether or not FDOR may lawfully impose documentary stamp taxes on Plaintiff and Class Members who were named in public records as parties purchasing real property from Fannie Mae or Freddie Mac in Florida and paid documentary stamp taxes on documents relating to their purchases;
- c. Award appropriate supplemental relief depending on the Court's declaration upon Plaintiff's motion;
- d. As supplemental relief, order FDOR to provide notice to Class Members of the Court's declaration;
- e. Award reasonable attorneys' fees and costs to counsel for Plaintiff and the Rule 1.220(b)(2) Class; and,
- f. Such other and further relief as is just and proper.

JURY TRIAL DEMANDED

Plaintiff, on behalf of himself and all others similarly situated, hereby demand a trial by jury of all issues so triable in this cause.

CERTIFICATE RE: E-FILING AND E-SERVICE

I HEREBY CERTIFY that this Complaint was filed electronically on September 21, 2016, in compliance with Florida Rules of Judicial Administration 2.515 and 2.516(e).

WE HEREBY CERTIFY, that a true and correct copy of the foregoing was served with the Summons and Complaint filed herein.

I FURTHER CERTIFY for purposes of service of any documents after initial process that staff.efile@pathtojustice.com is primary, steve@pathtojustice.com, mark@pathtojustice.com, and iris@pathtojustice.com as secondary.

Respectfully submitted,

**FARMER, JAFFE, WEISSING,
EDWARDS, FISTOS & LEHRMAN, P.L.**

By: /s/ Steven R. Jaffe
Steven R. Jaffe (FBN 390770)
Mark S. Fistos (FBN 909191)
425 N. Andrews Ave., Suite 2
Fort Lauderdale, Florida 33301
Telephone 954-524-2820
Facsimile 954-524-2822
steve@pathtojustice.com
mark@pathtojustice.com

MOYÉ LAW FIRM
David W. Moyé (FBN 782350)
527 E. Park Ave
Tallahassee, FL 32301
Telephone: 850-224-6693
Facsimile: 850-222-6693
david@moyelawfirm.com

Attorneys for Plaintiff