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S.C. Supreme Court

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes, Special Referee

Opinion No. 2013-UP-090
S.C. Ct. App. Filed February 27, 2013

JP Morgan Chase Bank, National Bank..... Respondent,

v.

Vanessa Y. Bradley..... Petitioner,

APPENDIX
VOLUME I

Susan Ingles, S.C. Bar No. 4577
South Carolina Legal Services
701 South Main Street
Greenville, SC 29601
(864) 679-3244
Attorney for Petitioner

James Y. Becker, S.C. Bar No. 64991
Sarah P. Spruill, S.C. Bar No. 68337
Mary M. Caskey, S.C. Bar No. 76198
Haynsworth Sinkler Boyd, PA
Post Office Box 11889
Columbia, SC 29211-1889
(803) 540-7870
Attorneys for Respondent

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes, Special Referee

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank..... Respondent,

v.

Vanessa Y. Bradley..... Appellant,

RECORD ON APPEAL

Susan Ingles, S.C. Bar No. 4577
South Carolina Legal Services
701 South Main Street
Greenville, SC 29601
(864) 679-3244
Attorney for Appellant

James Y. Becker, S.C. Bar No. 64991
Sarah P. Spruill, S.C. Bar No. 68337
Mary M. Caskey, S.C. Bar No. 76198
Haynesworth, Sinkler & Boyd, PA
Post Office Box 11889
Columbia, SC 29211-1889
(803) 540-7870
Attorneys for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

ORDER OF REFERENCE

Deficiency Judgment Waived

(011671-01281)

Pursuant to Rules 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled case is an action for foreclosure and may be referred to a Master in Equity or Special Referee in the above-entitled county by order of a circuit court judge or the clerk of court.

IT IS HEREBY ORDERED, that this action is referred to R. Murray Hughes, as Special Referee to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCP, and all matters arising from or reasonably related to such action. The Special Referee shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including but not limited to Rule 60(b). Judicial sales will be conducted pursuant to S.C. Code Section 15-39-680 or on any other convenient sale's date as may be determined by the Master in Equity/Special Referee.

The hearing shall be held in the Office of R. Murray Hughes, as Special Referee for Pickens County, located at:

4606 Moorefield Memorial Highway
Pickens, SC 29671

and the final order by the Special Referee shall be filed with the Clerk of Court for Pickens County not later than sixty (60) days after the date of the hearing.

[Signature]
Circuit Court Judge for Pickens County or
Clerk of Court for Pickens County

Pickens, South Carolina

2-24, 2009.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

009 FEB 24 A 10:52

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

FORM 4
JUDGMENT IN A CIVIL CASE

011671-01281

IN THE COURT OF COMMON PLEAS

CASE NO. 08-CP-39-2120

PMorgan Chase Bank, National Association,
PLAINTIFF(s) vs

Vanessa Y. Bradley; ,
DEFENDANT(S)

HECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered
- ☐ ACTION DISMISSED (CHECK REASON:) ☐ Rule12(b), SCRPC; ☐ Rule41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other - _____
- ☐ ACTION STRICKEN (CHECK REASON:) ☐ Rule40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other - _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other - _____
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

THE PROPERTY WHICH IS THE SUBJECT OF THIS ACTION SHALL BE SOLD AT PUBLIC SALE
IN ACCORDANCE WITH THE JUDGMENT OF FORECLOSURE AND SALE.

dated at Pickens, South Carolina, this 13th day of March, 2009

[Signature]
PRESIDING JUDGE/MASTER/SPECIAL REFEREE

This judgment was entered on the _____ day of _____, 2009, and a copy mailed first class this
_____ day of _____, 2009 to attorneys of record or parties (when appearing pro se) as follows:

Samuel C. Waters (SC Bar #5958)
ATTORNEY FOR THE PLAINTIFF(S)

Vanessa Y. Bradley
[Redacted]
Central, SC 29630

Clerk or Officer of the Court

Occupant
[Redacted]
Central, SC 29630

FILED UP COURT
PICKENS COUNTY
SOUTH CAROLINA
MAR 17 A 10:42

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

(011671-01281)

Samuel C. Waters, Esquire
Attorney for the Plaintiff

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

JUDGMENT OF FORECLOSURE AND SALE
Deficiency Judgment Waived

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2009 MAR 17 A 10:42

A hearing was held March 12, 2009 at 02:00 PM. The testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on December 30, 2008.
2. The Summons and Complaint were filed on December 30, 2008.
3. Service was made upon the Defendant(s) named in this report as shown by the proof(s) of service filed herein.
4. The Defendant(s) Vanessa Y. Bradley is in default as shown by affidavit or order filed herein.
5. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.
6. The Defendant(s) and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.
7. According to the affidavit filed herein, the Defendant(s) Vanessa Y. Bradley is in default and that the Defendant(s) Vanessa Y. Bradley is not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. Seq.
8. For value received, Vanessa Y. Bradley made, executed and delivered a(n) Fixed Rate Note dated January 30, 2001 promising thereby to pay the sum of \$84,200.00 with interest at

6.875% per annum. Other terms and conditions are stated in the Fixed Rate Note, which is of record herein.

9. To better secure the payment of the Fixed Rate Note described above Vanessa Y. Bradley made, executed, and delivered to Schmidt Mortgage Corporation a certain real estate first Mortgage in writing, dated January 30, 2001 covering real property in Pickens County, which is the same as that described in the Complaint. The first Mortgage was filed on January 31, 2001, and is of record in the Office of RMC/ROD in Book 1594 at Page 53. This mortgage was subsequently assigned to Fleet National Bank by assignment dated January 30, 2001 and recorded January 31, 2001 in Book 1594 at Page 69; subsequently assigned to the Plaintiff herein by assignment recorded January 29, 2009 in Book 3953 at Page 254. This mortgage is subject to a Loan Modification Agreement dated April 11, 2005.

10. This first Mortgage constitutes a first mortgage lien on the subject property, subject only to ad valorem or other liens/taxes given priority by statute.

11. The Plaintiff in this action is the owner and holder or nominee for the owner and holder of the Fixed Rate Note and first Mortgage it is seeking to foreclose.

12. Any notice required by the terms of the first mortgage or by state or federal statutes has been given to the applicable defendant(s) prior to the commencement of this action.

13. Payment due on the Fixed Rate Note has not been made as provided for therein, and the Plaintiff, as the holder or nominee for the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Fixed Rate Note and first Mortgage in the hands of the attorney herein for collection by foreclosure.

14. The sum of \$4,500 is a reasonable fee to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Fixed Rate Note and first Mortgage. These sums are likewise reasonable based on the time necessarily devoted to representation of the Plaintiff during the several month course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and their experience in handling foreclosure matters. The fees awarded herein are also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

15. According to the Plaintiff's accounting, after all payments received by the Plaintiff have been credited to the subject loan, the amount due and owing on the Fixed Rate Note, with

interest at the rate provided in the Fixed Rate Note, and other costs and expenses of the within action, including an attorney's fee, secured by the Fixed Rate Note and first Mortgage, is as follows:

(a)	Principal due August 1, 2008.....	\$94,373.63
(b)	Interest from July 1, 2008 through March 12, 2009 at 6.875% per annum.....	\$4,520.97
(c)	Advances (Escrow advances, corporate charges and other charges).....	\$127.81
(d)	Costs of collection prior to hearing (service, filing, etc.).....	\$510.00
(e)	Title Abstract Search.....	\$250.00
(f)	Attorney's fee.....	\$4,500.00
	TOTAL debt secured by Fixed Rate Note and first Mortgage, including interest to date shown.....	\$104,282.41

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 6.875% per annum (pursuant to the terms of the Fixed Rate Note and first Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the first Mortgage through the date to which such interest is computed.

16. Plaintiff is seeking the usual foreclosure of the first mortgage and has in the Complaint (or subsequently thereto in writing) expressly waived the right to a personal or deficiency judgment.

17. The Defendant(s) claim(s) or may claim a lien upon or legal interest in the subject property and in the event there is a surplus from the sale of the subject property, such Defendant(s) may present any such lien or legal interest at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

None.

IT IS THEREFORE ORDERED:

18. There is due on the Fixed Rate Note and first Mortgage set forth in the Complaint the sum of \$104,282.41, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

19. The amount due in the preceding paragraph (the "Final Total Debt" as set out

in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due the Plaintiff.

20. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

21. The Defendant(s) liable for the aforesaid judgment debt of the Fixed Rate Note and first Mortgage including interest at the rate of 6.875% per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

22. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Special Referee at public auction, at the Pickens County Courthouse, in the City of Pickens, County and State aforesaid on April 6, 2009, at 11:00 AM, or on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the next business day succeeding such holiday), on the following terms, that is to say:

a. For cash: The Special Referee will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at time of bid or comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder(s).

b. Interest on the balance of the bid shall be paid through the day of compliance at the rate of 6.875%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.

d. Purchaser to pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed and satisfaction of mortgage, and transfer taxes on the deed.

f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Court.

23. A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

24. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure, prior to sale.

25. The Special Referee will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within 20 days after date of sale, then the Special Referee may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

26. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

27. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Special Referee only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

28. The Special Referee will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

29. In the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Pickens County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

30. In the event the successful bidder is other than the Defendants in possession herein and the occupants have voluntarily vacated the premises or have been ejected from the premises

leaving furnishings, fixtures and items not subject to the Plaintiff's Mortgage in said premises, the Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

31. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), is forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.

32. In accordance with Rule 77(d), SCRCP, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear herein.

33. The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

34. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

35. The following is a description of the premises herein ordered to be sold:
All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens, being known and designated as Tract Two-A (2-A), containing 0.46 of an acre, more or less, on a plat prepared by Michael L. Henderson, PS #6946, dated October 19, 2000 and recorded in Plat Book 400 at Page 17B, records of Pickens County, South Carolina, reference to which is invited for a more complete and accurate description.

This being the same property conveyed to Vanessa Y. Bradley by deed of Southern Homes & Remodeling, Inc., dated October 26, 2000 and recorded October 27, 2000 in Book 575 at Page 72 in the Office of the Register of Deeds for Pickens County.

Property Address: [REDACTED]
Central, SC 29630

TMS# 4065-07-69-5698

Mar 13, 2009
Pickens, South Carolina


R. Murray Hughes
Special Referee

NOTICE OF SALE

BY VIRTUE of a decree heretofore granted in the case of: JPMorgan Chase Bank, National Association vs. Vanessa Y. Bradley; , C/A No. 08-CP-39-2120, The following property will be sold by R. Murray Hughes as Special Referee, on April 6, 2009, at 11:00 AM at the Pickens County Courthouse to the highest bidder:

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens, being known and designated as Tract Two-A (2-A), containing 0.46 of an acre, more or less, on a plat prepared by Michael L. Henderson, PS #6946, dated October 19, 2000 and recorded in Plat Book 400 at Page 17B, records of Pickens County, South Carolina, reference to which is invited for a more complete and accurate description.

Derivation: Book 575; Page 72

Central, SC 29630

4065-07-69-5698

SUBJECT TO ASSESSMENTS, PICKENS AD VALOREM TAXES, EASEMENTS AND/OR, RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

TERMS OF SALE: A 5% cash deposit is required. The deposit will be applied towards the purchase price unless the bidder defaults, in which case the deposit will be forfeited. If the successful bidder fails, or refuses, to make the required deposit on the day of sale or fails or refuses to comply with the bid within 20 days, then the property will be resold at the bidder's risk. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. The successful bidder will be required to pay interest on the amount of the bid from date of sale to date of compliance with the bid at the rate of 6.875% per annum. For complete terms of sale, see Judgment of Foreclosure and Sale filed with the Pickens County Clerk of Court at C/A #08-CP-39-2120.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search prior to the foreclosure sale date.

Samuel C. Waters, Esq.
Attorney for Plaintiff
P.O. Box 100200
Columbia, SC 29202-3200
(803) 744-4444
011671-01281

Website: www.rtt-law.com (see link to Resources/Foreclosure Sales)


R. Murray Hughes
Special Referee for
Pickens County

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2009 MAR 17 A 10:42

NOTICE TO PRINTER: Please insert:

____ Once during week commencing _____
____ Once during week commencing _____
____ Once during week commencing _____

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

FORM 4
JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 08-CP-39-2120

JPMorgan Chase Bank, National Association,
PLAINTIFF(s) vs

Vanessa Y. Bradley, ,
DEFENDANT(S)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2010 JUN 25 P 12:31

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered
- ☐ **ACTION DISMISSED** (CHECK REASON:) ☐ Rule12(b), SCRPC; ☐ Rule41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other - _____
- ☐ **ACTION STRICKEN** (CHECK REASON:) ☐ Rule40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other - _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other - _____
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

THE PROPERTY WHICH IS THE SUBJECT OF THIS ACTION SHALL BE SOLD AT PUBLIC SALE
PURSUANT TO THE JUDGMENT OF FORECLOSURE AND SALE.

Dated at Pickens, South Carolina, this 25th day of June, 2010

[Signature]
PRESIDING JUDGE/MASTER/SPECIAL REFEREE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this _____ day of _____, 2010 to attorneys of record or parties (when appearing pro se) as follows:

Clerk or Officer of the Court

Samuel C. Waters (SC Bar #5958)
Rogers Townsend & Thomas, PC
P. O. Box 100200
Columbia, SC 29202-3400
ATTORNEY FOR THE PLAINTIFF(s)

Occupant
[Redacted]
Central, SC 29630

Vanessa Y. Bradley
[Redacted]
Central, SC 29630

1 STATE OF SOUTH CAROLINA

2
3 COUNTY OF PICKENS

4
5 JPMorgan Chase Bank, National Association,

6 Plaintiff,

7 v.

8
9
10 Vanessa Y. Bradley;

11
12 Defendant(s).

13
14 (011671-01281)

15
16 Robert P. Davis
17 Attorney for the Plaintiff
18
19

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

SUPPLEMENTAL ORDER POST JUDGMENT
Deficiency Judgment Waived

20 Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the above-entitled matter was
21 referred to me with finality to enter a final judgment in the case. On March 17, 2009, a Judgment of
22 Foreclosure and Sale was issued. Prior to the scheduled sales date, the Plaintiff began negotiations for a
23 potential loss mitigation workout with the Defendants, Vanessa Y. Bradley. Unfortunately, the loss
24 mitigation workout did not occur, and the Plaintiff wishes to proceed with the foreclosure and sale and to
25 supplement the previous Judgment of Foreclosure and Sale to reflect the amount of payments, if any,
26 made.

27 THEREFORE, upon motion of the Plaintiff's counsel and for good cause indicated;

28 IT IS HEREBY ORDERED that the previous judgment debt be amended as follows:

29 1. The amount due and owing on the note from the previous judgment was as follows:

30 (a) Principal due \$94,373.63

31 (b) Interest from July 1, 2008 through
32 March 12, 2009 at 6.875% per annum \$4,520.97

33
34 (c) Advances (Escrow Advances, Corporate Charges,
35 and Other Charges) \$127.81

36
37 (d) Late Charges \$0.00

38
39 (e) Costs of collection prior to
40 hearing (service, filing, etc.) \$510.00

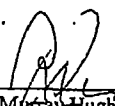
41
42 (f) Title Abstract Search Fee \$250.00
43

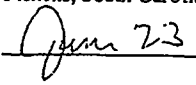
1 (g) Attorney's Fees..... \$4,500.00
2
3 PREVIOUS TOTAL DEBT..... \$104,282.41
4
5 2. Amended judgment debt is as follows:
6 (a) Principal now due..... \$94,185.23
7 (b) Interest from October 1, 2008 through
8 June 30, 2010 at 6.875% per annum \$11,331.60
9
10 (c) Advances (Escrow Advances, Corporate Charges including attorney
11 fees, costs, and other charges previously paid) \$410.97
12
13 (d) Late Charges \$0.00
14
15 (e) Additional Costs of collection since previous
16 hearing..... \$25.00
17
18 (f) Attorney's Fees..... \$3,555.00
19
20 NEW TOTAL DEBT now secured by Note and Mortgage
21 including interest to date shown..... \$109,507.80
22

23 The new total debt shall accrue interest hereafter at the rate of 6.875% per annum.
24 3. Pursuant to an Administrative Order of the South Carolina Supreme Court dated May 22,
25 2009, the Plaintiff has set forth its belief in its Complaint or by Affidavit, which is already of record in
26 this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for
27 modification pursuant to the terms of the Home Affordable Modification Program (HMP), and therefore
28 Plaintiff has fully complied with said Order, and the foreclosure may proceed. Also Plaintiff called
29 attention that pursuant to Administrative Order of the South Carolina Supreme Court dated May 22, 2009,
30 Plaintiff's attorney has not received a counter affidavit from the Defendant(s).

31 4. The mortgaged property shall be sold under the terms of the original Judgment of
32 Foreclosure and Sale.

33 AND IT IS SO ORDERED.

34
35
36 
37 R. Murray-Hughes
38 Special Referee for Pickens County

39 Pickens, South Carolina
40
41  23, 2010

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

CERTIFICATE OF MAILING
Deficiency Judgment Waived

(011671-01281)

I, Michelle S. King, an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have served a copy of the Supplemental Order Post Judgment, which is attached hereto and incorporated herein by reference, dated June 17, 2010 and in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to the below-listed parties in separate envelopes, at each of their respective addresses shown thereon, this 22 day of June, 2010.

Persons Served:

Vanessa Y. Bradley

Central, SC 29630

Michelle S. King
Michelle S. King

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

FORM 4
JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 08-CP-39-2120

JP Morgan Chase Bank, National Association,
PLAINTIFF(S)

vs

Vanessa Y. Bradley; ,
DEFENDANT(S)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
200 AUG 20 A 5b

HECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other - _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other - _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other - _____
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

THE PROPERTY WHICH IS THE SUBJECT OF THIS ACTION SHALL BE SOLD AT PUBLIC SALE
PURSUANT TO THE JUDGMENT OF FORECLOSURE AND SALE.

dated at Pickens, South Carolina, this 16th day of August, 2010

[Signature]
PRESIDING JUDGE/MASTER/SPECIAL REFEREE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this
day of _____, 2010 to attorneys of record or parties (when appearing pro se) as follows:

Samuel C. Waters (SC Bar #5958)
Waters Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202-3400
ATTORNEY FOR THE PLAINTIFF(S)

Vanessa Y. Bradley
[Redacted]
Central, SC 29630

Clerk or Officer of the Court

Occupant
[Redacted]
Central, SC 29630

1 STATE OF SOUTH CAROLINA
2
3 COUNTY OF PICKENS
4
5 JPMorgan Chase Bank, National Association,
6

Plaintiff,

7
8 v.
9

10 Vanessa Y. Bradley;

11 Defendant(s).
12
13

14 (011671-01281)

15 Robert P. Davis
16 Attorney for the Plaintiff
17
18
19

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

SECOND SUPPLEMENTAL ORDER POST
JUDGMENT
Deficiency Judgment Waived

2010 AUG 20 A 8:56
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

20 Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the above-entitled matter was
21 referred to me with finality to enter a final judgment in the case. On March 17, 2009, a Judgment of
22 Foreclosure and Sale was issued. Prior to the scheduled sales date, the Plaintiff began negotiations for a
23 potential loss mitigation workout with the Defendant, Vanessa Y. Bradley. A loss mitigation workout did
24 not occur and a Supplemental Order Post Judgment was filed on June 29, 2010. Prior to the scheduled
25 sales date, the Plaintiff entered into a forbearance agreement with the Defendant, Vanessa Y. Bradley.
26 The defendant has now defaulted on the terms of the forbearance agreement, and thus the Plaintiff wishes
27 to proceed with the foreclosure and sale and to supplement the previous Judgment of Foreclosure and Sale
28 to reflect the amount of payments, if any, made.

29 THEREFORE, upon motion of the Plaintiff's counsel and for good cause indicated;

30 IT IS HEREBY ORDERED that the previous judgment debt be amended as follows:

31 1. The previous Judgment debt was:

32 (a) Principal due \$104,282.41

33 (b) Interest from October 1, 2008 through
34 June 30, 2010 at 6.875% per annum \$11,331.60

35 (c) Advances (Escrow Advances, Corporate Charges,
36 and Other Charges) \$410.97

37 (d) Costs of collection prior to
38 hearing (service, filing, etc.) \$25.00
39
40
41

1 (f) Attorney's Fees..... \$3,555.00
2
3 PREVIOUS TOTAL DEBT..... \$119,604.98
4
5 2. Amended judgment debt is as follows:
6 (a) Principal now due..... \$94,185.23
7 (b) Interest from October 1, 2008 through
8 August 31, 2010 at 6.875% per annum \$12,410.80
9
10 (c) Advances (Escrow Advances, Corporate Charges including attorney
11 fees, costs, and other charges previously paid)..... \$804.30
12
13 (d) Additional Costs of collection since previous
14 hearing..... \$25.00
15
16 (f) Attorney's Fees..... \$3,385.00
17
18 NEW TOTAL DEBT now secured by Note and Mortgage
19 including interest to date shown..... \$110,810.33
20

21 The new total debt shall accrue interest hereafter at the rate of 6.875% per annum.
22 3. Pursuant to an Administrative Order of the South Carolina Supreme Court dated May 22,
23 2009, the Plaintiff has set forth its belief in its Complaint or by Affidavit, which is already of record in
24 this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for
25 modification pursuant to the terms of the Home Affordable Modification Program (HMP), and therefore
26 Plaintiff has fully complied with said Order, and the foreclosure may proceed. Also Plaintiff called
27 attention that pursuant to Administrative Order of the South Carolina Supreme Court dated May 22, 2009,
28 Plaintiff's attorney has not received a counter affidavit from the Defendant(s).

29 4. The mortgaged property shall be sold under the terms of the original Judgment of
30 Foreclosure and Sale.

31 AND IT IS SO ORDERED.

32
33 
34 R. Murray Hughes
35 Special Referee for Pickens County
36

37 Pickens, South Carolina

38 August 16, 2010
39

2008 AUG 20 A 8:56
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

CERTIFICATE OF MAILING
Deficiency Judgment Waived

(011671-01281)

I, Michelle S. King, an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have served a copy of the Supplemental Order Post Judgment, which is attached hereto and incorporated herein by reference, dated August 11, 2010 and in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to the below-listed parties in separate envelopes, at each of their respective addresses shown thereon, this 13 day of August, 2010.

Persons Served:
Vanessa Y. Bradley
[REDACTED]
Central, SC 29630

Michelle S. King
Michelle S. King

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2010 AUG 20 A 8:56

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley,

Defendant(s).

(011671-01281)

PICKENS COUNTY COURT OF COMMON PLEAS
SOUTH CAROLINA

DOCKET NO. 08-CP-39-2120

2010 SEP 3 P 11:34
22802

ORDER CONFIRMING SALE
Deficiency Judgment Waived

The Special Referee having filed his Report on Sale and Disbursements, and no exceptions having been taken thereto;

Therefore, upon considering the Special Referee's Report on Sale and Disbursements, it is ORDERED, that the same be, and it is hereby, confirmed, the sale made final and the case closed.


R. Murray Hughes
Special Referee for Pickens County

Pickens, South Carolina

September 14th, 2010

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

JPMorgan Chase Bank, National Association

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

PICKENS COUNTY
SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
DOCKET NO. 08-CP-39-2120

2010 SEP -3 P 11:34
2230

REPORT ON SALE AND DISBURSEMENTS
AND ORDER CONFIRMING SALE
Deficiency Judgment Waived

(011671-01281)

1. Pursuant to Order of Court and after due notice and advertisement, the undersigned sold the property, subject of this action, for the sum of \$60,000.00, that amount being the highest bid made on Sales Day September 7, 2010.

2. The undersigned has executed and delivered to Federal National Mortgage Association a good and sufficient deed.

3. The following costs have been incurred and funds received and disbursed as set out below:

Bid Amount		\$60,000.00
Received from Plaintiff	810.00	
Constructive Receipts	<u>59,190.00</u>	
Total Receipts	\$60,000.00	\$60,000.00

Disbursements

Reference Fee	200.00
Auctioneer Fee	10.00
Commission on Sale	<u>600.00</u>
Total Disbursed	810.00

All of the funds having been disbursed, I hereby ORDER the file closed and the case ended.



R. Murray Hughes
Special Referee for Pickens County

Pickens, South Carolina

September 14th, 2010

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF Pickens CLERK OF COURT JUDGMENT IN A CIVIL CASE
 IN THE COURT OF COMMON PLEAS PICKENS COUNTY
 SOUTH CAROLINA CASE NO. 2008-CP-39-2160

I.P. Morgan Chase Bank
N.A.

2011 APR 29 P 1:48

Vanessa Y Bradley

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☒ See attached order. (Formal order to follow) RMH
☐ Statement of Judgment by the Court:

Dated at Pickens, South Carolina, this 25th day of April, 2011.

[Signature]
 PRESIDING JUDGE / Special Referee

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Mary M. Cuskey Esq.
Haynesworth Smith Bogel PA
PO Box 11889
Columbia SC 29211-1889
 ATTORNEY(S) FOR THE PLAINTIFF(S)

Susan Taylor Esq.
SC Legal Services
701 S. Main St
Greenville SC 29601
 ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

SCCA SCRPC Form 4 Revised 06/2008

CLERK OF COURT
PICKENS COUNTY
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS 2011 APR 29 P 1:48 Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National
Association,

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO SET ASIDE SALE

This matter comes before me on the motion of Defendant Vanessa Y. Bradley ("Defendant"), to set aside a foreclosure sale held in the above-captioned case on September 7, 2011 (the "Foreclosure Sale"), and for the subsequent deed to be set aside. A hearing was held on Defendant's Motion on March 14, 2011. Defendant appeared through her counsel, Susan Ingles, Esq. Plaintiff JP Morgan Chase Bank, National Association ("Plaintiff"), appeared through its counsel, Mary M. Caskey, Esq. At the hearing, Defendant offered oral testimony in support of her motion, and Plaintiff offered the Affidavit of Charles Herndon and a memorandum of law opposing the motion. Both parties submitted supplemental memoranda in support of their positions on March 24, 2011.

For the reasons stated in Plaintiff's memoranda of law in opposition to Defendant's motion, which are incorporated herein, and after considering the testimony and arguments at the hearing, the Court denies Defendant's motion to set aside the Foreclosure Sale and subsequent deed.

I find that Defendant has failed to meet her burden of showing "fraud, misrepresentation, or other misconduct of an adverse party," as required by Rule 60(b)(3), SCRPC. While the Defendant made extensive efforts to avoid foreclosure and was given varying explanations of the status of her request for a loan modification, none of the statements by Plaintiff's employees arose to the level of fraud, misrepresentation, or misconduct. Under South Carolina law, an allegedly fraudulent representation "must relate to a present or pre-existing fact and it cannot ordinarily be based upon an unfulfilled promise to perform in the future or statements as to future events." *Bishop Logging Co. v. John Deer Indus. Equip. Co.*, 317 S.C. 520, 527, 455 S.E.2d 183, 187 (1995). Viewing the facts in the light most favorable to Defendant, I find that at the most critical time in August and early September 2010, Defendant was told that a request to postpone the Foreclosure Sale had been submitted, but she was never told that the sale would definitely be postponed. As a result, Defendant has failed to prove any fraud, misrepresentation, or misconduct by Plaintiff.

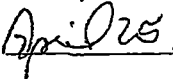
I further find that it is uncontested that a three month forbearance agreement beginning June 1, 2010, between Plaintiff and Defendant came to an end on August 31, 2010, and did not affect Plaintiff's rights to move forward with the Foreclosure Sale.

IT IS THEREFORE ORDERED that Defendant's motion to set aside the Foreclosure Sale and subsequent deed is **DENIED**.

AND IT IS SO ORDERED.


The Honorable R. Murray Hughes
Special Referee

Pickens, South Carolina

 2011

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS
PICKENS COUNTY
SOUTH CAROLINA

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 CP-39-2120

JPMorgan Chase Bank, National Association

Vanessa Y. Bradley

2012 FEB -6 P 12: 02 -

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Mary M. Caskey, Esq.

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Special Referee

Judge Code

Date 01-31-2012

SCRPC Form 4C (12/2011)

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Mary M. Caskey, Esq.
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211-1889

Susan Ingles, Esq.
S.C. Legal Services
701 South Main Street
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-39-2120

JPMorgan Chase Bank, National
Association,

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2012 FEB -6 P 12:02

ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER

This matter comes before me on Defendant Vanessa Y. Bradley's ("Defendant") Motion to Reconsider in Light of [the] May 2, 2011 S.C. Supreme Court Administrative Order on Mortgage Foreclosure and Additional Reasons ("Motion to Reconsider"), filed on May 25, 2011. Defendant's Motion to Reconsider seeks to alter or amend this Court's Order Denying Defendant's Motion to Set Aside Sale (the "Order") filed on April 29, 2011. I find that Defendant's Motion to Reconsider was timely filed and served, and thus properly before me.

A hearing was held on Defendant's Motion to Reconsider on August 24, 2011. Defendant appeared through her counsel, Susan Ingles, Esq. Plaintiff JPMorgan Chase Bank, National Association ("Plaintiff"), appeared through its counsel, Mary M. Caskey, Esq.

For the reasons explained below, the Court denies Defendant's Motion to Reconsider.

mr#1

Columbia: 1597400 v.5

FINDINGS OF FACT

The following findings of fact are based on the testimony of Plaintiff's witness, Charles Herndon, and Defendant, which was presented to me at the hearing on Defendant's Motion to Set Aside the Sale on March 14, 2011.

Plaintiff commenced this action on December 30, 2008, to collect a residential mortgage loan given to Defendant on January 30, 2001, which is secured by a mortgage on real property in Pickens County, South Carolina (the "Property"). The Defendant failed to respond to Plaintiff's Complaint and failed to appear at a final merits hearing on March 12, 2009. A Judgment of Foreclosure and Sale was issued on March 17, 2009, and the sale of the Property was scheduled to occur on April 6, 2009.

Although Defendant did not appear in the case or attend any hearings, immediately prior to the scheduled foreclosure sale, Defendant contacted Chase Home Finance, LLC ("Chase"), the servicer of Defendant's loan, to request a loan modification and that the foreclosure sale be postponed. Although under no obligation to do so, Plaintiff postponed the foreclosure sale, and to assist Defendant, Chase extended a trial period plan ("Trial Plan"), under the Making Home Affordable Home Affordable Modification Program ("HAMP"), in which Chase is a participant. Defendant accepted the terms of the Trial Plan, but by her own admission, she failed to timely make all of the payments required under the Trial Plan.

In March 2010, Plaintiff notified Defendant that her loan was not eligible for modification. In accordance with the Supreme Court's May 4, 2009, and May 22, 2009, orders concerning HAMP ("HAMP Orders"), Plaintiff's counsel served and filed an

Affidavit on May 17, 2010, stating that the Defendant was not eligible for a modification under HAMP.

Even though Defendant's loan was not eligible for a modification under HAMP, Chase continued to work with Defendant to reach a workout agreement for her loan, but due to her lack of income, Chase was unable to offer her a permanent solution. As a result, Plaintiff moved forward with its foreclosure, and its attorneys filed an Affidavit in Support of Supplemental Judgment dated June 21, 2010, referencing the loss mitigation efforts and detailing the interest and fees that had accrued since the original foreclosure order was entered in March 2009. A second foreclosure sale was scheduled for August 2, 2010.

Immediately prior to the second scheduled foreclosure sale, Defendant again requested that the sale be postponed. Plaintiff postponed the sale and Chase extended to Defendant a three month forbearance for June, July, and August 2010, the purpose of which, by Defendant's own admission, was to allow her to resubmit another loan modification application based on a change in her income. However, Chase determined it was still unable to offer Defendant a permanent loan modification and notified Defendant of its decision by letter dated August 19, 2010. Chase later provided Defendant with additional and detailed information about why her loan was not eligible for a loan modification.

After notifying Defendant that she was ineligible for a loan modification, Plaintiff proceeded with its foreclosure action, and its counsel filed an Affidavit in Support of Second Supplemental Judgment on August 20, 2010, again referencing Plaintiff's loss mitigation efforts, and detailing the interest and fees that had accrued since the

supplemental foreclosure order was entered in June 2010. A third foreclosure sale was scheduled for September 7, 2010.

Just as she had twice before, immediately prior to the third scheduled foreclosure sale, Defendant again asked Chase to reconsider her for a loan modification and postpone the sale. Between August 25, 2010, and August 31, 2010, Chase communicated with Defendant concerning her request for a loan modification and provided her with a detailed list of information it needed in order to consider her for a loan modification. Chase specifically informed Defendant that it would not request approval to postpone the foreclosure until all of the requested information was received.

On September 1, 2010—four business days prior to the third scheduled foreclosure sale on September 7, 2010—Defendant provided Chase with the missing documentation required to consider her request for a loan modification. The following day, Chase informed Defendant that her loan modification application was under review and that it had requested that the foreclosure sale be postponed, but that the request had not yet been approved. Any postponement of the foreclosure action required approval from the Federal National Mortgage Association, the investor on the loan. On September 4, 2010, Defendant contacted Chase to learn of the status of her modification request, and Chase specifically informed her that the modification request was under review, but that the foreclosure sale had not been postponed. The foreclosure sale occurred as scheduled, and the Property was sold on September 7, 2010. Chase later informed Defendant that her loan was not eligible for a modification under HAMP because Defendant had failed to complete a HAMP Trial Plan.

DISCUSSION

For the reasons explained below, I adhere to my previous ruling denying Defendant's Motion to Set Aside Sale. In her Motion to Reconsider, Defendant again alleges that Plaintiff committed fraud by promising her that the foreclosure sale would be cancelled, and that Plaintiff failed to comply with the Supreme Court's orders concerning HAMP. Defendant contends that this Court erred in denying her requests to have her default and all prior orders entered in this foreclosure action set aside, and to conduct discovery of Plaintiff's loss mitigation efforts with Defendant.

While the Defendant found herself in a difficult situation in trying to reinstate her delinquent loan, there is simply no evidence of fraud or misconduct by Plaintiff to warrant granting Defendant the relief she seeks. Instead, the evidence before me shows that despite no legal or contractual obligation to do so, Plaintiff postponed two foreclosure sales and worked with Defendant for seventeen months to try to modify Defendant's delinquent loan. After it exhausted its loss mitigation efforts and after the case had been pending for almost two years, Plaintiff determined it could not offer Defendant a permanent loan modification and properly moved forward with the sale of the Property.

I. Plaintiff's actions do not rise to the level of "fraud" under Rule 60(b)(3).

Having heard testimony from both parties in this action, I find that there is no evidence that the statement on which Defendant relies was false, much less fraudulent.

M^{#5}

The Defendant herself admitted numerous times during the hearing on her Motion that Plaintiff's representatives never told her that the sale had been postponed, but instead, only that a request to postpone the sale had been submitted for approval:

Ms. Caskey: Did anyone --so no one at the attorney's office ever told you that the foreclosure sale had been postponed, is that right?

Ms. Bradley: No.

Ms. Caskey: I think you testified earlier that no one at Chase told you that [the sale] had been postponed, right?

Ms. Bradley: Right.

Ms. Caskey: They just told you they requested it, correct?

Ms. Bradley: Right.

(Hrg. Tr. p. 64, ll. 1-10.) Defendant later confirmed her prior testimony:

Ms. Caskey: But no one had ever told you that [the sale] had been postponed.

Ms. Bradley: Correct.

(*Id.* at p. 79, ll. 17-21; *see also id.* at p. 30, ll. 15-18 ("And Jeanette had confirmed that the request had been postponed for the foreclosure sale had been submitted, but she didn't say what other actions had been taken"); *id.* at p. 31, ll. 20-21 ("they sent the postpone [sic], but they hadn't got a response or reply of whether or not if it had been or had not been [postponed]").) Defendant further acknowledged that she was never given any false information about the foreclosure sale. (*Id.* at p. 77, ll. 7-8 ("I didn't say I got incorrect information about the foreclosure sale.").)

Defendant's testimony corroborated that of Plaintiff's witness, Charles Herndon, who testified that Defendant was informed that a request to postpone the foreclosure sale was submitted for approval, but that no approval had been given, and thus the third scheduled foreclosure sale was never actually cancelled by Plaintiff.

Under South Carolina law, the statement on which Defendant relies—that Plaintiff's representatives had requested approval to cancel or postpone the foreclosure sale—does not amount to fraud because there is no evidence that the statement is false. It is undisputed that Chase requested approval to postpone the sale and did not receive the approval.

Further, an allegedly fraudulent representation "must relate to a present or pre-existing fact and it cannot ordinarily be based upon an unfulfilled promise to perform in the future or statements as to future events." *Bishop Logging Co. v. John Deere Indus. Equip. Co.*, 317 S.C. 520, 527, 455 S.E.2d 183, 187 (1995). "As a general rule, fraud cannot be predicated on a statement that constitutes an expression of an intention." *Osborn v. Univ. Med. Assocs.*, 278 F. Supp. 2d 720, 732 (D.S.C. 2003). Because the statement on which Defendant relies concerns an intent and a future event—the possible postponement of a foreclosure sale scheduled in the future—it does not constitute fraud.

II. Plaintiff's actions do not rise to the level of "misconduct" under Rule 60(b)(3).

Defendant also claims that "failures of communication" between Plaintiff and Defendant concerning the loan modification process constitute misconduct under Rule 60(b)(3). However, only misconduct amounting to "extrinsic fraud" justifies setting aside a final judgment under Rule 60(b)(3). *Chewning v. Ford Motor Co.*, 354 S.C. 72, 80, 579 S.E.2d 605, 610 (2003).

Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action."

Id. (quoting *Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)) (emphasis added).

In this case, none of Plaintiff's actions prevented Defendant from "fully exhibiting and trying [her] case." Defendant candidly admitted that she was served with the complaint, but chose not to hire an attorney or respond to any of the pleadings. Instead, she sought advice from a nonlawyer and was advised not to answer the complaint or attend the hearing. Thus, Defendant did not litigate the issues in this case because she chose not to based on advice she herself solicited, and not as a result of any statements made or actions by Plaintiff.

Defendant also claims that Plaintiff is guilty of misconduct under Rule 60(b)(3) because Plaintiff failed to properly consider her for a permanent loan modification. Defendant presented no such evidence. But, even if true, Plaintiff's actions did not affect Defendant's ability to adjudicate the issues in the foreclosure action. The foreclosure hearing occurred on March 12, 2009, which was 17 months before Defendant's last request for a loan modification on August 31, 2010. It is impossible that Plaintiff's actions in August 2010 could have affected Defendant's ability to fully litigate the matter before the Court in March 2009. Thus, Plaintiff's decision not to offer Defendant a permanent loan modification does not amount to misconduct under Rule 60(b)(3), and does not provide a basis to set aside the September 7th foreclosure sale.

III. The forbearance agreement that ended on August 31, 2010, did not prevent the September 7th foreclosure sale.

Defendant seeks a reconsideration of the ruling that a three-month forbearance period ended on August 31, 2010, and did not affect Plaintiff's right to move forward

with the foreclosure sale. Defendant testified that the purpose of the three-month forbearance was to allow her to resubmit an application for a loan modification, and to that end, Plaintiff postponed a foreclosure sale scheduled for August 2, 2010. Defendant admitted that after Chase received her application, she was notified that she was not eligible for a modification by letter dated August 19, 2010. As a result, the undisputed evidence before me shows that as of August 31, 2010, when the forbearance period ended, Defendant had been considered and denied for a loan modification. Thus, I find there was no reason that the forbearance agreement should have prevented the foreclosure sale.

IV. Defendant has not been denied due process at any time during the course of this foreclosure action.

Defendant claims a due process right to challenge the denial of her application for a loan modification following each denial, including after Plaintiff's letter dated August 19, 2010. However, Defendant has failed to show a deprivation of a protected liberty or property interest, which is a prerequisite to prevail on a due process claim. *See Steffens v. American Home Mortgage Servicing, Inc.*, 2011 U.S. Dist. LEXIS 26709 (D.S.C. March 15, 2011).

In *Steffens v. American Home Mortgage Servicing*, the District Court of South Carolina addressed an almost identical due process claim to the one Defendant presents here. In *Steffens*, the plaintiff alleged that she had "a protected property interest in a process of decision-making that complies with Treasury Department rules" concerning HAMP. *Id.* (internal cites omitted). The District Court of South Carolina expressly rejected the plaintiff's due process claims, holding that HAMP does not create a property

mt#9

interest in permanent loan modifications for borrowers. *Id.* at *7. The district court emphasized that "a protected property interest arises if a person has more than an abstract need or desire for [a benefit.] He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Id.* at *6 (quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972)). "When a statute or policy grants to the decisionmaker discretionary authority in its implementation, a protected property interest is not created." *Id.* Noting that HAMP does not create a private right of action, and that the compliance authority for HAMP is delegated solely to Freddie Mac, the district court held that HAMP does not create a property interest in permanent loan modifications for borrowers. *Id.* at *7; see also *Williams v. Geithner*, 2009 U.S. Dist. LEXIS 104096, at *6 (D. Minn. Nov. 9, 2009) (determining that the HAMP regulations "did not intend to create a property interest in loan modifications for mortgages in default," and thus finding no likelihood of success on the merits of plaintiffs' due process claim).

I find that the Defendant has no protected property interest in a loan modification or due process right to challenge the modification process in order to prevent foreclosure.

V. The Supreme Court's Administrative Order dated May 2, 2011, does not apply to this case.

In her Motion to Reconsider, Defendant argues that the Supreme Court's Administrative Order dated May 2, 2011 ("2011 Administrative Order"), requires the Court to reconsider its Order and entitles Defendant to the relief she seeks from this foreclosure action. However, I find that the 2011 Administrative Order does not impact this case at all. The 2011 Administrative Order expressly provides that it only applies to

actions pending on May 9, 2011, or actions filed after May 9, 2011. The foreclosure sale in this case occurred on September 7, 2010—eight months before the effective date of the 2011 Administrative Order—so this case is not subject to the 2011 Administrative Order.

VI. Defendant is simply not entitled to any of the remaining relief requested in her Motion to Set Aside the Sale.

In addition to asking the Court to set aside the September 7th foreclosure sale, Defendant requested that all prior orders be set aside, including the order of default judgment, so that she can file an answer and counterclaim. Alternatively, Defendant requested that any eviction be stayed for 90 days to allow for discovery on the loan modification process. For the reasons set forth below, there is no basis for any of the relief Defendant seeks and her request is denied.

a. Defendant withdrew her request to be relieved from default and for leave to file an answer and counterclaim.

Paragraph 1 of Defendant's Motion to Set Aside Sale requests "[t]o alter and amend the written decision on her Motion to Stay Further Action, Set Aside Entry to Default, and allow Defendant to answer and assert counterclaims." However, at the hearing held on March 14, 2011, counsel for Defendant stated that paragraph 1 of the Motion to Set Aside Sale was "a mistake" and that Defendant was not seeking to be relieved from default. Previously, Defendant never filed any motion to set aside the entry of default in this case, so I find that Defendant never properly requested that she be relieved from default and granted leave to file a responsive pleading.

b. Defendant withdrew her request to be relieved from default and for leave to file an answer and counterclaim.

Even if Defendant had properly requested relief from default, I find that she failed to make a showing why the order of default should be set aside. Rule 60(b), SCRCP,

governs motions for relief from a default judgment and requires a timely motion and a showing of mistake, inadvertence, or excusable neglect or other grounds under that rule, and generally a meritorious defense. *Sundown Operating Co. v. Intedger Indus.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009) ("Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c)."). The rigorous standard under Rule 60(b) is intended to "make it more difficult for a party to avoid default once the court has entered a judgment, which carries greater finality." *Id.* at 608, 681 S.E.2d at 889.

In this case, Defendant has not offered any evidence whatsoever as to why the default judgment entered on March 17, 2009, should be set aside. She admits receiving the foreclosure complaint and notice of the foreclosure hearing, and admits that she intentionally chose not to appear based on advice she had solicited from a nonlawyer. Further, Defendant did not offer any evidence of a meritorious defense to the foreclosure action. It is undisputed that Defendant was in default under the terms of the loan documents when the foreclosure action was filed, and that she is currently due for the monthly payment due on October 1, 2008. Further, Defendant's only claim against Plaintiff is that Plaintiff failed to permanently modify Defendant's loan under HAMP, which is not a viable cause of action. See *Steffens v. American Home Mortgage Servicing, Inc.*, 2011 U.S. Dist. LEXIS 26709 (D.S.C. March 15, 2011) (holding that HAMP does not create a private right of action).

Because Defendant has not made a timely request or showing to be relieved from default, her request is denied.

c. Due to her default, Defendant waived any right to object to the merits of the foreclosure action.

Defendant's default results in the admission of the well-pleaded facts of the complaint and waives all defenses not previously asserted. *Harbor Island Owner's Ass'n v. Preferred Island Properties, Inc.*, 369 S.C. 540, 633 S.E.2d 497 (2006); *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978); *State v. LoveShop, Ltd.*, 286 S.C. 486, 334 S.E.2d 528 (Ct. App. 1985). Although Defendant has attempted to raise defenses to Plaintiff's right to foreclose, under well-settled law, Defendant waived those defenses by intentionally failing to timely respond to Plaintiff's Complaint.

d. Defendant has failed to provide any basis for the Court to set aside the orders concerning the amount of the debt.

In addition to seeking reconsideration of this Court's Order dated April 25, 2011, which denied Defendant relief from the Court's Order Confirming the Sale, dated September 22, 2010, Defendant seeks to have this Court's orders dated March 17, 2009, June 25, 2010, and August 20, 2010, set aside. However, each of the orders was entered after Plaintiff's negotiations for a loss mitigation workout with Defendant failed and were entered solely for the purpose of updating the amount due on the loan as a result of accrual of interest and other charges. Defendant did not present any evidence that any of the amounts or information in the orders was incorrect, so there is no basis for the Court to set any of those orders aside, and Defendant's request is denied.

e. Defendant is not entitled to a stay for post-foreclosure sale discovery.

There is no basis for Defendant's request to conduct discovery with Plaintiff to obtain information about Plaintiff's decision not to offer Defendant a loan modification. Neither the South Carolina Rules of Civil Procedure nor the Supreme Court's HAMP

mt#13

Orders provide for discovery after a foreclosure merits hearing. *See* Rule 26, SCRCF (discovery only available for "relevant" matters in a "pending" action). Defendant has already waived her rights to raise any defenses to the foreclosure action and a claim under HAMP is not a viable claim or defense to the foreclosure action. As a result, I find there is no evidence "relevant to the subject matter" that could be discovered in post-foreclosure sale discovery and no basis for the Court to grant Defendant such relief.

VII. Plaintiff complied with the Supreme Court's HAMP Orders.

The Supreme Court's HAMP Orders provide that once a lender files an affidavit stating that it has complied with the HAMP Orders, a borrower has ten days to file a counter affidavit. Defendant candidly admitted that after receiving Plaintiff's Affidavit dated May 17, 2010, which states that Plaintiff had complied with the HAMP Orders, Defendant did not file a counter affidavit challenging Plaintiff's compliance. Thus, there is no basis to reconsider my ruling that Plaintiff complied with the Supreme Court's HAMP Orders.

VIII. Plaintiff properly denied Defendant's request for a loan modification.

Defendant claims that she was entitled to a permanent loan modification because she made eight payments under the Trial Plan. However the terms of the Trial Plan signed by Defendant are clear and unmistakable: the Trial Plan lasts for three months and requires the borrower to make three payments on time. By her own admission, Defendant failed to make the first three payments on time, which made her ineligible for a permanent modification. Although she testified that she continued to tender payments to Plaintiff from October 2009, to April 2010, the HAMP Trial Plan terminated when Defendant failed to make the full amount of the payments on time. Thus, I find there is

no evidence to support Defendant's claim that she was entitled to a permanent loan modification.

IX. Plaintiff had no duty to carry out any "modification obligation" prior to filing suit.

Defendant contends that "[t]he Court failed to address the Plaintiff's failure to carry out its modification obligation owed under the [May 2009 Administrative Order from the Supreme Court] before pursuing the foreclosure suit." However, Defendant cites no authority requiring Plaintiff to offer a loan modification prior to filing a foreclosure action. This action was filed on December 8, 2008, and the Supreme Court's HAMP Orders were not issued until May 4, 2009, and May 22, 2009, respectively. The HAMP Orders required that Plaintiff, as the lender in a pending action as of May 4, 2009, file an affidavit as described above, but did not contain any prerequisites with which Plaintiff must comply in order to bring the foreclosure action. I find that Plaintiff complied with all necessary prerequisites before filing the foreclosure action.

X. Plaintiff is not required to show prejudice.

Defendant claims that Plaintiff failed to produce evidence that it would be prejudiced if the sale is set aside, but Plaintiff bears no such burden. Defendant, as the movant under Rule 60(b), "has the burden of presenting evidence proving the facts essential to entitle her to relief," including that Plaintiff would not be prejudiced if Defendant is granted the relief she seeks. *BB&T v. Taylor*, 369 S.C. 548, 552, 663 S.E.2d 501, 503 (2006); *see also Rodriguez v. Gutierrez*, 391 S.C. 323, 705 S.E.2d 94, 99 (Ct. App. 2011).

mt#15

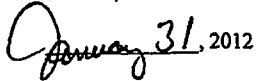
Moreover, the evidence in the record clearly shows Plaintiff would be prejudiced if Defendant is granted the relief she seeks. Plaintiff's witness Charles Herndon testified that Plaintiff worked with Defendant for almost two years to avoid foreclosure, but ultimately was not able to offer Defendant a loan modification. Mr. Herndon also testified that Plaintiff was the successful bidder of the Property, and that it assigned its bid to the Federal National Mortgage Association. Plaintiff would thus be severely prejudiced if the Court were to set aside the foreclosure sale or any of the prior orders in this case because Plaintiff would lose the time and money already expended to complete the foreclosure and the transfer of the Property to the Federal National Mortgage Association would have to be undone. Defendant has not offered any evidence to show that Plaintiff would not suffer this prejudice, and thus I find that she thus failed to meet her burden under Rule 60(b), SCRPC.

IT IS THEREFORE ORDERED that Defendant's Motion to Reconsider is **DENIED.**

AND IT IS SO ORDERED.


The Honorable R. Murray Hughes
Special Referee

Pickens, South Carolina

 January 31, 2012

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

CLEAR OF MORTGAGE
PICKENS COUNTY
SOUTH CAROLINA

2008 DEC 30

BOOKET NO. 55

2008-CP-39-2120

ALL PENDING
Deficiency Judgment Waived

(011671-01281)

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Vanessa Y. Bradley to Schmidt Mortgage Corporation dated January 30, 2001, and recorded in the Office of the RMC/ROD for Pickens County on January 31, 2001, in Mortgage Book 1594 at Page 53. This mortgage was subsequently assigned to Fleet National Bank by assignment dated January 30, 2001 and recorded January 31, 2001 in Book 1594 at Page 69; subsequently assigned to the Plaintiff herein. This mortgage is subject to a Loan Modification Agreement dated April 11, 2005.

The premises covered and affected by the said mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, described as follows:

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens, being known and designated as Tract Two-A (2-A), containing 0.46 of an acre, more or less, on a plat prepared by Michael L. Henderson, PS #6946, dated October 19, 2000 and recorded in Plat Book 400 at Page 17B, records of Pickens County, South Carolina, reference to which is invited for a more complete and accurate description.

This being the same property conveyed to Vanessa Y. Bradley by deed of Southern Homes & Remodeling, Inc., dated October 26, 2000 and recorded October 27, 2000 in Book 575 at Page 72 in the Office of the Register of Deeds for Pickens County.

Property Address:

Central, SC 29630

TMS# 4065-07-69-5698

Kevin T Hardy

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eva Moredock Sluskey (SC Bar # 5300) Mary K. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) Timothy B. Killen (SC Bar #72501)
William S. Kochler (SC Bar #74935) Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205) Brandon K. Cooper (SC Bar # 77622)
John P. Fetter (SC Bar # 77460) Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
December 24, 2008

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Vanessa Y. Bradley,

CLEAR OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Plaintiff(s)

7603 DEC 30 P 1:36

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVER SHEET

2008-CP-39-2120

Defendant(s)

Submitted by: Samuel C. Wilkins (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubla (SC Bar #16727), Ellie C. Floyd (SC Bar #68635), Michael P. Morris (SC Bar #73360), Eve Morelock Stacey (SC Bar #5300), Mary R. Powers (SC Bar #16534), Robert P. Davis (SC Bar #74030), Timothy R. Killen (SC Bar #72501), William S. Koehler (SC Bar #74935), Kevin T. Hardy (SC Bar #76015), Benjamin J. Powell (SC Bar #77205), Brandon K. Cooper (SC Bar #77622), John P. Feiner (SC Bar #77460), Kelsey K. Brookbank (SC Bar #77519)
Attorneys for the Plaintiff
011671-01281

Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444
(803) 343-7013 - Fax
info@rtt-law.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional	Torts - Personal Injury	Real Property
☐ Construction (100)	☐ Denial Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☒ Foreclosure (420)
☐ General (130)	☐ Notice/File Med Mal (230)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	☐ Other (299)	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
-
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstatement Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture-Consent Order (850)	☐ SCJOT (950)
	☐ Other (799)	☐ Other (899)	☐ Worker's Comp (960)
-
Special/Complex /Other			
☐ Environmental (600)	☐ Pharmaceuticals (630)		☐ Zoning Board (970)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)		☐ Administrative Law Judge (980)
☐ Medical (620)	☐ Out-of-State Deposition (650)		☐ Public Service Commission (990)
☐ Other (699)	☐ Sexual Predator (510)		☐ Employment Security Comm (991)
			☐ Other (999)

Submitting Party Signature:

Kevin T Hardy

Date:

12/29/08

Note: Privileged civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Privileged Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

PICKENS COUNTY

JPMorgan Chase Bank, National Association,
Plaintiff

vs.

Vanessa Y. Bradley;
Defendant.

IN THE CIRCUIT COURT FOR THE
THIRTEENTH

CLERK OF JUDICIAL CIRCUIT
PICKENS COUNTY
SOUTH CAROLINA

2008 DEC 30 CERTIFICATE OF EXEMPTION
FROM ADR

DOCKET NO.

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☒ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

Levon T. Hardy
Plaintiff/Attorney(s) for Plaintiff(s)

Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar # 68635), Michael P. Morris (SC Bar #73560), Eve Morelock Steacy (SC Bar # 5300), Mary R. Powers (SC Bar# 16534), Robert P. Davis (SC Bar # 74030), Timothy B. Killen (SC Bar #72501), William S. Koehler (SC Bar# 74923), Kevin T. Hardy (SC Bar #76015), Benjamin J. Powell (SC Bar #77205), Brandon K. Cooper (SC Bar # 77622), John P. Famer (SC Bar # 77460), Kelsey K. Brockbank (SC Bar # 77519)

Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444

Defendant/Attorney(s) for Defendant(s)

Date: December 24, 2008

011671-01281

SCCA / 234 (5/04)

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2009 DEC 30

DOCKET NO.

P 1:36

2009-CP-39-2170

SUMMONS AND NOTICES
(NON-JURY)
FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Waived

(011671-01281)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by JPMorgan Chase Bank, National Association.

Kevin T Hardy
Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Carley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) Timothy B. Killen (SC Bar #72501)
William S. Koehler (SC Bar# 74935) Kevin T. Hardy (SC Bar #76015) ✓
Benjamin J. Powell (SC Bar #77205) Brandon K. Cooper (SC Bar # 77622)
John P. Foner (SC Bar # 77460) Kelsey K. Bruckhank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
December 24, 2008

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley,

Defendant(s).

CLEAR OF COURT
PICKENS COUNTY
SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

2008 DEC 30 P 1:36
DOCKET NO.

2008-CP-39-2120

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE *
Deficiency Judgment Waived

(011671-01281)

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Pickens County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.
3. Plaintiff is the owner and holder of the Note and Mortgage described hereafter and the subject of this action.
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.
6. Heretofore, on or about January 30, 2001, Vanessa Y. Bradley made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$84,200.00, payable in monthly installments.
7. In order to secure the payment of the Note according to the terms and conditions thereof, Vanessa Y. Bradley made, executed and delivered unto Schmidt Mortgage Corporation a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens, being known and designated as Tract Two-A (2-A), containing 0.46 of an acre, more or less, on a plat prepared by Michael L. Henderson, PS #6946, dated October 19, 2000 and recorded in Plat Book 400 at Page 17B, records of Pickens County, South Carolina, reference to which is invited for a more complete and accurate description.

This being the same property conveyed to Vanessa Y. Bradley by deed of Southern Homes & Remodeling, Inc., dated October 26, 2000 and recorded October 27, 2000 in Book 575 at Page 72 in the Office of the Register of Deeds for Pickens County.

Property Address:

Central, SC 29630

TMS# 4065-07-69-5698

8. The Mortgage was signed, witnessed and probated January 30, 2001; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Pickens County on January 31, 2001, in Mortgage Book 1594 at Page 53. This mortgage was subsequently assigned to Fleet National Bank by assignment dated January 30, 2001 and recorded January 31, 2001 in Book 1594 at Page 69; subsequently assigned to the Plaintiff herein. This mortgage is subject to a Loan Modification Agreement dated April 11, 2005.

9. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

10. Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable Defendant(s) prior to the commencement of this action.

11. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for August 1, 2008, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of August 1, 2008, the principal sum of \$94,373.63, with interest from July 1, 2008, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

12. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

13. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

14. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the

amount of the debt.

15. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

16. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. None.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(3) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

First, to the costs and expenses of the within action and sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Pickens County, South Carolina, to

place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(7) Order such other and further relief as may be just and proper.

Kevin T Hardy

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)	Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453)	Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635)	Michael P. Morris (SC Bar #73560)
Eve Morelock Stacey (SC Bar # 5300)	Mury R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030)	Timothy B. Killen (SC Bar #72501)
William S. Kochler (SC Bar# 74935)	Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205)	Brandon K. Cooper (SC Bar # 77622)
John P. Feiner (SC Bar # 77460)	Kelsey K. Brockbunk (SC Bar # 77519)
220 Executive Center Drive, Suite 109	Post Office Box 100200 (29202)
Columbia, SC 29210	(803) 744-4444

Columbia, South Carolina
December 24, 2008

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2008 DEC 30 P 1:36

NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT
15 U.S.C. Section 1692, As Amended

1. The amount of the debt as of August 1, 2008, is the principal sum of \$94,373.63, with interest from July 1, 2008, advances, late charges, and the costs and disbursements of this action, including attorney's fees.
2. JPMorgan Chase Bank, National Association is the Creditor to whom the debt is owed.
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the Debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt, and a copy of the verification will be mailed to the Debtor by the Creditor's law firm.
5. If the Creditor named in this notice is not the original Creditor, and if you make a request to the Creditor's law firm within the thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Rogers Townsend and Thomas, PC, Post Office Box 100200, Columbia, South Carolina 29202-3200.
7. This notice should not be construed as a thirty (30) grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

ProVest, LLC - Tampa (Rome)
202 S. Rome Suite 150 Tampa, FL 33606



Affidavit of Service

DOCKET NUMBER: 2008-CP-37-2120
COURT OF COMMON PLEAS FOR PICKENS COUNTY, SC
CASE STYLE:
PLAINTIFF

FILE NUMBER: 011671-01281

JP Morgan Chase Bank, National Association, et seq.
vs.
DEFENDANT Vanessa Y. Bradley, et al.
SERVICE OF PROCESS ON: VANESSA Y. BRADLEY

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(X) (SUBSTITUTE) By leaving a copy at dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

PLACE OF SERVICE: [Redacted]
Central, SC 29630

Is the place of service the dwelling house or usual place of abode for the party being served? () Yes () No

DATE OF SERVICE: 12/30/2008 TIME OF SERVICE: 7:35 PM

TYPE OF DOCUMENTS: () SUMMONS & COMPLAINT (X) IS PENDENS
(X) OTHER: SUMMONS AND NOTICES AND COMPLAINT

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:

Name: DONALD BRADLEY; Relationship/Title: BROTHER
Sex: MALE; Race: BLACK; Facial Hair: None
Age (prox.): 41-45; Height (prox.): 6'3"; Weight (prox.): 240

MARITAL STATUS: (X) Single () Married () Separated () Unknown

MILITARY STATUS: PER MY INVESTIGATION, SAID PERSON
() WAS (X) WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE () UNKNOWN
MILITARY BRANCH, IF APPLICABLE:

IS THE SUBJECT PROPERTY A () YES (X) NO () MOBILE HOME VIN NOT VISIBLE
MOBILE HOME? VIN #:

COMMENTS:

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: Cindy Moore

Signature of Process Server

DECEMBER 31, 2008

Notary Public: Sworn and subscribed before me this 31 day of DECEMBER, in the year of 2008

() Personally known to me or () identified by the following document:

Type:

Number/Reference:

Jan Pat Wake
Notary Public (Legal Signature)

Notary Public for South Carolina Commission Expiration: 03/03/13



ROGERS TOWNSEND & THOMAS, PC
ATTORNEYS AND COUNSELORS AT LAW

tel 803-744-4444 mail PO Box 100200 (29202)
fax 803-343-7017 220 Executive Center Drive, Suite 109
web www.rtt-law.com Columbia, South Carolina 29210

February 19, 2009

Vanessa Y. Bradley
[REDACTED]
Central, SC 29630

Occupant
[REDACTED]
Central, SC 29630

Re: JPMorgan Chase Bank, National Association vs. Vanessa Bradley
Case No. 08-CP-39-2120; Pickens County
Our File No. 011671-01281

Dear Sir or Madam:

A foreclosure hearing has been set in the above-referenced matter for March 12, 2009 at 02:00 PM before R. Murray Hughes, Special Referee for Pickens County, at:
4606 Moorefield Memorial Highway
Pickens, SC 29671

Pursuant to S.C. Code Ann. § 14-11-110 (as amended), the Plaintiff's attorney will submit written testimony on behalf of the Plaintiff at the hearing listed above.

Sincerely,

Paralegal for:

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

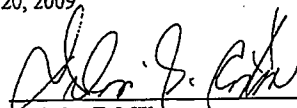
IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

CERTIFICATE OF MAILING
Deficiency Judgment Waived

(011671-01281)

I am an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have mailed a copy of the Notice of Hearing, which is attached hereto and incorporated herein by reference, dated February 19, 2009 and in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to each of the Addressees, listed on the Notice of Hearing and in separate envelopes, at each of their respective addresses shown thereon, this February 20, 2009.



Christina E. Miller
Deloris G. Cotton

NOTICE OF SALE

BY VIRTUE of a decree heretofore granted in the case of: JPMorgan Chase Bank, National Association vs. Vanessa Y. Bradley; , C/A No. 08-CP-39-2120, The following property will be sold by R. Murray Hughes as Special Referee, on April 6, 2009, at 11:00 AM at the Pickens County Courthouse to the highest bidder:

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens, being known and designated as Tract Two-A (2-A), containing 0.46 of an acre, more or less, on a plat prepared by Michael L. Henderson, PS #6946, dated October 19, 2000 and recorded in Plat Book 400 at Page 17B, records of Pickens County, South Carolina, reference to which is invited for a more complete and accurate description.

Derivation: Book 575; Page 72

~~Tract Two-A~~ Central, SC 29630

4065-07-69-5698

SUBJECT TO ASSESSMENTS, PICKENS AD VALOREM TAXES, EASEMENTS AND/OR, RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

TERMS OF SALE: A 5% cash deposit is required. The deposit will be applied towards the purchase price unless the bidder defaults, in which case the deposit will be forfeited. If the successful bidder fails, or refuses, to make the required deposit on the day of sale or fails or refuses to comply with the bid within 20 days, then the property will be resold at the bidder's risk. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. The successful bidder will be required to pay interest on the amount of the bid from date of sale to date of compliance with the bid at the rate of 6.875% per annum. For complete terms of sale, see Judgment of Foreclosure and Sale filed with the Pickens County Clerk of Court at C/A #08-CP-39-2120.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search prior to the foreclosure sale date.

Samuel C. Waters, Esq.
Attorney for Plaintiff
P.O. Box 100200
Columbia, SC 29202-3200
(803) 744-4444
011671-01281

Website: www.rtt-law.com (see link to Resources/Foreclosure Sales)


R. Murray Hughes
Special Referee for
Pickens County

2009 MAR 17 A 10:42
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

NOTICE TO PRINTER: Please insert:

____ Once during week commencing _____
____ Once during week commencing _____
____ Once during week commencing _____

NOTICE OF SALE

BY VIRTUE of a decree heretofore granted in the case of: JPMorgan Chase Bank, National Association vs. Vanessa Y. Bradley; , C/A No. 08-CP-39-2120, The following property will be sold by R. Murray Hughes as Special Referee, on August 2, 2010, at 11:00 AM at the Pickens County Courthouse to the highest bidder

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens, being known and designated as Tract Two-A (2-A), containing 0.46 of an acre, more or less, on a plat prepared by Michael L. Henderson, PS #6946, dated October 19, 2000 and recorded in Plat Book 400 at Page 17B, records of Pickens County, South Carolina, reference to which is invited for a more complete and accurate description.

Book 575; Page 72

██████████, Central, SC 29630

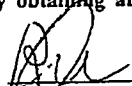
4065-07-69-5698

SUBJECT TO ASSESSMENTS, PICKENS AD VALOREM TAXES, EASEMENTS AND/OR, RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

TERMS OF SALE: A 5% cash deposit is required. The deposit will be applied towards the purchase price unless the bidder defaults, in which case the deposit will be forfeited. If the successful bidder fails, or refuses, to make the required deposit, or comply with his bid within 20 days, then the property will be resold at his risk. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. The successful bidder will be required to pay interest on the amount of the bid from date of sale to date of compliance with the bid at the rate of 6.875% per annum. For complete terms of sale, see Judgment of Foreclosure and Sale filed with the Pickens County Clerk of Court at C/A #08-CP-39-2120.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search prior to the foreclosure sale date.

Samuel C. Waters, Esq.
Attorney for Plaintiff
P.O. Box 100200
Columbia, SC 29202-3200
(803) 744-4444
011671-01281


R. Murray Hughes
Special Referee for
Pickens County

NOTICE TO PRINTER: Please insert:

____ Once during week commencing _____
____ Once during week commencing _____
____ Once during week commencing _____

NOTICE OF SALE

BY VIRTUE of a decree heretofore granted in the case of: JPMorgan Chase Bank, National Association vs. Vanessa Y. Bradley, , C/A No. 08-CP-39-2125, The following property will be sold by R. Murray Hughes as Special Referee, on September 7, 2010, at 11:00 AM at the Pickens County Courthouse to the highest bidder

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens, being known and designated as Tract Two-A (2-A), containing 0.46 of an acre, more or less, on a plat prepared by Michael L. Henderson, PS #6946, dated October 19, 2000 and recorded in Plat Book 400 at Page 17B, records of Pickens County, South Carolina, reference to which is invited for a more complete and accurate description.

Book 575; Page 72

~~08-CP-39-2125~~ Central, SC 29630

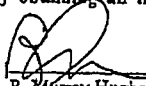
4065-07-69-5698

SUBJECT TO ASSESSMENTS, PICKENS AD VALOREM TAXES, EASEMENTS AND/OR, RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

TERMS OF SALE: A 5% cash deposit is required . The deposit will be applied towards the purchase price unless the bidder defaults, in which case the deposit will be forfeited. If the successful bidder fails, or refuses, to make the required deposit, or comply with his bid within 20 days, then the property will be resold at his risk. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. The successful bidder will be required to pay interest on the amount of the bid from date of sale to date of compliance with the bid at the rate of 6.875% per annum. For complete terms of sale, see Judgment of Foreclosure and Sale filed with the Pickens County Clerk of Court at C/A #08-CP-39-2120.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search prior to the foreclosure sale date.

Samuel C. Waters, Esq.
Attorney for Plaintiff
P.O. Box 100200
Columbia, SC 29202-3200
(803) 744-4444
011671-01281


R. Murray Hughes
Special Referee for
Pickens County

NOTICE TO PRINTER: Please insert:

____ Once during week commencing _____
____ Once during week commencing _____
____ Once during week commencing _____

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2010 AUG 20 A 8:56

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
2008-CP-39-2120

JP Morgan Chase Bank, National
Bank,

PLAINTIFF,

V.

Vanessa Y. Bradley,

DEFENDANT.

MOTION TO SET ASIDE SALE

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2009 SEP 20 A 11:10

NOTICE IS HEREBY GIVEN that the undersigned counsel for Defendant, Vanessa Y. Bradley, moves the Court for an Order, setting aside the sale and subsequent deed of the property in this case and staying and restraining further action by Plaintiff or the Court until full discovery and an evidentiary hearing can be had on the Defendant's eligibility for the Homes Affordable Modification Program.

The Defendant seeks the following relief:

1. To alter and amend the written decision on her Motion to Stay Further Action, Set aside Entry of Default and allow Defendant to answer and assert counterclaims, Vacate the Judgment of Foreclosure and Supplemental Orders, Discovery and an Evidentiary Hearing on Compliance with the Administrative Order of the South Carolina Supreme Court filed May 22, 2009;
2. An Order setting aside the sale and deed of the property to the Plaintiff on the basis of fraud;

3. An Order setting a conference and /or order for mediation to explore the Plaintiff's analysis of the loan herein under the Homes Affordable Modification Program (HAMP) and whether her trial modification should have been made permanent pursuant to that program and the regulations, guidelines and directives promulgated thereunder;
4. HAMP requires the Plaintiff to stop foreclosure when modification is still pending, and the Plaintiff represented to the Defendant repeatedly by telephone that modification was pending and the sale was put on hold. In addition, the Plaintiff represented to the Defendant in writing that the sale was put on hold. Since the sale was apparently not put on hold, this was fraud.
5. Defendant relied on the representations of Plaintiff as shown by her payment of the modified payment amount through August 2010. These were accepted by Plaintiff and the September payment was the first modified payment to be rejected.

This motion is made on the grounds that Plaintiff failed to properly review the Defendant for a permanent modification after she completed her trial modification period, prematurely continued the foreclosure before the HAMP process was completed, and failed to provide proper notice of their decision (if there was one) on permanent modification. Plaintiff is required to use reasonable efforts to remove all impediments to a permanent modification and to refrain from pursuing foreclosure until this has been done.

Though the sale should not have gone forward due to the HAMP status, the Plaintiff obtained Supplemental Orders and pursued the foreclosure sale. The Plaintiff or its servicer is obligated under its Participant Agreement and U.S. Treasury Supplemental Directives to offer a permanent modification or communicate to the borrower specifically why the trial modification cannot become permanent, this was not done. Since the sale went to the Plaintiff, it should be set aside so that the Court may inquire into the Plaintiff's fraud.

This motion is based on applicable statutory and case law and Defendant respectfully requests that the Court set aside the sale and/or any deed arising therefrom and allow at least a 90 day stay until a complete explanation of the Plaintiff's fraud can be inquired into and the failure to offer a permanent modification can be addressed by both parties. The S.C. Supreme Court's Administrative Order as well as an ever increasing body of federal law are designed to effect permanent modification of mortgages where, as here, the mortgagor has income to afford a modified payment, qualified for a trial modification and completes the trial modification.

WHEREFORE, Defendant requests this Court to grant this motion and order as follows:

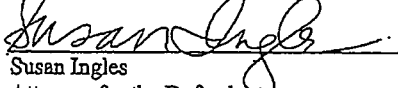
- A. That the sale of the property herein and any deed arising therefrom be set aside;
- B. That the Order and Supplemental Orders of Foreclosure be vacated and Defendant's default be set aside and the Defendant be allowed to file an Answer and Counterclaims;
- C. That further action in this matter be stayed for at least 90 days or until such time as the permanent modification opportunities have been properly afforded to the Defendant.
- D. That this Court order Plaintiff to supply Defendant with a sworn statement of the NPV values and of the specific facts showing that the loan is not eligible

for a permanent modification under the Making Home Affordable Modification Program and state the facts showing that the modification process specified by the Guidelines has been completed properly. This should include all assumptions and calculations.

E. Grant such other and further relief as the Court deems just and proper.

Date: 9-20-10
Greenville, SC

S.G. LEGAL SERVICES


Susan Ingles
Attorney for the Defendant
701 South Main Street
Greenville, SC 29601
(864)-679-3244 (phone)
(864)679-3260 (fax)

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JP Morgan Chase Bank, National Bank

☐ Plaintiff

v.

Vanessa Y. Bradley

☒ Defendant.

CLERK OF COURT
IN THE COURT OF COMMON PLEAS
PICKENS COUNTY
SOUTH CAROLINA
CASE NO.

2010 SEP 20 2008-CP-39-2120

MOTION INFORMATION FORM
AND COVER SHEET

Murray Hughes
878-2124

Plaintiff's Attorney: Kevin Hardy, Bar No. Address: Rogers Townsend & Thomas, P.O. Box 100200, Columbia, SC 29202 phone: 803-744-5219 fax: 803-343-7013 e-mail: other:	Defendant's Attorney: Susan Ingles, Bar No. 4577 Address: 701 South Main Street, Greenville, SC 29601 phone: 679-3244 fax: 679-3260 e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion Type

☒ Written motion attached

☒ Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

September 20, 2010
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:

☐ CONTESTED - AMOUNT DUE:

SCCA/233 (1/2003)

Fax:

Jun. 28. 2012 03:35pm: P006/009

STATE OF SOUTH CAROLINA CLERK OF COURT IN THE COURT OF COMMON PLEAS
PICKENS COUNTY 13TH JUDICIAL DISTRICT
COUNTY OF PICKENS SOUTH CAROLINA

200 SEP 23 P 3 24

JP Morgan Chase Bank, National Bank

Plaintiff,

vs.

CERTIFICATE OF MAIL
DOCKET NO. 2010-CP-39-2120
08

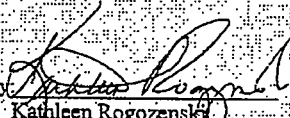
Vanessa Y. Bradley

Defendants.

I HEREBY CERTIFY that the Motion to Set Aside Sale, in the above-referenced matter, has been served by delivering the same to the Plaintiff(s) through their legal counsel Kevin Hardy, Esquire by U.S. First class mail requested, with the proper postage affixed to, on this 21st day of September, 2010 at the following addresses:

Kevin Hardy, Esquire
Rogers Townsend & Thomas, P.C.
P.O. Box 100200
Columbia, SC 29202

By:


Kathleen Rogozenski
South Carolina Legal Services
701 South Main Street
Greenville, SC 29601
854-679-3232

STATE OF SOUTH CAROLINA

IN COURT OF COMMON PLEAS

COUNTY OF PICKENS

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, N.A.,

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION TO SET ASIDE SALE

Vanessa Y. Bradley ("Defendant") submits this memorandum in support of her Motion to Set Aside Sale filed on September 20, 2010, with the Pickens Court of Common Pleas. The Defendant seeks an Order, setting aside the sale and subsequent deed of the property in this case and staying and restraining further action by Plaintiff or the Court until full discovery and an evidentiary hearing can be had on the Defendant's eligibility for the Homes Affordable Modification Program (HAMP). The motion further seeks that the default be set aside and that she be allowed to file responsive pleadings. The applicable HAMP rules are those contained in the Treasury Guidelines and Supplemental Directives issued beginning April 6, 2009 because the Defendant's Trial Period Plan was extended in June 2009. The subsequent superseding HMP Handbooks 1.0, 2.0 and 3.0 were not effective until after Chase evaluated Defendant's loan and extended a Trial Period Plan (TPP) to modify her loan under HAMP.

This motion is based on South Carolina Rule of Civil Procedure Rule 60(b)(3). That rule requires *"[o]n motion and upon such terms as are just, the court may relieve a party or his*

legal representative from a final judgment, order, or proceeding for the following reasons:"

"(3) fraud, misrepresentation, or other misconduct of an adverse party."

The fraud, misrepresentation and misconduct of the Plaintiff in this case can be summarized from the evidence into several categories as follows: -

1. Statements by the Plaintiff to Defendant that her home could not be sold while her loan was under review, yet proceeding with the sale of her home on September 7, 2010:
Tr. p. 17 line 20-p. 18 line 14 Amanda from Chase tells Bradley that Chase can't foreclose while she is in forbearance and while her modification is pending.
Tr. p. 22 lines 12-19 Sandra from Chase told Bradley that the September 7, 2010 foreclosure sale was on hold.
Tr. p. 29 lines 15-23 Sandra said they couldn't sell Bradley's home until the final review of her modification was completed and that would be 30-45 days (beyond the sale date of Sept. 7)
Tr. p. 30 line 21- p. 31 line 7 Jay from Chase said the house had not been sold on September 7, 2010.
Tr. p. 39 lines 6-16 Everyone she had talked to at Chase had said they cannot foreclose on your property while you are under review.
2. Statement in a HAMP denial letter dated August 19, 2010 based on insufficient Net Present Value (NPV) which stated that Defendant's home could not be sold for the 30 day period following the letter (on or before September 18, 2010).
3. The September 3, 2010 letter from Chase (Plaintiff's Exhibit 4) which induced Defendant not to act because it confirmed receipt of last info that Chase solicited from her (more than 7 days prior to sale) The application is deemed initiated when the initial request is received, here August 2, 2010, not the date final documentation is received.
4. Established pattern of being in charge of the conduct of the foreclosure lawsuit as well as simultaneous modification efforts. Upon revival of the long dormant foreclosure action, did nothing to apprise the Defendant of her due process rights, need to obtain a lawyer. No further hearings were noticed or held to inquire into the situation.
5. August 19, 2010 letter from Chase stated she was turned down for modification based on NPV but has 30 days to request NPV input information and house will not be sold during that time (This was false because they sold the house 19 days later on Sept. 7. The NPV inputs were requested by Defendant September 20 and sent by Chase October 5, 2010.

6. Actions in soliciting and receiving updated info indicated to Defendant that any sale of her home was on hold and were therefore misleading
7. Filed multiple affidavits that did not apprise the Special Referee of true state of modification efforts.
8. Told Defendant that they would not and could not pursue a foreclosure during the pendency of a forbearance or a modification review, yet pursued the foreclosure sale during both.

In the case at bar, the Plaintiff utterly failed to accord the Defendant her rights under HAMP and the S.C. Supreme Court Administrative Order on HAMP. The Plaintiff lulled the Defendant into a sense of comfort that they were working with her to modify her loan. But suddenly, after a long dormancy in the pending foreclosure lawsuit, and during a period of forbearance of loan payments given, the Plaintiff notified Defendant of a foreclosure sale of her property. A period of extending gestures of modification and mixed messages of whether the foreclosure could or would continue ensued.

A trial modification that had not been made permanent though paid for ten months was followed by a denial based on insufficient NPV while trial payments were still being made; and that was followed by another denial based on insufficient NPV; followed by a denial based on failure to make trial period payments that came after the September 7, 2010 foreclosure sale. None of these HAMP "decisions" were revealed in the various sworn statements that the Plaintiff presented to the Court beginning in May of 2010, though the Administrative Order required it.

The modification gestures, mixed messages, misrepresentations and failure to provide detailed information to the Court were followed by the sudden sale of her property with no hearing having been held for eighteen months. This sale occurred despite an August 19, 2010 letter from Chase stating that the home could not be sold for the next 30 days and verbal

assurances of the same from Chase employees up to and beyond the date the property was actually sold.

The Plaintiff would have the Court ignore the testimony of the Defendant and rely on an Affidavit summarizing, but not providing, servicer computer notes to sustain its fraudulent sale of the Defendant's home. The Plaintiff also asserts that to succeed in its motion under Rule 60(b)(3), the Defendant must have a meritorious private right of action under HAMP rather than a meritorious defense under our own Supreme Court's Administrative Order regarding rules foreclosing mortgagees must follow. The Defendant's defense must simply be one which is worthy of a hearing or judicial inquiry because it raised a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence. *McClurg v. Deaton* 380 S.C. 563; 671 S.E. 2d 87 (S.C. App. 2008). Such a defense is present here.

The following timeline setting forth the sequence of significant events beginning with the filing of the Complaint summarizes the fraud, misrepresentation and misconduct of the Plaintiff including their failure to timely file an Affidavit under the Supreme Court Administrative Order.¹

TIMELINE OF EVENTS

The following timeline of events is evidenced by the testimony of the Defendant Vanessa Bradley and not disputed by the Affidavit of Charles Herndon. Herndon is a Vice President of Chase Home Finance, LLC, the servicer of the Plaintiff's mortgage loan. The Affidavit is based

¹ Plaintiff highlights the failure of Defendant to respond to its "HAMP Affidavit". However, Plaintiff fails to mention that it did not adhere to the terms of the Administrative Order (AO). The AO required the Plaintiff to file its Affidavit by May 15, 2009. This was not done by the Plaintiff, therefore the foreclosure action was stayed by the terms of the order. There was no order lifting the stay in this case prior to the scheduling of the August 2 and September 7, 2010 sales. The AO further provides for dismissal of the foreclosure if the affidavit is not served within 90 days of May 22, 2009. This was not done by Plaintiff in the case at bar, as it filed an Affidavit on May 18, 2010.

solely on his summary of loan servicer computer notes rather than Mr. Herndon's own personal knowledge. The actual servicer notes were not provided by the Plaintiff.

December 30, 2008 Chase files Complaint for Foreclosure

January 2009 Bradley submits application for modification

Defendant submitted an application for a loan modification to Chase Home Finance, LLC ("Chase") the servicer of Defendant's loan. (Herndon Aff. ¶ 8). According to the Affidavit of Charles Herndon, Chase told Ms. Bradley that the review process would take about 8-10 weeks. (Herndon Aff. ¶ 8) Despite this representation, Chase continued to pursue the foreclosure lawsuit it had filed and a foreclosure sale was scheduled for April 6, 2009. Later, Chase agreed to postpone the foreclosure sale at Ms. Bradley's request as she was being reviewed for a modification.

January 2009 HAMP implemented by U.S. Treasury Department

March 17, 2009 Court issues Judgment of Foreclosure and Sale

April 6, 2009 First scheduled sale date

May 4, 2009 S.C. Supreme Court issues order to stay sales scheduled in April 2009

The S.C. Supreme Court issued its Administrative Order on the Making Home Affordable Program ("HMP") setting certain requirements of foreclosing mortgage lenders relative to HMP, most notably that homeowners be evaluated for HMP prior to foreclosure and that an Affidavit be filed in pending cases stating the specific facts relating to the evaluation of homeowners for HMP.

Chase did not file the Affidavit required by the Administrative Order.

May 22, 2009 S.C. Supreme Court issues superseding Administrative Order that is still current

EVENTS DURING HMP TRIAL PERIOD PLAN

June 2009

Chase extended a Trial Period Plan ("TPP") under HAMP, in which Chase is a participant. (Herndon Aff. ¶ 10; Plaintiff's Exhibit 1) According to the written TPP, plan included three monthly payments of \$517.29 beginning in July of 2009. Plaintiff made the three trial payments. Chase disputes that the final trial payment was made in full during September 2009 but provided no evidence of same other than the hearsay Affidavit of Charles Herndon (Herndon Aff. ¶ 11).

July 1, 2009

Effective date Defendant's Home Affordable
Modification Trial Period Plan (TPP) begins

(first payment due)

August 2009

Second month of TPP

August was last month for HAMP Affidavit to be filed for cases pending on May 4, 2009. Plaintiff did not file a HAMP Affidavit.

September 2009

Third month of TPP

October 2009-

March 2010

Chase continued to accept TPP payments from Defendant

Chase representative told Bradley to continue making her TPP payments and she did not tell her that she had failed the Trial Period Plan. Motion Hearing Tr. P.15 lines 2-20

March 4, 2010

Chase sends letter to Defendant and for the first time states that her loan is not eligible due to the Net Present Value (NPV)—even though she was previously granted a Trial Period Plan which requires passing the NPV test to begin with.

The NPV test is run before the trial plan offer is extended per Supplemental Directive 09-01 p. 4, HAMP Checklist for Verified Trial Period Plans, p.7, FAQ 2314. The versions used the first time the NPV test is run the test must be used for any subsequent runs of the NPV test. FAQ 1808, 1809.

The March 4, 2010 letter offers a Forbearance Plan as one of the options available. Ms. Bradley testified she did not recall receiving this letter. Plaintiff would have Court assume she received it. If she did, it offered forbearance which she was subsequently granted.

April 2010

Defendant's final TPP payment accepted by Chase
(A total of at least ten successive TPP payments accepted)

With Chase still accepting TPP payments, Bradley calls Chase and is granted a forbearance for June, July, August 2010

Upon completion of the three TPP payments, Defendant contacted Chase and asked how she should proceed with her payments. Chase told her to continue making payments for the same amount as the Trial Modification payments.
Motion Hearing Tr. P. 15 lines 2-20

It is undisputed that the Defendant continued making the payments through April of 2010 while her only income was unemployment benefits (Transcript p. 15 lines 14-20). The Herndon Affidavit does not mention these subsequent seven payments of \$518 made by Ms. Bradley when Chase failed to act on the TPP to make it permanent or to otherwise make known their intentions on the loan.

Chase asserts that the decision had been made in March 2010 that the loan did not meet the Net Present Value (NPV) test and she was denied a modification on that basis. Yet, her March and April 2010 payments were accepted. (Herndon Aff. ¶ 12; Plaintiff's Ex. 2 to Affidavit). Also, the TPP would not be extended unless the NPV test was run, per the above referenced Supplemental Directive and FAQ.

LAST HAMP TRIAL PERIOD PLAN PAYMENT MADE

May 12 2010

Chase swears to Affidavit that states:

"... the subject loan is not eligible for modification because the HMP modification process has been completed without a modification."

(Exhibit 1 to Plaintiff's memorandum in Opposition).

Ms. Bradley testified that Amanda from Chase granted a three month forbearance during which time she would not have to make payments to Chase for June, July or August of 2010 and she was to resubmit a modification package. (Transcript p. 16 lines 22-25). The Herndon Affidavit simply states that "Chase's customer service notes indicate that throughout May, June and July 2010 Chase continued to communicate with the Borrower and her representatives concerning the Loan, but Chase and the Borrower were unable to reach a workout agreement due to the Borrower's lack of income." (Herndon Aff. ¶ 13). Therefore, the fact that a forbearance was granted during June, July and August is undisputed.

EVENTS DURING PERIOD OF FORBEARANCE AGREEMENT

June 2010 Three month Forbearance begins

Per Amanda at Chase, a three month forbearance was granted for June, July and August 2010. She indicated Chase could not foreclose during the forbearance period.
Motion Hearing Tr. p. 161. 17-p. 171. 5.

Ms. Bradley submitted new information to Chase at their request with updated financial information. Despite this response with the requested submission, Chase began to pursue the foreclosure action which had lain dormant for a year.

Chase employee Barbara Hindman submitted her sworn Affidavit dated May 12, 2010 stating that "... the subject loan is not eligible for modification because the HMP modification process has been completed without a modification." This sworn statement was made just one month after Ms. Bradley's April payment. The Affidavit did not give any specific facts as required by the Administrative Order and did not mention the completed TPP or the March 4th denial based on NPV.

June 21, 2010 Despite the existing forbearance, Chase files Affidavit in Support of Supplemental Judgment which states:

"Prior to the scheduled sales date, the Plaintiff began negotiations for a potential loss mitigation workout with the Defendants, Vanessa Y. Bradley. Unfortunately,

the loss mitigation workout did not occur, and the Plaintiff wishes to proceed with the foreclosure and sale . . ."

This Affidavit did not mention the completed TPP, the denial based on NPV from March, or the existing forbearance for June, July and August 2010.

June 22, 2010 Notice of August 2, 2010 Sale sent

Despite the forbearance, the attorney for Chase set the sale of Ms. Bradley's home for August 2, 2010 and sent notice of same to Ms. Bradley June 22, 2010. She was surprised by that because she was relying on the forbearance that had been given and confirmed by Amanda at Chase.
Motion Hearing Tr. p. 17 line 13 – p. 18 line 14).

June 28, 2010 Bradley contacts Chase

On June 28, 2010, she contacted Chase and spoke with a representative named Autumn regarding the foreclosure. Autumn assured her that the forbearance was still active and that Chase would notify their attorneys of the forbearance.
Motion Hearing Tr. p. 18 line 15 – p. 19 line 1).

June 29, 2010 Bradley contacts Chase

On June 29, 2010, Defendant contacted Chase again and was told that she had been assigned a relationship manager. Defendant spoke with the relationship manager and was told to send proof of income. Defendant sent proof of income as requested.
Motion Hearing Tr. p. 20 lines 13-22)

July 2010 Bradley secures full time employment

In July 2010, Ms. Bradley secured full time employment and called Chase to let them know. The sale scheduled for August 2, 2010 had been cancelled. Ms. Bradley spoke with her relationship manager and informed her that she had gotten a job. She requested Ms. Bradley send the new information to Chase showing new employment income information, which she did.
Motion Hearing Tr. p. 21 line 4- p. 22 line 11).

August 2, 2010 Second scheduled sale date (cancelled)

August 2, 2010 Defendant faxed RMA (Request for modification and affidavit) including requested financial information to Chase. Fax receipt confirms this date

August 16, 2010 Notice of Sale scheduled for September 7, 2010

On August 16, 2010 during the forbearance period, Ms. Bradley received another notice of sale from Plaintiff's attorneys dated August 13, 2010 notifying her of a sale scheduled for September 7, 2010. Defendant called Chase and spoke with her relationship manager, Sandra, who informed her not to worry about Notice of Sale that the loan was in underwriting review. The relationship manager told Defendant she would contact attorney and let them know the foreclosure sale was on hold. She also said there would be a new relationship manager now that the modification was in underwriting. She stated the relationship manager was "Erin" in underwriting. Bradley was never able to talk to Erin.
Motion Hearing Tr. P. 22 l. 7- p. 23 l. 9.

August 19, 2010 Letter from Chase (Plaintiff's Exhibit 3)

On August 19, 2010, Chase sent a letter stating that the loan did not qualify for HMP. The reason for denial was "[b]ased on the NPV results, the owner of your loan has not approved modification." This letter also stated that she had 30 days to request the specifics and that "[n]o foreclosure sale will be conducted and you will not lose your home during this thirty day period." Defendant requested the values September 20, 2010 and received them October 5, 2010.

Chase refers to this as "Chase and Defendant were unable to agree on a workout". This assertion suggests that the modification process is a two way street but belies their overall position that they are not *required* to grant a modification and they simply notified Ms.ley that modification was denied.

Motion Hearing Tr. p. 23 lines 12- 21

August 25, 2010 Bradley contacts Chase

Ms. Bradley again contacted Chase on or about August 25, 2010 and asked her what amount to pay for September of 2010 since the forbearance was to end at the end of August. She was told that a sale had been set for September 2, 2010, and that Defendant needed \$678 or whatever amount she could afford to send in order

to stop the impending sale of her home. (The August 19 letter had stated that the home could not be sold for 30 days).
Motion Hearing Tr. p. 23 l. 22- p. 24 l. 7

August 30, 2010 Bradley contacts Chase

Subsequently, on August 30, 2010, she contacted Chase and spoke with a representative that told her that her home had been set for sale September 7, 2010. Chase told her that they had all the paperwork needed to review her for modification but they needed a paycheck stub evidencing new income. Defendant faxed this requested information to Chase on August 31, 2010.
Motion Hearing Tr. p. 24 l. 20-p.25 l. 9

August 31, 2010 Defendant faxed additional info requested by Chase.
Fax receipt confirms this date.
Motion Hearing Tr. p. 25 lines 18-25 and p. 26 lines 12-15
Defendant's Ex. 8

FORBEARANCE AGREEMENT ENDS

September 1, 2010 Bradley contacts Chase

On September 1, 2010, Defendant tried to contact her relationship manager Erin in the Underwriting Department at Chase but she was unavailable. Defendant spoke with another representative Beth and was told that Chase had received all the necessary modification documents and that she would send a notice to Erin in the Underwriting Department to have the sale postponed. She was instructed to call back the next day, September 2, 2010.
Motion Hearing Tr. p. 27 lines 9-17

September 2, 2010 Bradley contacts Chase

When she called Chase on September 2, 2010, she requested again to speak with Erin in the Underwriting Department but was told that Erin was busy. At that time, Ms. Bradley spoke with another representative Samantha who informed her that she would send another e-mail to Erin to escalate the action and assure postponement of the September 7, 2010, sale date. By letter dated September 3, 2010, Chase confirmed receipt of modification application on August 30, 2010.
Motion Hearing Tr. p. 27 l. 23- p. 28 l. 21 and Plaintiff's Ex. 4

September 3, 2010 Bradley contacts Chase

Defendant again contacted Chase and requested to speak with Erin and was told she was not in and was told by another representative named Sheryl that my file was in underwriting and the request to postpone the sale had been submitted. The Chase representative instructed Defendant to call back the next day.
Motion Hearing Tr.p.28 l. 15-p. 29 l. 14

September 3, 2010 Chase sends letter to Defendant confirming receipt of her RMA (Request for modification and affidavit).
Defendant's Ex. 4

The letter states:

" If your loan has already been referred to foreclosure, we will not sell it at a foreclosure sale, subject to applicable law and judicial rules that may limit our ability to prevent or cancel pending sale. NOTE: If your initial request for evaluation was received less than seven (7) business days prior to a scheduled sales, we are not required to complete the evaluation for HAMP. Please be aware that during the evaluation period, the foreclosure process may continue at the same time. You may receive foreclosure and/or eviction notices- delivered to you by mail or in person- or you may even notice steps being taken to proceed with a foreclosure sale of your home. Do not ignore any foreclosure notices. While you will not lose your home during evaluation (subject to applicable law), to protect your rights under applicable foreclosure law, you may need to respond to these foreclosure notices or take other actions. If you have any questions about the foreclosure process and the evaluation of your modification request, contact us at (866) 550-5705.

Bradley's initial request was received August 2 (more than seven (7) business days prior to the sale scheduled for September 7, 2010. Therefore, Bradley rightfully believed she would not lose her home per the terms of this letter.

September 4, 2010 Bradley contacts Chase

Defendant once again contacted Chase on September 4, 2010, and was informed that Erin was not in and the Chase representative that Defendant spoke with confirmed that request for postponement of the foreclosure sale scheduled for September 7, 2010, had in fact been sent.
Motion Hearing Tr. p. 30 lines 7-20

September 7, 2010 .. Third scheduled sale date ..
(1st was April 2009 and 2nd was August 2, 2010)

September 7, 2010 Bradley contacts Chase

On September 7, 2010, Defendant contacted Chase and spoke with "Jay" and was told that it would take 30-45 days for review of the loan and that Erin was not available. Defendant was again told that email to postpone sale had been sent.
Motion Hearing Tr. p. 30 l. 21-p. 31 l. 9

September 9, 2010 Bradley contacts Chase

On September 9, 2010, Defendant contacted Chase and again asked to speak with Erin and was told Erin was not in. Defendant spoke with "Calvin", a Chase representative, who informed Defendant that Plaintiff had denied modification application because of insufficient funds. Defendant inquired as to why she was not told this when she spoke with Jay on September 7, 2010. Calvin stated he knew nothing about this.
Motion Hearing Tr. p. 31 l. 11-p. 32 l. 13

September 13, 2010 Bradley contacts Chase

September 13, 2010, Defendant contacted Chase about their letter dated September 3, 2010 (Defendant's Exhibit 4) and spoke with "Diana". Diana confirmed Plaintiff's denial of modification application. Diana also informed her that underwriting "quality control" did not like the reason for the denial and that Defendant's case had been sent back for further review. Defendant faxed the requested letter and paycheck stub that same day. (See Exhibit)

September 14, 2010 Bradley contacts Chase

On September 14, 2010, Defendant called and spoke with a Chase representative named "Hope". Hope informed Defendant that the foreclosure sale had not been stopped and that she would send an email to her manager requesting an update on the case. Hope told Defendant to call her back on September 16, 2010.
Motion Hearing Tr. p. 33 l. 21-p. 34 l. 2

September 20, 2010 Bradley sends request for NPV inputs and under separate cover sends Qualified Written Request

On September 20, 2010, Defendant faxed Chase a request for the NPV value inputs used for calculation of her modification eligibility. Additionally, by fax and certified mail, Defendant sent to Chase a Qualified Written Request, requesting information relating to the servicing of Defendant's loan.
Motion Hearing Tr. p. 38 l.10- p. 39 l. 22

September 20, 2010 Bradley contacts Chase

On or about September 20, 2010, Defendant called Chase and spoke with "Lilly". Lilly informed Defendant that her home had already been sold and that there was not any time to stop the foreclosure
Motion Hearing Tr. p. 39 lines 6-16

September 21, 2010 Chase sends letter to Bradley which for the first time states that they are unable to offer her a modification because "... you did not make all of the required Trial Period Plan payments by the end of the trial period."

This letter dated September 21, 2010, the day after this motion was filed, came one year after the final TPP month of September 2009 and 5 months after her last payment to Chase.
(Exhibit 4 to Affidavit of Charles Herndon)

September 22, 2010 Notice to Vacate property sent to Defendant by Rogers, Townsend and Thomas informing her that property was sold September 7, 2010

Motion Hearing Tr. p. 40 lines 12-15

October 5, 2010 Chase sends NPV inputs in response to Bradley's request
Ex. 5 to Affidavit of Charles Herndon.

CONCLUSION

This case should have been dismissed in August of 2009 pursuant to the South Carolina Supreme Court Administrative Order (AO). However, Plaintiff resurrected the case with no action other than a ten months late HMP Affidavit on May 18, 2010 and a notice of sale two months after that (June 2009) during a

period when Plaintiff had granted Defendant a forbearance. The original judgment of foreclosure prior to the AO had been entered by the Special Referee on March 17, 2009.

The Plaintiff's communication with the Defendant established a pattern of her reliance on them for action on her loan and their misrepresentation to her of the true status of the long dormant foreclosure action. Plaintiff emphasizes that Defendant was in default of answering the original action and did not file a HAMP counter affidavit. Plaintiff however, failed to file its own HMP Affidavit in a timely fashion under the AO and did nothing to alert Defendant that she should contact an attorney for representation upon the untimely revival of the long forgotten default judgment that was still stayed by the AO.

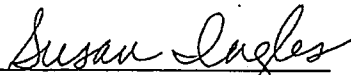
SCRCP Rule 60(b)(3) has long been available to litigants where a party is induced not to present a case or deprived of the opportunity to be heard. *Hilton Head Ctr., Inc. v. Pub. Serv. Comm'n*, 294 S.C. 9; 362 S.E. 2d 176 (1987). Though the case law in South Carolina recognizes a duty to act timely in attending pending litigation, other considerations can come into play when a Rule 60 motion is predicated on the mistaken belief or neglect of a non-lawyer. *Roberts v. Peterson*, 292 S.C. 149 (S.C. App. 1987). This should be true more so when the Rule 60 motion is based on the fraud, misrepresentation or misconduct of the other party who is represented by a lawyer.

The Defendant said it herself when she testified at the motion hearing in response to the question whether she had any reason to believe that what Chase employees told her by telephone was true: "No. I mean, they working for Chase and I figured they knew what they was doing. And usually when you conduct business, I feel you're to be honest and true and stand behind your word."

The timeline of events reflecting the documentary evidence and Defendant's testimony demonstrates misrepresentations both verbally and in writing upon which Defendant clearly relied to her detriment. The Defendant motion should be granted.

Respectfully submitted,

3-24, 2011


Susan Ingles S.C. Bar No. 4577
Attorney for Defendant
South Carolina Legal Services
701 S. Main Street
Greenville, SC 29601
Tel. # 864-679-3244
Fax # 864-679-3260

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

PICKENS COUNTY
SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
DOCKET NO. 08-CP-39-2120

JPMorgan Chase Bank, National Association,

2010 SEP 3 P 11: 34
2280F

Plaintiff,

ASSIGNMENT OF BID
Deficiency Judgment Waived

v.

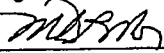
Vanessa Y. Bradley;

Defendant(s).

(011671-01281)

FOR VALUABLE CONSIDERATION, receipt whereof is hereby acknowledged, JPMorgan Chase Bank, National Association does hereby assign its successful bid in the foregoing foreclosure action unto the Federal National Mortgage Association, its successors and assigns, and does hereby direct R. Murray Hughes, as Special Referee for Pickens County, to execute his deed to the subject premises unto said assignee.

JPMorgan Chase Bank, National Association


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar# 74935)
Shawn R. Willis (SC Bar # 71155) Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205) John P. Fetner (SC Bar # 77460)
Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
September 9, 2010

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
CLERK OF COURT
PICKENS COUNTY Case No. 2008-CP-39-2120
SOUTH CAROLINA

JP Morgan Chase Bank, National Bank 2011 FEB -7 P 1:13

Plaintiff,

NOTICE OF HEARING

vs.

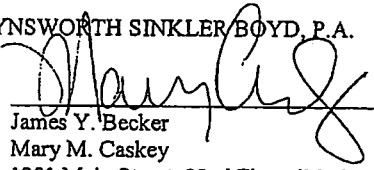
Vanessa Y. Bradley,

Defendant.

TO: SUSAN INGLES, ATTORNEY FOR VANESSA Y. BRADLEY,
DEFENDANT:

NOTICE IS HEREBY GIVEN that a hearing on Defendant's Motion to Set Aside Sale will be held before The Honorable R. Murray Hughes, Special Referee, in the above captioned matter on Tuesday, March 8, 2011, at 10:00 a.m., at 4606 Moorefield Memorial Highway, Pickens, South Carolina 29671-9065.

HAYNSWORTH SINKLER/BOYD, P.A.

By: 

James Y. Becker
Mary M. Caskey
1201 Main Street, 22nd Floor (29201-3226)
Post Office Box 11889 (29211-1889)
Columbia, South Carolina
(803) 779-3080
Attorneys for Plaintiff

February 4, 2011

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
IN THE COURT OF COMMON PLEAS
PICKENS COUNTY
SOUTH CAROLINA
Case No. 2008-CP-39-2120

2011 FEB -7 P 1:13

JP Morgan Chase Bank, National Bank,

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the addresses shown below.

1. Notice of Hearing; and
2. Certificate of Service.

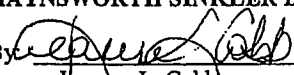
Parties of Record

Attorney for Vanessa Y. Bradley

Susan Ingles, Esq.
S.C. Legal Services
701 South Main Street
Greenville, SC 29601

HAYNSWORTH SINKLER BOYD, P.A.

By


Jeanene L. Cobb
Legal Secretary

Date: February 4, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Association, P 1: 35
UNITED STATES BANKRUPTCY COURT

Plaintiff,

AMENDED NOTICE OF HEARING

vs.

Vanessa Y. Bradley,

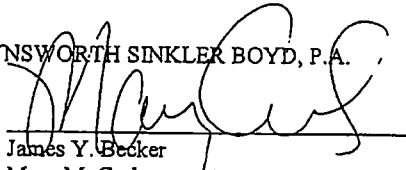
Defendant.

TO: SUSAN INGLES, ATTORNEY FOR VANESSA Y. BRADLEY,
DEFENDANT:

NOTICE IS HEREBY GIVEN that a hearing on Defendant's Motion to Set Aside Sale previously scheduled for Tuesday, March 8, 2011 at 10:00 a.m. will now be held before The Honorable R. Murray Hughes, Special Referee, in the above captioned matter, on Tuesday, March 8, 2011, at 3:00 p.m., at 4606 Moorefield Memorial Highway, Pickens, South Carolina 29671-9065.

HAYNSWORTH SINKLER BOYD, P.A.

By:


James Y. Becker
Mary M. Caskey
1201 Main Street, 22nd Floor (29201-3226)
Post Office Box 11889 (29211-1889)
Columbia, South Carolina
(803) 779-3080
Attorneys for Plaintiff

February 8, 2011

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank,

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

2011 FEB -9 P 1:35

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the addresses shown below.

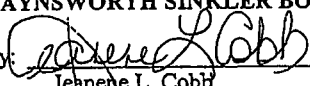
1. Amended Notice of Hearing; and
2. Certificate of Service.

Parties of Record

Attorney for Vanessa Y. Bradley

Susan Ingles, Esq.
S.C. Legal Services
701 South Main Street
Greenville, SC 29601

HAYNSWORTH SINKLER BOYD, P.A.

By: 
Jeanene L. Cobb
Legal Secretary

Date: February 8, 2011

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank,

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

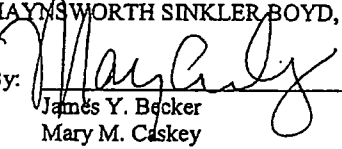
SECOND AMENDED NOTICE OF HEARING

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 FEB 17 P 12

**TO: SUSAN INGLES, ATTORNEY FOR VANESSA Y. BRADLEY,
DEFENDANT:**

NOTICE IS HEREBY GIVEN that a hearing on Defendant's Motion to Set Aside Sale previously scheduled for Tuesday, March 8, 2011 at 3:00 p.m., will now be held before The Honorable R. Murray Hughes, Special Referee, in the above captioned matter, on Monday, March 14, 2011 at 3:00 p.m. at 4606 Moorefield Memorial Highway, Pickens, South Carolina 29671-9065.

HAYSWORTH SINKLER BOYD, P.A.

By: 

James Y. Becker
Mary M. Caskey
1201 Main Street, 22nd Floor (29201-3226)
Post Office Box 11889 (29211-1889)
Columbia, South Carolina
(803) 779-3080
Attorneys for Plaintiff

February 15, 2011

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank,

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the addresses shown below.

1. Second Amended Notice of Hearing; and
2. Certificate of Service.

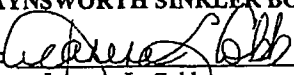
Parties of Record

Attorney for Vanessa Y. Bradley

Susan Ingles, Esq.
S.C. Legal Services
701 South Main Street
Greenville, SC 29601

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 FEB 17 P 12:13

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Jeanene L. Cobb
Legal Secretary

Date: February 15, 2011

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-39-2120

2011 MAR 28 A 10:12

JP Morgan Chase Bank, National
Association, -

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

**PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION TO SET ASIDE SALE**

JPMorgan Chase Bank, National Association ("Plaintiff") submits this supplemental memorandum in opposition to Vanessa Y. Bradley's ("Defendant") Motion to Set Aside Sale, following the hearing on Defendant's Motion held on March 14, 2011.¹ At the hearing, Defendant requested (1) that the foreclosure sale held on September 7, 2011 ("Final Foreclosure Sale") and the subsequent deed be set aside; and (2) that the Court order "a conference for mediation to explore the analysis of [Defendant's] home under Homes Affordable" or allow Defendant to "pursue discovery to determine why she was turned down." (Hearing Tr. p. 5, ll. 15-16, p. 6, ll. 23-24-p.7 ll. 1-2.) In support of her requested relief, Defendant claims that Plaintiff failed to properly consider her for a loan modification under the Home Affordable Modification Program ("HAMP"), that Plaintiff failed to comply with the South Carolina Supreme Court's Order dated May 22, 2010, concerning HAMP ("Supreme Court Order"), and that Plaintiff improperly

¹ Plaintiff served its original Memorandum in Opposition to Defendant's Motion to Set Aside the Sale at the hearing on March 14, 2011.

13-25-p. 67, ll. 11.) Because Defendant is in default and failed to follow the express directive of the Supreme Court's Order, Defendant should be estopped from arguing that Plaintiff failed to comply with the Supreme Court's Order or that Plaintiff is not entitled to foreclose.

II. Defendant presented no evidence that Plaintiff failed to properly consider her loan for modification under HAMP.

Even if Defendant had standing to raise any defenses to the foreclosure action or the sale, which she does not, there is no evidence to support her claim that Plaintiff failed to consider her for a modification under HAMP.²

First, Defendant claims that because she was offered a trial modification, that she "was clearly given the modification." (Hearing Tr. p. 86, ll. 5-6.) However, as Defendant herself admitted, she failed to abide by the plain terms of the Trial Plan by failing to make her third trial plan payment on time when due. (*Id.* at pp. 53-56.) This is a breach of the express terms of the Trial Plan, which specifically provides that if a borrower fails to make the trial plan payments as required, then "the Loan Documents will not be modified and this Plan will terminate." (Herndon Aff. at Exh. 1, p. 2.) Also, under the plain terms of the HAMP servicing guidelines, if a Defendant fails to make "current trial period payments" then the Defendant is not eligible for a permanent modification. See Making Home Affordable Program, *Handbook for Servicers of Non-GSE Mortgages*, Version 3.0, p. 78 (as of Dec. 2, 2010), available at https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_30.pdf.

² Defendant seeks the opportunity to conduct discovery of Plaintiff in order to determine whether Plaintiff properly considered her for a modification, but other than Defendant's unsupported statements that she believes that she should have been given a modification, there is no evidence whatsoever that Plaintiff failed to properly consider her for a modification.

By her own admission, Defendant failed to timely make the payments required under the Trial Plan, which made her ineligible for a permanent modification.³

Second, there is no evidence that Plaintiff improperly denied Defendant for a loan modification based on the net present value ("NPV") of her loan. Instead, Defendant admitted that she received a letter dated August 19, 2010, informing her that she had been denied a permanent loan modification because the NPV was deemed insufficient under HAMP guidelines. (Hearing Tr. p. 60, ll. 12-25-p. 61, ll. 1.) Defendant requested more information concerning the NPV inputs used for her loan, and Plaintiff provided her with the specific NPV calculations used. (*Id.* at Def. Exh. 3; Herndon Aff. ¶ 21, Exh. 5.) At the hearing, however, Defendant failed to introduce any evidence or authority showing that Plaintiff used the incorrect NPV inputs or otherwise incorrectly analyzed her loan for a modification.

Additionally, prior to the August 19, 2010, letter concerning a denial of her loan modification request, Plaintiff had previously informed Defendant by letter dated March 4, 2010, that her loan was not eligible for a modification due to the net present value of her loan, though Defendant does not recall receiving the letter. (Herndon Aff. ¶ 12, Exh. 2.) Defendant did admit, however, that the letter was addressed to her home address and that she received all other correspondence from Plaintiff. (Hearing Tr. p. 56, ll. 21-25-p. 57, ll. 1-20.) Moreover, Defendant admitted that she received a copy of the Affidavit

³ Defendant also claims that because she made payments in the amount of the Trial Plan payments after October 2009, that Plaintiff waived its right to refuse to modify her loan based on her failure to make the Trial Plan payments as required and to proceed with the foreclosure action. (Hearing Tr. p. 86, ll. 12-15.) However, the Trial Plan clearly allows Plaintiff to accept payments under the Trial Plan "without prejudice to, and will not be deemed a waiver of, the acceleration of the loan or foreclosure action and related activities and shall not constitute a cure of my default under the Loan Documents." (Herndon Aff., Exh. 1, p. 2.)

filed by Plaintiff's foreclosure counsel on or about May 17, 2010, which was based on the March 4, 2010, letter, and which informed the Court and Defendant that Defendant was not eligible for a modification under HAMP. (*Id.* at p. 65, ll. 13-25-p. 66, 1-21.) Thus, it is undisputed that by the time of the Final Foreclosure Sale on September 7, 2010—almost two years after the foreclosure action had been filed—Defendant had received numerous notifications that she did not qualify for a permanent loan modification, each containing a specific basis for the denial.

Simply, there is no evidence that Plaintiff failed to properly consider Defendant for a modification or failed to notify Defendant of its decision concerning her loan modification request, and thus, there is no basis for Defendant's claims that the Final Foreclosure Sale and subsequent deed should be set aside.

III. Defendant failed to present any evidence of fraud by Plaintiff in its prosecution of the foreclosure action or with regards to the Final Foreclosure Sale.

Defendant's motion is based on Rule 60(b)(3), SCRCP, which provides for relief from judgment or an order if there is evidence of "fraud, misrepresentation, or other misconduct of an adverse party." Specifically, referring to the Final Foreclosure Sale, Defendant alleges that "Plaintiff represented to the Defendant in writing that the sale was put on hold. Since the sale was apparently not put on hold, this was fraud." (Motion at 2.) However, at the hearing, Defendant admitted that none of Plaintiff's representatives ever told her that the Final Foreclosure Sale had been postponed or cancelled, and Defendant produced no documentation to support her claims. (Hearing Tr. p. 79, ll. 17-21.) Instead, she admitted that she was told that a request had been submitted for the sale to be postponed and that her loan was under review for a modification, and that Defendant assumed the sale would be cancelled. (*Id.* p. 64, ll. 1-10.) Plaintiff

acknowledged that a request to postpone the sale had been made, but was not approved. (Herndon Aff. ¶ 18.) Thus, the evidence presented to the Court by Defendant and by Plaintiff clearly shows that Plaintiff never told Defendant, orally or in writing, that the Final Foreclosure Sale had been cancelled.⁴

Because no misrepresentation concerning the Final Foreclosure Sale was made, there is no fraud, and thus, no basis for the Final Foreclosure Sale and subsequent deed to be set aside. Defendant has failed to identify any other grounds under Rule 60(b) that would justify setting aside the Final Foreclosure Sale and subsequent deed, and thus Defendant is not entitled to any such relief.

IV. There is no basis in law, equity, or otherwise for Defendant to be allowed to engage in post-trial, post-sale discovery with Plaintiff.

Although Defendant admits that neither the Supreme Court's Order nor HAMP *require* a lender to offer a modification to a borrower, Defendant requests that the Court allow discovery to investigate the underwriting procedures used by Plaintiff in assessing Defendant's loan for a modification. (Hearing Tr. pp. 86, ll. 23-25, 88, ll. 6-13.)

There is no legal or other authority providing for the requested discovery. Although Defendant claims that the Supreme Court's Order provides for such discovery, the Order is absolutely silent as to any type of discovery concerning the HAMP process, pre- or post-foreclosure. Additionally, there are no provisions in the South Carolina Rules of Civil Procedure concerning discovery after an action has ended. Rule 26, SCRCF, provides for the scope of discovery, and states that "Parties may obtain

⁴ Moreover, the postponement of the Final Foreclosure Sale would not have resulted in a modification of Defendant's loan. As explained in the letter sent to Defendant on September 21, 2010, Defendant did not qualify for a loan modification under HAMP because she failed to abide by the terms of the Trial Plan. (Herndon Aff. ¶ 20.)

discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action” (emphasis added). As explained above, by defaulting to the Complaint, Defendant has already waived her rights to raise any defenses to the foreclosure action—including the defenses related to HAMP—and has not argued that she should be let out of default. Additionally, as explained in Plaintiff’s original memorandum in opposition to Defendant’s Motion, there is no private right of action under HAMP, and a failure to modify a loan cannot be the basis of an affirmative defense or a counterclaim. Because there are no defenses or counterclaims that may be raised in response to Plaintiff’s foreclosure action, there is no evidence “relevant to the subject matter” that could be discovered in post-foreclosure sale discovery.

Moreover, it is unclear what such unwarranted discovery would produce. As explained at length above, Plaintiff has already provided Defendant with several notices concerning why her loan is not eligible for a modification, and Defendant has failed to produce any evidence to refute the reasons offered. Defendant appears to be attempting to force Plaintiff to modify Defendant’s loan, despite the fact that Plaintiff is not required to do so by the terms of the note, the mortgage, HAMP guidelines, the Supreme Court’s Order, or any applicable law. As such, Plaintiff requests that all of Defendant’s demands for discovery or mediation conferences be denied.

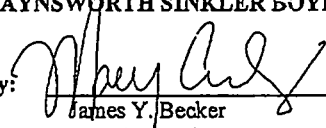
CONCLUSION

Based on the foregoing, there simply is no factual evidence or basis in law or equity for the foreclosure sale held on September 7, 2010, to be set aside, or for Defendant to be allowed to engage in post-trial discovery of Plaintiff. Plaintiff requests

that the Court issue an order denying Defendant's motion and all of the relief she requests therein, and for such other relief as the Court finds just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By:


James Y. Becker
Mary M. Caskey

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779-3080

Attorneys for Plaintiff

March 24, 2011

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JP Morgan Chase Bank, National Bank

☐ Plaintiff

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-39-2120

2011 MAY 24 P 2:30

MOTION INFORMATION FORM
AND COVER SHEET

v.

Vanessa Y. Bradley

☒ Defendant.

Plaintiff's Attorney: Mary M. Caskey, Bar No. Address: P.O. Box 11889, Columbia, SC 29211-1889 phone: 803-779-3080 fax: 803-765-1243 e-mail: other:		Defendant's Attorney: Susan Ingles, Bar No. 4577 Address: 701 South Main Street, Greenville, SC 29601 phone: 679-3244 fax: 679-3260 e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Rule 59 Motion Estimated Time Needed: 1.0 Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion Type			
☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		Date submitted	
Susan Ingles		May 23, 2011	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE	
		CODE: Date:	
CLERK'S VERIFICATION			
Collected by:		Date Filed:	
☐ MOTION FEE COLLECTED:		MS	
☐ CONTESTED - AMOUNT DUE:			

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
2008-CP-39-2120

JP Morgan Chase Bank, National
- Bank,

PLAINTIFF,

MOTION TO RECONSIDER IN LIGHT
MAY 2, 2011 S.C. SUPREME COURT
ADMINISTRATIVE ORDER ON
MORTGAGE FORECLOSURE AND
ADDITIONAL REASONS

Defendant Y. Bradley,

DEFENDANT.

2011 MAY 25 P 2:30

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Pursuant to SCRCP Rules 59 and 52, the undersigned counsel for Defendant, Defendant
Y. Bradley, moves the Court for reconsideration of its denial of the Defendant's Motion
as hereinafter set forth.

The Defendant sought the following relief:

1. To set aside the sale and deed of the property to the Plaintiff on the basis of fraud;
2. To set aside Entry of Default and allow Defendant to answer and assert counterclaims,
3. Vacate the Judgment of Foreclosure and Supplemental Orders;
4. Allow Discovery and allow an Evidentiary Hearing on Compliance with the Administrative Order of the South Carolina Supreme Court filed May 22, 2009 as its terms require;
5. Allow at least a 90 day stay until a complete explanation of the Plaintiff's fraud can be inquired into and the failure to offer a permanent modification can be addressed by both parties or until such time as the permanent modification opportunities have been properly afforded to the Defendant.
6. That this Court order Plaintiff to supply Defendant with a sworn statement of the NPV values and of the specific facts showing that the loan is not eligible for a permanent modification under the Making Home Affordable Modification Program and state the facts showing that the modification

process specified by the Guidelines has been completed properly. This should include all assumptions and calculations.

The Court took approximately 2 hours of testimony from the Defendant. The Plaintiff submitted an Affidavit of Charles Herndon. Both parties submitted memoranda in support of their positions. The Special Referee rendered a decision denying the motion stating only 2 conclusions of law:

1. Defendant failed to meet her burden of proof of showing "fraud, misrepresentation or other misconduct of an adverse party," as required by Rule 60(b)(3), SCRCP;
2. A forbearance agreement between the parties began June 1, 2010, ended August 31, 2010 and did not affect Plaintiff's rights to move forward with the Foreclosure Sale.

The only findings of fact made by the Court in support of its conclusions were as follows:

1. While the Defendant made extensive efforts to avoid foreclosure and was given varying explanations of the status of her request for a loan modification, none of the statements by Plaintiff's employees arose to the level of fraud, misrepresentation.
2. At the most critical time in August and early September 2010, Defendant was told that a request to postpone the Foreclosure Sale had been submitted, but she was never told that the sale would definitely be postponed.

The Defendant requests that the Court reconsider its order based on the following and amend it accordingly:

I.

The S.C. Supreme Court issued an Administrative Order on Mortgage Foreclosure on May 2, 2011 shortly after the hearing in this case. That order outlines the failures of communication between servicers and borrowers such as the failures revealed in the case at bar. For that reason alone, the intention of the SC Supreme Court and the spirit of its Administrative Orders on Mortgage Foreclosure called for the Defendant to have a full

and fair opportunity to challenge Chase's refusal to modify her loan or even to treat her fairly.

II

- Although there was sufficient evidence produced by Defendant to support a finding of fraud, Rule 60b3 does not limit the basis for allowing relief only to proof of fraud. The findings of fact by the Court do in fact support these other possibilities under the Rule, a finding of at least misconduct, if not misrepresentation.

The Court did not consider the fraud contained in the August 19, 2010 letter which denied modification based on failure of the Net Present Value Test (NPV). Not only the HAMP regulations, but the letter itself state that the Defendant had 30 days to seek the NPV inputs and challenge them and the property could not be sold during that time. Those 30 days did not expire until September 18, 2010. Therefore, the sale should not have taken place September 7, 2010 during that 30 day period, nor should notice of it have even been published. This was a false statement if indeed the Plaintiff intended to have the Court sell the property September 7, 2010.

III.

The Defendant seeks reconsideration of the Court's decision because the Court did not specifically and adequately address Defendant's requests for relief in all of its particulars.

IV.

The Order is deficient for the following reasons:

The Court misinterprets the meaning of forbearance. The Court finds there was a forbearance agreement but ignores the fact that the procedure necessary to the September 7, 2010 sale and the sale that had also been scheduled for August 2, 2010 that was

cancelled took place during the period of the forbearance when Plaintiff was to be taking no action. The sale took place 7 days after the end of the forbearance period. Neither the Defendant's due process rights in the litigation, nor her rights under HAMP could have possibly been followed during that short period. The following actions took place during the period of the forbearance agreement:

June 22, 2010 - Defendant received Notice of Sale with date August 2, 2010

-Chase sent a second Supplemental Order Post Judgment

- In this, they state that Defendant entered into a forbearance agreement with Chase, however, they then claim Defendant defaulted on the terms of the Forbearance agreement – but don't mention any specific facts or what term was

August 2, 2010

-Defendant called Chase about obtaining a job and getting a new modification and sends in the appropriate paperwork

August 13, 2010

-Chase sent another Supplemental Order Post Judgment

August 16, 2010

- Defendant received another Notice of Sale (dated 8-13-10)
-Defendant called Chase and was assured everything was okay and that her request was currently in underwriting
-she was also told that they would contact the foreclosure attorney

August 19, 2010

-received letter of denial – stating that NPV was inadequate
-this letter also explicitly stated her home would not be sold in 30days
-Defendant timely requested inputs

August 25, 2010

-Defendant called Chase and was told the foreclosure sale date was September 2, 2010
-then told if she paid \$678 now, she could stop the foreclosure sale

August 30, 2010

-Defendant called Chase again and told sale date was 9-7-10
-also confirmed that Defendant had sent in all necessary paperwork except for paycheck stub

August 31, 2010

-Defendant faxed in paycheck stub

V.

4

101

102

The Order fails to address how the actions of the Plaintiff proved compliance with the Administrative Order such that the request for an evidentiary hearing contained in the Motion was not granted.

Plaintiff's counsel argued that once the modification evaluation was over, the Plaintiff was allowed to go forward with the foreclosure. However, this position does not account for the fact that the AO allows the homeowner to challenge the modification process to determine if they were given due process therein before the Court sets a sale date. Neither Plaintiff nor the Court provided this required opportunity. The Plaintiff's Affidavit of Non-eligibility seems to have been premised on a previous denial, though Plaintiff disputed that denial as well.

The Order fails to address the fact that the Defendant's ability to challenge the modification decision was forestalled/foreclosed by the timing of the sale and the cutting short of the NPV challenge period and the supplemental order, sale notice, and other procedural items done during the forbearance that immediately preceded the sale.

The NPV test must be run in order to grant a Trial Payment Plan. The Plaintiff failed to show how the Defendant's net present value (NPV) had changed from when she was granted a loan modification in June 2009 and when she applied for it again. The Trial Period Plan under which the Defendant paid for 8 months presupposed the requirements of the Net Present Value calculation were met. This failure of the Plaintiff also shows that it did not comply with either Administrative Order.

The Court failed to address the Plaintiff's failure to carry out its modification obligation owed under the AO before pursuing the foreclosure suit. These should be

subsequent, not simultaneous. That is, the AO requires that the remedies under HAMP must be fully exhausted before a Plaintiff goes forward with foreclosure litigation.

VI.

The Court gave too much credence to the Affidavit submitted by the Plaintiff giving it more weight than the extensive, fact specific, live testimony of the Defendant. The Plaintiff's entire case at every juncture from Summons and Complaint through sale was supported at most only by affidavits, never by live testimony. The Herndon Affidavit was amply rebutted by the Defendant's live testimony.

The multiple instances of misinformation, the overall conduct of the Plaintiff and the failure of due process in the litigation as well as the HAMP evaluation pursuant to the AO, were not properly considered by the Court, especially since the only evidence ever presented in this case at all has been via affidavit.

VII.

Although Chase stated that it has already assigned its bid from the foreclosure sale, it produced no evidence that it would be prejudiced if the sale is set aside.

VIII.

Though it makes some findings of fact and conclusions of law, the Court does not adequately state the basis for the result it reaches. It broadly refers to the "reasons stated in the Plaintiff's memoranda" as the basis for its denial of Defendant's motion but does not specifically address all of the arguments or the factual issues stated therein which were as follows:

PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO DEFENDANT'S
MOTION TO SET ASIDE SALE

- I. Plaintiff has complied with the Supreme Court's Temporary Restraining Order concerning HAMP.
- II. Plaintiff is not required to modify Defendant's loan.
 - a. There is no private right of action under HAMP.
 - b. Defendant lacks standing to attempt to force the Plaintiff to modify Defendant's loan under HAMP.
- III. Plaintiff properly and timely notified Defendant of her ineligibility under HAMP.
- IV. Plaintiff properly determined that Defendant was not eligible for a modification under HAMP.
 - a. The Net Present Value of Defendant's loan was insufficient to be eligible for a loan modification under HAMP.
 - b. The Defendant is ineligible for a HAMP modification because she failed to perform under the terms of the Trial Plan.
- V. Plaintiff was not required to postpone the September 7, 2010, foreclosure sale.
- VI. There is no evidence of fraud to warrant vacating the foreclosure orders and the foreclosure sale.

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM
IN OPPOSITION TO DEFENDANT'S
MOTION TO SET ASIDE SALE

- I. Because she is in default, Defendant waived any right to object to the foreclosure based on Plaintiff's failure to modify her loan.
- II. Defendant presented no evidence that Plaintiff failed to properly consider her loan for modification under HAMP.
- III. Defendant failed to present any evidence of fraud by Plaintiff in its prosecution of the foreclosure action or with regards to the Final Foreclosure Sale.
- IV. There is no basis in law, equity, or otherwise for Defendant to be allowed to engage in post-trial, post-sale discovery with Plaintiff.

All of these arguments were overcome by the testimony and evidence presented. The Defendant requests that the Court state more specifically how these issues warrant denial of her Motion.

IX.

Finally, the S.C. Supreme Court issued an Administrative Order on Mortgage Foreclosure shortly after the hearing and order in this case. That order outlines the failures of communication between servicers and borrowers as revealed in the case at bar.

The May 2, 2011 Administrative Order was specifically issued because the trial courts reported an increasing number of unresolved foreclosure actions.

"The trial courts report that such breakdowns are largely the result of difficulty in communication between lender-servicers and debtors, and the fact that foreclosure actions are proceeding to conclusion without regard to ongoing loss mitigation efforts by the parties."

For that reason alone, the intention of the SC Supreme Court and the spirit of its Administrative Orders on Mortgage Foreclosure called for the Defendant to have a full and fair opportunity to challenge Chase's refusal to modify her loan or even to treat her fairly, and call for it even now.

Conclusion

Based on the all of the facts as were for the first time being presented to the Court at the Motion hearing, Defendant has established meritorious defenses and met the standards of timeliness to justify this Court in vacating the Judgment of Foreclosure and Sale and for the other relief requested in the Defendant's Motion and allowing Defendant the opportunity to investigate the modification evaluation, present her position and defend her home from foreclosure.

Plaintiff's lack of consideration for due process, violation of the Administrative Orders of the S.C. Supreme Court regarding foreclosure, unclean hands, fraud, misrepresentation and misconduct, and disregard of the HAMP guidelines each constitute sufficient basis to cause this Court to vacate the judgment, set aside the sale and grant the other relief requested in the Defendant's motion.

Date: 5-24-11
Greenville, SC

S.C. LEGAL SERVICES

Susan Ingles
Susan Ingles
Attorney for the Defendant
701 South Main Street
Greenville, SC 29601
(864)-679-3244 (phone)
(864)679-3260 (fax)

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
2008-CP-39-2120

JP Morgan Chase Bank, National -
Bank,

PLAINTIFF,

V.

CERTIFICATE OF SERVICE BY MAIL

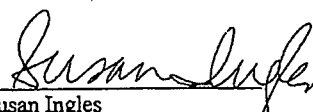
Vanessa Y. Bradley,

DEFENDANT.

I HEREBY CERTIFY that the Motion for Reconsideration in the above-referenced matter, has been filed/served by delivering the same to the Special Referee U.S. first class mail, with the proper postage affixed to, on this 24th day of May 2010 at the following address:

Mary M. Caskey
P.O. Box 11889
Columbia, SC 29211-1889

By:


Susan Ingles
South Carolina Legal Services
701 South Main Street
Greenville, SC 29601
864-679-3244

5-24, 2011
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes
- Special Referee

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank
Respondents,

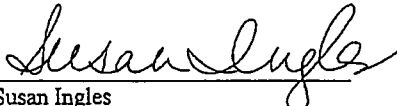
v.

Vanessa Y. Bradley
Appellant.

NOTICE OF APPEAL

Vanessa Y. Bradley appeals the order of the Honorable R. Murray Hughes dated April 25, 2011, and the underlying orders entered March 17, 2009, June 25, 2010, August 20, 2010 and September 22, 2010.

May 26, 2011


Susan Ingles
SOUTH CAROLINA LEGAL SERVICES
701 South Main Street
Greenville, SC 29601
Attorney for Appellant

Other Counsel of Record:

James Y. Becker
Mary M. Caskey
P.O. Box 11889
Columbia, SC 29211-1889

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes
Special Referee

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank
Respondents,

v.

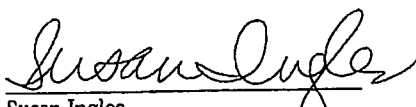
Vanessa Y. Bradley
Appellant.

PROOF OF SERVICE

I certify that I have served the corrected Notice of Appeal on JP Morgan Chase Bank, National Bank, by depositing a copy of it in the United States Mail postage prepaid on May 26, 2011 addressed to their attorney of record at the following address:

James Y. Becker
Mary M. Caskey
P.O. Box 11889
Columbia, SC 29211-1889

May 26, 2011


Susan Ingles
SOUTH CAROLINA LEGAL SERVICES
701 South Main Street
Greenville, SC 29601
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes
Special Referee

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank
Respondents,

v.

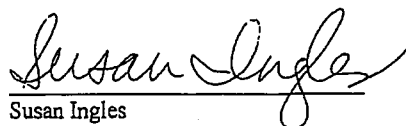
Vanessa Y. Bradley
Appellant.

PROOF OF SERVICE

I certify that I have served the corrected Notice of Appeal on the Honorable R. Murray Hughes, by depositing a copy of it in the United States Mail postage prepaid on May 26, 2011 addressed as follows:

R. Murray Hughes
Special Referee
4606 Moorefield Mem Hwy # 3
Pickens, SC 29671

May 26, 2011


Susan Ingles
SOUTH CAROLINA LEGAL SERVICES
701 South Main Street
Greenville, SC 29601
Attorney for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
THE COURT OF COMMON PLEAS

Case No. 2008-CP-39-2120

2011 JUN 15 P 1:03

JPMorgan Chase Bank, National
Association, -

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION TO RECONSIDER**

JPMorgan Chase Bank, National Association ("Plaintiff") submits this memorandum in opposition to the Motion to Reconsider in Light of May 2, 2011 S.C. Supreme Court Administrative Order on Mortgage Foreclosure and Additional Reasons ("Motion to Reconsider"), filed by Vanessa Y. Bradley ("Defendant") on May 25, 2011. Defendant's Motion to Reconsider seeks to alter or amend the Court's Order Denying Defendant's Motion to Set Aside Sale (the "Order") filed on April 29, 2011. As explained below in more detail, the Court should deny Defendant's Motion to Reconsider for the following reasons:

- Defendant's Motion to Reconsider is not timely because it was not served within ten days after receipt of written notice of the entry of the Order.
- The Supreme Court's Administrative Order dated May 2, 2011, does not apply to this case because the foreclosure sale occurred before May 2, 2011.
- The Court properly held that no evidence supports a finding of fraud under Rule 60(b)(3), SCRCP, because Defendant admitted that Plaintiff never promised her that the September 7th foreclosure sale had been or would be postponed.
- The misrepresentations and misconduct alleged by Defendant do not constitute "fraud" or "misconduct" under Rule 60(b)(3), SCRCP, because they did not prevent Defendant from responding to the foreclosure complaint and subsequent pleadings or appearing at any hearings.

- The Court properly held that the alleged forbearance agreement that ended on August 31, 2010, did not prevent the foreclosure sale.
- Defendant does not have a due process right to challenge Plaintiff's decision not to modify her loan.
- The Court properly denied Defendant's request to vacate the default judgment because Defendant did file a timely motion, offered no excuse as to her failure to respond to the complaint, and failed to prove she had a meritorious defense to Plaintiff's claims.
- The Court properly refused to vacate the March 12, 2009, June 25, 2010, and August 20, 2010, orders concerning the amount of the debt, because Defendant did not allege or prove any misconduct concerning those orders.
- The Court properly determined that Defendant is not entitled to a stay for post-foreclosure discovery.
- The Court properly determined that Plaintiff complied with the Supreme Court's Orders concerning HAMP because Plaintiff filed the required affidavits and Defendant never filed any counter-affidavit.
- The Court properly denied Defendant's requests for relief because Defendant is not entitled to a loan modification.
- Plaintiff had no duty to carry out any modification obligations prior to filing suit.
- Plaintiff is not required to make a showing that it would be prejudiced if Defendant is granted the relief she seeks.

I. Defendant's Motion to Reconsider is not timely.

Rules 52(b) and 59(e), SCRCF, required Defendant to file her Motion to Reconsider not later than ten (10) days after receipt of written notice of the entry of the Order, which she did not do. By email dated April 25, 2011, the Court advised counsel for the parties that it intended to deny Defendant's Motion to Set Aside the Sale and would file the proposed order Plaintiff submitted, which Defendant's counsel had previously received by email on April 1, 2010.

On May 10, 2011, Plaintiff's counsel received a copy of the Order, which had been filed on April 29, 2011, but Defendant did not serve her Motion to Reconsider until May 24, 2011, as evidenced by the Certificate of Service to the Motion to Reconsider.¹ Because Defendant's

¹ Defendant did not state the date that her counsel received a copy of the Order in her Motion to Reconsider, but because she is located in Greenville, and counsel for Plaintiff is located in Columbia, it

Motion to Reconsider was not filed within ten days of receipt of notice of the entry of the Order, the motion is untimely.

II. The Supreme Court's Administrative Order dated May 2, 2011, does not apply to this case.

Defendant claims that the Supreme Court's Administrative Order dated May 2, 2011 ("2011 Administrative Order") requires the Court to set aside the foreclosure sale and all prior orders so she can challenge Plaintiff's denial of Defendant's request for a loan modification. (Motion to Reconsider pp. 2-3.) However, the 2011 Administrative Order expressly provides that it only applies to actions pending on May 9, 2011, or actions filed after May 9, 2011. Here, the foreclosure sale in this case occurred on September 7, 2010—eight months before the effective date of the 2011 Administrative Order. Thus, this case is not subject to the 2011 Administrative Order.

III. The Court properly held that no evidence supports a finding of fraud under Rule 60(b)(3), SCRPC.

In her Motion to Set Aside Sale, Defendant alleged that Plaintiff fraudulently represented that the September 7th foreclosure sale had been postponed. (Motion to Set Aside Sale p. 2.) However, the following undisputed evidence offered by both parties shows that Plaintiff never promised that the September 7th foreclosure sale had been or would be postponed:

- Defendant was informed twice that she did not qualify for a permanent loan modification prior to receiving notice of the September 7th foreclosure sale. (Hrg. Tr. pp. 57-60; Herndon Aff. ¶¶ 12, 15).
- After Defendant received notice of the September 7th foreclosure sale, she made a third loan modification request to Plaintiff, and was informed by Plaintiff that her modification request could not be considered until she submitted a complete, updated set of financial documents. (Hrg. Tr. pp. 61-62; Herndon Aff. ¶¶ 17-18.)

stands to reason that Defendant's counsel would have received mail from Pickens County on the same day, if not before, Plaintiff's Columbia counsel.

- Defendant did not submit a complete set of financial documents until August 31, 2010, which less than seven business days before the scheduled September 7th foreclosure sale. (Hrg. Tr. p. 61, ll.18-23; Herndon Aff. ¶¶ 17-18.)

Most significantly, Defendant admitted several times during the hearing that Plaintiff never told her that the sale had been postponed:

Ms. Caskey: Did anyone –so no one at the attorney's office ever told you that the foreclosure sale had been postponed, is that right?

Ms. Bradley: No.

Ms. Caskey: I think you testified earlier that no one at Chase told you that it had been postponed, right?

Ms. Bradley: Right.

Ms. Caskey: They just told you they requested it, correct?

Ms. Bradley: Right.

(Hrg. Tr. p. 64, ll. 1-10.) Defendant later confirmed her prior testimony:

Ms. Caskey: But no one had ever told you that it had been postponed.

Ms. Bradley: Correct.

Ms. Caskey: That was just your understanding?

Ms. Bradley: Right.

(*Id.* at p. 79, ll. 17-21; *see also id.* at p. 30, ll. 15-18 (“And Jeanette had confirmed that the request had been postponed for the foreclosure sale had been submitted, but she didn’t say what other actions had been taken”); *id.* at p. 31, ll. 20-21 (“they sent the postpone [sic], but they hadn’t got a response or reply of whether or not if it had been or had not been”).)

Defendant further acknowledged that she was never given any misinformation about the foreclosure sale. (*Id.* at p. 77, ll. 7-8 (“I didn’t say I got incorrect information about the foreclosure sale.”).) Defendant’s testimony corroborated that of Charles Herndon, who testified that Defendant was informed that a request to postpone the foreclosure sale was submitted but the foreclosure sale was never cancelled. (Herndon Aff. ¶ 18).

Under South Carolina law, the statement on which Defendant relies—that Plaintiff's representatives had requested that the sale would be postponed—does not amount to fraud. An allegedly fraudulent representation "must relate to a present or pre-existing fact and it cannot ordinarily be based upon an unfulfilled promise to perform in the future or statements as to future events." *Bishop Logging Co. v. John Deer Indus. Equip. Co.*, 317 S.C. 520, 527, 455 S.E.2d 183, 187 (1995) (emphasis added). "As a general rule, fraud cannot be predicated on a statement that constitutes an expression of an intention." *Osborn v. Univ. Med. Assocs.*, 278 F. Supp. 2d 720, 732 (D.S.C. 2003). Because the statement on which Defendant relies concerns an intent and a future event, it cannot constitute fraud.

IV. The misrepresentations and misconduct alleged by Defendant do not constitute "fraud" or "misconduct" under Rule 60(b)(3), SCRPC.

Defendant alleges that in addition to misrepresentations made by Plaintiff in August 2010 about the foreclosure sale, the "failures of communications" between Plaintiff and Defendant concerning the loan modification process amounted to misconduct by Plaintiff. (Motion to Reconsider pp. 3, 7.) However, under Rule 60(b)(3), only misconduct amounting to "extrinsic fraud" justifies setting aside a final judgment. *Chewning v. Ford Motor Co.*, 354 S.C. 72, 80, 579 S.E.2d 605, 610 (2003).

Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action."

Id. (quoting *Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)).

In this case, all of the alleged misrepresentations concern whether Defendant was ever told that the September 7th foreclosure sale had been postponed. Even if Plaintiff had told

Defendant that the foreclosure sale had been postponed, which it did not, Defendant still could have protected herself by answering the complaint, responding to affidavits, and appearing at the foreclosure hearing. Defendant candidly admitted that she was served with the complaint, but chose not to hire an attorney or even attend a hearing. (Hrg. Tr. p. 50, ll. 2-20.) Instead, she sought assistance from a company named "First Foreclosure Solutions," and testified she was told by the representative of First Foreclosure not to answer the complaint and not to attend the hearings. (*Id.* at p. 50, ll. 22-25-p. 51, ll. 1-5.) It is thus clear from Defendant's own testimony that she did not litigate the issues in the case because she was advised not to, and not as a result of any actions by Plaintiff.

Defendant also claims that Plaintiff is guilty of misconduct under Rule 60(b)(3) because it did not properly consider her for a permanent loan modification. Even if true, Plaintiff's actions did not affect Defendant's ability to adjudicate the issues in the foreclosure action. The foreclosure hearing occurred on March 12, 2009, which was 17 months before Defendant's last request for a loan modification on August 31, 2010. It is impossible that Plaintiff's actions in August 2010 could have affected Defendant's ability to fully litigate the matter before the Court in March 2009. Thus, the record is clear that Plaintiff's actions are not "fraud" or "misconduct" under Rule 60(b)(3), and the Court properly denied Defendant's Motion to Set Aside Sale.

V. The Court properly held that the alleged forbearance agreement that ended on August 31, 2010, did not prevent the foreclosure sale.

Defendant contends that the Court erred by finding that a three-month forbearance period ended on August 31, 2010, and did not affect Plaintiff's right to move forward with the foreclosure sale. (Motion to Reconsider pp. 3-4.) Defendant testified that the purpose of the forbearance was to "give [her] three months forbearance, which would be for June, July and

August of 2010, for [her] to resubmit [her] modification package." (Hrg. Tr. p. 16, ll. 22-25.) Plaintiff and Defendant tried to reach a workout of Defendant's loan, and Defendant resubmitted a loan modification request during that time because she found employment. (*Id.* at pp. 16-17; Herndon Aff. ¶ 14.) To assist Defendant, Plaintiff postponed a foreclosure sale scheduled for August 2, 2010. (Herndon Aff. ¶ 15.)

However, after reviewing Defendant's loan modification request, Plaintiff determined that Defendant was still ineligible for a loan modification and promptly notified Defendant of the denial. (*Id.*) Defendant received a letter dated August 19, 2010, informing her that she had been denied for a loan modification because the net present value of her loan did not meet HAMP guidelines. (Hrg. Tr. pp. 60-61; Herndon Aff. ¶ 15.) As a result, the uncontested, undisputed evidence before the Court proved that as of August 31, 2010, when the forbearance period ended, Defendant had been considered and denied for a loan modification. As explained below, the August 19, 2010, denial letter did not create any due process rights for Defendant to challenge the modification decision or to prevent foreclosure, *see infra* Section VI, so the Court correctly held that the forbearance agreement did not prevent the foreclosure sale.

VI. Defendant has not been denied due process at any time during the course of this foreclosure action.

Defendant claims a due process right to challenge the denial of her application for a loan modification following each denial, including after Plaintiff's letter dated August 19, 2010. (Motion to Reconsider pp. 4-5.) However, to prevail on a due process claim, Defendant must first show a deprivation of a protected liberty or property interest. *See Steffens*, 2011 U.S. Dist. 26709, at * 5.

In *Steffens v. American Home Mortgage Servicing*, the District Court of South Carolina addressed an almost identical due process claim to the one Defendant presents. In *Steffens*, the plaintiff alleged that she had “a protected property interest in a process of decision-making that complies with Treasury Department rules” concerning HAMP. *Id.* (internal cites omitted). The District Court of South Carolina expressly rejected the plaintiff’s due process claims, holding that HAMP does not create a property interest in permanent modification for borrowers. *Id.* at *7. The district court emphasized that “a protected property interest arises if a person has more than an abstract need or desire for [a benefit.] He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.” *Id.* at *6 (quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972)) (emphasis added). “When a statute or policy grants to the decisionmaker discretionary authority in its implementation, a protected property interest is not created.” *Id.*

Noting that HAMP does not create a private right of action, and that the compliance authority for HAMP is delegated solely to Freddie Mac, the district court held that HAMP does not create a property interest in permanent modification for borrowers. *Id.* at *7; see also *Williams v. Geithner*, 2009 U.S. Dist. LEXIS 104096, at *6 (D. Minn. Nov. 9, 2009) (determining that the HAMP regulations “did not intend to create a property interest in loan modifications for mortgages in default,” and thus finding no likelihood of success on the merits of plaintiffs’ due process claim).

Thus, Defendant has no protected property interest in a loan modification or due process right to challenge the modification process in order to prevent foreclosure.

VII. The Court properly denied Defendant the remaining relief requested in her Motion to Set Aside the Sale.

In addition to asking the Court to set aside the September 7th foreclosure sale, Defendant requested that all prior orders be set aside, including the order of default judgment, so that she can file an answer and counterclaim. Alternatively, Defendant requested that any eviction be stayed for 90 days to allow for discovery on the loan modification process. Defendant is simply not entitled to any of the relief she seeks.

a. Defendant withdrew her request to be relieved from default and for leave to file an answer and counterclaim.

Paragraph 1 of Defendant's Motion to Set Aside Sale requests "[t]o alter and amend the written decision on her Motion to Stay Further Action, Set Aside Entry to Default, and allow Defendant to answer and assert counterclaims." (Motion to Set Aside Sale p. 1.) However, at the hearing held on March 14, 2011, counsel for Defendant stated that paragraph 1 of the Motion to Set Aside Sale was "a mistake" and that she was not seeking to be relieved from default. (Hrg. Tran. p. 6, ll. 14-16.) Defendant never filed any Motion to Set Aside Entry of Default in this case. As a result, Defendant's request that she be relieved from default and granted leave to file a responsive pleading is not properly before the Court.

b. Defendant failed to make a showing as to why the default judgment should be vacated.

Even if Defendant had requested relief from default or if she had filed a proper motion, she failed to make a showing why the order of default should be set aside. Rule 60(b), SCRPC, governs motions for relief from a default judgment and requires a timely motion and a showing of mistake, inadvertence, or excusable neglect or other grounds under that rule, and generally a meritorious defense. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009) ("Once a default judgment has been entered, a party seeking to be relieved must

do so under Rule 60(b), SCRCF. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c)."). The rigorous standard under Rule 60(b) is intended to "make it more difficult for a party to avoid default once the court has entered a judgment, which carries greater finality." *Id.* at 608, 681 S.E.2d at 889.

In this case, Defendant has not offered any evidence whatsoever as to why the default judgment entered on March 17, 2009, should be set aside. Defendant admits that she received the foreclosure complaint and notice of the foreclosure hearing, but failed to appear on the advice of a non-lawyer. (Hrg. Tr. pp. 50-51.) Additionally, Defendant has not offered any evidence that she has a meritorious defense. It is undisputed that Defendant was in default under the terms of the loan documents when the foreclosure action was filed, and that she is currently due for the monthly payment due on October 1, 2008. (Herndon Aff. ¶ 7; Second Supplemental Order Post Judgment p. 2.) Thus, Defendant has no defense to Plaintiff's foreclosure claim.

It is also undisputed that Defendant's only claim against Plaintiff is that Plaintiff failed to permanently modify her loan under HAMP. (Motion to Reconsider p. 5.) However, as explained in Plaintiff's Memorandum in Opposition to the Motion to Set Aside Sale, there is no private right of action under HAMP. *See, e.g., Singh v. Wells Fargo Bank*, 2011 U.S. Dist. LEXIS 3563 at *23 (E.D. Ca. Jan. 7, 2011); *Zeller v. Aurora Loan Servs., LLC*, 2010 U.S. Dist. LEXIS 80449 at *2 (W.D. Va. Aug. 10, 2010). On March 15, 2011—one day after the hearing in this case—the District Court of South Carolina joined courts across the nation in holding that there is no private right of action under HAMP. *See Steffens v. American Home Mortgage Servicing, Inc.*, 2011 U.S. Dist. LEXIS 26709 (D.S.C. March 15, 2011).

Defendant has not made the requisite request or showing to be relieved from default, and the record is woefully insufficient to allow Defendant to be relieved from default.

c. Due to her default, Defendant waived any right to object to the merits of the foreclosure action.

Defendant's default results in the admission of the well-pleaded facts of the complaint and waives all defenses not previously asserted. *Harbor Island Owner's Ass'n v. Preferred Island Properties, Inc.*, 369 S.C. 540, 633 S.E.2d 497 (2006); *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978); *State v. LoveShop, Ltd.*, 286 S.C. 486, 334 S.E.2d 528 (Ct. App. 1985). Defendant is attempting to raise defenses to Plaintiff's right to foreclose, but under well-settled law, Defendant waived those defenses by failing to timely respond to Plaintiff's Complaint.

d. Defendant has failed to provide any basis for the Court to set aside the orders concerning the amount of the debt.

In addition to seeking reconsideration of this Court's Order dated April 25, 2011, which denied Defendant relief from the Court's Order Confirming the Sale, dated September 22, 2010, Defendant seeks to have this Court's orders dated March 17, 2009, June 25, 2010, and August 20, 2010, set aside.

i. March 17, 2009, Order.

After a hearing on March 12, 2009, the Court entered an Order on March 17, 2009, that held Defendant in default and granted judgment in favor of the Plaintiff for the amounts due. Defendant admits she had notice of the March 12th hearing, failed to appear, and did not dispute that the amount of the debt as stated in the March 17, 2009, Order was correct. Defendant does not allege any misconduct or misrepresentation by Plaintiff with regards to the March 17, 2009, Order, and thus there is no basis for the Court to set it aside.

ii. June 25, 2010, Order.

The June 25, 2010, Supplemental Order Post Judgment was entered after negotiations for a loss mitigation workout with Defendant failed. (Affidavit in Support of Supplemental Judgment, dated June 21, 2010.) Following the March 17, 2009, Order, Plaintiff agreed to postpone the original foreclosure sale scheduled for April 6, 2009, and extended a HAMP trial period plan ("Trial Plan") to Defendant. (Herndon Aff. ¶ 10.) Defendant admitted that she failed to timely make the third and final payment due under the Trial Plan, and admitted that she received notice from Plaintiff that she had been denied a permanent loan modification. (Hrg. Tr. pp. 53-56, 65-66.) Defendant never filed any counter affidavits concerning the debt or the HAMP modification process. (Hrg. Tr. p. 67, ll. 1-3.) Defendant cannot challenge the modification process now.

The June 25, 2010, Order was entered solely for the purpose of updating the amount of the debt due because more than a year had passed since the entry of the March 17, 2009, Order. Defendant has not alleged any misconduct or misrepresentation by Plaintiff with regards to the June 25, 2010, Order, and thus there is no basis for the Court to set it aside.

iii. August 20, 2010, Order.

Like the June 25, 2010, Order, the August 20, 2010, Second Supplemental Order Post Judgment was entered after negotiations for a loss mitigation workout with Defendant failed. Following the June 25, 2010, Order, a second foreclosure sale was scheduled for August 2, 2010. (Herndon Aff. ¶ 14.) However, at Defendant's request, Plaintiff again agreed to postpone the foreclosure sale to discuss a possible resolution. (*Id.* ¶ 15.) Plaintiff subsequently determined that Defendant was still not eligible for a permanent loan modification, and by letter dated August 19, 2010, Plaintiff notified Defendant of the same. (*Id.* ¶ 15; Hrg. Tr. p. 60, ll. 19-25-p.

61, ll. 1.) On August 20, 2010, Plaintiff filed an Affidavit in Support of Second Supplemental Judgment, seeking to update the amount of the debt due since the June 25, 2010, Order was entered. There is no dispute that Defendant's loan was not modified as of August 20, 2010, and that the debt amounts in the August 20, 2010, Order are correct, so there is no basis for the Court to set it aside.

VIII. Defendant is not entitled to a stay for post-foreclosure sale discovery.

Defendant claims that the Supreme Court's Orders concerning HAMP afford her the opportunity to conduct discovery on Plaintiff's underwriting procedures. (Hrg. Tr. pp. 86, ll. 23-25, 88, ll. 6-13.) However, the Supreme Court's HAMP Orders do not provide for any type of discovery concerning the HAMP process or otherwise, and the South Carolina Rules of Civil Procedure do not allow for discovery after the merits hearing. See Rule 26, SCRCP (discovery only available for "relevant" matters in a "pending" action). Defendant has already waived her rights to raise any defenses to the foreclosure action and a claim under HAMP is not a viable claim or defense to the foreclosure action. As a result, there is no evidence "relevant to the subject matter" that could be discovered in post-foreclosure sale discovery and no basis for the Court to grant Defendant such relief.

IX. The Court properly determined that Plaintiff complied with the Supreme Court's Order concerning HAMP.

The Supreme Court's May 2009 Orders concerning HAMP provide that once a lender files an affidavit stating that it has complied with the HAMP Orders, a borrower has ten days to file a counter affidavit. Defendant candidly admitted that after receiving Plaintiff's Affidavit dated May 17, 2010, which testifies that Plaintiff had complied with the HAMP Orders, Defendant did not file a counter affidavit challenging Plaintiff's compliance. (Hrg. Tr. p. 65, ll.

13-25-p. 67, ll. 11.) The Court thus correctly determined that Plaintiff complied with the Supreme Court's HAMP Orders.

X. The Court properly denied Defendant's request for relief because Defendant is not entitled to a loan modification.

Defendant's efforts to set aside the foreclosure sale and reopen the foreclosure are tantamount to pursuing a private right of action under HAMP, which does not exist for the reasons described in Section II of Plaintiff's Memorandum in Opposition to Defendant's Motion to Set Aside Sale. The Court should not allow Defendant to perform an end-run around nationwide jurisprudence.

XI. Plaintiff properly denied Defendant's request for a loan modification.

Defendant claims that she was entitled to a permanent loan modification because she made eight payments under the Trial Plan. (Motion to Reconsider p. 5.) However the terms of the Trial Plan signed by Defendant are clear and unmistakable: the Trial Plan lasts for three months and requires the borrower to make three payments on time. (See Herndon Aff. at Exh. 1, p. 2.) Additionally, if a Defendant fails to make "current trial period payments" then the Defendant is not eligible for a permanent modification. See *Making Home Affordable Program, Handbook for Servicers of Non-GSE Mortgages*, Version 3.0, p. 78 (as of Dec. 2, 2010), available at

https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_30.pdf.

By Defendant's own admission, she failed to make the first three payments on time, which made her ineligible for a permanent modification. (Hrg. Tr. pp. 53-56 (admitting that her payments were late, and that the third payment, due by September 30, 2009, was not made until mid-October 2009); see also Herndon Aff. ¶ 11.) Although Defendant testified that she

continued to tender payments to Plaintiff from October 2009, to April 2010, the HAMP Trial Plan terminated when Defendant failed to make the full amount of the payments on time. (Hrg. Tr. at pp. 15-16.) Thus, there is no evidence to support Defendant's claim that she was entitled to a permanent loan modification.

XII. Plaintiff had no duty to carry out any "modification obligation" prior to filing suit.

Defendant contends that "[t]he Court failed to address the Plaintiff's failure to carry out its modification obligation owed under the AO before pursuing the foreclosure suit." (Motion to Reconsider p. 5.) However, Defendant cites no authority requiring Plaintiff to offer a loan modification prior to filing a foreclosure action. This action was filed on December 8, 2008, and the Supreme Court's HAMP Orders were not issued until May 4, 2009, and May 22, 2009, respectively. The HAMP Orders required that Plaintiff, as the lender in a pending action as of May 4, 2009, file an affidavit as described above, but did contain any prerequisites with which Plaintiff must comply in order to bring the foreclosure action.

XIII. Plaintiff is not required to show prejudice.

Defendant claims that Plaintiff failed to produce evidence that it would be prejudiced if the sale is set aside, but Plaintiff bears no such burden. (Motion to Reconsider p. 6.) Defendant, as the movant under Rule 60(b), "has the burden of presenting evidence proving the facts essential to entitle her to relief," including that Plaintiff would not be prejudiced if Defendant is granted the relief she seeks. *BB&T v. Taylor*, 369 S.C. 548, 552, 663 S.E.2d 501, 503 (2006); *see also Rodriguez v. Gutierrez*, 391 S.C. 323, 705 S.E.2d 94, 99 (Ct. App. 2011).

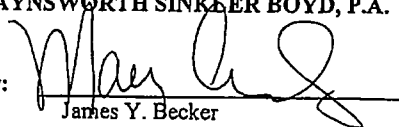
Moreover, the evidence in the record clearly shows Plaintiff would be prejudiced if Defendant is granted the relief she seeks. Charles Herndon testified that Plaintiff worked with

Defendant for almost two years to avoid foreclosure, but ultimately was not able to offer Defendant a loan modification. (Herndon Aff. ¶¶ 8-18.) Mr. Herndon also testified that Plaintiff was the successful bidder of the Property, and that it assigned its bid to the Federal National Mortgage Association. (Id. ¶ 19.) Plaintiff would thus be severely prejudiced if the Court were to set aside the foreclosure sale or any of the prior orders in this case because Plaintiff would lose the time and money already expended to complete the foreclosure of the subject property and the transfer of the Property to the Federal National Mortgage Association would have to be undone. Defendant has not offered any evidence to show that Plaintiff would not suffer this prejudice, and has thus failed to meet her burden under Rule 60(b), SCRPC.

CONCLUSION

Based on the foregoing, Plaintiff requests that the Court issue an order denying Defendant's Motion to Reconsider and all of the relief she requests therein, and for such other relief as the Court finds just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

James Y. Becker
Mary M. Caskey

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779-3080

Attorneys for Plaintiff

June 13, 2011

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank,

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

2011 JUN 15 P 1:03

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served electronic mail, or by other delivery as indicated, to all parties of record at the addresses shown below.

1. Plaintiff's Memorandum in Opposition to Defendant's Motion to Reconsider; and
2. Certificate of Service.

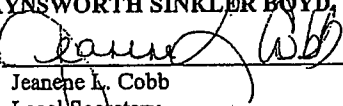
Parties of Record

Attorney for Vanessa Y. Bradley

Susan Ingles, Esq.
S.C. Legal Services
701 South Main Street
Greenville, SC 29601

HAYNSWORTH SINKLER BOYD, P.A.

By:


Jeanene L. Cobb
Legal Secretary

Date: June 13, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS

JP MORGAN CHASE BANK, NATIONAL BANK

Plaintiff,

vs.

CASE NO.: CP 2008-CP-39-2120

VANESSA Y. BRADLEY,

Defendant.

HEARING: SPECIAL REFEREE
R. MURRAY HUGHES, ESQUIRE

DATE: March 14, 2011

TIME: 3:00 p.m.

LOCATION: R. MURRAY HUGHES
4606 Moorefield
Pickens, SC

REPORTED BY: SHARON G. HARDOON,
Court Reporter, Notary Public

1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFF
JP MORGAN CHASE BANK, NATIONAL BANK:

3 HAYNSWORTH SINKLER BOYD, P.A.
4 BY: MARY M. CASKEY
1201 Main Street, 22nd Floor
5 Columbia, SC 11889
(803) 779-3080
6 mcaskey@hsblawfirm.com

7 ATTORNEYS FOR THE DEFENDANT
VANESSA Y. BRADLEY:

8 S.C. LEGAL SERVICES
9 BY: SUSAN INGLES
701 South Main Street
10 Greenville, SC 29601
(864) 679-3244
11 susaningles@sclegal.org

12 Also Present:
Kathryn Gailey, Esq., SC Legal Services
13 Brian Blake, Intern SC Legal Services

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PLAINTIFF'S EXHIBITS

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1 P R O C E E D I N G S

2 THE COURT: Miss Ingles, you are the
3 moving party. Just go ahead whenever you're
4 ready.

5 MS. INGLES: Well, should I just
6 start with the testimony, or did you want me
7 to summarize?

8 THE COURT: Why don't you summarize
9 it for me. I'll hear from both counsel.

10 MS. INGLES: I'm Susan Ingles. I'm
11 here on behalf of Vanessa Bradley. She is
12 the defendant in this case, and apparently
13 her home was sold at a foreclosure sale on
14 September 7th.

15 Our motion today is seeking to have
16 that sale set aside. And we have a number of
17 reasons, not the least of which is that at
18 the time the sale was done, Miss Bradley was
19 under a HAMP modification review by the
20 plaintiff, by Chase, and she did not get a
21 denial letter until later in September of
22 2010.

23 So her testimony will be, I'll just
24 summarize it briefly for you, that she was on
25 the phone with them constantly, she has had a

1 previous trial modification plan that she
2 paid under for quite some time and became
3 unemployed. And then subsequent to that,
4 because she had been paying under the trial
5 modification, a forbearance of three months
6 was allowed so that she could apply for a
7 HAMP based on this newer income.

8 And so there's been a number of letters
9 she has received, conversations she's had with
10 the plaintiff, all of which led her to believe
11 that she was under review and that her house
12 wasn't going to be sold and so forth. So that's
13 basically the fact situation here.

14 As far as our motion, I didn't want to
15 mention that number 1, our motion actually does
16 not apply today and was just a mistake today.
17 I'm inserting that paragraph there. But we are
18 asking that the sale be set aside, and if there's
19 been a deed of the property, and I understand
20 that there has been, that that be all set aside
21 based on fraud, which we'll have the testimony
22 about today.

23 We've also ask that Your Honor set a
24 conference for mediation to explore the analysis
25 of her home under Homes Affordable, or for to

1 allow us to pursue discovery to determine why she
2 was turned down. There's a number of reasons why
3 she certainly shouldn't have been turned down.
4 And the reasons that she was turned down are kind
5 of all over the place both verbally and in
6 writing.

7 Barring that, we would want a stay so
8 that the modification could be properly reviewed.

9 And also, there are, as you are probably
10 aware of the new programs in South Carolina to
11 help people like Miss Bradley who have become
12 unemployed but now are employed again. There's a
13 number of opportunities for her to get help with
14 the loan payment, either lump sum or in payments.
15 She's employed and there's really no reason for
16 her to be foreclosed, but most definitely, I
17 think the most thing is that the administrative
18 order that is in effect right now from our
19 Supreme Court definitely requires that there not
20 be a sale of the property while the loan is under
21 review. And I think it's going to be clear that
22 this loan was under review at the time.

23 THE COURT: All right. Thank you for
24 your motion.

25 MS. CASKEY: Good morning, Mary

1 Caskey here on behalf of the Plaintiff, JP
2 Morgan Chase. I think something to think
3 about early-on in this case is that the
4 particular event surrounding third and final -
5 foreclosure sale that occurred on September
6 7th was not the only event. It wasn't the
7 only foreclosure sale and it wasn't the only
8 attempt that Mr. Chase and Miss Bradley made
9 to modify her loan.

10 The property had been scheduled for
11 sale two times previously. The sales had
12 been stayed two times previously, both at
13 Miss Bradley's request so that she could be
14 considered for a HAMP modification. And
15 after both of those stays, a letter was sent
16 to her explaining the reasons for her denial.

17 The second thing I think is
18 important to point out is that with regards
19 to compliance with the Supreme Court's order.
20 The Supreme Court order does not require that
21 Chase modify a borrower's loan. It simply
22 requires that the lender state whether a
23 borrower is eligible for a determination
24 under HAMP and that the case be stayed
25 pending that determination.

1 At the time that this third foreclosure
2 sale took place in September, Miss Bradley had
3 already been considered twice for a modification
4 before and both of those applications have been
5 denied.

6 Third, I think it's important to
7 remember that overall purpose of HAMP. HAMP
8 is not just intended to help borrowers. HAMP
9 was a program commenced to address a large
10 crisis in the financial industry. In HAMP,
11 the agreements in HAMP is not between Chase
12 as servicer and Miss Bradley. The HAMP
13 agreement is between Chase and the US
14 Treasury Department. And any obligations
15 that Chase has under the servicing agreement
16 with the US treasury Department are not
17 enforceable only by the US Treasury and
18 Chase. Miss Bradley has no rights under the
19 HAMP Modification Handbook, the HAMP
20 supplemental guidelines or any of the
21 directives that give the servicer guidelines
22 about how to comply with HAMP. That's why
23 many courts have determined that there's no
24 private right of action under HAMP.
25 If Miss Bradley -- for example, if

1 this property -- if she had been evicted and
2 moved on and decided not to try to set aside
3 the sale, she couldn't bring a claim in
4 Circuit Court against Chase. The same
5 reasons that that's not possible are the same
6 reasons why the sale shouldn't be set aside.

7 Finally, with regards to whether or
8 not Chase should have stopped that final
9 foreclosure sale, I'm not aware, Chase is not
10 aware of any evidence that it ever informed
11 Miss Bradley in writing or verbally that the
12 sale had been postponed. I mean, that in the
13 past tense. She was not informed that, yes,
14 we've gotten approval and the sale has been
15 stopped.

16 As you'll see in the affidavit that
17 I submitted today, Chase did say, we're going
18 to request, we're going to try to get it
19 stopped. Chase wasn't able to do that. It
20 had to seek Fannie Mae approval. And the
21 request for the foreclosure to be stayed was
22 received less than seven business days before
23 the foreclosure sale. That's going to be
24 important under the HAMP guidelines as to
25 when Chase was required to stop the

1 foreclosure sale.

2 So I think, as the testimony will
3 come out, it will be clear that there's
4 really no basis for fraud. There was no
5 statement that the sale had been postponed.
6 And, second, I think it will be clear that
7 regardless of the reasons why the
8 modification was denied, the foreclosure
9 orders and subsequent sale should not be set
10 aside, because there's simply no private
11 right of action under HAMP and there's [REDACTED]
12 requirement that the lender modify the
13 loan.

14 THE COURT: Thank you, ma'am. All
15 right. Are we ready for testimony?

16 MS. INGLES: Yes.

17 THE COURT: Very well. Call your
18 first witness.

19 MS. INGLES: Vanessa Bradley.

20 THE COURT: Miss Bradley, if you'll raise
21 your right hand, the court reporter will swear
22 you.

23 WHEREUPON:

24 VANESSA BRADLEY,
25 after having been sworn to tell the truth, the

1 whole truth and nothing but the truth testified
2 as follows:

3 EXAMINATION

4 - BY MS. INGLES:

5 Q. Miss Bradley, we've just gone over kind of
6 why we're here today. And you are Vanessa
7 Bradley, you're the defendant in this action,
8 correct?

9 A. Yes.

10 Q. Tell us what your address is.

11 A. [REDACTED] Central, South Carolina,
12 29630.

13 Q. Is that the home that you have mortgaged with
14 Chase?

15 A. Yes, ma'am.

16 Q. And you're here today to testify about what
17 happened from your perspective on this
18 foreclosure and ultimate sale of your house; is
19 that right?

20 A. Yes, ma'am.

21 Q. In your communications with Chase, did you
22 keep notes and information about your contacts
23 with them and who you spoke with and that sort of
24 thing?

25 A. Yes, ma'am.

1 Q. I think you have with you a timeline that
2 we've put together just to sort of summarize what
3 your notes say.

4 A. Yes, ma'am.

5 Q. And you plan to use that today to sort of
6 refresh your recollection instead of rifle
7 through your notes and that sort of thing?

8 A. Yes, ma'am.

9 MS. INGLES: And I think, Judge,
10 we've done that mainly to help, not just Miss
11 Bradley.

12 THE COURT: It moves things along.
13 I appreciate it.

14 MS. INGLES: It moves things along
15 and will be helpful to The Court to determine
16 what's been going on.

17 BY MS. INGLES:

18 Q. So having said all that, would you start by
19 just telling The Court about that first trial
20 modification that came along with your loan back
21 in June of 2009?

22 A. Okay. In 2009, I was granted a trial
23 modification under HAMP, which was supposed to
24 have been for three months, which was August,
25 September and October. And in October --

1 BY MS. INGLES:

2 Q. Let me stop you right there for just a
3 second. What was the payment to be?

4 A. It was 517 and some change, but I rounded it
5 up just to make an 518.

6 Q. What had your payment been before that?

7 A. 678 and some change.

8 Q. Okay. Go ahead. Did you go ahead and do
9 that modification?

10 A. I did.

11 Q. Did you sign a written agreement of the
12 modification?

13 A. Yes, I did.

14 Q. Did you ever receive back from Chase a copy
15 of that agreement with their signature on it?

16 A. No, ma'am.

17 Q. Do you know if they ever signed it?

18 A. I don't.

19 Q. So tell us how that trial modification
20 went?

21 A. It was supposed to have been for three
22 months; August, September and August. At the end
23 of October, they were supposed to decide whether
24 or not if I was approved for the modification.

25 Q. For the permanent modification?

1 A. Yes.

2 Q. Did you make the payments in August,
3 September and October?

4 A. Yes, ma'am.

5 Q. And then what happened after that?

6 A. During this time, I became unemployed, but I
7 still made the payments. Some of them was a
8 little late, but I still made them.

9 Q. So you made them beyond October of 2009?

10 A. Yes. In October, I had contacted Chase, and
11 I can't remember the young lady I spoke with, but
12 I was actually going to pay my trial
13 modifications up at the end of October, okay, do
14 I continue to pay, or do I stop. She said, well,
15 continue to make your trial payments which you're
16 paying and they will decide just to show as of a
17 good faith, and so that's what I did.

18 Q. And when is the last time you made a payment
19 on that modification?

20 A. I made the last payment April 2010.

21 Q. Okay. And then what did you do after that?
22 Or what caused you stop paying at the point?

23 A. In March -- I think it was in March I
24 received a letter they needed some more updated
25 information. I sent them all the information

1 that they needed. I was still unemployed at this
2 time. And I contacted Chase and I explained to
3 the gentleman that I talked to -- I wasn't really
4 taking notes then, which I should have, and I
5 told him that I got my unemployment and I
6 wouldn't be able to make my payment for this
7 month. And he said, well, since, you can't make
8 your payment, then we can go ahead and proceed on
9 the foreclosure. And I'm like, well, you know,
10 basically wasn't nothing I can do.

11 And then I went to the Urban League and
12 consulted a housing counselor.

13 Q. To help you work something out with Chase?

14 A. To see if they could help me understand
15 better what was going on and see if I can work
16 something out.

17 Q. Were you able to work something?

18 A. Yes. I went to the Urban League and we
19 contacted Chase, me and Miss Vernon. She was on
20 speaker phone with me. I was in the office and
21 we spoke with Amanda and we told her what was
22 going on and everything. And Amanda had said she
23 would give me three months forbearance, which
24 would be for June, July and August of 2010 and
25 for me to resubmit my modification package.

1 Q. Okay. Did you resubmit your modification
2 package?

3 A. Yes. I did my income verification over the
4 phone. I resubmitted the modification package.
5 I faxed in all the required documents.

6 Q. And then after doing that, what happened
7 next?

8 A. I was relying on what Amanda had said, and
9 around the 22nd, I received a letter.

10 Q. This was the 22nd of?

11 A. Of June.

12 Q. Okay.

13 A. I received a letter from the Plaintiff's
14 attorney saying they had set a sale date for my
15 home on August 2nd.

16 Q. So were you surprised by that with the
17 forbearance having been given?

18 A. Yes.

19 Q. Okay.

20 A. Because while talking to Amanda, she had told
21 me that, well, they couldn't foreclose. She said
22 there wasn't nothing they could do until they get
23 my -- because of the forbearance and because
24 after I submitted my modification package and
25 after they go through review, there was nothing

1 that could be done. So I relying --

2 Q. You mean nothing -- when you said there's
3 nothing to be done?

4 A. As far as foreclosure.

5 Q. Okay.

6 A. That they can't foreclose on it until after
7 all that was over and done.

8 Q. Okay. So what did she say about this sale
9 date, that that couldn't happen; is that what you
10 understood her to mean?

11 A. That's what I understood that it couldn't
12 happen, because I had the forbearance until the
13 end of the August. And there wasn't nothing that
14 could be done. They couldn't foreclose on it.

15 Q. Did you follow up on that later?

16 A. Yes, ma'am. I called back on the 28th, and
17 spoke with an Autumn regarding another letter I
18 had received and Autumn assured me that the
19 forbearance was in action.

20 THE COURT: The 28th of what month?

21 THE WITNESS: June.

22 BY MS. INGLES:

23 Q. Of 2010; is that right?

24 A. Yes, ma'am. And she assured me that the
25 forbearance was still active and Chase would

1 notify their attorneys of the forbearance.

2 Q. What did you feel at that point was going
3 on?

4 A.- I felt like.

5 Q. What was your understanding?

6 A. From my understanding, I got that they wasn't
7 going to be selling my house not until -- they
8 wasn't going to be selling it, because the
9 forbearance didn't end until August and she said,
10 after I submitted my package, that it would be 30
11 to 45 days before they would make a decision on
12 it.

13 Q. And all of these conversations that you just
14 described have been with employees of Chase, the
15 Plaintiff?

16 A. Yes, ma'am.

17 Q. Is there any reason that you had not to
18 believe that what they were saying was true?

19 A. No. I mean, they working for Chase and I
20 figured they knew what they was doing. And
21 usually when you conduct business, I feel that
22 you're to be honest and true and stand behind
23 your word.

24 Q. So what was the next thing that happened when
25 you followed up with him?

1 A. On the 29th of June, I called and spoke with
2 David. And he had told me that they had assigned
3 me a relationship manager and her name was Sandra
4 and he gave me Sandra's direct number.

5 Q. Did he say what a relationship manager was?

6 A. He basically said that whenever I have any
7 question, I call her and ask her and she would be
8 the one getting in contact with me and keeping me
9 updated on where my modification was at as far as
10 review. And if there was any more information or
11 anything that they needed, then she would be the
12 one that would contact me.

13 Q. So then what did David say? Anything else
14 besides relationship information?

15 A. No -- well, after he gave me her direct
16 number then he transferred me to her and I spoke
17 with her and she said everything -- she had
18 received all the information and everything that
19 I had faxed in and that I just needed to send
20 proof of my income, which I did do all that.

21 Q. So that was still in June of 2010?

22 A. Yes, ma'am.

23 Q. So, after you sent that in, you're still in
24 this three-month forbearance that you
25 mentioned?

1 A. Yes, ma'am.

2 Q. So what's the thing that you did as far as
3 this loan?

4 A. Well, I didn't do nothing in July because I
5 in the forbearance was standing in good. And
6 then --

7 Q. Let me just stop you right there for just a
8 second. So at that point in July of 2010, did
9 you have a job?

10 A. I got a job in July.

11 Q. Tell me what you got.

12 A. I work for Pickens Board of Disabilities
13 Special Needs as a direct support specialist.

14 Q. What is your income there?

15 A. I make 9.31 an hour.

16 Q. And you had -- okay. What did you do once
17 you got the employment?

18 A. When I got the -- when I got my wage
19 verification stating that I was employed and how
20 many hours and everything I would get a week, I
21 called Chase and I spoke with Sandra and I
22 informed her that I had gotten the job and my
23 wage and hours and everything that I was going to
24 be making, and she told me to send my -- redo my
25 income part of the modification package and send

1 it to her and she would send it to underwrite.

2 Q. Okay. Did you send that in?

3 A. Yes, ma'am.

4 Q. When is the next time that you followed up
5 with them?

6 A. I called --

7 Q. Let me ask you: At that point, it was your
8 understanding that sale -- that August 2nd sale
9 had been postponed or it had been canceled, or
10 whatever?

11 A. Yes, ma'am.

12 And then on August 16th, I received another
13 notice of sale from the Plaintiff's attorney, and
14 I immediately called Chase and I spoke with
15 Sandra. Sandra told me not to worry about it and
16 that the notice -- that my loan was in underwrite
17 for reviewing and she said she would contact the
18 attorneys regarding the status of my case and
19 that the foreclosure sale was on hold.

20 Q. Okay.

21 A. And then she said, well, since this is
22 underwrite that I had a new relationship manager
23 and in underwrite my relationship manager would
24 be Erin.

25 Q. So, now you're going to be talking to a

1 different department basically?

2 A. Yes, ma'am.

3 Q. All right. Did you ever talk to Erin?

4 A. No, ma'am.

5 Q. Did you try to talk to her?

6 A. Yes, ma'am. I called several occasions, left
7 several messages on her voicemail, left my
8 number, everything, and I never got to speak with
9 her.

10 Q. What's the next communication you had with
11 Chase?

12 A. On August 19th, they sent me a letter saying
13 that I didn't qualify for the loan modification
14 based on NPV value results.

15 Q. And what did you do in response to that?

16 A. And they said I had 30 days to request this
17 information.

18 Q. The NPV information?

19 A. Yes, the NPV information.

20 Q. So this was a letter dated August 19th, so 30
21 days from that would have been September 19th?

22 A. Yes, ma'am. So on the 25th, I called Chase
23 again. I spoke with Jessica to ask her, because
24 I knew my forbearance was going to be up at the
25 end of the August.

1 Q. Okay.

2 A. And I was asking her how much was I supposed
3 to send in September. And she said 678 or
4 whatever I can pay. She said because the sale
5 had not been stopped. The sale date had been set
6 for September 2nd and I need to send something to
7 stop the sale.

8 Q. And 678, that was what your original payment
9 was under the loan?

10 A. Yes, ma'am.

11 Q. Is that what you sent?

12 A. No, ma'am. I didn't send it because it was
13 like, okay, if I send it -- I felt like if I sent
14 it, it wouldn't guarantee me that that was going
15 to stop the sale. So I asked Jessica to transfer
16 me to Erin and Nancy picked up -- Nancy answered
17 and told me that Erin was out and for me to call
18 back the following day.

19 Q. Did you do that?

20 A. Yes, ma'am. I called back -- well, I called
21 back on August 30th and I spoke with a Linda.
22 Linda told me that my property had been set for
23 sale August -- not August -- September 7th. And
24 she informed me that they did receive all my
25 necessary paperwork and it was in review.

1 Q. When you say necessary paperwork, you mean
2 the one for HAMP modification?

3 MS. CASKEY: I'm sorry. Did she say
4 what day that was? -

5 THE WITNESS: August 30th.

6 MS. CASKEY: Thank you.

7 THE WITNESS: She said that they had
8 all the necessary modification paperwork and
9 she told me to send a pay check stub.

10 BY MS. INGLES:

11 Q. Why was that that you had to send another
12 paycheck stub?

13 A. Well, when Sandra had originally told me to
14 send the paycheck stub, I had only had one
15 paycheck stub. I only get paid once every two
16 weeks.

17 Q. And this was a new job?

18 A. A new job, yes. And I had told Sandra that I
19 only had one paycheck stub because we get paid
20 every two weeks and only had the one paycheck
21 stub. She told me to go ahead and send that
22 paycheck stub and when I get paid again to send
23 that one and that's what I did.

24 Q. Okay. And that was August 31st?

25 A. Yes, ma'am.

1 Q. Now, what did you do next after sending that
2 as far as to follow up with what was going on
3 with your modification application?

4 A. Well, on that day when I was talking to
5 Linda, I asked to speak to Erin.

6 Q. Erin is your underwriting relationship
7 manager?

8 A. Yes, ma'am.

9 Q. Okay.

10 A. I was told that she wasn't available.

11 Q. Okay.

12 A. And then August 31st, that's when I faxed my
13 paycheck stubs, bank statements, and amended
14 version of the modification package. I faxed all
15 that back to Chase.

16 Q. Did you have any reason to believe at that
17 moment that they weren't working with you on this
18 modification application?

19 A. No. I thought they was working with me. I
20 though, you know, they was supposed to be doing
21 it.

22 Q. You were sending stuff, they were asking for
23 other stuff and so forth?

24 A. Yes, ma'am.

25 Q. Okay.

1 A. I'm on the phone, they'll tell me I need to
2 do this, this and this, and then a couple of days
3 later asking for something totally different and
4 - then I would send that in, what they were asking
5 for that's totally different.

6 Q. Okay. So after you send in that second
7 paycheck stub, what was your next
8 communication?

9 A. On the 1st of September, I tried to contact
10 Erin in the underwrite department at Chase. She
11 wasn't available. I spoke with Beth, and she
12 told me that Chase had received all my
13 documentations that they needed. And she told
14 me, she -- and Beth told me she would send Erin
15 an email for her to have the sale date postponed.
16 And she said she also would tell -- she also told
17 me to call back the following day.

18 Q. Which would have been September 2nd?

19 A. Yes, ma'am.

20 Q. 2010. Did you do that?

21 A. Yes, ma'am.

22 Q. What happened in that conversation?

23 A. I called back on September 2nd asked to speak
24 with Erin. I was told Erin was busy, and I spoke
25 with a Samantha. And she said she would send an

1 email to her manager and Erin for them to
2 escalate to have the sale postponed.

3 Q. Because at this point, had you still not
4 gotten a definite answer on your modification?

5 A. No, ma'am.

6 Q. And you didn't have any reason to know
7 exactly what they were doing with this sale at
8 that point that you have you had been notified
9 of?

10 A. No, ma'am.

11 Q. Other than that they were requesting it be
12 postponed?

13 A. Yes, ma'am.

14 Q. What would be your next contact with them?

15 A. I called back on September 3, 2010 to
16 Chase -- no. On September 3rd, that's when I
17 received a letter saying that my modification
18 application had ** and the request -- I had
19 submitted a hardship letter and documentation of
20 my income.

21 Q. So this was like more information that they
22 needed at that point?

23 A. They said -- they informed me they received
24 all that because that was the last information
25 that they needed, my hardship letter.

1 Q. That's what they asked you for over the
2 phone?

3 A. Yes, ma'am. And they just sent me a letter
4 telling me they received this from me.

5 Q. Okay.

6 A. And then on the 3rd, I called Chase and asked
7 Erin again. I was told Erin wasn't in and I
8 spoke with a Sheryl. And Sheryl informed me that
9 my file was, in fact, in underwrite, and the
10 request for the postponement of the sale had been
11 submitted.

12 Q. What did you think that meant?

13 A. That they had sent it and they was -- had
14 sent the request for it to be postponed.

15 Q. Did you think it was still going to be held
16 at that point?

17 A. No, I didn't. Because when I was talking to
18 Sandra when she said she was sending it down to
19 underwrite, she had told me that they couldn't
20 foreclose -- they couldn't sell it or doing
21 nothing until they had the final review on my
22 modification of which she said it would be 30 to
23 45 days.

24 Q. That would have put you into October --

25 A. Yes, ma'am.

1 Q. -- of 2010?

2 THE COURT: Who told you that?

3 THE WITNESS: Sandra.

4 THE COURT: Sandra.

5 THE WITNESS: Yes, sir.

6 BY MS. INGLES:

7 Q. Did you have any other discussion with
8 Sheryl?

9 A. That was it. She just instructed me to call
10 back on the 4th, September 4th. I called back on
11 September 4th and I spoke with a Jeannette and
12 she told me Erin wasn't in.

13 Q. Erin being the relationship manager in
14 underwriting?

15 A. Yes, ma'am. And Jeanette had confirmed that
16 the request had been postponed for the
17 foreclosure sale had been submitted, but she
18 didn't say what other actions had been taken.
19 She just said it had been submitted and told me,
20 you know, basically call back the next day.

21 So on September 7th, I called -- that's
22 when I spoke with Jay, and he told me -- he also
23 told me that it takes 30 to 45 days to review my
24 case, for them to go over my modification package
25 and said Erin wasn't available.

1 I was asking them about the emails that
2 Sheryl and Linda and all them had sent Erin. He
3 said, yeah, they had been sent for the sale to be
4 postponed and the property had not been sold on
5 the 7th of September.

6 Q. So on that day, they said it wasn't sold.

7 A. Right.

8 Q. We didn't do that?

9 A. Right.

10 Q. Who was that that said that?

11 A. Jay. And then I called back on September
12 9th.

13 Q. Why did you call back?

14 A. I was trying to -- hoping I could get to talk
15 to Erin to see exactly what was going on.

16 Q. To see if you were going to get approved for
17 the modification?

18 A. Yes. And see, you know, if the foreclosure
19 went through or whatever. Basically because, I'm
20 like -- they kept saying they sent the postpone,
21 but they hadn't got a response or reply of
22 whether or not if it had been or had not been.

23 And Erin, she wasn't in, and I spoke with
24 a Calvin. He informed me that on the 7th, the
25 Plaintiff denied my modification application.

1 Q. He's like looking at the computer and telling
2 you what the computer says or something?

3 A. That's what I took he was doing.

4 Q. Okay. Had you gotten anything in writing
5 about that?

6 A. No, ma'am.

7 Q. Okay.

8 A. And I was questioning him.

9 Q. So did they deny it?

10 A. He was like for insufficient funds. And I
11 was like, why didn't Jay tell me this when I
12 talked to him on the 7th. And Calvin told me he
13 didn't know nothing about that. So I called back
14 on the 13th after receiving -- on the 13th, I
15 received a letter from the Plaintiff dating
16 that -- on the 13th, I received a letter, so I
17 called Chase and I spoke with Diane to confirm
18 that the plan -- exactly about why they did deny
19 my modification.

20 And Diane, she's -- I spoke with the
21 Diane. And she told me that the underwrite
22 quality control they didn't like the reason they
23 gave.

24 Q. That who gave?

25 A. Underwrite had gave for denying my

1 modification and they had sent it back down to
2 review.

3 Q. So they're telling you then that your
4 property was sold but your modification is still
5 to be reviewed, basically is the information you
6 have at that point?

7 A. Yes, ma'am.

8 THE COURT: What was the letter on
9 9/13? Did it say anything?

10 THE WITNESS: It was saying that --

11 MS. INGLES: I think 9/3 was the
12 letter.

13 THE WITNESS: I received it on the
14 13th. I don't know the exact date the letter
15 was written, but it was stating why I was
16 denied for the --

17 THE COURT: It was just reasons for your
18 denial?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. Thank you.

21 THE WITNESS: And then I called back
22 on the 14th -- called Chase back on the 14th
23 and spoke with Hope and she told me the
24 foreclosure had not been stopped and she
25 would send her manager an email requesting an

1 update on my case. And Hope asked me, you
2 know, to call back the following day.

3 BY MS. INGLES:

4 Q. Was this the first time that somebody
5 actually told you that the foreclosure had not
6 been stopped or had someone told you that before
7 then?

8 A. No. They didn't say -- they didn't know
9 whether it had been stopped or whatever. That
10 was the -- Hope first one to say it was not
11 stopped.

12 Q. So the letter that denied you at that point
13 said it was because of the NPV or because of
14 something else? Let me see if we got a copy.

15 A. I don't remember exactly which one it was.

16 MS. INGLES: These are the letters
17 that she has.

18 MS. CASKEY: Okay.

19 BY MS. INGLES:

20 Q. What was the date? You're talking about the
21 one before September 21st?

22 A. The one I received on the 13th, the letter
23 was dated 9/3.

24 Q. Is that the one you're talking about, Exhibit
25 F?

1 A. Yes, ma'am. This is the one I was talking
2 about.

3 Q. What does that say as far as why you're --
4 does it say you were turned down at that point or
5 does that one just say she received your
6 application?

7 A. They just had some criterias that said that
8 if I am eligible for these criterias and
9 submitted all required documentation, then they
10 can offer me a trial period, a trial period
11 plan.

12 Q. Okay. So is that just the letter of
13 confirmation -- let's see -- that they received
14 your recently submitted request for modification?
15 That's not actually a denial, is it?

16 A. No, that's not fully -- no.

17 Q. So, let me show you another letter here.

18 MS. INGLES: Bear with me, Judge, if
19 you don't mind.

20 THE COURT: That's fine.

21 BY MS. INGLES:

22 Q. Let me show you this letter of August 19th,
23 if that was attached to the Plaintiff's
24 affidavit. That may be the one you're referring
25 to and I just have a different date.

1 A. Yeah, I think this is the one, because this
2 is the one about the NPV values.

3 Q. So that's the one you already mentioned about
4 the NPV?

5 A. Uh-huh.

6 Q. Okay. So is that the letter that you were
7 talking about with Diana about the denial where
8 she said quality control didn't like that, or
9 something? Or was there a later letter that we
10 just don't have a copy of? I know there was one
11 later in September, but I'm wondering if there
12 was one in between these two?

13 A. I'm not sure.

14 Q. Let me show you the one -- the letter from
15 September 21 and ask you if you recognize that
16 one again.

17 A. I think this is the one, because they said
18 they was unable to do it, because they're saying
19 I didn't make all my trial payments by the end of
20 the trial period.

21 Q. Now, was that referring back to a year before
22 that when you had a trial modification, or do you
23 know?

24 A. I don't know, because my original trial
25 payment was for August, September and October.

1 THE COURT: Do we need to mark this?

2 MS. INGLES: Yes.

3 (DFT. EXH. 1, HAMP plan; 7/1/09, was
4 marked for identification.)

5 BY MS. INGLES:

6 Q. So this letter of September 21 says that the
7 trial period -- that you were denied because you
8 did not make all the required trial period plan
9 payments by the end of the trial period?

10 A. Uh-huh.

11 Q. Let's just assume -- let's go back to
12 determine if that's even true about your trial
13 modification that you had a year before that.
14 Did you make all the required payments?

15 A. Yes, ma'am.

16 Q. So, if they are referring to that previous
17 trial period plan that had been a year before
18 that, this would be incorrect, you did make all
19 the payments?

20 A. Yes, ma'am.

21 Q. In fact, you made payments beyond the period
22 that they required, well into the next year,
23 April 2010, I believe you testified?

24 A. Yes, ma'am.

25 Q. Now, this letter of August 19th that says you

1 were denied because of MPV results that was
2 mentioned earlier --

3 A. Yes, ma'am.

4 Q. -- do you remember getting that?

5 A. Yes, ma'am.

6 (DFT. EXH. 2, Letter from Chase to
7 Bradley; 3/4/2010, was marked for
8 identification.)

9 BY MS. INGLES:

10 Q. And did you later -- I think you said you
11 requested that they provide you with those NPV.

12 A. Yes, ma'am. I faxed them and I sent by
13 certified mail asking them to send me the
14 qualified writing request for how they determined
15 the NPV value.

16 Q. Did you do that so that you could find out
17 why those values caused you to be denied?

18 A. Yes, ma'am.

19 Q. Let me show you this fax. It's two pages.
20 This is a fax from 9/20/2010. Could you tell us
21 what that is?

22 A. This is what I had faxed asking them --
23 requesting that they send me the things on how
24 they determine the NPV value.

25 Q. What's the date of that, 9/20?

1 A. Yes, ma'am.

2 Q. So you did that within the 30 days?

3 A. Yes, ma'am.

4 Q. Now, tell me what happened after that last

5 conversation?

6 A. Well, I called Lilly also on the 20th. I

7 called Chase and I spoke with a Lilly and she

8 told me that my home had already been sold and

9 there wasn't enough time to stop the

10 foreclosure.

11 Q. Okay. What was your reaction to that?

12 A. I was really distraught because everyone I

13 had talked to up to this time they were saying

14 there was nothing they can do because it was

15 under review. And while it was under review,

16 they couldn't foreclose on it.

17 Q. Did you also send them a qualified written

18 request during that time period? Let me show you

19 what I'm referring to. It's a fax also 9/20. Do

20 you recognize that as something you sent?

21 A. Yes, ma'am. I faxed it and I also sent it

22 certified mail.

23 Q. Okay.

24 MS. INGLES: I'm going to ask that

25 these last two that she referred to be

1 marked.

2 (DFT. EXH. 3, Letter from Chase to
3 Bradley; 8/19/10, was marked for identification.)

4 - (DFT. EXH. 4, Letter from Chase to
5 Bradley; 9/3/10, was marked for identification.)

6 BY MS. INGLES:

7 Q. So at that time, other than looking into
8 finding a lawyer to represent you on this, did
9 you do anything else regarding Chase at that
10 time?

11 A. No, not really.

12 Q. And then let me show you this notice to
13 vacate the property that's dated September 22.

14 Did you receive that notice?

15 A. Yes, ma'am.

16 Q. Now, you are still living in the house today;
17 is that right?

18 A. Yes, ma'am.

19 Q. You're still desirous of continuing to pay on
20 your loan and keep your house; is that right?

21 A. Yes, ma'am.

22 Q. You have the ability to do that with your
23 job, don't you?

24 A. Yes, ma'am.

25 Q. Is there anything else that you would have

1 done had you known that the house was actually
2 being sold on September 7th of 2010?

3 A. I thought they was being honest and true with
4 me. And if I knew they wasn't, I probably would
5 have looked into other avenues and obtained a
6 lawyer sooner than I did.

7 Q. I want to -- Chase has submitted an affidavit
8 of Charles Herndon, a vice president of Chase
9 Home Finance, LLC. And in that affidavit he
10 mentions some discussion that their notes reflect
11 or had with you. And I'd just like to read those
12 to you and ask you what you remember about this,
13 if anything.

14 A. Okay.

15 Q. It says in Paragraph 17, prior to the
16 September 7th foreclosure sale, the borrower,
17 that's you, again request that Chase reconsider
18 her for a loan modification. The customer
19 service notes indicate that between August 25,
20 2010 and August 31, 2010, Chase communicated with
21 the borrower concerning her modification request
22 and informed her that it could not reconsider her
23 for a modification without updated financial
24 information about her income and expenses. Do
25 you agree with that?

1 A. Yes, ma'am.

2 Q. And I believe it's your testimony that you
3 did send in that information?

4 A. Yes, ma'am.

5 Q. Next it states -- the affidavit states, Chase
6 also informed the borrower that it would not
7 request that the foreclosure sale be postponed
8 until all the required documentation for the
9 modification request was received by Chase. Did
10 anybody tell you that?

11 A. They said as soon as they got all the
12 necessary paperwork in, then they would postpone
13 it.

14 Q. Okay. And then you did send in all your
15 paperwork?

16 A. Yes, ma'am.

17 Q. And they acknowledged receiving that, didn't
18 they?

19 A. Yes, ma'am.

20 Q. Long before the sale?

21 A. Yes, ma'am.

22 Q. Next the affidavit in Paragraph 17 says, the
23 borrower will provide the missing financial
24 documents needed to complete the borrower's
25 request for modification on September 1, 2010.

1 Does that sound right to you from your fax?

2 A. I think so.

3 Q. And then in Paragraph 18 it says, in the
4 affidavit on September 2, 2010, Chase advised the
5 borrower that her request for a modification was
6 under review. Chase also advised the borrower
7 that it would request that the foreclosure sale
8 be postponed, but that the request to postpone
9 the sale would have to be approved by the Federal
10 National Mortgage Association, the investor on
11 the loan. Do you remember being told that?

12 A. They just said that they was going to
13 postpone it. As far as being reviewed by
14 somebody else, no, they never told me that.

15 Q. And the last line of Paragraph 18 of the
16 affidavit says, the borrower contacted Chase by
17 telephone on September 4, 2010 and was advised
18 that the foreclosure sale had not been postponed.

19 I mean, you said that they never told you
20 that it had not been postponed like that, but I
21 just wanted to make sure.

22 A. Yes. I don't know if it was the 4th, but
23 they kept saying that the email had been sent for
24 them to escalate it to postpone it, but they
25 said, yeah, it was postponed.

1 Q. Did they ever say it has definitely not been
2 postponed?

3 A. No.

4 Q. Okay.

5 A. But from my understanding that I getting from
6 everyone that I was talking to, as long as it was
7 in review, they could not foreclose on it.

8 Q. Okay.

9 MS. INGLES: I'm going to ask that
10 that affidavit be marked. I assume that
11 there's probably a original, but since we're
12 testifying from it.

13 (DFT. EXH. 5, Affidavit of Charles
14 Herndon, Chase; 3/10/11, was marked for
15 identification.)

16 MS. CASKEY: Does that have a copy
17 of all the exhibits attached?

18 MS. INGLES: Yes. If you want to --
19 did you say you gave him the original?

20 THE COURT: The Charles Herndon
21 affidavit?

22 MS. CASKEY: Yes, sir.

23 MS. CASKEY: Here's a copy, if you
24 want to put the original into evidence. You
25 can just give him a copy. It's up to you.

1 THE COURT: This is the original.

2 MS. INGLES: If I could just check
3 and make sure which exhibits we got here.

4 THE COURT: Go right ahead. One,
5 two, three.

6 BY MS. INGLES:

7 Q. Now, this is the notice to vacate the
8 property from September 22nd. I don't think
9 we've entered that yet. Do you remember
10 receiving that?

11 A. Yes, ma'am.

12 (DFT. EXH. 6, Notice to Vacate
13 Property; 9/2/10 was marked for identification.)

14 BY MS. INGLES:

15 Q. Do you recall when you received that letter
16 to vacate?

17 A. When?

18 Q. Uh-huh.

19 A. It was towards the end of September.

20 MS. INGLES: Your Honor, I've just
21 got a few other items that were either sent
22 to Chase or received from Chase, and I'd like
23 to just -- I think she's probably talked
24 about most of them, but I want to go ahead
25 and enter them in evidence. I've kind of

1 gotten them out of order from how I brought
2 them here today.

3 THE COURT: If there is no
4 objection, we will just put them right on
5 in.

6 MS. CASKEY: It's okay.

7 BY MS. INGLES:

8 Q. This is your fax that you sent August 2nd
9 with your requested information, that was your
10 employment and income information; is that
11 right?

12 A. Yes, ma'am.

13 MS. INGLES: Mark that as the next
14 exhibit, please.

15 (DFT. EXH. 7, Fax from Bradley to
16 Chase; 8/2/10, was marked for identification.)

17 BY MS. INGLES:

18 Q. That's your submission of August 31st of 2010
19 sending financial information?

20 A. Yes, ma'am.

21 Q. Do you recognize that as what you sent to
22 them?

23 A. Yes, ma'am.

24 Q. All right.

25 MS. INGLES: I ask that that be

1 marked as the next exhibit.

2 (DFT. EXH. 8, Fax from Bradley to
3 Chase; 8/31/10, was marked for identification.)

4 BY MS. INGLES:

5 Q. And then this is the package, I believe, that
6 you received about the August sale and that's
7 dated June 22nd?

8 A. Yes, ma'am.

9 Q. That came from the Plaintiff's attorney?

10 A. Yes, ma'am.

11 MS. INGLES: If you'll hand that to
12 the court reporter to be marked as the next
13 exhibit.

14 (DFT. EXH. 9, Letter from Rogers,
15 Townsend & Thomas to Hughes; 6/22/10, was marked
16 for identification.)

17 BY MS. INGLES:

18 Q. And then one last item and that is
19 documentation that you received noticing a sale
20 and orders being submitted to the Judge on August
21 13th of 2010; is that right?

22 A. Yes, ma'am.

23 MS. INGLES: Okay. If you'll hand
24 that to The Court reporter to be marked,
25 please.

1 (DFT. EXH. 10, Letter from Rogers
2 Townsend & Thomas to Hughes; 8/13/10, was marked
3 for identification.)

4 BY MS. INGLES:

5 Q. Okay. Is there anything else that you want
6 to let the Judge know about that you haven't
7 already testified to?

8 A. I don't think so. I think we talked about
9 everything.

10 MS. INGLES: That's all I have.

11 THE COURT: Thank you.

12 Cross-examination.

13 EXAMINATION

14 BY MS. CASKEY:

15 Q. Good afternoon. I'm Mary Caskey. I'm here
16 on behalf of Chase. If I could have the exhibits
17 I don't see any reason to duplicate if we have
18 questions. I want to, unfortunately, back up and
19 go over some of the timelines we talked about
20 today. Okay?

21 A. Okay.

22 Q. The loan that we're talking about today,
23 that's the loan from about 2001; is that
24 correct?

25 A. Yes.

1 Q. And that loan has been modified before; is
2 that right? It has been modified -- prior to the
3 discussions we're having today, it was modified
4 in 2005. Does that sound right?

5 A. Yeah, Washington Mutual when they had it,
6 yes.

7 Q. And then it was modified again in 2008, is
8 that right, March 2008?

9 A. I'm trying to think. They didn't modify it.
10 They gave me a deferment.

11 Q. Okay. They gave you a deferment, but you
12 didn't sign a second loan modification
13 agreement?

14 A. I'm not sure.

15 Q. But to your knowledge, prior to this
16 foreclosure action that was in December 2008, you
17 had gotten assistance on the loan; is that right?

18 A. They deferred it.

19 Q. Because you had trouble making your payments
20 before?

21 A. Well, my husband and I separated and I lost
22 my job.

23 Q. I understand. Now, this foreclosure action
24 was filed on December of 2008, do you remember
25 that?

1 A. I think so.

2 Q. And do you recall getting served with the
3 summons and the complaint about the foreclosure,
4 -kind of getting in the papers, being served with
5 them?

6 A. Yeah.

7 Q. Did you hire an attorney at that point?

8 A. No.

9 Q. Did you come to any hearings at that point?

10 A. No. I had received this letter in the mail
11 called 1-800 Hope -- 1-800 something or another
12 Hope, and they could help you. I had called that
13 and left my name and phone number and everything,
14 and this company called. First Foreclosure
15 contacted me, and they were supposed to have been
16 working with me to -- to help me get it modified.

17 Q. But did you ever come to court? Prior to
18 today, have you been to court for this
19 foreclosure?

20 A. No.

21 Q. Okay.

22 A. When they set up a court date or whatever, I
23 was dealing with first foreclosure, and the lady
24 that I was speaking with that was supposed to --
25 I can't remember the lady's name.

1 Q. The lady at First Foreclosure, though?
2 A. Yeah. She told me not to go.
3 Q. So you received advice from somebody else not
4 to answer the complaint?
5 A. Yeah.
6 Q. And the first foreclosure solutions, they
7 actually contacted Chase for you; is that right?
8 Did you give them authorization to speak with
9 someone at Chase?
10 A. Well, this time -- it was Washington Mutual
11 then.
12 Q. Oh, correct. I'm sorry. And when I'm
13 talking Chase, Washington Mutual eventually
14 became Chase, right?
15 A. Right.
16 Q. Did First Foreclosures solutions contact
17 Washington Mutual for you?
18 A. Yes.
19 Q. And they requested a modification for you?
20 A. Yes.
21 Q. Do you recall -- that was just after the
22 foreclosure action had been filed, right?
23 A. Yes.
24 Q. Do you recall getting a notice that the
25 property had been scheduled to be sold on April

1 6th, 2009?

2 A. I don't remember that one.

3 Q. But you were working with First Foreclosure
4 and they were trying to get the foreclosure
5 stopped; is that what you remember?

6 A. Right.

7 Q. To your knowledge, no foreclosure sale took
8 place in April, right?

9 A. Right.

10 Q. Now, I'm going to hand you -- I don't believe
11 the trial plan has been entered. I'm going to
12 hand you the Home Affordable Trial Plan that we
13 were discussing earlier.

14 MS. INGLES: Mark this as
15 Plaintiff's Exhibit 1.

16 (PLF. EXH. 1, Home Affordable
17 Modification Trial Period Plan, was marked for
18 identification.)

19 BY MS. CASKEY:

20 Q. Is that a copy of the trial plan that we've
21 been talking about?

22 A. Yes.

23 Q. And that's your signature on the last page?

24 A. Yes.

25 Q. You can hold on to that for a second.

1 Earlier we talked about under the trial plan that
2 your payments were \$517.29; is that right?
3 A. Yes.
4 Q. And it says those payments are due on August
5 1st -- I'm sorry -- July 1st, August 1st and
6 September 1st, right?
7 A. Uh-huh.
8 Q. And did you have the opportunity to read this
9 agreement before you signed it?
10 A. Yeah, I read some of it, yeah.
11 Q. And in Paragraph B it says, just follow along
12 and tell me if I read it correctly. It says,
13 except to set forth in Section 2-C below, the
14 lender will suspend any scheduled foreclosure
15 sale provided I continue to meet the obligations
16 under this plan. That any pending foreclosure
17 action will not be dismissed and may be
18 immediately resumed from the point at which it
19 was suspended if this plan terminates. Did I
20 read that correctly?
21 A. Yes. That's what it says.
22 Q. Moving down to Section F it says, if prior to
23 the modification effective date -- and that date
24 is defined earlier as the date that you completed
25 those three payments, correct?

1 A. Uh-huh.

2 Q. If prior to the modification effective date,
3 the lender does not provide me with a fully
4 executed copy of this plan, the modification
5 agreement, I have not made the trial payments --
6 the trial period payments under Section 2 of this
7 plan, or the lender determines that my
8 representation in Section 1 are no true and
9 correct, the loan documents will not be modified
10 and this plan will terminate. Did I read that
11 correctly?

12 A. Yes.

13 Q. Now, you testified earlier that you made all
14 the payments under the trial plan; is that
15 correct?

16 A. Yes.

17 Q. For the purposes of our discussion when I say
18 trial plan, I'm talking about the three payments,
19 July, August and September. Okay?

20 A. Yes.

21 Q. And I think you testified earlier too that
22 those payments may have been a bit late
23 sometimes; is that right?

24 A. Yes.

25 Q. Do you recall calling Chase sometime in

1 September and telling them that you were going to
2 have trouble making that October payment -- or
3 September payment?

4 A. Yes.

5 Q. I believe you were working with the Urban --
6 is it the Urban League? Is that the name of that
7 organization?

8 A. Clemson Community Care.

9 Q. Clemson Community Care. And what kind of
10 service does Clemson Community Care provide?

11 A. They provide services when people need help
12 paying bills, food, heat.

13 Q. Okay. And so you contacted them because you
14 were not going to be able to make that third
15 trial plan payment; is that right?

16 A. I wasn't going to be able to make all of it.
17 My car had tore up, and I had to get it fixed.

18 Q. Okay.

19 A. So I can continue to look for a job.

20 Q. So you made part of it?

21 A. Yes.

22 Q. Chase records show that the amount was \$368
23 does that sound about right?

24 A. Yes.

25 Q. And you made that -- do you recall what date

1 you made it on?

2 A. No, I don't.

3 Q. Do you think you made it before the end of
4 September?

5 A. I think I did. I'm not sure.

6 Q. You were going to rely on the Clemson
7 Community Care to make the rest of the payment;
8 is that right?

9 A. Yes. That was supposed to be \$150.

10 Q. And Chase records showed that they paid that
11 sometime in October. Does that sound right?

12 A. I'm not sure when they paid it, because they
13 kept having a problem with getting authorization
14 forms signed or something or another.

15 Q. Is it possible that you made that third
16 payment past September 30th?

17 A. Part of it, yeah.

18 Q. So the whole amount didn't come in until
19 sometime in October?

20 A. Yeah.

21 Q. I'm going to hand you what I'm going to mark
22 as Plaintiff's Exhibit 2, which is a letter dated
23 March 4, 2010. This is Exhibit 2 to the
24 affidavit of Charles Herndon.

25 (PLF. EXH. 2, Letter from Chase to

1 Bradley; 3/4/10, was marked for identification.)
2 BY MS. CASKEY:
3 Q. Take a moment to take a look at this letter.
4 That's your address at the top, correct?
5 A. Yes.
6 Q. Do you recall receiving this letter from
7 Chase?
8 MS. INGLES: What did you say the
9 date was?
10 MS. CASKEY: March 4, 2010.
11 THE WITNESS: No.
12 BY MS. CASKEY:
13 Q. Do you have any reason -- the address is
14 correct at the top; is that correct?
15 A. Yes.
16 Q. We talked about a number of other letters
17 that Chase has sent you, correct?
18 A. Uh-huh.
19 Q. And all of those letters were sent to that
20 address, right?
21 A. Yes.
22 Q. And this letter states that you have been
23 declined for a modification due to the present
24 value of your loan; is that right?
25 A. Yeah.

1 Q. Is it possible that you received this letter
2 and just don't recall?

3 A. Every letter I received from you all I've
4 kept.

5 Q. Okay. So you don't recall ever seeing this
6 letter before?

7 A. No.

8 Q. Earlier you talked about how -- we went
9 through a number of individuals that you talked
10 to in May, June and July and August of 2010.

11 A. Right.

12 Q. You talked to Amanda. I think you mentioned
13 a Sandra. Several people at Chase.

14 A. Uh-huh.

15 Q. I think at one point you mentioned that the
16 loan had been assigned to a person named Erin; is
17 that right?

18 A. Uh-huh.

19 Q. I understand from your testimony that you
20 were unable to get in touch with Erin; is that
21 right?

22 A. Yes.

23 Q. Whenever you called Chase were unable to
24 speak to anyone about your loan?

25 A. I spoke to different people and usually

1 whatever -- I guess whoever would look at
2 whatever computer screen that was there, and they
3 gave me whatever information was there.
4 Q. So someone was available to talk to you,
5 right, even if it wasn't necessarily Erin?
6 A. (Witness nods head up and down.)
7 Q. Is that a yes?
8 A. Yes.
9 Q. The court reporter has trouble taking head
10 nods, so you got to say it out loud.
11 I think also you testified that sometime
12 in -- maybe it was May or June, you got a
13 forbearance; is that right?
14 A. Yes.
15 Q. And part of that forbearance was that there
16 wouldn't be any foreclosure sale during those
17 these months, and those three months were June,
18 July and August; is that right?
19 A. Yes.
20 Q. And according to my notes, and you can tell
21 if the dates are wrong, feel free to use that
22 timeline, that that forbearance was sometime
23 around June 29th. Does that sound right? Can
24 you tell me what day you received that agreement
25 for the forbearance?

1 A. It was June 9th.

2 Q. June 9th, okay. You got the verbal agreement
3 for a forbearance, right?

4 A. Right.

5 Q. You never signed anything; is that correct?

6 A. No. I asked her to send me -- you know,
7 could I get that in writing. She never sent
8 it.

9 Q. Did any foreclosure sale take place in June,
10 July or August?

11 A. No.

12 Q. At the end of August, I believe you received
13 a letter that's been marked as --

14 MS. CASKEY: I'm going to mark it as
15 Plaintiff's Exhibit 3.

16 (PLF. EXH. 3, Letter from Chase to
17 Bradley; 8/19/10, was marked for identification.)

18 BY MS. CASKEY:

19 Q. You've already testified that you received a
20 copy of this letter; is that correct?

21 A. Yes.

22 Q. And the letter is dated August 19, 2010 and
23 states that you are not eligible for a
24 modification due to the net present value of your
25 loan; is that right?

1 A. Yes.

2 Q. And I think after that, you testified you

3 called Chase back and you started working with

4 them again; is that right?

5 A. Uh-huh.

6 Q. And it wasn't until August 31st that you

7 finally sent them in this last bit of

8 information; is that right?

9 A. I sent out everything they were waiting for.

10 And when I spoke with Sandra about my income, I

11 told her that I only had one paycheck stub.

12 Q. Okay.

13 A. Because it was a new job I just started and

14 we only get paid once every two weeks, and she

15 told me that would be fine. Send that one. And

16 when I get the other one to send it in. Get

17 another one, send it in.

18 Q. But you did eventually -- you talked to

19 someone at Chase and they did give you a list of

20 additional information that they needed?

21 A. Yes.

22 Q. And you sent that in on August 31st?

23 A. Yes.

24 Q. And on September 3rd -- and I'm just trying

25 to find the letter.

1 MS. CASKEY: I don't have a copy of
2 the letter, so I need to use the exhibit
3 copy. September, 3, 2010.

4 MS. INGLES: Let me see if I got an
5 extra one.

6 (PLF. EXH. 4, Letter from Chase to
7 Bradley; 9/3/10, was marked for identification.)

8 BY MS. CASKEY:

9 Q. I'm going to hand you what will be marked as
10 Plaintiff's 4. And this is a letter dated
11 September 3, 2010. We've already talked about
12 it. It's the letter that you said that you got
13 from Chase telling you we got everything that we
14 need; is that right?

15 A. Uh-huh.

16 MS. INGLES: Say yes or no.

17 THE WITNESS: Yes, ma'am.

18 BY MS. CASKEY:

19 Q. I want you to look at Page 2 of the letter.
20 About halfway down on the page, beginning with
21 the sentence that says, if your loan has already
22 been referred to foreclosure. Do you see that?

23 A. Yes.

24 Q. Your loan at that point had already been
25 referred to foreclosure, correct?

1 A. Yes.

2 Q. It says, if your loan has already been
3 referred to foreclosure, we will the sell it at a
4 foreclosure sale subject to applicable law and
5 judicial rules that may limit our ability to
6 prevent or cancel any pending sale. Note, and
7 this in bold, if your initial request for
8 evaluation was received less than seven business
9 days prior to a scheduled sale, we are not
10 required to complete the evaluation or HAMP.
11 Please be aware that during the evaluation
12 period, the foreclosure process may continue at
13 the same time. You may receive foreclosure
14 and/or eviction notices delivered to you by mail
15 or in person or you may even notice steps taken
16 to proceed with the foreclosure sale of your
17 home. And then again in bold, do not ignore any
18 foreclosure notices.

19 Is that correct? Did I read that
20 correct?

21 A. Yes.

22 Q. After you received this letter, did you
23 contact anyone at the attorney's office that was
24 doing the foreclosure?

25 A. No, not at the attorney's office.

1 Q. Did anyone -- so no one at the attorney's
2 office ever told you that the foreclosure sale
3 had been postponed; is that right?

4 A. No.

5 Q. I think you testified earlier that no one at
6 Chase told you that it had been postponed, right?

7 A. Right.

8 Q. They just told you they requested it,
9 correct?

10 A. Right.

11 Q. After you received the letter on August 19,
12 2010 that told you that you had been denied for a
13 modification, did you contact an attorney then?

14 A. I'm trying to think. I'm not sure what date
15 it was that I obtained a lawyer.

16 Q. Okay. Well, earlier you testified that if
17 you had known that the September 7th foreclosure
18 sale was going to go through that you would have
19 done something. What exactly would you have done
20 if you had known that the foreclosure sale was
21 going to go through?

22 A. You know, I would have -- early on, I would
23 have obtained a lawyer sooner. And either, you
24 know, went and talked to someone else that knew
25 more about what was going on than relying on my

1 own understanding.

2 Q. But at the time of August the foreclosure
3 action had been pending for eight months; is that
4 right? It had been pending since December of
5 2008?

6 A. Yeah, I think so.

7 Q. I'm sorry. That's more than -- a year and
8 eight months; is that correct?

9 A. Yeah.

10 Q. And you hadn't hired an attorney by August of
11 2010, had you?

12 A. No.

13 Q. I'm going to hand you what's going to be
14 marked as Plaintiff's Exhibit 5, which is an
15 affidavit that was filed earlier in this case.

16 (PLF. EXH. 5; Affidavit of Barbara
17 Hindman; 5/12/10, was marked for identification.)

18 MS. CASKEY: That was Exhibit 1 to
19 the memorandum in support, is the copy of the
20 affidavit.

21 MS. INGLES: That you just handed
22 her?

23 MS. CASKEY: That I just handed her.

24 BY MS. CASKEY:

25 Q. Do you recall ever seeing that affidavit

1 before?

2 A. I think that's when I went and got my housing
3 counselor. Because I went to the magistrate
4 office to see if they could explain this to me
5 and they said that I would have to get a lawyer,
6 or whatever.

7 Q. Okay. And this affidavit doesn't have a
8 title. It just states it's an affidavit of
9 Barbara Hindman and it's dated May 12, 2010; is
10 that right?

11 A. Uh-huh.

12 Q. And it states that pursuant to Supreme Court
13 Order 2009 5/22/01, the last paragraph states,
14 the Plaintiff is a servicing agent for the
15 mortgage loan described in this foreclosure
16 action, is participating in the Home Affordable
17 Modification program, but the subject loan is not
18 eligible for modification because the HAMP
19 modification process has been completed without a
20 modification. Did I read that correctly?

21 A. Yes.

22 Q. So after you received this affidavit, you
23 went and spoke with a housing counselor; is that
24 what you said?

25 A. Yes.

1 Q. Did you file anything with the Court after
2 you received this affidavit?

3 A. No.

4 Q. Okay. Did you call Chase and ask any
5 questions about this affidavit?

6 A. No, I didn't know I was supposed to file
7 anything or call them. PROOF.

8 Q. But this affidavit did tell you that your
9 HAMP process had been completed and that your
10 loan hadn't been modified; is that correct?

11 A. Yes.

12 MS. CASKEY: If I could have just
13 one second.

14 BY MS. CASKEY:

15 Q. I think earlier you testified -- we talked
16 about the trial plan payments, and one of the
17 letters that you received, which is marked as
18 Defendant's Exhibit 1 states that you had been
19 declined for a modification because you had
20 failed to make all the payments under the trial
21 plan; is that correct?

22 A. Yes.

23 Q. And earlier you testified to your -- you
24 know, after questions from your attorney that
25 that statement was wrong; is that right?

1 A. Yes.

2 Q. After we went through the payment history,
3 you also testified that that last payment under
4 the trial plan, that one for September, that that
5 payment was late; was that right?

6 A. I don't know exactly when Clemson Community
7 Care sent that payment in.

8 Q. Do you have any information or evidence that
9 they paid it by September 30, 2009?

10 A. No, I don't.

11 Q. And you weren't able to make a full payment
12 at that time; is that correct?

13 A. Right.

14 Q. So it's possible -- and I know you say you
15 don't know the date that Community Care made it,
16 but if Community Care didn't make it by September
17 30th, then you wouldn't have made that payment on
18 time; is that right?

19 A. I guess.

20 MS. CASKEY: I think that's all the
21 questions that I have for now.

22 THE COURT: Redirect?

23 MS. INGLES: Yes.

24 EXAMINATION

25 BY MS. INGLES:

1 Q. Vanessa, let me just start with that last
2 affidavit, which was May 12th of 2010. I believe
3 that's Exhibit 5 that stated that your loan was
4 not eligible for modification because the HAMP
5 modification process has been completed without a
6 modification.

7 Now the previous month before that, which
8 would have been April 2010, you had made a
9 payment.

10 A. Yes, ma'am.

11 Q. Which turned out to be your final payment on
12 that modification plan; is that right?

13 A. Yes, ma'am.

14 Q. During this month of May, 2010 is that when
15 you contacted them about the fact that your
16 unemployment was running out?

17 A. Yes.

18 Q. And it was right subsequent to that they gave
19 you the three-month deferment for June, July and
20 August; is that correct?

21 A. Yes.

22 Q. Although, there may be some question on the
23 part of the Plaintiff as to whether or not you
24 made a full payment in September, which would
25 have been the third payment of the trial plan,

1 you also made a payment in October, November
2 December, all of 2009.

3 A. Yes.

4 Q. January, February, March and April of 2010.

5 A. Yes.

6 Q. So you made about ten payments.

7 A. Yes.

8 Q. I believe that adds up to...

9 A. Yes.

10 Q. And it was mentioned that as of that August
11 date, that last month of the deferment, August
12 2010, the month before the sale took place, that
13 you had not paid on this loan in a year and eight
14 months, but, in fact, you had a three-month
15 deferment, you had made ten trial plan payments?

16 A. Yes.

17 Q. And had been in negotiations for
18 modification; is that right?

19 A. Yes.

20 Q. So you didn't really go a year and eight
21 months without paying anything, did you?

22 A. No.

23 Q. And Plaintiff's Exhibit 4 was -- Miss Caskey
24 read to you from Page 2 of Plaintiff's Exhibit 4,
25 which indicated some information about when your

1 initial request for evaluation was received, if
2 it had been received less than seven business
3 days prior to a scheduled sale they're not
4 required to complete an evaluation; is that
5 right?

6 A. Yes.

7 Q. But his had been an ongoing evaluation
8 request, had it not?

9 A. Yes.

10 Q. So that wasn't the first time that
11 modification had been discussed between you and
12 the folks at Chase?

13 A. No.

14 Q. And you said that when you did call Chase on
15 the numerous occasions that you mentioned and
16 there may be others that you haven't mentioned
17 where you called them; is that the case?

18 A. There have been some. I didn't write names
19 or notes down when I did call them.

20 Q. And you've never not been able to speak to
21 anyone but it sounds like there's been many times
22 where you weren't really able to get any
23 information about what was going on?

24 A. Right.

25 Q. From your testimony, many times you got

1 information that turned out to be not correct; is
2 that right?

3 A. Right.

4 Q. And you talked about some previous -- what we
5 referred to modifications on your loan, but you
6 said one of them was just a deferment of payment
7 when you were going through a divorce; is that
8 right?

9 A. Yes.

10 Q. So that was just something -- was that
11 something you just discussed over the phone and
12 they said, don't worry about making that payment,
13 or what was that?

14 A. That when I lost my job in '06. And they
15 sent me out -- they deferred it I think for like
16 three months, but then I had to go back to making
17 the same payments.

18 Q. And they didn't waive those payments?

19 A. No.

20 Q. That money is still owed that they
21 deferred?

22 A. Right. If I remember correctly, they said
23 them payments basically was moved to the end of
24 the loan.

25 Q. Okay. And you mentioned that you had

1 received a letter about the Hope for Homeowners
2 program?

3 A. Yes.

4 Q. Did you receive that from Chase?

5 A. I'm not sure who sent it to me.

6 Q. You don't know. All right.

7 And Plaintiff's Exhibit 1 was the trial plan
8 that you were working under back in August of
9 2009, and then you paid all the way through April
10 of 2010, right?

11 A. Yes.

12 Q. And there were a number of references about
13 the modification and what would happen if there
14 were any deficiencies or anything like that, that
15 the plan wouldn't be honored if this or that
16 happened, if you were late or missed a payment,
17 or those sorts of things, that that was here in
18 Plaintiffs' Exhibit 1. But did you ever receive
19 any kind of notice from Chase --

20 A. No.

21 Q. -- that this plan was not going to continue
22 because you had missed a payment or only made a
23 partial payment or this \$150 wasn't received
24 until October?

25 A. No.

1 Q. Did anyone ever tell you that over the
2 phone?

3 A. No.

4 Q. You continued making those payments all the
5 way through April 2010 of the following year?

6 A. Yes.

7 Q. Did they accept all those payments?

8 A. Yes.

9 Q. Did they ever say this trial modification is
10 over, we're not going to do it because that \$150
11 came late?

12 A. No.

13 Q. And I believe there was the Defendant's
14 Exhibit 1, the letter of September 21 of 2010
15 which notified you that -- and this was right
16 after your home had been sold -- we are unable to
17 offer you a home affordable modification because
18 you did not make all of the required trial period
19 plan payments by the end of the trial period.
20 Okay. But you've just discussing -- if that's
21 the ones that they're talking about, the ones
22 from August of 2010 to -- excuse me -- August of
23 2009 to April of 2010, you made more than what
24 was required, didn't you?

25 A. Yes.

1 Q. After this letter, Defendant's Exhibit 1, you
2 later received a letter on August 19th of 2010
3 which is Defendant's Exhibit 2 saying that it was
- 4 the NPV test was why it was denied. So this
5 letter about the trial modification period came
6 this NPV letter?

7 A. Right.

8 Q. So the September 21, 2010 letter, Defendant's
9 Exhibit 1, that's the first time you heard of
10 this denial because some failure of the trial
11 period plan?

12 A. Yes.

13 Q. And apparently, although you said you didn't
14 receive it, there was a letter from March 4th of
15 2010, that's been entered, Plaintiff's Exhibit 2,
16 that seems to also deny your modification based
17 on the NPV calculation?

18 A. Yes.

19 MS. INGLES: That's all I have.

20 MS. CASKEY: Can I have two quick
21 points?

22 THE COURT: Go right ahead.

23 BY MS. INGLES:

24 Q. We were discussing earlier -- your attorney
25 mentioned that it was an ongoing evaluation

1 process; is that right? Do you recall that?

2 A. Yes.

3 Q. Referring back to Defendant's Exhibit 2,
4 though, by August 19, 2010, this is that letter
5 telling you that you were denied because of the
6 NPV inputs, correct?

7 A. Correct.

8 Q. As of August 19, 2010, Chase had informed you
9 you're not eligible for a modification; is that
10 correct?

11 A. Yes.

12 Q. So at that point that modification request
13 had been denied; is that right?

14 A. Yes.

15 Q. I understand that after that, you know, by
16 August 31st that you sent in more paperwork, more
17 financial information and that kind of thing; is
18 that correct?

19 A. Because I got that correspondence by mail
20 asking and requesting for this information.

21 Q. So that was a new request; is that correct?

22 A. Yes.

23 Q. And the second thing I want to ask you about
24 is, you said that you got some incorrect
25 information from Chase over the phone. Now,

1 earlier you testified that they told you that
2 they had requested that the foreclosure sale be
3 postponed, that you had never been told that it
4 actually had been postponed, so what incorrect
5 information did you receive about the foreclosure
6 sale from Chase?

7 A. I didn't say I got incorrect information
8 about the foreclosure sale.

9 Q. So none of the incorrect information that you
10 described had to do with the foreclosure sale at
11 all; is that right?

12 A. I mean, what I feel is incorrect information,
13 one person telling me one thing, one person
14 another. But then, this lady is assigned to me
15 as my relationship manager, but yet I got a
16 million and one excuses why that she cannot speak
17 with me.

18 Q. Did any of those people ever give you any
19 misinformation about the foreclosure?

20 A. They didn't know what was going on. They
21 just said, well, I'll have her give you a call.
22 We need an update on your file. I mean,
23 basically -- and then I called to get one thing
24 and then somebody would tell me something else.
25 Okay, why wasn't I informed of this when I called

1 this day?

2 Q. But was any of that information ever wrong
3 about the foreclosure sale?

4 MS. INGLES: I object to the
5 question as asking for a conclusion. She's
6 testified to a lot of different things that
7 she said turned out to be incorrect, and so
8 to ask for that to be --

9 MS. CASKEY: I'm trying to clarify
10 whether any of the incorrect information -- I
11 understand that she feels she received a
12 number of incorrect statement about the HAMP.
13 I would agree that that's what she testified
14 to.

15 However, I don't see -- I think
16 there's inconsistent testimony based upon
17 your statements and then my statements and
18 back and forth about whether those statements
19 by Chase were incorrect about the
20 foreclosure, and that's why we're here today.
21 I'd like a little leniency, and I can reword
22 my question.

23 THE COURT: Reword your question,
24 I'll overrule the objection. Go ahead.
25 BY MS. CASKEY:

1 Q. Excuse me, Miss Bradley. I just want to be
2 clear, I understand that you feel that you
3 received miscommunication or misinformation from
4 Chase about the HAMP; is that right? About the
5 modification, correct?

6 A. Yes.

7 Q. But do you at any time believe that you
8 received misinformation, a wrong statement from a
9 Chase representative about the foreclosure sale
10 that was scheduled for September 7th?

11 A. Yes. Because when I called in August, they
12 said it's in review and it's going to take 30 to
13 45 days and nothing can be done.

14 Q. You took that to mean that the foreclosure
15 sale had been postponed?

16 A. Right.

17 Q. But no one had ever told you that it had been
18 postponed.

19 A. Correct.

20 Q. That was just your understanding?

21 A. Right.

22 MS. CASKEY: Thank you. That's
23 all.

24 THE COURT: Very well. Is that
25 everything?

1 MS. INGLES: That's it.

2 MS. CASKEY: Sorry. I just didn't know
3 if we would have an additional time to --

4 THE COURT: I just wanted to bring
5 up a couple things. I didn't know if you
6 want to go first.

7 MS. INGLES: Go ahead.

8 MS. CASKEY: I think what we learned
9 here today is that the facts really aren't
10 that much in dispute. You know, with the
11 exception of a couple discrepancies about
12 correspondence, I don't think that there's
13 that much in dispute. I think Miss
14 Bradley -- a foreclosure action was filed.
15 She did not respond. She didn't hire an
16 attorney. The first foreclosure sale was
17 set. She contacted foreclosure help,
18 foreclosure assistance, they got it with
19 Chase. The sale got postponed.

20 The modification trial plan went in
21 place. She didn't made the third payment on
22 time. The agreement is pretty clear about what
23 that means. The foreclosure sale gets reset
24 pursuant to an order, pursuant to an affidavit,
25 all of which are attached to the memorandum in

1 opposition. And each of those affidavits gave
2 Miss Bradley the opportunity to say, whoa, whoa,
3 whoa, this is wrong. I haven't been evaluated
4 for HAMP.

5 If you look at each of the affidavits,
6 they each state that the borrower has been with
7 Chase to try to work out an agreement and they
8 haven't been able to work one out. There's been
9 no affidavits in opposition filed to any of those
10 orders, and I don't see any reason why those
11 orders and the affidavits that brought on the
12 orders was incorrect.

13 With regards to the third and final
14 foreclosure sale, in the motion, there's a
15 reference to the HAMP guidelines and requiring
16 that the foreclosure sale be stopped and whatnot,
17 and I just want to offer up a copy of the HAMP
18 Servicing Guidelines just to be clear about what
19 the HAMP guidelines do say about stopping the
20 foreclosure action, because even though, as I
21 mentioned in the opening, Miss Bradley has no
22 rights to enforce any obligations under the
23 servicing guidelines, Chase did what it was
24 supposed to under the servicing guidelines. I
25 won't go through those in detail. I think

1 they're outlined in the memo sufficiently. But
2 they come back to the seven-day timeline.

3 As Miss Bradley testified, it wasn't
4 until August 31st that she got that last bit of
5 paperwork in to Chase. And that third request,
6 that one for August 31st that was a whole new
7 request, because the previous request had been
8 completed, she had been denied based on that
9 information. And regardless of the reason for
10 the denial, whether one time it's the NPV HAMP,
11 those are all viable reasons for denial under the
12 HAMP guidelines, and those are included in here
13 as well.

14 Finally, the basis for this motion -- one
15 more thing. The Supreme Court order from May 22,
16 2010, there's an allegation in the motion that
17 Chase failed to comply with it. But as Miss
18 Bradley testified, she received the affidavit
19 from Chase in May of the 2010 that said we
20 completed our HAMP analysis and we've determined
21 that the loan cannot be modified under HAMP.

22 Even though I know that Miss Bradley
23 disputes receiving that March 4, 2010 letter,
24 that May 2010 affidavit put everybody on notice
25 that Chase thought it had done what it was

1 supposed to under the HAMP. And the Supreme
2 Court's order, that's all that it requires.

3 That also gave Miss Bradley ten days to
4 object to the affidavit under the Supreme Court's
5 order, and, of course, she did not do so.

6 Finally, and I think this is really
7 important, the basis for the motion today under
8 Rule 60 is fraud, that Chase committed a fraud
9 that caused the foreclosure sale to go forward
10 and for Miss Bradley to rely on its statements
11 that this foreclosure sale wasn't going to go
12 forward.

13 First, I think we've established that
14 what Chase told Miss Bradley is that it would
15 request that the sale be postponed. That's a
16 statement of a future event. It would request
17 that it would do something. The affidavit of
18 Charles Herndon said it did request it. But as
19 Miss Bradley stated, it never said that sale has
20 been postponed, as in the past tense, it has been
21 done. The sale has been canceled. We are not
22 going forward with this.

23 Instead, it told her that it would look
24 into things. And these are statement of intent,
25 staging of future events, and those cannot form

1 the basis of fraud under South Carolina law.

2 So I think it's important to keep in
3 minds all of those things as we go forward that
4 if there is any question about whether the HAMP
5 analysis was completed properly, one, it should
6 have been brought up much earlier prior to the
7 foreclosure and immediately after the affidavit
8 was filed by Chase. And, two, even if the HAMP
9 process was not completed properly under the HAMP
10 guidelines, there's no private right of action
11 under HAMP. And, third, the obligation of Chase
12 to comply with the Supreme Court order has
13 nothing to do with actually modifying the loan,
14 or completing the analysis properly.

15 Thank you for indulging me.

16 THE COURT: Thank you. Miss Ingles?

17 MS. INGLES: All I can say in
18 response to that is that this is a court of
19 equity, and we file this motion under Rule
20 60, which allows this court to find that the
21 Plaintiff didn't make misrepresentations to
22 Miss Bradley and to set aside the foreclosure
23 and the sale on that basis.

24 I think her testimony, which is
25 really not contradicted by any other

1 testimony today, is quite clear. You can say
2 anything you want to about what's in a bunch
3 of documents, but the reality is that these
4 people were talking to her on the telephone,
5 they were making representations, they were
6 suggesting to her, telling her, well, your
7 loan is under review, so that's going to take
8 30 to 45 days and we can't sell the property
9 when your loan is under review.

10 You know, these are the kind's of
11 things that are misrepresentations that get
12 us to a point like this.

13 To say that the affidavit that was
14 filed in May ends the discussion about HAMP,
15 that affidavit said that she didn't qualify
16 based on a trial -- she clearly qualified
17 because they gave her a trial modification.
18 I think the question is why that trial
19 modification was not made permanent because
20 they accepted payments on it all the way
21 through April.

22 The way that the administrative
23 order is, as I understand it and working with
24 it for the last two years, is that homeowner
25 is to be given every opportunity to access

1 the programs that are available to stay in
2 their home. This is not a situation of a
3 person who has not been making payments for a
4 long time, who can't make any payments under
5 a modification. She clearly was given the
6 modification. For some reason, Chase, later,
7 chose to accept another application from her
8 and turned her down for a different reason.

9 And then when that reason apparently
10 became insufficient later on, they went back
11 to the old trial modification. That plan
12 didn't work. I think they waived that, so I
13 don't think the letter denying it on that
14 basis, after having denied it on the basis on
15 the NPV calculation, should bear any weight.

16 The Supreme Court's order allows for
17 a stay in a case like this, when something
18 like this has happened, so that the homeowner
19 can conduct discovery, have an evidentiary
20 hearing to determine if this rejection of her
21 application was legitimate and was warranted
22 under the rules.

23 There is not a requirement that
24 every lender must give a modification. That
25 certainly is true. But I think between the

1 HAMP regulations and our Supreme Court's
2 clear directive that we want to keep people
3 in their homes and give them every
4 opportunity to do that is really applicable
5 in this case. I think this was a comedy of
6 errors. It's typical of the miscommunication
7 that happens between lenders or their
8 foreclosure counsel.

9 You have people at the lender
10 telling homeowners one thing on the telephone
11 that never gets to the lawyer that is
12 handling the case.

13 And while I understand that Miss
14 Bradley did not file an answer, that she
15 certainly was in default in the lawsuit, the
16 representations that were made to her on the
17 telephone certainly did not suggest to her
18 that she needed to be concerned. They had
19 been working with her for a long time. She
20 had made payments all the way up, you know,
21 as we've mentioned until 2010. The three
22 payments after that were deferred. So
23 there's nothing to -- there's no testimony
24 that counters that.

25 So, I think probably the order in this

1 case, the amount that has been set is incorrect
2 in and of itself.

3 But I think the equity calls for
4 this loan to be reviewed and for a stay in
5 this case. If they're not willing to review
6 the loan, then I would ask the court to allow
7 us to conduct discovery to determine exactly
8 what they did in reviewing this loan for
9 modification and what was going on at Chase
10 that caused all these telephone calls, these
11 unresponsive telephone calls, this
12 relationship manager who my client could
13 never talk to.

14 You know, there has to be some
15 accountability on the other side. The fact
16 that she can file a bunch of papers that have
17 a bunch of fine print, oh, didn't you not see
18 this in the letter, well, no, I was listening
19 to the people on the telephone that were
20 telling me what was going on, and I think
21 that's Miss Bradley did.

22 So I would just ask for -- certainly
23 if The Court doesn't feel comfortable with
24 setting aside the sale and the foreclosure at
25 this time, I would certainly ask for a stay

1 on any further proceedings on this, including
2 a stay of any eviction of Miss Bradley from
3 her home so that we can get to the bottom of
4 what happened her.

5 And as I mentioned at the beginning,
6 there are at least two other programs that
7 are available to Miss Bradley so that if
8 there has been any deficiency caused by this
9 waiting game that happened in these few
10 months of missed payments, that can most
11 likely be resolved by loan assistance from
12 the S.C. Help program, from the Hardest Hit
13 fund. There's loan repayment. There's at
14 least two of these programs that she
15 currently qualifies for.

16 So we're not in a situation where
17 Chase is not going to get their -- you know,
18 potentially get their loan back to where it
19 needs to be. And so the idea that they would
20 want to go ahead with this, I find, you know,
21 unsettling, but that's how these things go.

22 I would ask The Court just got this
23 memorandum of law today.

24 THE COURT: You want to file a
25 response?

1 MS. INGLES: I would ask for ten
2 days, just hold the record open for us to
3 respond. I may not need that much time.

4 MS. CASKEY: I'd like the same to
5 the testimony today, if necessary.

6 THE COURT: That's no problem.
7 We'll put it down for -- I don't know what
8 day of the week March 24th falls on, but
9 that's ten days.

10 MS. INGLES: I think given that, it
11 makes sense to me for us to have a period of
12 discovery so that we can find out what the
13 evidence will actually show happened here.

14 THE COURT: Okay.

15 MS. CASKEY: Your Honor -- I apologize.

16 MS. INGLES: I don't think it will
17 be helpful to have affidavits.

18 THE COURT: Okay.

19 MS. INGLES: Not for us anyway.

20 THE COURT: Okay.

21 MS. CASKEY: Your Honor, I would
22 strenuously object to any discovery regarding
23 the HAMP in this case and it's for the
24 reasons that I described.

25 First of all, and I understand that

1 Miss Ingles has attacked the reasons that
2 Chase denied the modification based on the
3 failure to pay the trial plan, but there's no
4 evidence that its denial based on the NPV no
5 evidence.

6 MS. INGLES: Well, that's why we
7 need discovery, to make that determination.

8 MS. CASKEY: Your Honor, that's not
9 a basis to set aside a foreclosure. There's
10 a missing link here.

11 Miss Bradley has no right to have
12 her home loan reviewed over and over and over
13 again for HAMP. This is becoming a serial
14 HAMP abuse situation.

15 MS. INGLES: That's why you haven't
16 accepted any payments from her.

17 MS. CASKEY: I'm sorry. I didn't
18 interrupt you. Please just give the
19 courtesy. I object to the discovery because
20 I don't know what it would do. If it showed
21 that Chase -- I think the affidavit that was
22 submitted today shows what Chase did. It
23 reviewed the loan a number of times based on
24 financial information provided by Miss
25 Bradley. It denied the loan for a

1 modification.

2 The Supreme Court order only
3 requires that you consider it if it's
4 eligible. They considered it multiple times
5 and have already denied it. So I'm really
6 not sure what discovery would do in this
7 situation.

8 And the relief that was requested
9 was one that the default be set aside. I
10 don't ** any basis for that. There's no
11 indication other than just unfortunate delay
12 on Miss Bradley's part as to why she didn't
13 respond to the original foreclosure action.

14 So if we're anywhere in this case, I
15 think we're back to that original order. If
16 there's a question about the amounts due on
17 the loan and that that's the basis for
18 setting aside the orders today, I haven't
19 seen any testimony or any evidence from Miss
20 Bradley that she made payments that somehow
21 weren't accounted for correctly.

22 You know, Chase has filed a number
23 of affidavits in the case in support of its
24 affidavits for supplemental judgment and
25 those affidavits, of course, have led to

1 orders by you.

2 So I guess I just would want to be
3 clear if discovery is the goal, then what
4 would discovery -- what would the point be?
5 Because at this point, the loan has -- the
6 bid has been assigned. Chase does not own
7 the property. I'm not sure what the
8 discovery -- the end result is supposed to
9 be, I guess is my point.

10 MS. INGLES: I think the court order
11 makes that very clear that the homeowner has
12 the right to find out if this process was
13 done correctly, if the HAMP process was done
14 correctly. The fact that --

15 MS. CASKEY: I'm just not clear
16 where that is.

17 MS. INGLES: Maybe we'll argue all
18 day, if we don't just cut it off at some
19 point.

20 THE COURT: You're going to submit
21 something in ten days, so I'm sure that will
22 come up in there.

23 MS. INGLES: I just think it's
24 important to make sure that it's clear. I
25 wouldn't want discovery either, because it's

1 real easy just to put in a affidavit we did
2 it right, but there's no way to find out if
3 they did it right without the discovery, and
4 I think the administrative order clearly
5 gives that.

6 I'll leave it at that.

7 THE COURT: All right. I'll hear
8 from you all in ten days, and then I'll take
9 a couple of weeks to review this and I'll
10 issue a ruling.

11 Let me make sure we get everything.
12 I'll retain all the original exhibits in my
13 file for the time being.

14 (The hearing was concluded at 4:50 p.m.)
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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Court Reporter,
Notary Public, State of South Carolina at Large,
do hereby certify that the foregoing transcript
is a true, accurate and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto affixed
my official seal this 18th day of March 2011 at
Greenville, Greenville County, South Carolina.

Sharon G. Hardoon
Court Reporter, Notary Public
My commission expires:
April 7, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

 ORIGINAL

J.P. Morgan Chase Bank, National)
Bank,)
Plaintiffs,)
-vs-)
Vanessa Y. Bradley,)
Defendant.)

2008-CP-39-2120

TRANSCRIPT OF RECORD

A hearing was held on the 24th day of August, 2011,
at 2:33 p.m. at the Pickens County Courthouse, 214 East
Main Street, Pickens, South Carolina.

B E F O R E:

Special Referee R. Murray Hughes, Pickens, South
Carolina

APPEARANCES:

Mary M. Caskey, Esquire,
Haynsworth Sinkler Boyd P.A.
1201 Main Street, 22nd Floor
Post Office Box 11889
Columbia, South Carolina 29211-1889

Attorney for the Plaintiffs,

Susan Ingles, Esquire
S. C. Legal Services
701 South Main Street
Greenville, South Carolina 29601

Attorney for the Defendant.

REPORTED BY: Cathy L. Young, CVR

CANNON COURT REPORTING
Post Office Box 2727
Greenville, South Carolina 29601
(864) 298-0082

1 MS. INGLES:

2 I'm just going to go ahead and just ask that that be
3 made a part of the file. That's the original --

4 THE COURT:

5 Okay, this is the original transcript from the March
6 14th hearing, which has been clocked in. You want
7 me to go ahead and open it up?

8 MS. INGLES:

9 Yes, sir. And I guess I should state the case is J.
10 P. Morgan Chase Bank versus Vanessa Bradley, Case
11 Number 2008-CP-39-2810.

12 THE COURT:

13 Okay.

14 MS. INGLES:

15 And, Your Honor, I'm here today on the Defendant
16 Vanessa Bradley's Motion to Reconsider, and amend
17 your order that was entered on our motion to set
18 aside the sale of the property, and other relief.
19 There's a number of grounds and specifics that I
20 need to ask the Court to consider.

21 THE COURT:

22 All right.

23 MS. INGLES:

24 But, initially, Your Honor, in -- in rendering your
25 decision, stated two conclusions of law, one -- one

1 was failure to meet the burden of proof under Rule
2 60(b)(3); and also the forbearance agreement between
3 the parties that's referred to in the order that
4 stated it did not affect the Plaintiff's rights to
5 move forward with the foreclosure sale. I'd like to
6 just start first, actually, with the forbearance
7 agreement issue. I do agree that that was
8 uncontested; and, in fact, I think in one of your
9 prior orders, you had actually -- there was a
10 finding that there had been a forbearance agreement
11 during that period. However, we did dispute whether
12 or not that forbearance affected the Plaintiff's
13 right-to-move-forward-with the foreclosure sale; and
14 that was the main request for amendment that we have
15 there. Your order says that was not contested, but
16 that was actually one of our most significant
17 arguments in the case, was that there should have
18 been no activity in this case during that
19 forbearance period. And, in fact, there was at
20 least one supplemental order -- I believe two
21 supplemental orders were issued, and the sale for
22 September was published; all of that during the
23 period where there really should have been no
24 activity in the foreclosure case. In addition to
25 that, the order, I believe it was August 16th -- it

1 may have been dated August 11th, one second. It's
2 unclear whether that signed and issued order was --
3 it looks like it was entered August 20th.

4 THE COURT:

5 So we're talking about an order --

6 MS. INGLES:

7 The 20th.

8 THE COURT:

9 --that was filed August 20th?

10 MS. INGLES:

11 Right, August 20th, 2010.

12 THE COURT:

13 Okay. That would be one of those two supplemental
14 orders?

15 MS. INGLES:

16 Yes, sir.

17 THE COURT:

18 Okay.

19 MS. INGLES:

20 So several things about that being done during the
21 forbearance period in addition to what I've already
22 stated. There was an ongoing -- it's clear from --
23 from the transcript, ~~there was an ongoing~~
24 ~~modification~~ and a letter which we had held out as
25 being very significant, the August 19th, 2010,

1 letter, that actually was a denial letter for a
2 modification; but in that letter it gave my client
3 30 days to challenge the denial. And that 30 days
4 would not have been up until well into September
5 when the foreclosure sale was -- took place on, I
6 believe, September 7th.

7 THE COURT:

8 Right.

9 MS. INGLES:

10 So -- and in addition to that, depending on when --
11 it's unclear to me whether or not this was even
12 served on my client after you signed it. I didn't
13 see any -- there's -- there's just no -- she was
14 served with an unsigned copy of it, but not after
15 you actually signed it. And so I think she would
16 have an appeal period that should have gone, if,
17 nothing else, so that she could challenge that
18 order. Particularly, since the only affidavit of
19 non-eligibility that had been recorded at that point
20 was one in May of 2010. And that particular
21 affidavit did not give any specifics about why there
22 was to be no modification. In addition to that,
23 when that affidavit was filed, and this is borne out
24 by the -- by the transcript, Ms. Bradley had just
25 made a payment the month before in April; and this

1 affidavit -- she -- if -- you may or may not recall,
2 probably not specifics of this case, but there had
3 been a trial period planned --

4 THE COURT:

5 Right, right.

6 MS. INGLES:

7 -- that went through September.

8 THE COURT:

9 Right.

10 MS. INGLES:

11 And there was some testimony about perhaps that her
12 final payment may have been late; however, they
13 continued to accept payments through April of the
14 following year. It was only when in April she
15 contacted -- well, I believe she said she contacted
16 them in May because her unemployment had run out;
17 and it was at that point that this affidavit of no
18 modification was filed, gave -- giving no reason.
19 Later there were at least two reasons, well, maybe
20 three. I think in August of 2010 the reason that
21 was given was a negative NPV calculation. However,
22 under the rules of HAMP that were in affect at that
23 time, the NPV calculation is not supposed to change
24 from when it's initially calculated. If it's -- if
25 another modification application is done, there

1 shouldn't be any changes in the NPV calculation. So
2 if there was already a trial period planned, then
3 her NPV calculation would have had to have been
4 positive, at that point; and that should not have
5 changed later through that -- that following year.
6 But in addition to that, after that denial, and in
7 response to the modification application, and
8 negotiations, and so forth, that was going on
9 through the end of August into early September, the
10 denial letter, which is on file with the transcript,
11 stated that it was because of failure to make trial
12 modification payments. Well, that really wasn't
13 correct because she had made trial modification pay
14 -- planned payments all the way through April.
15 There may be some argument about whether or not that
16 that constitutes a waiver or not of the right to not
17 go forward with a permanent modification; but, you
18 know, the client -- and -- and this is, I guess, an
19 overall broad statement about this case, and the
20 Court's order. We feel like that under 60(b)(3),
21 it's not just a showing of fraud, but a showing of
22 misrepresentation or other misconduct. And
23 throughout this she was getting so many mixed
24 messages. She was getting letters that gave her
25 time periods that were not met by the Claimant. She

1 was told all kinds of different information over the
2 phone by representatives of Chase. And I do think
3 -- and -- and this is part of why we, you know,
4 filed a motion to amend in light of the most recent
5 order of our Supreme Court, because it addresses
6 exactly what happened in this case, and shows our
7 Chief Justice's intent in what should have been done
8 in this case. And so I think that's very
9 significant in asking the Court to reconsider our --
10 our original motion. It's clear that -- I mean it's
11 -- I -- I can cite chapter and verse in the
12 transcript where Ms. -- Ms. Bradley stated that she
13 was ~~told that~~ the sale was postponed, going to be
14 postponed, a request to postpone had been submitted.
15 And I think in response to maybe one question, it
16 seemed like she said, well, they never told me it
17 was actually postponed. But her original testimony
18 when she was going through her own timeline, it was
19 clear that she was given the impression that this
20 sale was going to be put off, number one, because of
21 the forbearance that she was still in at the time;
22 and number two, because there was a modification
23 that was pending that she was negotiating. And you
24 want to keep in mind that the reason that they were
25 accepting another application from her is, because

1 she had, in fact, gotten a job. You know, she had
2 gone through, however, eight months or so of making
3 trial period payments beyond her -- the initial
4 three months basically on her unemployment. And
5 then they gave her for the forbearance period when
6 her unemployment ran out based on the fact that she
7 was going, you know, in good faith, trying very hard
8 to find employment, and felt like she was going to
9 find it; and, in fact, she did. So on page 22, she
10 said, "Sandra said that foreclosure sale is on,
11 hold." That was on August 16th. On page 29 of the
12 transcript, line six through 11, "Cheryl said that
13 the request for postponement of the sale has been
14 submitted." That was September 3rd. Let me go
15 back, on September --

16 THE COURT:

17 Okay, page 22 is on 8/16 is on hold. Page 29?

18 MS. INGLES:

19 29, uh-huh.

20 THE COURT:

21 And that -- what date was that?

22 MS. INGLES:

23 That was September 3rd.

24 THE COURT:

25 Nine/3, okay.

1 MS. INGLES:

2 I apologize, I skipped over one, pages 27 and 28,
3 both Sandra and Erin said, "We're sending an email
4 to postpone the sale." Also, on page 29, Sandra
5 says they can't sell the property during the 30-day
6 period after that denial letter. She's got 30 days
7 to, you know, ask for information, ask why she's
8 been denied. So not only has Chase given her that,
9 the HAMP regulations give her that; but our own
10 Supreme Court says that she should have that
11 opportunity to challenge the denial. Now, it's true
12 that she was in default in this lawsuit; however, it
13 had been like a year and a half since the original
14 order in the case. So I think any reasonable person
15 would not really think that there was any
16 opportunity or need to do anything else other than
17 what Ms. Bradley doing, which was talking to her
18 mortgage company. The -- their lawyers certainly
19 weren't talking to her, and that's one of the
20 problems that's outlined in the new administrative
21 order.

22 THE COURT:

23 Yeah, that --

24 MS. INGLES:

25 Even though you've got a lawsuit pending, --

1 THE COURT:

2 I agree with that part, but --

3 MS. INGLES:

4 -- you're not supposed to be talking to the lawyer.

5 THE COURT:

6 Judge Toal went on and on about that.

7 MS. INGLES:

8 Right. And -- and that's something that I have
9 found, you know, in my own practice, that, you know,
10 I'll be defending somebody, and I'll say, "Let's try
11 to, you know, see what can be done on a HAMP
12 modification." And I'm directed to, you know,
13 contact the mortgage company. That doesn't happen
14 anymore, but during that period of time it did. And
15 so even for, you know, us, as defense attorneys in
16 these cases, that's what we're being told to do,
17 rely on the mortgage company. You know, the -- the
18 lawyers indicate -- would indicate that they had no,
19 you know, authority to do anything other than what
20 the mortgage company was doing. So I really do feel
21 like that, in this particular case, default or not,
22 lawyer or not, she was doing what a reasonable
23 person under the circumstances would do. And it's
24 -- it's my contention really that this -- the
25 original administrative order even was not followed.

1 I just wanted to mention a few other places in the
2 transcript. On page 30, September 4th, "Jeanette,
3 the request to postpone the sale has been
4 submitted." On page 30, on September 7th, the day
5 that her property was sold, Jay says, "Well, it'll
6 be 30 to 45 days while we're reviewing your
7 modification package." So really, you know, as in
8 many of these cases, it's the right hand doesn't
9 know what the left hand is doing type of scenario.
10 Because really it seems like that the people at
11 Chase that she's talking on the phone to are
12 basically trying to follow the rules; but they don't
13 really have apparently any authority to tell the
14 lawyers what to do. So there's two, you know,
15 parallel tracks that are going on. And, again, I
16 think that's what our most recent administrative
17 order is trying to address, the problem that arise
18 out of that. Again, Jay, on September 7th told Ms.
19 Bradley the property had not been sold. So we can
20 talk all we want to about fraud, and the statements
21 about what's going to be happening in the future, or
22 promise to do some action in the future. It's clear
23 that the overall message that my client was being
24 given was that her modification negotiation was
25 ongoing. You know, they had no intention of trying

1 to sell her property. And really, whether they had
2 intention or not, they shouldn't have been allowed
3 to. They shouldn't have submitted to you a
4 supplemental order during the period of forbearance.
5 They shouldn't have scheduled -- they scheduled two
6 sales during the forbearance, actually. I believe
7 they scheduled one for August. Also they shouldn't
8 have published for the sale. In other words,
9 really, if you were following the rules of civil
10 procedure, and let's say that it was okay that they
11 submitted a supplemental order to you, and didn't
12 serve it on her, and had no hearing either before or
13 after it at which she could challenge anything that
14 was in order, or challenge whether or not she had
15 been improperly denied for a modification, you know,
16 all -- all of that aside, the rules of civil
17 procedure, I think, would require that she has a
18 time period within which to appeal your order. She
19 wasn't given that. And that's indicative of all the
20 procedural problems in this case is because of the
21 fact that they do -- once they decide that they're
22 going to have a sale, it's -- it's, you know,
23 they're moving it along in a hurry. Now, a long
24 period of time went by while these modifications
25 were being negotiated. But I don't think that can

1 be blamed on her, because that was something that
2 was being offered to her. She was making her
3 payments. She was being told, you know, "Yes, you
4 can apply for a modification." So to hold that
5 against her, that there were several attempts at
6 that I think is unfair. The other thing that I
7 would point out about the supplemental orders is
8 that none of them indicate payments made by Ms.
9 Bradley, which she clearly made during the time from
10 the first order all the way through to your final
11 supplemental order. And it was clear from her
12 testimony that she made those payments. And -- and
13 actually, I think in the affidavit of Charles
14 Herndon, I think he admitted that as well. I think
15 there was a couple of other items in the transcript
16 that I would just mention on that point. Page 39,
17 my client just indicated, sort of in an overall
18 statement, "Everyone said that they couldn't
19 foreclose while it was under review." And I don't
20 think there's -- there's a doubt about that that
21 that was what she was being told. Now, Mr. Herndon
22 can say all he wants to, but he never had a
23 conversation with Ms. Bradley. He was just somebody
24 who reviewed some service notes that weren't even
25 attached to his affidavit. So I -- it'd be our

1 position that the Court should give greater weight
2 to what Ms. Bradley said in person. And the August
3 19th letter that I referred to giving the 30
4 calendars days was Plaintiff's Exhibit 3.

5 THE COURT:

6 Okay.

7 MS. INGLES:

8 The -- the next point that my motion had raised was
9 -- well, it really -- it mainly had to do with that
10 August 19th letter. I think that is right. That's
11 not a promise of a future act. That says you've got
12 30 days. We're not going to sell your property
13 during that time. You can challenge what we've
14 done. And she did attempt to challenge that as a
15 matter of fact. She did send a letter as outlined
16 in the letter from Chase; but by that time the
17 property had been sold, and we were into, you know,
18 trying to get the sale set aside so that she could
19 try to retain her home and reinstate her loan. But
20 the next thing was that we just said it in a general
21 way, that there were a number of things in our
22 motion that just -- and were not addressed by the
23 order, and some of those we talked about that day at
24 the hearing. Let me just -- and I -- and I think it
25 may have been implicit in your order that it wasn't

1 stated, but, you know, we had asked for discovery,
2 and there was some exchange about whether or not
3 there should be discovery. And you actually did not
4 rule on whether or not Ms. Bradley should be allowed
5 -- should have been allowed, or now should be
6 allowed to have an evidentiary hearing on compliance
7 with the administrative order. And I think the
8 Plaintiff's position is that we're not entitled to
9 discovery on that. However, I dispute that, because
10 it's not a unilateral situation. You know, it's not
11 just they can say, "Oh, you don't qualify," and
12 that's the end of the discussion. It's clear that
13 my client should have had an opportunity to
14 challenge that to -- there's no other way for her to
15 know what was being done on the other end, and
16 whether or not it was being done right; you know,
17 other than what little bit she can say they told
18 her. And I've had many cases where through
19 discovery before having an evidentiary hearing on
20 this, we have, in fact, discovered that things have
21 not been done properly. So whether or not that was
22 done in this case, we don't know, because my client
23 was not given that opportunity, and -- and she
24 should have been. The other item, we had asked for
25 a stay, and for a complete explanation as to why

1 they failed to offer her a modification or until the
2 permanent modification opportunities was properly
3 forwarded. I really feel like that it's -- it's
4 somewhat unclear from that last denial letter that
5 she got in September that it wasn't really a denial
6 based on anything she had submitted because it came
7 after the property had already been sold. So it's
8 very easy, at that point, to say, "Well, let's see,
9 what can we say? Oh, she didn't make all the trial
10 period payments." You know, suddenly that's an
11 issue, where it hasn't been before. We asked that
12 -- that -- that the Plaintiff be required to supply
13 a sworn statement about the NPV values, and to state
14 the specific facts that showed that the modification
15 process specified by the guidelines had been
16 completed properly, giving all assumptions and
17 calculations. Now, again, I think it's properly
18 implicit in your order that you were not granting
19 that request.

20 THE COURT:

21 No.

22 MS. INGLES:

23 But we were seeking, you know, explanation of why.
24 why the administrative order did not apply in this
25 case, and why this sale should not be set aside.

1 ~~The order~~ --- all the orders vacated, and the entry
2 of ~~default~~ vacated as well. All right, the next
3 thing that I wanted to address as set forth in the
4 motion was about the findings of fact; and I may
5 overlap a little bit here, so if I've already gone
6 over some of what I would want to mention here, I
7 apologize. But Your Honor made a finding of fact
8 that my client had made extensive efforts to avoid
9 foreclosure and was given varying explanations of
10 the status of her request for loan modification.
11 And then you made a finding that none of the
12 statements arose to the level of fraud or
13 misrepresentation. And -- and I think I've already
14 stated here, but I -- I want to emphasize again the
15 broad picture that this lady had and that she
16 testified about. She made extensive efforts. They
17 were working with her. They were giving her every
18 reason to believe that this was ongoing and her
19 property wasn't going to be sold. And for goodness
20 sakes, she had a job, she really had only missed at
21 that point, the payments during the forbearance
22 period, which they had agreed to. So it's really
23 disingenuous to all of a sudden now, you know, come
24 in and say, "Oh, you know, you haven't paid, you
25 haven't paid your trial period plan, we're just

1 going to, you know, go forward." There were
2 multiple supplemental orders, none of them with a
3 hearing, none of them with an opportunity for her to
4 say -- to challenge what was going on. Now, there
5 was the affidavit of non-eligibility that was in May
6 of 2010; however, it gave no specifics, which is
7 part of what our motion was, to say, "Tell us,
8 specifically how you complied with the
9 administrative order." And -- and -- and I really
10 feel like, as in many cases, where the defendant is
11 in default, and doesn't have an attorney, all of
12 that was just sort of skipped over, because it was
13 assumed that this was just going to go on straight
14 to a sale. But the reason that shouldn't have been
15 -- it shouldn't have been assumed, but it often is,
16 because of the attorneys and the servicers not
17 working in conjunction with one another. And I've
18 already mentioned the issue of whether or not they
19 had been served -- the orders were served on her,
20 and, you know, that final right to appeal. All
21 right. Well, you know, in section four of my
22 motion, I talked about whether or not the Court was
23 properly looking at the issue of the forbearance,
24 and I have already talked about that a little bit.
25 But, again, just to emphasize, the sale of the

1 property took place seven days after the end of the
2 forbearance period. And it's our position that it's
3 a mistake to make that finding, and issue your order
4 on that basis, because there wasn't sufficient time
5 given for her even if she had been served with the
6 order; and nothing should have been done during that
7 forbearance period, in any event. And I just want
8 to go through very quickly, and it's listed in my
9 motion, so I don't want to go on for too long, but
10 there's a whole list here of all the things that
11 happened during the forbearance. And, you know,
12 then there was, at some point, a denial that she was
13 told that -- that she was in default on the
14 forbearance. And the question -- how can you be in
15 default on forbearance? The forbearance says you
16 don't have to pay for three months while we're
17 working on your modification. Where's the default
18 on her part? There isn't any. She's sent in
19 everything she was supposed to send in, not that
20 that's a default, but the forbearance is something
21 that Chase gave! It's up to them to honor it. And
22 I think it's clear that they didn't. And I'll just
23 let those -- unless the Court had any questions
24 about any of those, I'll let those just speak for
25 themselves. I think they're clear in -- in the

1 record. The next, in number five, I had asked that
2 the Court address how the actions of Chase, the
3 Plaintiff, proved compliance with the administrative -
4 order such that a request for an evidentiary hearing
5 was contained, and our motion was not granted. Now,
6 admittedly, that by the time we filed our motion,
7 the property had already been sold. However, part
8 of our whole motion is that should be set aside, and
9 we should go back to square one and make sure
10 everything's done right. Make sure they did
11 everything correctly. Again, this is not -- it's
12 not a unilateral situation. It's a -- it's a
13 lawsuit, and both sides have rights, and I don't
14 think that hers were observed. The Plaintiff's
15 counsel had argued that once the modification
16 evaluation was over, that they're allowed to go
17 forward with the foreclosure. However, that does
18 not account for the fact that the administrative
19 order does allow the challenge of the modification.
20 Additionally, and I've already mentioned this, the
21 Plaintiff's affidavit of non-eligibility, it
22 apparently was premised on a previous denial, but --
23 but it was unclear -- I mean it had to have been on
24 a previous denial; but since there was a trial
25 period planned, and this affidavit was the month

1 after her last pay -- her eighth, I believe, payment
2 under that, it's unclear how that affidavit could
3 actually be true. And, again, no further affidavits
4 of non-eligibility were filed, and, you know, to
5 match up with the denials that were made. But,
6 again, the order fails to address the fact that Ms.
7 Bradley's ability to challenge the modification
8 decision was forestalled by the timing of the sale,
9 and the cutting short of the NPV challenge period
10 thereby of the sale. And, again, the procedural
11 problems with that final order, sale notice during
12 the month of August, and I think the final -- the
13 ~~final publication being September 1st, according to~~
14 ~~the notice of sale on file.~~ And just, again,
15 highlighting the requirement that the Plaintiff
16 carry out its own obligations under HAMP and under
17 the administrative order, my client had certain
18 rights under HAMP that were not followed. She had
19 certain rights that I've enumerated under the South
20 Carolina Rules of Civil Procedure that she was not
21 afforded, as well. Finally, in number six, I've
22 asked the Court to ~~reconsider the credence that was~~
23 ~~given to the affidavit of Charles Herndon.~~ Most
24 importantly, because my client was at the hearing
25 and was testifying to her own personal knowledge.

1 And it's our position that that should be given much
2 greater weight, than a affidavit of someone who
3 summarized computer notes. -I believe, beginning on
4 page 41 of the transcript, we specifically addressed
5 the paragraphs in Mr. Herndon's affidavit and what
6 was stated in those. And just to highlight a few,
7 on page 42, the affidavit states, "Chase also
8 informed the borrower that it would not request that
9 foreclosure sale be -- be postponed until all
10 required documentation for the modification request
11 was received by Chase." And I asked her, "Did
12 anybody tell you that?" And she said, "They said as
13 soon as I got all the necessary paperwork in, that
14 -- then they would postpone the sale." This goes
15 back to embrace the broad principle that -- or the
16 broad problem that occurred in this case, which was,
17 she was constantly -- and even their own affidavit
18 states that once she sent everything in, the sale
19 would be postponed. She sent everything in. It was
20 acknowledged that she sent everything in. And she
21 says here that she did send in the paperwork. On
22 page 43 of the transcript, referring to paragraph 18
23 of the affidavit, Mr. Herndon says, ~~That~~ "on
24 September 2nd Chase advised the borrower that her
25 request for a modification was under review." This

1 is in his own affidavit. But the day before that,
2 ~~the last publication of notice of the sale that~~
3 happened. And five days later the property was
4 sold. He says, "Chase also advised the borrower
5 that it would request that the foreclosure sale be
6 postponed, but that would have to be approved by
7 Fannie Mae, Federal National Homeowners Association,
8 the investor on the loan." And I said, "Do you
9 remember being told that?" And she said, "They just
10 said they were going to postpone it. As far as
11 being reviewed by somebody else, no, they never told
12 me that." Also, in paragraph 18, Mr. Herndon says,
13 "That the borrower contacted Chase on September 4th
14 and was advised that the foreclosure sale had not
15 been postponed." And her response to that was --
16 and I said, you know, "Did they ever tell you it had
17 not been postponed?" She says, "Yes, I don't know
18 if it was the 4th, but they kept saying that the
19 email had been sent for them to escalate it to
20 postpone it. They said, yeah, it was postponed."
21 And that does comport to what Mr. Herndon said the
22 procedure would have been. And then on page 44,
23 "But from my understanding," this is Ms. Bradley
24 talking, "But from my understanding I'm getting from
25 everyone that I was talking to as long as it was in

1 ~~review~~, they could not foreclose on it." And I gave
2 you that list at the beginning of all the different
3 people, as her testimony says in the transcript who
4 were saying this to her. In an affidavit from Mr.
5 Herndon summarizing some computer notes just doesn't
6 change that line of testimony. And then, finally,
7 in number eight, I had asked the -- the Court,
8 respectfully, to be more specific as to the findings
9 of fact and conclusions of law that resulted in your
10 decision. There was just a broad referral to the
11 reasons stated in the Plaintiff's memoranda as to
12 the basis for the denial. And there were quite a
13 few of those, and they were, I thought adequately
14 addressed by my client, and such that the motion
15 shouldn't have been granted. And I think I've --
16 I've pretty much summarized that. But I did want to
17 address a couple of other just overall broad
18 concepts that the Plaintiff has raised. One of
19 those is a lot of time was spent on this in the
20 memorandum, whether or not there's a private right
21 of action under HAMP. And that is not what this
22 case is about. This case is about whether HAMP was
23 properly followed, but more importantly, about
24 whether my client had an opportunity to challenge
25 what was done in the modification process, pursuant

1 to the administrative order. Yes, there's a lot of
2 cases around the country who may have said or held
3 that there's no private right of action. One case
4 is cited by the Plaintiff, of a Federal District
5 Court case, which was actually a pro se litigant,
6 and the case was essentially dismissed, it's the
7 Steffens' case. The case was essentially dismissed,
8 because of, you know, pro se litigant was not able
9 to produce the proof that was necessary for her
10 claims to survive some earlier motions in the case.
11 I don't think that really applies to this situation.
12 She -- that was a -- she was a Plaintiff suing her
13 mortgage company. This is a Defendant Homeowner
14 asking that our Court's administrative order be
15 followed. And I don't think that goes against the
16 issue of a private right of action. And in
17 conjunction with that, there is some argument that's
18 raised as to whether or not the Defendant, Ms.
19 Bradley, has standing to force the Plaintiff to
20 modify her loan. I don't think anything in our
21 motion said that they were required to modify her
22 loan or required to modify in some particular way. I
23 think they are required to properly evaluate her
24 under HAMP and to give her the opportunity to
25 challenge whether or not they did that, whether not

1 they properly evaluated her. Your Honor indicated
2 that there was no fraud to warrant vacating the
3 foreclosure orders and the sale. I think that it's
4 clear from the testimony that there was fraud and
5 misrepresentation; but, certainly, there was other
6 misconduct in the overall way that this was handled,
7 not the least of which is the failure to follow the
8 South Carolina Rules of Civil Procedure, and the
9 failure to follow our administrative order, and give
10 this lady the opportunities that she is supposed to
11 get. I do think for other litigants now that will
12 clearly be done. And I think that for her, because
13 her case is still pending, that that should be
14 allowed in her situation at this point. You know,
15 we're not talking about someone who is trying to
16 stay in their home and not make their mortgage
17 payment. She clearly testified, at the conclusion
18 of her testimony, that she has a job. She wants to
19 keep her mortgage. She wants to pay. She paid all
20 the way through, you know, three months -- four
21 months before the property was sold, so I think that
22 there's sufficient -- more than sufficient testimony
23 under Rule 60(b)(3) of fraud, misrepresentation, and
24 other misconduct. I think that's all I have.

25 THE COURT:

1 Okay, fine. Ms. Caskey?

2 MS. CASKEY:

3 Good afternoon.

4 THE COURT:

5 Good afternoon.

6 MS. CASKEY:

7 I think, first as a preliminary procedural matter,
8 before I address the specific points raised, the
9 first argument in the Plaintiff's memorandum in
10 opposition to the Defendant's motion to reconsider
11 is about the timing of the motion. And I would just
12 ask that the Court consider that as an argument.
13 You know, Plaintiff's counsel got this motion -- or,
14 I'm sorry, got a written copy of the order denying
15 the motion to set aside the sale on May 10th. The
16 motion to reconsider was not filed until May 24th.
17 I'm not aware of the date that counsel for the
18 Defendant received a copy of the written order, and
19 I certainly don't want to make any allegations
20 regarding whether she did or didn't definitely get
21 them on what date; but it would stand to reason that
22 if I, as Plaintiff's counsel, got it in Columbia on
23 May 10th, that she would have gotten it on or before
24 the same date giving the proximity to the
25 Courthouse. So I would just ask that the Court, in

1 ruling on the motion, consider that. The ten day
2 requirement for motions to reconsider is a definite
3 requirement. The ten day time limit cannot be
4 extended, and the Court's ruled on that several
5 times. With regards to the merits of the motion, I
6 think there are several things that -- that -- that
7 Defendant's counsel raised. The overall arching
8 theme which should be -- seems to be that the
9 Defendant just simply didn't have a chance to do
10 anything in this case. And that the Defendant
11 didn't have a chance to stop the sale. They didn't
12 have -- she didn't have a chance to contest any of
13 the affidavits, or any of the orders, or the
14 foreclosure hearing, or any of the events that took
15 place in the foreclosure. And I think that's a
16 little misleading, because the foreclosure has been
17 pending since December 2008. And as, you know, it's
18 clearly set forth in the transcript, the original
19 foreclosure order was entered in March of 2009,
20 before the HAMP order ever even came out, before the
21 Defendant ever made any sort of effort to
22 participate in the litigation whatsoever. And under
23 the Rules of Civil Procedure, they're there for a
24 reason. They were there to give her the opportunity
25 to come forth at the foreclosure hearing and

1 participate. When she chose not to participate in
2 the foreclosure hearing, she waived any rights to a
3 defense to the foreclosure. And part of that, she
4 waived the opportunity to participate. And at that
5 point this case law decided at length in several of
6 the memorandum that -- presented by Plaintiff, you
7 waive your opportunity to contest the amount of the
8 debt -- or to contest anything basically but -- but
9 the right of the -- the -- the parties to -- to move
10 forward from there. So I think we want to be
11 careful when we're talking about due process that
12 she was given the opportunity to appear at the
13 original foreclosure hearing. And at the hearing in
14 this case on -- in March, I asked her, I said, "What
15 would you have done differently, if you had known
16 that the foreclosure sale was going to go through?"
17 And at this point, I'm fast forwarding almost two
18 years since the foreclosure was -- had been
19 commenced. And I said, "What exactly," this is on
20 page 64 of the transcript, "What exactly would you
21 have done if you had known that the foreclosure sale
22 was going to go through?" And she says, "You know,
23 I would have -- early on I would have obtained a
24 lawyer sooner, and either went and talked to someone
25 else that knew more about what was going on rather

1 than relying on my own understanding." And then I
2 indicated that at the time that the foreclosure sale
3 was going on, she had talked to someone. She had
4 hired First Foreclosure Systems -- Solutions to try
5 to help her get a loan modification. And they had
6 told her not to answer the complaint. They had told
7 her not to go to the hearings. So she was relying
8 on the advice of -- of a non-lawyer unfortunately
9 not to participate in the action. So with regards,
10 to the orders entered prior to the August 2010 order
11 that was immediately prior to the foreclosure sale,
12 there is no testimony that she did not have the
13 opportunity to attend those -- to attend the
14 original foreclosure hearing. There was no
15 testimony that the prior orders were not served
16 properly. Today was the first that there has been
17 any indication that the Rules of Civil Procedure
18 were not followed with regards to every single
19 pleading filed in this case. And I believe that Ms.
20 Bradley testified, we showed her several letters,
21 several documents, she admitted that all of them
22 were properly addressed to her. She couldn't
23 necessarily receiving all of them, but I think that
24 that's, you know, pretty reasonable, given the
25 amount of documentation that was discussed. But

1 there's a presumption that when a document is
2 mailed, that it was, in fact, received. So I think
3 that this whole argument about what the Plaintiff
4 had -- I'm sorry, what the Defendant had the
5 opportunity to do needs to be viewed in the context
6 of the fact that the action had been pending for two
7 years prior to the one month timeframe that the
8 Defendant is really disputing. And that timeframe
9 is August and September of 2010. And prior to that
10 time, there had been ample opportunity to get an
11 attorney, ample opportunity to contest any of these
12 other orders, ample opportunity to contest the
13 affidavit that was submitted by Chase, saying, "Yes,
14 we complied with our Supreme Court's order." And
15 I'd like to take a minute on that front, to just
16 review what the administrative order from May 22nd,
17 2009, says about that affidavit. It says, "Once the
18 affidavit is served, any other party to the action
19 shall have ten days to serve a counter-affidavit."
20 And then it provides that the Judge shall consider
21 the affidavit and any counter-affidavit that may be
22 filed to determine if there is any contested issue
23 that must be resolved regarding the eligibility of
24 the like for modification." So when Defendant
25 requests this evidentiary hearing that she claims

1 that she's entitled to, she never took the initial
2 step of filing a counter-affidavit. Not when the
3 first affidavit was filed, or any other point in the
4 case. Even a late affidavit wasn't even submitted.
5 So the idea that some evidentiary hearing is now
6 appropriate two years after the fact is a little --
7 a little difficult to bear given the fact that the
8 case had, in fact, been pending for two years, and
9 that the rule, the administrative order that guides
10 this case had clearly set forth the procedure. The
11 other thing, I think, to keep in mind, with regards
12 to these administrative orders, which I would
13 acknowledge, both the Plaintiff's and the
14 Defendant's bar have struggled, I think, to really
15 understand to try to understand how they apply given
16 the Rules of Civil Procedure, and how foreclosures
17 are handles, is that the Court itself acknowledges
18 that it's taken three administrative orders to try
19 to help resolve the situation that has resulted from
20 the mortgage financial crisis. And in doing so, the
21 Court has acknowledged that it -- it's a process.
22 And this most recent order from May 2nd, 2011,
23 specifically sets forth that it's not applicable to
24 actions that were pending prior to the date of the
25 order. And the reason that it does that is because

1 otherwise it would open up every single foreclosure,
2 or have the potential to open up every single
3 foreclosure, and really put the lenders in a crisis
4 who've done their best to comply with not only the
5 administrative order, the HAMP guidelines, the South
6 Carolina Rules of Civil Procedure, and the statutes
7 governing mortgage foreclosures. So I think, even
8 though the -- the Supreme Court has done its best to
9 try to address these problems, both of its orders
10 specifically set forth the date on which they became
11 effective. And they did that so it wouldn't open up
12 prior foreclosures. So to use this order as the
13 sole basis to open up a foreclosure, require an
14 evidentiary hearing, unwind the entire transaction,
15 and go back to the original foreclosure hearing is
16 not what the Supreme Court intended, and it's
17 certainly outside of the realm of the scope of that
18 order. Defendant's counsel talked a lot about the
19 forbearance agreement. And there was some testimony
20 at the hearing from Ms. Bradley about the
21 forbearance agreement. There is no written
22 forbearance agreement that was documented by either
23 side. So the terms of the forbearance agreement are
24 pretty much unknown, except for the fact that it
25 seems uncontested that for at least until the end of

1 August no foreclosure sale could occur. And
2 Defendant's counsel has a list of activities, as she
3 mentioned that -- that occurred during the
4 forbearance period; but there's no evidence, no
5 legal support, or no case law that says that those
6 actions couldn't take place. The forbearance is
7 defined as the agreement to not move forth on a
8 right. And that's exactly what happened. For those
9 three months Chase did not actually complete the
10 foreclosure sale. And that foreclosure sale was
11 completed as soon as the forbearance period was up.
12 And without some documentation, or legal support, or
13 some sort of argument as to why the actions set
14 forth in her memorandum were not acceptable during
15 the forbearance period, it's difficult to understand
16 why, in fact, those -- those actions were not
17 allowed. Typically, forbearance agreements are very
18 specific, they have the terms. And in this case,
19 this was simply an oral forbearance. And the
20 Court's without information to know what other terms
21 might have been part of that forbearance. And as
22 the Court's already correctly noted, the forbearance
23 agreement ended on August 31st, 2010; and there
24 simply was nothing to prevent the foreclosure sale
25 from going forward at that point. Defendant's

1 counsel also argued that, you know, at that point,
2 or after the -- after the August 2010 order, that
3 Ms. Bradley should have been allowed to appeal the
4 order, and that no sale should have taken place.
5 Well, that's not what happens in a regular
6 foreclosure situation. The sale of the foreclosure
7 is not postponed pending an appeal unless the party,
8 in fact, takes upon itself to file the appeal. And,
9 again, there's been no evidence presented that the
10 order was not properly served; not at this hearing,
11 and not at the prior hearing, or any other time in
12 the case. So the idea that everything should have
13 been put on hold until the appeals period ended,
14 again, is without support. With regards to the
15 statements of fraud, Ms. Ingles went through several
16 parts in the transcript where, again, I think it's
17 undisputed that at many times throughout the hearing
18 Ms. Bradley testified that she was told that the
19 sale would be postponed, i.e., in the future; and I
20 think we've exhausted the discussion about whether a
21 statement of future fraud or a future event could be
22 fraud. She also highlighted a number of areas where
23 Ms. Bradley indicated that maybe she was told that
24 it was postponed; and as a result, when it came time
25 for the end of Ms. Bradley's direct examination, and

1 the beginning of cross-examination, that issue
2 needed clarification, because her own testimony was
3 completely contradictory on the issue. It was
4 contradictory about what she was told, when she was
5 told. And so the -- an -- an effort was made by me
6 to try to clarify that issue, and on a number of
7 occasions, not just one occasion, on a number of
8 occasions which are cited in the memorandum. She
9 specifically said, she had been told that it was
10 going to be postponed, but that it had not been
11 postponed yet. So to the extent that there's any
12 question that that statement rises to the level of
13 fraud, again, I believe that the ample case law has
14 been presented to the Court to show that that's
15 simply not a statement of fraud. With regard to
16 whether this -- the overall feeling that Ms. Bradley
17 got, the overall message, I think was the word that
18 was used, that she got, that the sale had been
19 postponed, that's not sufficient to constitute
20 fraud. Rule 9 requires that you show who made the
21 statement, when they made it, what the statement
22 was, and how you relied on it. And I think that
23 even if you take into account and accept the fact
24 that she was -- may have been given contradictory
25 statements concerning the status of the foreclosure

1 sale, there's no question based on her own
2 testimony, that, ultimately, she could not say, yes,
3 I was told that sale would not occur. And, second,
4 and maybe more importantly, because it's easy to get
5 caught up in her various statements about what she
6 was told, she can't really show that she relied on
7 it. She -- she hasn't given any information about
8 what she would have done if she had known that the
9 foreclosure sale was going to go through. She
10 didn't hire her an attorney prior to that date. She
11 didn't indicate that she was going to hire an
12 attorney for the foreclosure sale specifically; the
13 foreclosure having been pending for two years. She
14 also didn't indicate that she had the wherewithal to
15 bid at the foreclosure sale. She didn't have the
16 means to short sale the property. She didn't
17 provide any evidence whatsoever that somehow those
18 statements stopped her from doing what she was
19 otherwise going to do. And in -- in bringing the
20 motion to satisfy the sale under Rule 60 is the
21 Defendant's burden to prove the fraud. And it's the
22 Defendant's burden to prove the prejudice that
23 resulted as a resort -- as a result of the fraud.
24 Chase does not have to show any prejudice whatsoever
25 that it would occur if it's not required to do the

1 actions that -- that the Defendant's requested and
2 not required to resell the property. That's the
3 Defendant's burden. With regards to whether or not
4 the evidence or the statements amounted to fraud, I
5 believe Defendant's counsel mentioned that she --
6 that they rose to the level of misconduct,
7 generally. And there's -- this is addressed
8 specifically in the memorandum in opposition to the
9 motion to reconsider. Misconduct for the purposes
10 of Rule 60 is specifically defined. And it's a very
11 -- it's a very narrow type of misconduct. It's not
12 just general misconduct, it's not -- it's not the
13 type of confusion that the administrative order from
14 the Supreme Court is trying to stop, this
15 unintentional confusion, it is misconduct that is
16 intended to prevent a party from participating in
17 the litigation. And there's no evidence whatsoever
18 that Chase intentionally made any statements or took
19 any action to try to prevent Ms. Bradley from
20 participating in the foreclosure action prior to the
21 date of the foreclosure sale or at the foreclosure
22 sale; and in fact, the evidence shows that as little
23 as three days before the sale she was specifically
24 told, "The sale has not been postponed, you need to
25 protect your rights. The sale has not been

1 postponed." And that evidence is admitted by Ms.
2 Bradley, that on September 4th, I believe, she was
3 told, "The sale hasn't yet been postponed." We've
4 made this expedited request, that's undisputed, that
5 it was requested that it be postponed; but there's
6 no dispute that, in fact, she was not told at that
7 point that it was postponed. I think it's also
8 significant, there's a -- a discussion about due
9 process, and I've -- I've discussed, you know, the
10 -- the history of the case that was going for,
11 again, almost two years before we even get to that
12 August 2010 date. And prior to that time, I believe
13 Ms. Bradley, excuse me, has requested that those
14 orders be set aside. And as I've explained in the
15 memorandum and opposition, there simply is no basis
16 to set aside those orders, because each order was
17 entered after timely notice to the Court -- or to
18 the Defendant and to the Court, and she never
19 submitted anything in opposition to those orders,
20 never requested a hearing. There's been no
21 suggestion that a hearing was required for a
22 supplemental affidavit concerning the amount of the
23 debt. And Ms. Bradley also at this hearing has
24 claimed that those orders did not properly take into
25 account payments made prior to those; but there's

1 been no evidence on that. There's been no evidence
2 that the amount of the debt set forth in those
3 orders, was not correct. And so I think that --
4 that hearing that, and considering that testimony,
5 or lack thereof, of that argument, at this juncture
6 in the case, and the motion to reconsider would be
7 considering new evidence, which, of course, is not
8 allowed in a Rule 59E motion. And, briefly, on the
9 procedural aspects of the case, and on the specific
10 request that certain actions in the case be set
11 aside, you know, the -- the case is kind of -- we've
12 been working backwards. We've been starting with
13 that August, September issue, with the sale and the
14 forbearance agreement, and I believe we've
15 adequately set forth our position that there was no
16 reason for that sale not to go forward because
17 there's no written agreement saying that it couldn't
18 go forward at that point. There's no written
19 agreement saying that the forbearance agreement
20 would give her 30 more days, or that it, you know,
21 would start the foreclosure process over. There's
22 no case law that provides for that. And there's
23 been no statutory or other legal argument that there
24 was a timeline that needed to start once that
25 forbearance agreement ended. And, again, we backed

1 up to those supplement orders, there's no evidence
2 about the service, no evidence that those were
3 improperly entered. Backing all the way up to the
4 foreclosure hearing, Ms. Bradley's also requested
5 that she be relieved from default and allowed to
6 file an answer and counterclaim. And as stated in
7 the motion -- or in the memorandum and opposition
8 and the motion to reconsider, that request, one, was
9 withdrawn at the hearing. It was specifically
10 addressed, and at the hearing, the counsel stated
11 that it was a mistake, and that it wasn't intended
12 -- intended to be included in the motion. But more
13 importantly, and substantively, there's no basis for
14 it. There's no -- there's been no testimony
15 whatsoever about why she didn't originally respond
16 to the answer -- or the complaint. There's no
17 indication that she has some sort of meritorious
18 defense. The order was entered in, again, March,
19 2009 -- or -- yeah, March 2009, and which was two
20 months prior to the Court's administrative order on
21 HAMP, so there wouldn't have been any basis for any
22 HAMP review at that point in time. So there
23 literally are not defenses that Ms. Bradley has
24 testified that she would have presented, so there's
25 no basis for her to be let out of default and file

1 an answer and counterclaim. And because of that
2 default, she, of course, has waived any merit -- any
3 right to object to the merits of the action. If I
4 could just have one second?

5 THE COURT:

6 Take your time.

7 MS. CASKEY:

8 I'll go through my notes.

9 THE COURT:

10 While you're doing that, let me ask Ms. Ingles, is
11 the request to let her file an answer, and let her
12 out of the original default, is that still a live
13 issue as far as you're concerned?

14 MS. INGLES:

15 Yes, I -- I think there's a misconception about
16 that. The wording of that request and that motion
17 was the problem. It wasn't that we weren't asking
18 for that to be so, so let me just find that. And I
19 think we've talked about it a little bit before we
20 went on the record, so the record may be somewhat
21 confusing. Somehow I don't know what I did with
22 that, now I'm going to look for it, it'll take me
23 just a minute to find it. But I think it referred
24 to their having been an order entered already in the
25 case, and that was not the situation here. And so

1 what I was trying to address was the fact that there
2 has not been -- okay. What the motion said in
3 paragraph one, "Seeking the following relief to
4 alter and amend the written decision on her motion
5 to stay further action since entry of default, and
6 allow Defendant to answer and assert counterclaims."
7 There had not been a written decision on any motion
8 yet. And so that's what the "stay" that was being
9 addressed, was that there was not written decision
10 yet; and I think that was just wording, it was a
11 typo basically. So --

12 THE COURT:

13 Basically, you're saying that's something that was
14 failed to address in my previous order, the one I
15 issued in --

16 MS. INGLES:

17 No, no, I'm saying that that was just -- that
18 verbiage should not have been in there at all.

19 THE COURT:

20 Oh.

21 MS. INGLES:

22 Because you had not -- this was our original motion
23 to set aside the sale that she's talking about.

24 THE COURT:

25 Okay, all right. Okay, thank you.

1 MS. INGLES:

2 And the language was just, you know, mistakably
-3 written.

4 THE COURT:

5 Okay.

6 MS. INGLES:

7 We were still -- and I realize that's a separate
8 issue from some of the other vacating the sale, and
9 setting aside the sell and all; but that was part of
10 what we had asked for was to set aside the entry of
11 default, and I think she's addressed that
12 substantively anyway.

13 THE COURT:

14 Okay, good, I just want to clear that up. Okay, Ms.
15 Caskey, I didn't mean to interrupt you.

16 MS. CASKEY:

17 Oh, no, you're -- you're fine. Just stepping back
18 into the discussion, one of the arguments raised by
19 Defendant's counsel was about the NPV calculations.
20 And that if the trial claim was in place, then the
21 NPV calculations must have already been done, and
22 they must have already been -- met with HAMP
23 guidelines. There's been no evidence on that. And
24 it's not Chase's burden at a motion to set aside a
25 sale under Rule 60, or at a motion to reconsider, to

1 prove that type of calculation was not properly --
2 or that the -- how the calculation was done, or what
3 the requirements of the calculation are; that burden
4 falls on the Defendant to show that it was done
5 incorrectly, that there was some basis for fraud in
6 the NPV calculations. There's been no testimony
7 whatsoever that any of the NPV calculations were
8 incorrect. There's been no evidence submitted about
9 how NPV calculations are done. There's been no
10 evidence submitted that NPV calculations have to be
11 done prior to trial plan payments. And when I say
12 no evidence, I'm including no legal authority
13 either. So there's been literally no argument
14 concerning that prior to the motion to reconsider
15 and the motion to today. Additionally, with regards
16 to the request for discovery, again, this is
17 addressed in the memorandum and opposition. There
18 was some indication that somehow Plaintiff's
19 position was that the Defendant's just not entitled
20 to discovery on modification issues. That's not the
21 posit -- that's not our position. Our position is,
22 that it's not appropriate at this juncture in the
23 case. Discovery under Rule 26 has to be done with
24 regards to pending matters, and this matter's been
25 complete since September 2010. This, at this point,

1 would be post-judgment discovery. And I was unable
2 to find any authority whatsoever supporting that
3 type of discovery. If Ms. Bradley had -- had served
4 discovery concerning the calculations, and what was
5 done, and how it was done, during the pendency of
6 the Court -- of the case that may or may not have
7 been relevant depending on the specific requests
8 that were served. But it's certainly not relevant
9 at this juncture when the burden is on -- about Rule
10 60, is about fraud and misstatements and
11 misrepresentations, and there's been no evidence
12 that misrepresentations in the statements, etcetera,
13 were made about NPV calculations or about missed
14 trial plans. And on that note, Ms. Bradley also
15 testified at the hearing that she did make the trial
16 -- that she made payments in the amount of the trial
17 plan payment amount, after the trial plan ended.
18 It's undisputed that the trial plan is a three month
19 period. She was late on the third payment. She
20 acknowledged that. She said she was just having
21 difficulty making the payment. And it's undisputed
22 that, at least, for some portion following the end
23 of the trial plan, she submitted payments in the
24 same amount as of the trial plan. But Chase is not
25 obligated to honor or to extend the trial plan out

1 past that three months. Chase also doesn't waive
2 any right to the full amount due under the loan,
3 because it accepts a partial payment. That trial
4 plan agreement specifically indicated that it ended
5 after three months. And at that point, she, again,
6 became due for whatever amount was due on the loan,
7 including the full amount of her monthly mortgage
8 payment. So not only was she submitting the
9 payments late under the trial plan, but then she
10 wasn't even submitting the full amount that she was
11 due for the month, much less the full amount of the
12 arrears that was due. So that the suggestion that
13 somehow the amount of the debt is not proper because
14 Chase didn't give proper credit or credence to the
15 trial plan payments that were made is, one, not
16 supported by the record, and, two, is disingenuous,
17 because Chase, at that point, legally was entitled
18 to accept partial payments or less payments, but it
19 was not required to not foreclose on the property,
20 simply because it had accepted partial payments, and
21 that's under the terms of the mortgage and its
22 standard -- standard case law analyzing those --
23 those issues. Finally, with regards to HAMP
24 compliance and whether or not Chase complied with
25 the -- the administrative order, there is a

1 suggestion that multiple affidavits should have been
2 filed, and an affidavit should have been filed after
3 each individual review. And I acknowledge that
4 under the May 22nd, 2011 -- or May 2nd, 2011, order,
5 it appears that the Court was trying to correct or
6 at least address the situation where modification
7 were discussed after an initial HAMP modification
8 situation. And also trying to address a situation
9 where the foreclosure counsel was not involved. But
10 under the May 22nd, 2009, order, which is the only
11 administrative order that governs this case, only
12 one affidavit has to be filed. You have to show
13 that you make an initial HAMP determination, that
14 you comply with the Court's requirements on that,
15 and they have ten days to object. There's nothing
16 in that order that requires subsequent affidavits,
17 updated affidavits, or anything of the sort. So I
18 think perhaps the thing to take away is, at one
19 point, I believe, Ms. Ingles said both sides have
20 rights. And default or not, or attorney or not, Ms.
21 Bradley has rights. And she does have rights, and
22 those rights are set forth in the Rules of Civil
23 Procedure, and in the administrative order that
24 governs this case. She did not choose to protect
25 herself by following the rules that were set forth

1 in both of those guidelines; and in doing so, she
2 waived certain rights to participate in the
3 litigation. And past that, Chase has rights. Chase
4 has the right to pursue a foreclosure on a debt that
5 was delinquent. And Chase has a right to -- to
6 fully participate in the foreclosure regardless of
7 whether or not the borrower continues to submit
8 modifications as long as Chase is being forthright
9 with the customer, which they were doing. They were
10 sending letters. They were trying to communicate.
11 And as Ms. Ingles admitted, they were doing their
12 best to try to assist her in the situation. And,
13 again, I think it all comes back to, at the very end
14 of the day, Ms. Bradley is not able to show that,
15 even if you take all her statements as true, which
16 many of which are inconsistent, but even if you
17 agree with her version of the story, she simply
18 cannot show that she relied on anything that Chase
19 did in avoiding that foreclosure sale. She did not
20 fail to take or take any action based on what Chase
21 did or allegedly did. And I think that at the end
22 of the day, that's really what governs the motion
23 for today. I'll be happy to answer any questions
24 Your Honor might have.

25 THE COURT:

1 Thank you. Any rebuttal?

2 MS. INGLES:

3 Yes, sir, a few things. I wanted to just point out
4 initially in one of the last things that was said,
5 Ms. Bradley did testify at the hearing that they did
6 tell her to continue paying the trial period
7 payment. She just didn't choose to pay a lesser
8 amount. She called them up, and said, "What's going
9 on? You know, the three months is up." And they
10 said, "Just keep making the payment." And that's
11 what she did, and it was accepted. So that was not
12 necessarily her just choosing to pay the lesser
13 payment, she was told to continue making the
14 payment, and she did. And to go back to the
15 beginning of Ms. Caskey's argument, you can take
16 that same issue, she said several times, this case
17 has been going on for two years. Well, yeah, it has
18 been going on for two years, and for half of that
19 Ms. Bradley was making payments. And for another
20 three or four months of that, she was in a forbear
21 -- was granted a forbearance, and was in a
22 forbearance. So the greater part of that two years
23 she was paying on the loan. Yes, the foreclosure
24 judgment was in early 2009, so why would she have
25 thought that there was anything else for her to be

1 doing in this litigation that she clearly didn't
2 understand, which many people -- probably most
3 people don't understand what they're supposed to do.
4 But when it was over a year prior to these
5 negotiations during the forbearance period, the idea
6 that somehow she didn't participate a year before
7 that and that affected her rights during the
8 forbearance period, I -- I just don't think that's
9 being fair to a pro se litigant to suggest that she
10 should realize that there was something in this
11 litigation that she should be doing. Again, she was
12 negotiating with Chase, which, you know, may have
13 been the problem. She did rely on what they said.
14 She said she would have gotten an attorney had --
15 had she realized that this was going to happen.
16 That was one of the, you know, the many things that
17 she said. She wouldn't have relied, she wouldn't
18 have believed, but she did believe. And, in fact, I
19 -- I disagree. I think that the misconduct,
20 misrepresentation, fraud did -- was intended to
21 prevent her from participating in the lawsuit. Had
22 she not thought that she -- that this sale wasn't
23 going forward, that there was still, you know, this
24 30 days to challenge the NPV calculations from that
25 August 19th letter, there would clearly have been

1 participation by her; but she thought she was
2 participating in the way that most per se litigants,
3 at that time, believed. I also would like to
4 discuss this idea of the burden of proof being on my
5 client. Yes, to some degree it is. But to say the
6 burden of proof on whether or not the reasons for
7 denial were correct, I -- I think it's wrong to look
8 at it that way. Because without an evidentiary
9 hearing and discovery, she has no way of proving
10 that. She has only what was told to her by Chase,
11 and what was written to her in letters. That -- and
12 that's what we've presented. And that's part of why
13 we did -- did ask for an evidentiary hearing, and
14 did ask for discovery. I also want to take
15 exception to -- not take exception, but -- but read
16 some additional information from the May 22nd, 2009,
17 administrative order, because it does allow the
18 Court to go back and have an evidentiary hearing
19 despite a counter-affidavit not being filed. It
20 says, "If a counter-affidavit is not timely served,
21 the determination of whether there are HAMP issues,
22 which need to be resolved before foreclosure is
23 ordered, before the sale is commenced, shall be
24 based on the affidavit alone, unless the Judge
25 allows the late service and filing of the counter-

1 affidavit, or allows issue to become contested at
2 some later stage of the proceeding." Well, that's
3 where we are. We're at the later stage of the
4 proceeding. And I also take exception to whether or
5 not this is a pending case under the more recent
6 administrative order. Yes, it's a pending case,
7 there's a motion to set aside the sale that was --
8 that was pending, at the time of that order. So,
9 yes, there had been a judgment and a sale, but we
10 are actively in litigation to void that sale or
11 vacate that sale. We're in the Courtroom today. We
12 were in the Courtroom back in March asking for that.
13 So I -- I think this is a pending case and was at
14 that time. It was stated that there's no authority
15 to support discovery under the administrative order.
16 Well, I think it goes without saying that a litigant
17 should be allowed discovery, and I've never had one
18 denied in any foreclosure defense where I've dealt
19 with the issue of having an evidentiary hearing.
20 I've always been granted the right to discovery.
21 Otherwise, how can you determine whether or not you
22 are properly evaluated? They're the ones with all
23 the information. So, of course, to meet your burden
24 on that, you've got to have discovery. You've got
25 to be able to get their records. Just an affidavit

1 from someone who looked at their records and works
2 for them, is not enough, you know, you -- you should
3 be allowed to make that determination. And -- and I
4 want to just address some other things that were
5 mentioned. And I've already said this, I think, to
6 some degree, but it was stated that there was --
7 that she did -- that my client did, in fact, have
8 the opportunity to challenge the foreclosure, and
9 that it was going on for so long, and she had two
10 years during which she could have challenged the
11 foreclosure. But I think it's that length of time
12 that actually supports our position. She was lulled
13 into this sense of complacency and not really
14 knowing that there were procedural things that she
15 could be doing other than what she was doing, which
16 was talking to her mortgage company. It was stated
17 that she waived defenses by not coming to that
18 foreclosure hearing. Again, that was two years
19 before, and much has happened in the, you know,
20 foreclosure law since that hearing was held. And if
21 another hearing had been held, she would most likely
22 have come to that after what had happened. It was
23 stated that the definition of a forbearance
24 agreement is an agreement not to go forward, not to
25 go forward with the foreclosure. And, if, in fact,

1 that's that case, that forbearance agreement was
2 breached by Chase, because they're the ones that
3 went forward with the case and did procedural
4 things. They anticipated that they were going to
5 deny her modification. They anticipated that. Why
6 else would they have sent a supplemental order while
7 they're supposedly considering her application? Why
8 else would they have, excuse me, offered a
9 supplemental order, published notice of a sale, and
10 ask this Court to set a sale, if they weren't
11 anticipating that there was going to be a denial?
12 That clearly, I think, breaches the forbearance
13 agreement. It's stated, well, we don't exactly know
14 what the forbearance agreement was because it wasn't
15 -- yeah, we know what the forbearance agreement was,
16 it was she didn't have to make a payment for three
17 months while they were reviewing her HAMP
18 application. That's clearly what it was. And I
19 think this Court, you know, found that there was a
20 forbearance agreement. So to anticipate during the
21 period of forbearance that -- that she's not going
22 to be allowed to modify, reinstate her loan,
23 whatever, I think is a breach of that forbearance,
24 and they clearly did that. On the issue of the
25 right to appeal an order that is issued by this

1 Court, and that there shouldn't have been a sale
2 already set within that short timeframe from when
3 this Court issued that August 16th order, Ms. Caskey
4 said, well, you know, the sale's not postponed in
5 foreclosure cases. Well, they ought to be if
6 they're not. I think we've got a long history of
7 these cases being done in a hurried fashion because
8 most people defaulted, and all that, but now there
9 are reasons for that not to be done that way. And
10 it shouldn't have been done that way in this case.
11 The -- the full amount of time under the rules
12 should have been given. The full amount of time
13 under the letter of August 19th that clearly said we
14 will not sell your property during the next 30 days,
15 when they sent her that letter, and they knew that
16 her house was going to be sold on September 7th.
17 She talked to all those people who said, "Oh, yeah,
18 we sent in the request to postpone. Yeah, we've
19 postponed it. Your property was not sold on
20 September 7th." Jay said, "Your property was not
21 sold on September 7th." You know, all of that, and
22 they knew that they had also in writing, not just
23 verbally, but in writing, in the August 19th letter,
24 said, "You have 30 days to challenge this decision,
25 and your house will not be sold during that time."

1 So if -- if you want to say none of that other stuff
2 that was said to her, none of the statements about
3 postponing the sale, none of the statements about
4 your house was not sold on September 7th, you know,
5 any of the verbal statements, there was a written
6 letter from Chase, and that was a misrepresentation.
7 And she relied on it clearly. She sent them a
8 letter requesting the NPV calculation. That's all I
9 have. Thank you.

10 THE COURT:

11 Okay. Thanks folks.

12 MS. CASKEY:

13 I just want to address one point, and it's only on
14 the applicability of this order --

15 THE COURT:

16 Okay.

17 MS. CASKEY:

18 -- with regards to it. It's with regards to the May
19 2nd, 2011, order, and whether this is a pending
20 action. I just want to highlight for the Court that
21 under the section on page two of the order, and I'm
22 referring to page two from the available copy from
23 the Supreme Court's website, it says, "In all
24 mortgage foreclosures actions pending on May 9th,
25 2011, before any merits hearing in the case, or if

1 an order of foreclosure has been entered, before any
2 foreclosure sale." So the -- the idea is that it's
3 actions that have not already been set for a sale.
4 And Chase's position would be that because this
5 clearly already had been sold at foreclosure this
6 order is simply not applicable. The foreclosure
7 intervention aspects of the order are not
8 applicable, and, again, the point of the order was
9 not to open up foreclosure actions that had already
10 been completed. So this Court should decide the
11 motion based on the prior administrative order, and
12 other applicable law. Thank you.

13 THE COURT:

14 Thank you very much. All right. I'll review it
15 all, and get you out a decision, or ask one of you
16 to draw an order.

17 MS. CASKEY:

18 Thank you, Your Honor.

19 MS. INGLES:

20 Thank you.

21 (There being no further questions, the deposition was
22 concluded at 4:00 p.m.)
23
24
25

CERTIFICATE

I, the undersigned, Cathy L. Young, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition was taken on the 24th day of August, 2011.

That the within deponent was sworn to tell the truth and that the foregoing is an accurate transcription of the testimony taken under oath.

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of September, 2011.

Cathy L. Young

CATHY L. YOUNG, CWR
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES February 19, 2019

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was 1:10 2:17 3:1,7,9	we 3:11,14 4:24 7:20	what's 12:21 51:8	working 18:17 19:17	your 2:15,17,24,24 3:8
3:14,15,16,17,19,22	8:3 12:19,20 15:17	when 5:5,10,23 6:14,24	20:17 41:12	3:15 12:6 13:18
3:25 4:2,3,9,22,23	15:20,23 16:1,20,22	8:18 9:5 30:1,11 32:1	works 55:1	14:10 15:12,25 17:18
5:1,5,11,13,20,22,23	16:24 17:9,11,23	32:24 33:2 36:24	would 4:13 5:4,15 7:3	18:7,25 20:3,17 25:9
6:11,14,17,18,21,21	21:6,9 23:4 30:10	37:4,21 46:11 47:9	10:15 11:18,23 13:17	27:1 30:7 39:25 43:6
7:2,8,11,23,24 8:1,13	31:20 32:14 40:11	52:4 57:2,15	14:7,16 18:6 23:8,14	50:24 54:23 57:14,19
8:13,17,18,18,19,20	41:25 43:17,19 45:7	where 3:23 8:12 16:18	23:19 24:5,6,22	57:20,25 58:4 59:18

you're 11:4 43:10,13 44:13 45:17,17 jou've 10:25 15:11 54:24,24	4 4th 12:2 24:13,18 40:2 4:00 59:22 41 23:4 42 23:7 43 23:22 44 24:22 45 12:6			
1 1st 22:13 10th 28:15,23 11 9:12 11th 4:1 60:16 11889 1:17 1201 1:16 14th 2:6 16th 3:25 9:11 57:3 18 23:22 24:12 19 60:19 19th 4:25 15:3,10 52:25 57:13,23	5 59E 41:8			
2 2nd 23:24 33:22 49:4 58:19 2:33 1:10 20th 4:3,7,9,11 2008 29:17 2008-CP-39-2120 1:6 2008-CP-39-2810 2:11 2009 29:19 32:17 42:19 42:19 49:10 51:24 53:16 2010 4:11,25 5:20 6:20 19:6 31:10 32:9 35:23 36:2 40:12 46:25 2011 1:10 33:22 49:4,4 58:19,25 60:8,16 2019 60:19 214 1:10 22 9:9,17 22nd 1:16 32:16 49:4 49:10 53:16 24th 1:10 28:16 60:7 26 46:23 27 10:2 2727 1:25 28 10:2 29 9:11,17,19 10:4 29211-1889 1:17 29601 1:21,26 298-0082 1:26	6 60 38:20 39:10 45:25 47:10 60(b)(3) 3:2 7:20 27:23 64 30:20			
	7 7th 5:6 12:4,18 57:16 57:20,21 58:4 701 1:20			
	8 8/16 9:17 864 1:26			
	9 9 37:20 9th 58:24			
3 3 15:4 3rd 9:14,23 30 5:3,3 10:6 12:2,4,6 15:3,12 41:20 52:24 57:14,24 30-day 10:5 31st 35:23 39 14:16				

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

AFFIDAVIT IN SUPPORT OF
SUPPLEMENTAL JUDGMENT
Deficiency Judgment Waived

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2010 JUN 25 PM 12:30

(011671-01281)

Personally appeared, the undersigned, who being duly sworn, deposes and says:

I am one of the attorneys for the Plaintiff in the above captioned action. On March 17, 2009, a Judgment of Foreclosure and Sale was issued. Prior to the scheduled sales date, the Plaintiff began negotiations for a potential loss mitigation workout with the Defendants, Vanessa Y. Bradley. Unfortunately, the loss mitigation workout did not occur, and the Plaintiff wishes to proceed with the foreclosure and sale and to supplement the previous Judgment of Foreclosure and Sale to reflect the amount of payments, if any, made.

The following principal, interest and escrow/corporate advances which are secured by the mortgage being foreclosed, have been incurred to the date of hearing shown herein below (see also attached, as Exhibit "A", the itemized debt printout from the Plaintiff):

1. Amended judgment debt is as follows:
 - (a) Principal now due..... \$94,185.23
 - (b) Interest from October 1, 2008 through
June 30, 2010 at 6.875% per annum \$11,331.60
 - (c) Advances (Escrow Advances, Corporate Charges including attorney
fees, costs, and other charges previously paid)..... \$410.97
 - (d) Late Charges \$0.00
 - (e) Additional Costs of collection since previous
hearing..... \$25.00
 - (f) Attorney's Fees..... \$3,555.00

NEW TOTAL DEBT now secured by Note and Mortgage
including interest to date shown..... \$109,507.80

The new total debt shall accrue interest hereafter at the rate of 6.875% per annum.

2. An affidavit asserting HMP non-eligibility was served on May 17, 2010. No counter affidavits have been received by Plaintiff's counsel in the above-captioned action.


Rogers Townsend & Thomas, PC

ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)	Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453)	Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635)	Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300)	Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030)	William S. Koehler (SC Bar # 74935)
Kevin T. Hardy (SC Bar #76015)	Benjamin J. Powell (SC Bar #77205)
John P. Fetner (SC Bar # 77460)	Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Columbia, SC 29210	Post Office Box 100200 (29202) (803) 744-4444

Columbia, South Carolina

Sworn to before me this 21 day of June, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/26/2010

PAY4 AS-OF 06/30/10 PAYOFF CALCULATION TOTALS 06/01/10 12:34:08
 NAME VY BRADLEY CONTACT NAME VANESSA Y BRADLEY

		RATE CHANGES		
		INT FROM	RATE	AMOUNT
PRINCIPAL BALANCE	94,185.23			
INTEREST 06/30/10	11,331.60	06/01/08	6.87500	11,331.60
PRD RATA MIP/PMI	.00	07/01/10		
ESCROW ADVANCE	1,301.72			
ESCROW BALANCE	.00			
SUSPENSE BALANCE	3,252.50			
HUD BALANCE	.00			
REPLACEMENT RESERVE	.00			
RESTRICTED ESCROW	.00			
TOTAL FEES	35.00			
ACCUM LATE CHARGES	.00			
ACCUM NSF CHARGES	.00			
OTHER FEES DUE	77.90			
PENALTY INTEREST	.00			
FLAT/OTHER PENALTY FEE	.00	TOTAL INTEREST		11,331.60
CR LIFE/ORIG FEE RBATE	.00	TOTAL TO PAYOFF		105,962.80
RECOVERABLE BALANCE	2,283.85	NUMBER OF COPIES: 1	PRESS PF1 TO PRINT	

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

AFFIDAVIT IN SUPPORT OF SECOND
SUPPLEMENTAL JUDGMENT
Deficiency Judgment Waived

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
AUG 20 A 8:56

(011671-01281)

Personally appeared, the undersigned, who being duly sworn, deposes and says:

I am one of the attorneys for the Plaintiff in the above captioned action. On March 17, 2009, a Judgment of Foreclosure and Sale was issued. Prior to the scheduled sales date, the Plaintiff began negotiations for a potential loss mitigation workout with the Defendant, Vanessa Y. Bradley. A loss mitigation workout did not occur and a Supplemental Order Post Judgment was filed on June 29, 2010. Prior to the scheduled sales date, the Plaintiff entered into a forbearance agreement with the Defendant, Vanessa Y. Bradley. The defendant has now defaulted on the terms of the forbearance agreement, and thus the Plaintiff wishes to proceed with the foreclosure and sale and to supplement the previous Judgment of Foreclosure and Sale to reflect the amount of payments, if any, made.

The following principal, interest and escrow/corporate advances which are secured by the mortgage being foreclosed, have been incurred to the date of hearing shown herein below (see also attached, as Exhibit "A", the itemized debt printout from the Plaintiff):

1. Amended judgment debt is as follows:
 - (a) Principal now due..... \$94,185.23
 - (b) Interest from October 1, 2008 through August 31, 2010 at 6.875% per annum \$12,410.80
 - (c) Advances (Escrow Advances, Corporate Charges including attorney fees, costs, and other charges previously paid) \$804.30
 - (d) Allowable Late Charges..... \$0.00
 - (e) Additional Costs of collection since previous hearing..... \$25.00
 - (f) Attorney's Fees..... \$3,385.00

NEW TOTAL DEBT now secured by Note and Mortgage
including interest to date shown..... \$110,810.33

The new total debt shall accrue interest hereafter at the rate of 6.875% per annum.

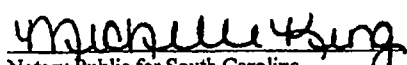
2. An affidavit asserting HMP non-eligibility was served on May 17, 2010. No counter affidavits have been received by Plaintiff's counsel in the above-captioned action.


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) Shawn R. Willis (SC Bar # 71155)
William S. Koehler (SC Bar # 74935) Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205) John P. Fetner (SC Bar # 77460)
Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina

Sworn to before me this 11 day of August, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/26/2010

PAY4 AS-OF 08/31/10 PAYOFF CALCULATION TOTALS 08/09/10 12:57:28
 NAME VY BRADLEY CONTACT NAME VANESSA Y BRADLEY

		----- RATE CHANGES -----		
		INT FROM	RATE	AMOUNT
PRINCIPAL BALANCE	94,185.23			
INTEREST 08/31/10	12,410.80	10/01/08	6.87500	12,410.80
PRD RATA MIP/PMI	.00	09/01/10		
ESCROW ADVANCE	1,301.72			
ESCROW BALANCE	.00			
SUSPENSE BALANCE	3,252.50-			
HUD BALANCE	.00			
REPLACEMENT RESERVE	.00			
RESTRICTED ESCROW	.00			
TOTAL-FEES	95.00			
ACCUM LATE CHARGES	.00			
ACCUM NSF CHARGES	.00			
OTHER FEES DUE	77.90			
PENALTY INTEREST	.00			
FLAT/OTHER PENALTY FEE	.00			
CR LIFE/ORIG FEE RBATE	.00			
RECOVERABLE BALANCE	2,677.18			
		TOTAL INTEREST		12,410.80
		TOTAL TO PAYOFF		107,495.33
		NUMBER OF COPIES: 1		PRESS PF1 TO PRINT

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
DOCKET NO. 08-CP-39-2120

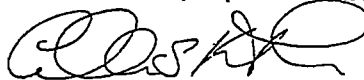
2009 FEB 23

AFFIDAVIT OF DEFAULT AND NON-
MILITARY SERVICE
Deficiency Judgment Waived

(011671-01281)

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and says that she/he is one of the attorneys for Plaintiff in the above-entitled action and that more than thirty (30) days have elapsed since the service of the Summons and Complaint upon the Defendant(s) and that no Answer or Notice of Appearance has been served on Plaintiff's attorney as required by the Summons by the Defendant(s) Vanessa Y. Bradley. Therefore, the Defendant(s) Vanessa Y. Bradley is in default.

Further, that s/he has investigated the occupational status of the Defendant(s) Vanessa Y. Bradley and she is not in the Military Service of the United States as contemplated by the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq.



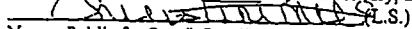
Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
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Kevin T. Hardy (SC Bar #76015) Benjamin J. Powell (SC Bar #77205)
John P. Fetner (SC Bar # 77460) Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina

February 4, 2009

Sworn to before me this 4th day of February, 2009

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 12-1-19

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

AFFIDAVIT
Deficiency Judgment Waived

(011671-01281)

To all Defendants: pursuant S.C. Supreme Court Order 2009-05-22-01, if you contest this affidavit, you have 10 days to serve a Counter-affidavit on Plaintiff's Counsel.

PERSONALLY appeared before me, the undersigned, who being duly sworn, states:

1. My name is Barbara Hindman. I am Vice President

for the Plaintiff in the above-captioned case. I have personal knowledge of the facts set forth in this affidavit and am authorized to execute it on Plaintiff's behalf.

2. I have reviewed the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) dated May 22, 2009.

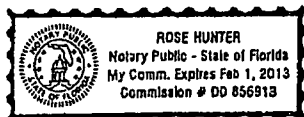
3. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program, but the subject loan is not eligible for modification because the HMP modification process has been completed without a modification.

4. Therefore, no mortgagor in this action is entitled to relief under the said Order.

Barbara Hindman (signature)
Barbara Hindman (print name)
As Vice President (title)

SWORN to before me this
12 day of May, 2010

Rose Hunter
Notary Public for the State of Florida
My Commission expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

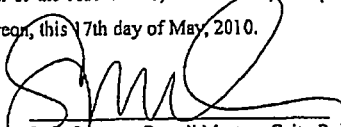
IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

CERTIFICATE OF MAILING
Deficiency Judgment Waived

(011671-01281)

I am an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff. I do hereby certify that I have mailed a copy of the Plaintiff's Affidavit for the Home Affordable Modification Program, which is attached hereto and incorporated herein by reference, dated May 12, 2010 and in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to each of the Addressees, listed below, in separate envelopes, at each of their respective addresses shown thereon, this 17th day of May, 2010.


Judy Sawyer; Brandi Meetze; Caity Reichman;
Jennifer Edwards; Frankie Holmes-Able;
Kim Brunson; Sierra Barbour; Tiffany Hartwick, and
Heather Cannon

Vanessa Y. Bradley
~~104 08-CP-39-2120~~
Central, SC 29630

Olivera Brown
Legal Department
Fannie Mae
14221 Dallas Parkway
Suite 1000
Dallas, TX 75254

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
JPMorgan Chase Bank, National Association,
Plaintiff,
v.
Vanessa Y. Bradley;
Defendant(s).

IN THE COURT OF COMMON PLEAS
DOCKET NO. 08-CP-39-2120

AFFIDAVIT OF VERIFIED STATEMENT OF
ACCOUNT
Deficiency Judgment Waived

(011671-01281)

Personally appeared, who being duly sworn, deposes and says:

My name is Esad Cavka and I am Foreclosure Officer (title) for the Plaintiff in the above-captioned action. I am authorized to execute this Affidavit of Verified Statement of Account. The following principal, interest and escrow/corporate advances which are secured by the mortgage being foreclosed, have been incurred to the date of hearing:

1. Principal\$94,185.23
2. Interest thereon from October 1, 2008 at the rate of 6.875% per annum as of
June 30, 2010\$11,331.60
3. Advances\$410.97
4. Late charges\$0.00

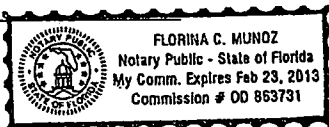
TOTAL PRINCIPAL, INTEREST AND EXPENSES\$105,927.80

Esad Cavka
Name Esad Cavka
(Title) Foreclosure Officer

Jacksonville Florida
(City and State)

06-30, 2010
Sworn to before me this 30 day of JUNE, 2010.

FLORINA C. MUNOZ (L.S.)
Notary Public for Florida
My Commission Expires: _____





ROGERS TOWNSEND & THOMAS, PC

Default Services Department Attorneys
ATTORNEYS AND COUNSELORS AT LAW
Samuel C. Waters Cheryl H. Fisher Reginald P. Corley Jennifer W. Rubin Ellie C. Floyd
Michael P. Morris Mary R. Powers Robert P. Davis William S. Koehler
Eve Moredock Stacey Kelsy K. Brockbank John P. Fetner Kevin T. Hardy Benjamin J. Powell

July 07, 2010

To: The Clerk of Court
P.O. Box 215
Pickens, SC 29671

From: DSS/spl
Rogers Townsend & Thomas PC
DEFAULT SERVICES

Re: 08-cp-39-2120 (011671-01281)

ACTION REQUESTED:

Please clock the Affidavit of Verified Statement of Account

2010 JUL -8 P 3:03
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National
Association,

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

AFFIDAVIT OF CHARLES HERNDON

Personally appeared before me, Charles Herndon, who, being duly sworn, deposes and states as follows:

1. I am a Vice President of Chase Home Finance, LLC ("Chase"). Chase is the servicer of the mortgage loan of Vanessa Bradley (the "Borrower"), loan number [REDACTED] 3657 (the "Loan"), which is the subject of this foreclosure action. I am duly authorized to make this Affidavit.

2. I am familiar with the books and business records that Chase maintains for mortgage loans, have personal knowledge of how those records are created and maintained, and understand how to read and interpret those records. The statements made herein are based on my review of Chase's business records to which I have access.

3. The Loan consists of a promissory note ("Note") and Mortgage executed by the Borrower on or about January 30, 2001. The real property that is the subject of the Mortgage and the foreclosure action is located in Pickens County, commonly known as [REDACTED] Central, South Carolina 29630-8810 (the "Property").

4. Chase is the servicer of the Loan, and as servicer, Chase is responsible for collecting and applying payments on the Loan account and taking any appropriate actions to collect the Loan and preserve the Property.

5. The Loan was originated by Schmidt Mortgage on or about January 30, 2001, and assigned to Fleet National Bank on or about January 30, 2001. Fleet National Bank assigned the Mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for Fleet National Bank on February 7, 2001, and JPMorgan Chase Bank, NA, as attorney in fact for Bank of America N.A. f/k/a Fleet National Bank, N.A. assigned the Mortgage to JPMorgan Chase Bank, National Association c/o Washington Mutual Bank ("WaMu") on January 13, 2009. JPMorgan Chase Bank, National Association is the successor in interest to WaMu.

6. The Loan has been modified twice since its origination in January 2001. The Loan was first modified by a Loan Modification Agreement dated April 11, 2005, and second by a Loan Modification Agreement dated March 24, 2008. Despite the modifications to the terms of the Loan, however, the Borrower was still unable to make the payments due on the Loan.

7. On December 30, 2008, Chase filed this foreclosure action, based on the Borrower's failure to make payments when due. At the time the foreclosure complaint was filed, the Borrower was due for her August 1, 2008, payment. After a hearing on March 12, 2009, a Judgment of Foreclosure and Sale was issued on March 17, 2009, and a foreclosure sale was scheduled to occur on April 6, 2009.

8. Chase's customer service notes for the Loan indicate that prior to the scheduled foreclosure sale, Chase was contacted by First Foreclosure Solutions ("FFS"), a representative of the Borrower, who wanted to apply for a modification of the Loan on the Borrower's behalf. FFS submitted a completed modification application for the Borrower on or about January 14,

2009, and was advised by Chase that the modification review process would take approximately 8-10 weeks.

9. On or about March 25, 2009, an FFS representative contacted Chase to request that Chase postpone the foreclosure sale scheduled for April 6, 2009. Chase agreed to postpone the foreclosure sale to allow the Borrower and her representatives to continue to negotiate a possible workout of the Loan.

10. To assist the Borrower, Chase extended a trial period plan ("Trial Plan") under the Making Home Affordable Modification Program ("HAMP"), which the Borrower accepted on or about June 24, 2009. A copy of the signed Trial Plan extended to the Borrower is attached hereto as Exhibit 1.

11. Under the Trial Plan, the Borrower agreed to make three monthly payments, each in the amount of \$517.29, due on July 1, 2009, August 1, 2009, and September 1, 2009. The Borrower made the first and second payments due under the Trial Plan, on June 26, 2009, and August 5, 2009, respectively. However, the Borrower failed to submit the full balance of the third payment due on September 1, 2009, and instead remitted a payment in the insufficient amount of \$368.00, on September 22, 2009. The Borrower did not pay the balance of the third Trial Plan payment until October 19, 2009, when she submitted a payment in the amount of \$150.00.

12. By letter dated March 4, 2010, Chase notified the Borrower that her Loan was not eligible for modification because the net present value of her Loan did not meet HAMP guidelines for a modification. A copy of the March 4, 2010, letter to the Borrower is attached as Exhibit 2.

13. Chase's customer service notes indicate that throughout May, June, and July 2010, Chase continued to communicate with the Borrower and her representatives concerning the Loan, but Chase and the Borrower were unable to reach a workout agreement due to the Borrower's lack of income.

14. Because Chase was unable to offer the Borrower a loan modification or other workout option, Chase instructed its attorneys to move forward with the foreclosure sale. A second foreclosure sale was scheduled for August 2, 2010, but immediately prior to the sale, the Borrower telephoned Chase and informed it that her income had changed and that she wanted to be reconsidered for a loan modification.

15. Chase again agreed to postpone the sale to discuss a possible loss mitigation workout with the Borrower. After reviewing the Borrower's request, however, Chase determined that the Borrower was not eligible for a modification, and on August 19, 2010, Chase notified the Borrower by letter that she had again been denied a modification under HAMP because the net present value of her Loan did not meet HAMP guidelines for a modification. A copy of the August 19, 2010, letter is attached as Exhibit 3.

16. After Chase notified the Borrower that she was ineligible for a loan modification, Chase instructed its attorneys to move forward with the foreclosure sale, and a third foreclosure sale of the Property was scheduled for September 7, 2010.

17. Prior to the September 7th foreclosure sale, the Borrower again requested that Chase reconsider her for a loan modification. The customer service notes indicate that between August 25, 2010, and August 31, 2010, Chase communicated with the Borrower concerning her modification request, and informed her that it could not reconsider her for a modification without updated financial information about her income and expenses. Chase also informed the Borrower that it

would not request that the foreclosure sale be postponed until all the required documentation for the modification request was received by Chase. The Borrower provided the missing financial documents needed to complete the Borrower's request for a modification on September 1, 2010.

18. On September 2, 2010, Chase advised the Borrower that her request for a modification was under review. Chase also advised the Borrower that it would request that the foreclosure sale be postponed, but that the request to postpone the sale would have to be approved by the Federal National Mortgage Association, the investor on the Loan. The Borrower contacted Chase via telephone on September 4, 2010, and was advised that the foreclosure sale had not been postponed.

19. The Property was sold on September 7, 2010, and Chase was the successful bidder of the Property. Chase assigned its bid to the Federal National Mortgage Association.

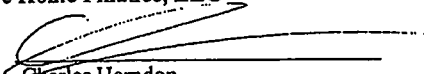
20. Chase notified the Borrower by letter dated September 21, 2010, that her Loan was not eligible for modification under the HAMP because she had previously failed to complete a HAMP trial period plan. A copy of this letter is attached hereto as **Exhibit 4**.

21. Chase also notified the Borrower by letter dated October 5, 2010, providing the Borrower with the net present value data inputs that were used to determine that she was not eligible for a modification. A copy of this letter is attached hereto as **Exhibit 5**.

Further Affiant sayeth not.

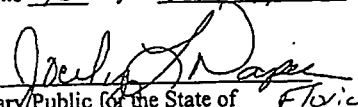
Chase Home Finance, LLC

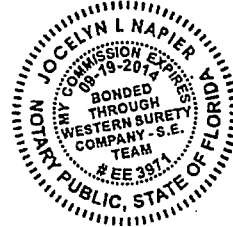
By:


Charles Herndon

Its: Vice President

SWORN to and subscribed before me
on this 10 day of March, 2011


Notary Public for the State of Florida
My commission expires: 9-19-2014



STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

FORECLOSURE
SPECIAL REFEREE'S DEED

TO ALL TO WHOM THESE PRESENTS SHALL COME OR BE MADE KNOWN:

Or whom the same may in anywise concern, R. Murray Hughes, Special Referee for the
County and State aforesaid SEND GREETING:

WHEREAS, JPMorgan Chase Bank, National Association, on or about December 30,
2008, did exhibit its complaint in the Court of Common Pleas in the County and State aforesaid, Case No.
08-CP-39-2120, against Vanessa Y. Bradley.

And the Cause, being at issue before R. Murray Hughes, Special Referee, came on to be heard on
March 12, 2009, when the said R. Murray Hughes, after a full hearing thereof, and mature deliberation in
the Premises, Did Order, Adjudge and Decree that the premises hereinafter mentioned and described
should be sold at public auction on the terms and for the purposes mentioned in said Decretal Order, as by
reference thereto, on file in the said Court will appear; and after having duly advertised the said premises
for sale by Public outcry, on September 7, 2010. I, the said R. Murray Hughes did then, openly and
publicly, and according to the custom of auction, sell and dispose of the said premises below described,
unto JPMorgan Chase Bank, National Association for \$60,000.00 who thereafter assigned its bid unto the
below named Grantee for \$60,000.00 being, at that price, the highest bidder for the same.

NOW, KNOW ALL MEN, That I, the said Special Referee in consideration of the
premises, and also in consideration of the sum of \$60,000.00 paid me by the below-named Grantee, the
receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these
Presents, do grant, bargain, sell and release unto the below named Grantee, its successors and assigns:

Federal National Mortgage Association
P. O. Box 650043
Dallas, TX 75265-0043

All that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County
of Pickens, being known and designated as Tract Two-A (2-A), containing 0.46 of an acre, more or less,
on a plat prepared by Michael L. Henderson, PS #6946, dated October 19, 2000 and recorded in Plat
Book 400 at Page 17B, records of Pickens County, South Carolina, reference to which is invited for a
more complete and accurate description.

This being the same property conveyed to Vanessa Y. Bradley by deed of Southern Homes &
Remodeling, Inc., dated October 26, 2000 and recorded October 27, 2000 in Book 575 at Page 72 in the
Office of the Register of Deeds for Pickens County.

TMS# 4065-07-69-5698

TOGETHER with all and singular the rights, members, hereditaments and appurtenances
whatsoever, to the said premises belonging, or in anywise appertaining, and the reversions and
remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, possession,
property, benefit, claim and demand whatsoever, both at law and in equity, of the said Vanessa Y.
Bradley and of all the parties to the said suit and of all other persons rightfully claiming or to claim the
same, or any part thereof, by, from or under them, or either of them.

11071-1281

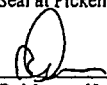
Instrument = 201013830 BKD: 1343 P45: 226

Subject to assessments, taxes, easements, conditions and restrictions of record and otherwise affecting the property.

TO HAVE AND TO HOLD, the said premises with its hereditaments, privileges and appurtenances unto the said Grantee, its successors and assigns, forever.

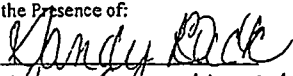
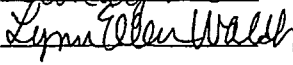
IN WITNESS WHEREOF, I, the said R. Murray Hughes under and by virtue of the said Decree, have hereunto set my Hand and Seal at Pickens, South Carolina this 14th day of

September 2010



R. Murray Hughes
Special Referee for Pickens County

Sealed and Delivered in
the Presence of:

Instrument = 201013830 BKD: 1343 PG: 227

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

ACKNOWLEDGMENT
S.C. Code §30-5-30
(Effective January 1, 1995)

Nancy Beck, a Notary Public for the State of South Carolina, do hereby certify
that R. Murray Hughes, Special Referee for Pickens County, personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

WITNESS our hands and seals on this 14th day of September, 2010.

Nancy Beck
Notary Public for South Carolina
My commission expires: 5/3/2017

Index by: R. Murray Hughes, Special Referee for Pickens County

Titleholders(s) at filing of Lis Pendens: Vanessa Y. Bradley

Prepared by:

Rogers Townsend & Thomas, PC (bmm/011671-01281)
P.O. Box 100200
Columbia, SC 29202-3200

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF LEXINGTON

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Deed to property located at [REDACTED], Central, SC 29630, TMS# 4065-07-69-5698, was executed by R. Murray Hughes, Special Referee, to Federal National Mortgage Association on September 14, 2010

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. code Ann. Section 12-24-10 et seq. because the deed is:

#3. Otherwise exempted under the laws and Constitution of this State or of the United States.

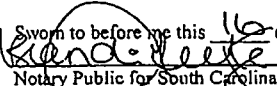
I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Transfer fee exemption #3, 12-24-40(3), 12 USCS 1717, and 12 USCA 1723a


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Kochler (SC Bar # 74935)
Shawn R. Willis (SC Bar # 71155) Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205) John P. Fetter (SC Bar # 77460)
Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Sworn to before me this 16 day of September, 2010.


Notary Public for South Carolina

My Commission Expires: 9/13/13

(011671-01281)



ROGERS TOWNSEND & THOMAS, PC
ATTORNEYS AND COUNSELORS AT LAW

Default Services Department Attorneys

Samuel C. Waters	Cheryl H. Fisher	Reginald F. Corley	Jennifer W. Rubin	Ellie C. Floyd	Michael P. Morris
Mary R. Powers		Robert P. Davis		William S. Koehler	
Eve Mordock Stacey	Kelsay K. Buckbank	John P. Fetner	Kevin T. Hardy	Benjamin J. Powell	

March 20, 2009

Vanessa Y. Bradley
[REDACTED]
Central, SC 29630

Occupant
[REDACTED]
Central, SC 29630

Re: JPMorgan Chase Bank, National Association vs. Vanessa Bradley
Case No. 08-CP-39-2120; Pickens County
Our File No. 011671-01281

Dear Sir/Madam:

Please be advised that on March 12, 2009 a hearing was held and Judgment of Foreclosure and Sale was entered in the above referenced foreclosure action. This Judgment was filed on March 17, 2009. Please note that the foreclosure sale has been scheduled for either April 6, 2009 or some subsequent sales day. If the currently scheduled foreclosure sale is postponed for any reason, please contact our office at 803-744-4444 to find out the status of the case and/or the next scheduled foreclosure sale date.

For further clarification, please check with the county Clerk of Court to view the original documents or to obtain any copies.

Default Services Section

Enclosed: Form 4

**This is an attempt to collect a debt and any information
obtained will be used for that purpose.**

011671-01281
Form 4

318

319

Occupant

Central, SC 29630



Vanessa Y. Bradley
[REDACTED]
Central, SC 29630

011671-01281
Form 4

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes, Special Referee

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank..... Respondent,

v.

Vanessa Y. Bradley..... Appellant,

CERTIFICATE OF COUNSEL

As Legal Counsel for the Appellant, I do hereby certify that the Record on Appeal includes all of the documents proposed to be included as referred to in the Designations of Matter of all parties and no additional documents have been added.



Susan Ingles, S.C. Bar No. 4577
South Carolina Legal Services
701 South Main Street
Greenville, SC 29601
(864) 679-3244
Attorney for Appellant

August 31, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes, Special Referee

Case No. 2008-CP-39-2120

JPMorgan Chase Bank, National Association,

Respondent,

v.

Vanessa Y. Bradley,

Appellant.

APPENDIX TO
RECORD ON APPEAL

Susan Ingles, S.C. Bar No. 4577
South Carolina Legal Services
701 South Main Street
Greenville, SC 29601
(864) 679-3244
Attorney for Appellant

James Y. Becker, SC Bar No. 64991
Sarah P. Spruill, SC Bar No. 68337
Mary M. Caskey, SC Bar No. 76198
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, Suite 2200 (29201)
Post Office Box 11889 (29211)
Columbia, South Carolina
Attorneys for Respondent

RECEIVED

SEP 27 2012

SC Court of Appeals

PLEADINGS

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CERTIFICATE OF COUNSEL.....	354

STATE OF SOUTH CAROLINA CLERK OF COURT
PICKENS COUNTY THE COURT OF COMMON PLEAS
SOUTH CAROLINA
COUNTY OF PICKENS Case No. 2008-CP-39-2120
2012 SEP 21 A 10:38

JP Morgan Chase Bank, National
Association,

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION TO SET ASIDE SALE**

JPMorgan Chase Bank, National Association ("Plaintiff") submits this memorandum in opposition to Vanessa Y. Bradley's ("Defendant") Motion to Set Aside Sale, filed on September 20, 2010. This memorandum is supported by the Affidavit of Charles Herndon, dated March 10, 2011.

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff commenced this action on December 30, 2008, for the purpose of collecting a residential mortgage loan given to Defendant on January 30, 2001, which is secured by a mortgage encumbering real property located in Pickens County, South Carolina (the "Property"). The Defendant failed to respond to Plaintiff's Complaint, and after a hearing on March 12, 2009, a Judgment of Foreclosure and Sale was issued on March 17, 2009. A foreclosure sale was scheduled to occur on April 6, 2009.

Prior to the scheduled foreclosure sale, Chase Home Finance, LLC ("Chase"), the servicer of Defendant's loan, was contacted by a representative of the Defendant who

requested a loan modification on the Defendant's behalf and requested that the foreclosure sale scheduled for April 6, 2009, be postponed. (Herndon Aff. ¶¶ 8-9.) Plaintiff agreed to postpone the foreclosure sale, and to assist the Defendant, Chase extended a trial period plan ("Trial Plan"), under the Making Home Affordable Home Affordable Modification Program ("HAMP"), in which Chase is a participant. (*Id.* ¶ 10.)¹ Defendant accepted the terms of the Trial Plan, and made the first and second payments due under the Trial Plan. (*Id.* ¶ 11.) However, Defendant failed to submit the full balance owed for the third payment due on September 1, 2009. (*Id.*) Defendant submitted a partial payment of the third Trial Plan payment on September 22, 2009, but did not submit the remainder due until October 19, 2009. (*Id.*)

On March 4, 2010, Plaintiff notified Defendant that her loan was not eligible for a modification because the net present value of her loan did not meet HAMP guidelines for a modification. (*Id.* ¶ 12.). Plaintiff's counsel served and filed an Affidavit concerning the Defendant's non-eligibility for a modification under HAMP on May 17, 2010. A copy of the HAMP affidavit is attached hereto as Exhibit 1, and its terms are incorporated herein by reference.

From May to July 2010, Chase continued to work with the Defendant to attempt to reach a workout agreement concerning the Defendant's loan, but due to the Borrower's lack of income, Chase was unable to offer the Defendant any type of loss mitigation workout. (Herndon Aff. ¶ 13.) As a result, Plaintiff instructed its attorneys to move forward with the foreclosure sale. (*Id.* ¶ 14.) Counsel for Plaintiff filed an Affidavit in Support of Supplemental Judgment dated June 21, 2010, referencing Plaintiff's loss

¹ Chase agreed to postpone the foreclosure sale even before the Supreme Court's orders concerning HAMP were issued on May 4, 2009, and May 22, 2009, respectively.

mitigation efforts, and detailing the interest and fees that had been accrued since the original foreclosure order was entered in March 2009. A copy of the June 21, 2010, affidavit is attached hereto as Exhibit 2, and its terms are incorporated herein by reference. A second foreclosure sale was scheduled for August 2, 2010.

Immediately prior to the second scheduled foreclosure sale, at the Defendant's request, Plaintiff again agreed to postpone the sale and to negotiate with the Defendant for a possible workout of her loan. (Herndon Aff. ¶¶ 14-15.) However, Chase and Defendant were unable to agree upon a workout, and on August 19, 2010, Plaintiff notified Defendant that she had again been denied a modification under HAMP due to the net present value of her loan. (*Id.* ¶ 15.) Plaintiff later provided Defendant with additional and detailed information about the net present value calculations that were used in determining that her loan was not eligible for a loan modification. (*Id.* ¶ 21.)

After notifying Defendant that she was ineligible for a loan modification, Plaintiff instructed its attorneys to move forward with the foreclosure sale. (*Id.* ¶ 16.) Plaintiff's counsel filed an Affidavit in Support of Second Supplemental Judgment on August 20, 2010, again referencing Plaintiff's loss mitigation efforts, and detailing the interest and fees that had been accrued since the supplemental foreclosure order was entered in June 2010. A copy of the August 20, 2010, affidavit is attached hereto as Exhibit 3, and its terms are incorporated herein by reference. A third sale of the Property was scheduled for September 7, 2010.

Prior to the third scheduled foreclosure sale, the Defendant against requested that Chase reconsider her for a loan modification. (Herndon Aff. ¶ 17.) Between August 25, 2010, and August 31, 2010, Chase communicated with the Defendant concerning her

request and informed her that it needed certain updated financial information in order to consider her for a modification. (*Id.*) Chase specifically informed the Defendant that it would not request that the foreclosure sale be postponed until all of the required information had been received to consider the modification request. (*Id.*)

On September 1, 2010—four business days prior to the third scheduled foreclosure sale on September 7, 2010—Defendant provided Chase with the missing documentation required to consider her request for a loan modification. (*Id.*) The following day, on September 2, 2010, Chase advised Defendant that her request for a modification was under review and that it would request that the foreclosure sale be postponed. (*Id.* ¶ 18.) However, any postponement of the foreclosure action required approval from the Federal National Mortgage Association, the investor on the loan. (*Id.*) On September 4, 2010, Defendant contacted Chase to learn of the status of her modification request, and was specifically informed that the modification request was under review, but that the foreclosure sale had not been postponed. (*Id.*) The foreclosure sale occurred as scheduled, and the Property was sold on September 7, 2010. (*Id.* ¶ 19.) Chase ultimately informed Defendant that her loan was not eligible for a modification under HAMP because Defendant had failed to complete a HAMP Trial Plan. (*Id.* ¶ 20.)

Defendant alleges that Plaintiff failed to comply with the South Carolina Supreme Court's Administrative Order filed May 22, 2009, and that her loan should have been permanently modified based on the Trial Plan, despite the fact that Defendant failed to make all the payments due under the Trial Plan. Defendant also claims that Plaintiff should have stopped the third and final foreclosure sale while considering Defendant for a modification pursuant to HAMP guidelines, despite the fact that Plaintiff had already

postponed two prior foreclosure sales and already considered Defendant for multiple loan modifications. As explained below, HAMP does not require lenders to modify a borrower's loan, and the HAMP guidelines do not provide a basis to set aside the foreclosure sale or any of the prior orders entered in this case. Moreover, neither Plaintiff nor Chase made any representations to the Defendant that the sale had been postponed. As a result, there is no evidence of fraud and no basis to set aside the foreclosure sale or any prior orders entered in this case, and unwind the foreclosure to allow the Defendant leave to file an answer and counterclaim.

ARGUMENT

I. Plaintiff has complied with the Supreme Court's Temporary Restraining Order Concerning HAMP.

Defendant alleges that Plaintiff failed to comply with the Supreme Court's May 22, 2009, Order concerning HAMP. The Order simply requires that for mortgages involving residential property, a lender must state in an affidavit "that the loan is subject to modification under the HMP or that the requirements of the HMP have not been met." (Admin. Order. at 2.) Once a plaintiff in a foreclosure action serves an affidavit concerning HAMP, any other party to the action has ten days to serve a counter affidavit.

In this case, the Court has already ruled that Plaintiff complied with the Supreme Court's Order. In its Supplemental Order Post Judgment dated June 23, 2010, the Court held:

Pursuant to an Administrative Order of the South Carolina Supreme Court dated May 22, 2009, the Plaintiff has set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan that is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP), and therefore Plaintiff has fully complied with said Order, and the foreclosure may proceed. Also, Plaintiff called attention that pursuant to Administrative Order of the South Carolina Court dated

May 22, 2009, Plaintiff's attorney has not received a counter affidavit from the Defendant(s).

(Supp. Order at 2.) As explained by the Court, Plaintiff complied with the Supreme Court's Order by filing the May 17, 2010, affidavit, and Defendant failed to file any counter affidavit refuting Plaintiff's affidavit. Defendant's claim is simply without merit.

II. Plaintiff is not required to modify Defendant's Loan.

Defendant claims that her trial modification should have been permanent pursuant to HAMP's guidelines and regulations, and that as a result, the foreclosure action should be set aside, and she should be granted leave to file an answer and counterclaim. However, there is no evidence to support Defendant's claim that she is entitled to a modification under the HAMP guidelines, and even if there was, there is no private right of action under HAMP by which to force a lender to modify a borrower's loan or to justify setting aside a foreclosure order and sale.

a. There is no private right of action under HAMP.

The case law from around the nation is clear that there is no private right action for an alleged violation of HAMP.

In *Marks v. Bank of Am., N.A.*, 2010 U.S. Dist. LEXIS 61489 (D. Az. June 22, 2010), a copy of which is attached hereto as Exhibit 4, Bank of America approved the borrower for a loan modification under HAMP. *Id.* at *2. However, the bank experienced a delay in providing the loan modification agreement, and even though the bank advised the borrower that the foreclosure date had been "pushed back," the bank completed the foreclosure. *Id.* at *3. As a result, the borrower filed suit alleging that the bank breached its contractual obligations under HAMP, and the bank moved to dismiss the complaint. *Id.* at *1.

The court granted the bank's motion to dismiss because no express or implied private right of action exists under HAMP. The court first noted that "Plaintiff's allegations regarding breach of contract are simply an attempt at enforcing a private right of action under HAMP." *Id.* at *13. In determining that HAMP does not authorize an express private right of action, the court stated:

Nowhere in the HAMP Guidelines, nor in the [Emergency Economic Stabilization Act of 2008], does it expressly provide for a private right of action. Rather, Congressional intent expressly indicates that compliance authority was delegated solely to Freddie Mac. By delegating compliance authority to one entity, Freddie Mac, *Congress intended that a private cause of action was not permitted.*

Id. at *16 (internal citations omitted) (emphasis added).

In rejecting the argument that HAMP created an implied private right of action, the court similarly stated, in pertinent part:

First, Plaintiff is not one of the class for whose "especial benefit" the HAMP was enacted. While Plaintiff may be a part of a class of homeowners whom EESA and HAMP are *intended to benefit*, the statute sweeps much more broadly than their "especial benefit." These statutes are addressed to large-scale economic phenomena affecting not only distressed homeowners, but also financial institutions and homeowners at large.

Second, legislative intent does not create a cause of action under the HAMP . . . In addition, legislative history indicates that the right to initiate a cause of action lies with the Secretary via the Administrative Procedures Act. Allowing the Plaintiff to assert a private cause of action would contravene clear legislative intent.

Id. at *17-18 (emphasis in original).

Courts across the nation have followed the holding in *Marks* that there is no private right of action under HAMP. See *Singh v. Wells Fargo Bank*, 2011 U.S. Dist. LEXIS 3563 at *23 (E.D. Ca. Jan. 7, 2011) ("However, it is well established that there is no private cause of action under HAMP."); *Zeller v. Aurora Loan Servs., LLC*, 2010 U.S.

Dist. LEXIS 80449 at *2 (W.D. Va. Aug. 10, 2010) (“However, ‘nowhere in the HAMP Guidelines, nor in the [legislation authorizing the creation of HAMP], does it expressly provide for a private right of action.’”). *Accord Shurtliff v. Wells Fargo Bank, N.A.*, 2010 U.S. Dist. LEXIS 117962 (D. Utah Nov. 5, 2010); *Zoher v. Chase Home Fin.*, 2010 U.S. Dist. LEXIS 109936 (S.D. Fla. Oct. 14, 2010).

It is clear from the case law discussed above that HAMP does not afford Defendant any rights which would entitle her to have the foreclosure order and sale set aside, or any good faith basis for the counterclaim that she seeks to bring. She is not entitled to a modification under HAMP, and there is no private right of action under HAMP by which she could enforce such a right. Thus, the Defendant’s attempts to manipulate HAMP to force Plaintiff to modify Defendant’s contractual obligations must fail.

b. Defendant lacks standing to attempt to force the Plaintiff to modify Defendant’s Loan under HAMP.

Defendant claims that Plaintiff is “obligated under its Participant Agreement and U.S. Treasury Supplemental Directives to offer a permanent modification or communicate to the borrower specifically why the trial modification cannot become permanent.” (Motion at 3.) Because she bases her claims on allegations that Plaintiff improperly denied her application for a loan modification under HAMP, Defendant is actually suing on the servicing agreement between Chase, the servicer of the loan, and the U.S. Department of Treasury as a third-party beneficiary. However, the case law is clear that the participating loan servicers and the Treasury Department did not intend to create a direct benefit on potentially affected borrowers, such as Defendant:

Under the HAMP, a qualified borrower would not be reasonable in relying on an agreement between a participating servicer and the U.S. Department

of Treasury in manifesting an intention to confer a right on the borrower because the agreement does not *require* that the participating servicer modify eligible loans. Even Fannie Mae, which has rights under the Agreement, cannot force a participating servicer to make a particular loan modification. Thus, a borrower could not require the servicer to make any particular loan modification under the HAMP Agreement.

Marks v. Bank of Am., N.A., 2010 U.S. Dist. LEXIS 61489, at *8 (D. Az. June 22, 2010) (emphasis in original) (internal citations omitted).

Accordingly, the district court held that because the bank was not obligated to modify the plaintiff's loan, the plaintiff did not have the right to enforce the HAMP participation agreement. *Id.* at *11. The district court also held that the plaintiff could not have reasonably believed the bank had an obligation to modify the loan because HAMP only requires a servicer to consider a modification. *Id.* The district court further recognized that if it "were to grant Plaintiff third-party beneficiary status, the Court would be opening the door to potentially 3-4 million homeowners filing individual claims," which would "clearly contravene[] the purpose of the HAMP as an administrative tool to effectuate the goals of the [Emergency Economic Stabilization Act]." *Id.* at *11-12 (citations omitted). Thus, the plaintiff was "an incidental beneficiary to a governmental contract between [the bank] and the U.S. Treasury." *Id.* For these same reasons, Defendant lacks standing to require Plaintiff to use HAMP as a basis to set aside a foreclosure action or to allege a counterclaim against Plaintiff.

III. Plaintiff properly and timely notified Defendant of her ineligibility under HAMP.

Defendant claims that Defendant was not notified why her loan was not eligible for a modification under HAMP. (Motion at 2-3.) This statement is patently false, as demonstrated by the Affidavit of Charles Herndon. After Plaintiff agreed to postpone the

first foreclosure sale of the Property and completed an analysis of the Defendant's loan, Plaintiff notified Defendant by letter dated March 4, 2010, that her loan was not eligible for a modification because the net present value of her loan did not meet HAMP guidelines. (Herndon Aff. ¶ 12, Exh. 2; *see also id.* at Exh. 5 (letter providing Defendant with specific net present value data inputs that were used to determine that she was not eligible for a loan modification).) After Plaintiff agreed to postpone the second foreclosure and again consider the Defendant's loan for a modification, Plaintiff notified the Defendant by letter dated August 19, 2010, that her loan was not eligible for a modification because the net present value of her loan did not meet HAMP guidelines. (*Id.* ¶ 15, Exh. 3.) Finally, after Plaintiff reconsidered the Defendant for a modification in September 2010, Plaintiff notified Defendant that her loan was still ineligible for a modification under HAMP. (*Id.* ¶ 20, Exh. 4.) The evidence present clearly shows that Plaintiff effectively and regularly communicated with the Defendant concerning her eligibility under HAMP.

IV. Plaintiff properly determined that Defendant was not eligible for a modification under HAMP.

Even if Defendant had enforceable rights and standing under HAMP, the evidence shows that Plaintiff already determined that Defendant was not eligible for a modification under HAMP pursuant to HAMP guidelines.

a. The Net Present Value of Defendant's loan was insufficient to be eligible for a loan modification under HAMP.

In order to be eligible for a modification under HAMP, applicable guidelines provide that all loans must be evaluated using a standardized net present value ("NPV") calculation that compares the NPV result for a modification to the NPV result for no modification. *See Making Home Affordable Program, Handbook for Servicers of Non-*

GSE Mortgages, Version 3.0, p. 73 (as of Dec. 2, 2010), available at https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_30.pdf (emphasis added). A servicer is only required to offer a loan modification based on the NPV of a loan if the NPV is deemed "positive," meaning that the NPV result for a modification scenario is greater than the NPV result for no modification. In the case of the Defendant's Loan, the NPV was deemed insufficient under HAMP guidelines, and thus Plaintiff was not required to modify the Loan. (Herndon Aff. ¶¶ 12, 15.) As a result, Defendant was not eligible for a loan modification under HAMP.

b. The Defendant is ineligible for a HAMP modification because she failed to perform under the terms of the Trial Plan.

As set forth by Mr. Herndon, shortly after Plaintiff postponed the first scheduled foreclosure sale, it extended Defendant the Trial Plan. (Herndon Aff. ¶ 10.) Under the applicable guidelines, if a Defendant fails to make "current trial period payments," then the Defendant is not eligible for a permanent modification. See *Making Home Affordable Program, Handbook for Servicers of Non-GSE Mortgages*, Version 3.0, p. 78 (as of Dec. 2, 2010), available at https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_30.pdf. Defendant failed to submit the full balance of the third Trial Plan payment by September 2009, the month in which it was due, and thus, Defendant is ineligible for a modification under HAMP because she failed to meet the requirements of the Trial Plan.

V. Plaintiff was not required to postpone the September 7, 2010, foreclosure sale.

Regardless of Defendant's standing or other rights under HAMP, Plaintiff complied with the applicable guidelines concerning when a lender must suspend a scheduled foreclosure sale. HAMP guidelines provide:

3.3 Suspension of Scheduled Foreclosure Sale

When a borrower submits a request for HAMP consideration after a foreclosure sale date has been scheduled and the request is received no later than midnight of the seventh business day prior to the foreclosure sale date (Deadline), the servicer must suspend the sale as necessary to evaluate the borrower for HAMP. Servicers are not required to suspend a foreclosure sale when (1) a request for HAMP consideration is received after the Deadline; (2) a borrower received a permanent modification and lost good standing (as described in Section 9.4); (3) a borrower received a [Trial Period Plan] offer and failed to make one or more payments under the [Trial Period Plan] by the last day of the month in which it was due; or (4) a borrower was evaluated based on an Initial Package and determined to be ineligible under HAMP requirements.

See Making Home Affordable Program, Handbook for Servicers of Non-GSE Mortgages, Version 3.0, p. 53 (as of Dec. 2, 2010), available at https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_30.pdf (emphasis added). Of the four reasons a servicer may refuse to postpone a sale, three are applicable in this case.

First, Defendant failed to submit a completed request for a loan modification at least seven business days prior to the third scheduled foreclosure sale. After the third foreclosure sale had been scheduled for September 7, 2010, Defendant against requested a loan modification. (Herndon Aff. ¶ 17.) Defendant's request for a modification was not considered complete until September 1, 2010, when Chase received all of the documents necessary to process her request for a loan modification, which was only four business days before the scheduled foreclosure sale. (*Id.* ¶ 17.) Because Chase received her request less than seven days before the scheduled foreclosure sale, Plaintiff was not required to suspend the foreclosure sale.

Second, Defendant failed to complete the Trial Plan offered to her by Chase, and thus, under the guidelines, Plaintiff was not required to suspend the scheduled foreclosure action. (*Id.* ¶ 11.) Third and finally, Chase had already considered the Defendant for a modification twice before, and had already postponed two prior foreclosure sales. (*Id.* ¶¶ 12-15.) Because Defendant had already been evaluated under HAMP and determined to be ineligible, Plaintiff was not required to suspend the final foreclosure sale.

VI. There is no evidence of fraud to warrant vacating the foreclosure orders and the foreclosure sale.

Defendant requests an Order setting aside the foreclosure sale and prior foreclosure orders on the basis of fraud, claiming that Plaintiff “represented to the Defendant in writing” and by telephone that the foreclosure sale scheduled for September 7, 2010, had been postponed. (Motion at 2.) However, Defendant failed to file an affidavit or any evidence in support of her motion and there is no factual evidence to support her claims. In contrast, Mr. Herndon’s affidavit clearly explains the representations made to the Defendant by Chase, the servicer, concerning the September 7, 2010, sale. Once Chase had received a completed application for a loan modification, Chase informed the Defendant that it would request that the foreclosure sale be postponed. (Herndon Aff. ¶ 18.) Two days later, but still three days prior to the foreclosure sale, Chase informed Defendant that the foreclosure sale had not been postponed. (*Id.*) Thus, the evidence before the Court shows that Chase made no misrepresentations to the Defendant that the foreclosure sale had been postponed.

Moreover, the statements on which the Defendant relies could not be the basis for fraud. Statements concerning a future event—such as the postponement of a future event—cannot form the basis of fraud. Under South Carolina law, an allegedly

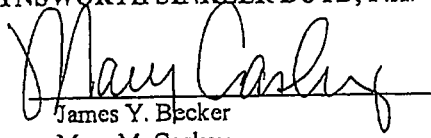
fraudulent representation "must relate to a present or pre-existing fact and it cannot ordinarily be based upon an unfulfilled promise to perform in the future or statements as to future events." *Bishop Logging Co. v. John Deer Indus. Equip. Co.*, 317 S.C. 520, 527, 455 S.E.2d 183, 187 (1995) (emphasis added). "As a general rule, fraud cannot be predicated on a statement that constitutes an expression of an intention." *Osborn v. Univ. Med. Assocs.*, 278 F. Supp. 2d 720, 732 (D.S.C. 2003). Even if Defendant could prove that any representatives of Chase or Plaintiff promised her that the foreclosure sale would be postponed, such statements concern an intent or a future event, and are not fraud. Thus, the alleged misrepresentations cannot be the basis to set aside the foreclosure sale or prior orders.

CONCLUSION

Based on the foregoing, Plaintiff requests that the Court issue an order denying Defendant's motion and all of the relief she requests therein, and for such other relief as the Court finds just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By:


James Y. Becker
Mary M. Caskey

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779-3080

Attorneys for Plaintiff

March 14, 2011

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

AFFIDAVIT
Deficiency Judgment Waived

(011671-01281)

To all Defendants: pursuant S.C. Supreme Court Order 2009-05-22-01, if you contest this affidavit, you have 10 days to serve a Counter-affidavit on Plaintiff's Counsel.

PERSONALLY appeared before me, the undersigned, who being duly sworn, states:

1. My name is Barbara Hindman I am Vice President

for the Plaintiff in the above-captioned case. I have personal knowledge of the facts set forth in this affidavit and am authorized to execute it on Plaintiff's behalf.

2. I have reviewed the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) dated May 22, 2009.

3. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program, but the subject loan is not eligible for modification because the HMP modification process has been completed without a modification.

4. Therefore, no mortgagor in this action is entitled to relief under the said Order.

Barbara Hindman (signature)

Barbara Hindman (print name)

As Vice President (title)

SWORN to before me this
12 day of May, 2010

Rose Hunter

Notary Public for the State of Florida

My Commission expires: _____

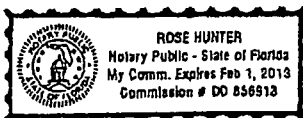


EXHIBIT 1

337

338

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

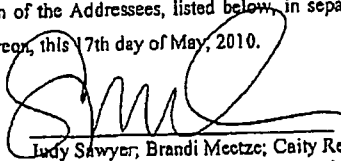
IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

CERTIFICATE OF MAILING
Deficiency Judgment Waived

(011671-01281)

I am an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff. I do hereby certify that I have mailed a copy of the Plaintiff's Affidavit for the Home Affordable Modification Program, which is attached hereto and incorporated herein by reference, dated May 12, 2010 and in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to each of the Addressees, listed below, in separate envelopes, at each of their respective addresses shown thereon, this 17th day of May, 2010.



Judy Sawyer; Brandi Meetze; Caity Reichman;
Jennifer Edwards; Frankie Holmes-Able;
Kim Brunson; Sierra Barbour; Tiffany Hartwick, and
Heather Cannon

Vanessa Y. Bradley

Central, SC 29630

Olivera Brown
Legal Department
Fannie Mae
14221 Dallas Parkway
Suite 1000
Dallas, TX 75254

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

AFFIDAVIT IN SUPPORT OF
SUPPLEMENTAL JUDGMENT
Deficiency Judgment Waived

(011671-01281)

Personally appeared, the undersigned, who being duly sworn, deposes and says:

I am one of the attorneys for the Plaintiff in the above captioned action. On March 17, 2009, a Judgment of Foreclosure and Sale was issued. Prior to the scheduled sales date, the Plaintiff began negotiations for a potential loss mitigation workout with the Defendants, Vanessa Y. Bradley. Unfortunately, the loss mitigation workout did not occur, and the Plaintiff wishes to proceed with the foreclosure and sale and to supplement the previous Judgment of Foreclosure and Sale to reflect the amount of payments, if any, made.

The following principal, interest and escrow/corporate advances which are secured by the mortgage being foreclosed, have been incurred to the date of hearing shown herein below (see also attached, as Exhibit "A", the itemized debt printout from the Plaintiff):

1. Amended judgment debt is as follows:
 - (a) Principal now due..... \$94,185.23
 - (b) Interest from October 1, 2008 through
June 30, 2010 at 6.875% per annum \$11,331.60
 - (c) Advances (Escrow Advances, Corporate Charges including attorney
fees, costs, and other charges previously paid) \$410.97
 - (d) Late Charges \$0.00
 - (e) Additional Costs of collection since previous
hearing..... \$25.00
 - (f) Attorney's Fees..... \$3,555.00

NEW TOTAL DEBT now secured by Note and Mortgage
including interest to date shown..... \$109,507.80

The new total debt shall accrue interest hereafter at the rate of 6.875% per annum.

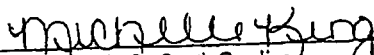
2. An affidavit asserting HMP non-eligibility was served on May 17, 2010. No counter affidavits have been received by Plaintiff's counsel in the above-captioned action.


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)	Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453)	Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar #68635)	Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar #5300)	Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar #74030)	William S. Koehler (SC Bar #74935)
Kevin T. Hardy (SC Bar #76015)	Benjamin J. Powell (SC Bar #77205)
John P. Fetner (SC Bar #77460)	Kelsey K. Brockbank (SC Bar #77519)
220 Executive Center Drive, Suite 109	Post Office Box 100200 (29202)
Columbia, SC 29210	(803) 744-4444

Columbia, South Carolina

Sworn to before me this 21 day of June, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/26/2010

PAY4 AS-OF 06/30/10 PAYOFF CALCULATION TOTALS 06/01/10 12:34:08
 NAME VY BRADLEY CONTACT NAME VANESSA Y BRADLEY

			----- RATE CHANGES -----		
			INT FROM	RATE	AMOUNT
PRINCIPAL BALANCE	94,185.23				
INTEREST 06/30/10	11,331.60	CALC	10/01/08	6.87500	11,331.60
PRO RATA MIP/PMI	.00		07/01/10		
ESCROW ADVANCE	1,301.72				
ESCROW BALANCE	.00				
SUSPENSE BALANCE	3,252.50-				
HUD BALANCE	.00				
REPLACEMENT RESERVE	.00				
RESTRICTED ESCROW	.00				
TOTAL-FEES	35.00				
ACCUM LATE CHARGES	.00				
ACCUM NSF CHARGES	.00				
OTHER FEES DUE	77.90				
PENALTY INTEREST	.00				
FLAT/OTHER PENALTY FEE	.00				
CR LIFE/ORIG FEE RBATE	.00				
RECOVERABLE BALANCE	2,283.85				
			TOTAL INTEREST		11,331.60
			TOTAL TO PAYOFF		105,962.80
			NUMBER OF COPIES: 1		PRESS PF1 TO PRINT

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

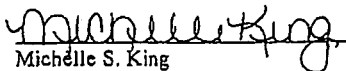
DOCKET NO. 08-CP-39-2120

CERTIFICATE OF MAILING
Deficiency Judgment Waived

(011671-01281)

I, Michelle S. King, an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have served a copy of the Supplemental Order Post Judgment, which is attached hereto and incorporated herein by reference, dated June 17, 2010 and in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to the below-listed parties in separate envelopes, at each of their respective addresses shown thereon, this 22 day of June, 2010.

Persons Served:
Vanessa Y. Bradley
~~Vanessa Y. Bradley~~
Central, SC 29630


Michelle S. King

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

CASE NO. 08-CP-39-2120

MOTION INFORMATION
FORM
AND COVER SHEET

JPMorgan Chase Bank, National Association ☒ Plaintiff
v.

Vanessa Y. Bradley; ☐ Defendant

Check box above indicating submitting party

Name, S.C. Bar no. and address of plaintiff's attorney

Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Elliot C. Floyd (SC Bar # 68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar # 5300), Mary R. Powers (SC Bar #16534), Robert P. Davis (SC Bar # 74030), William S. Koehler (SC Bar# 74935); Kevin T. Hardy (SC Bar #76015); Benjamin J. Powell (SC Bar #77205); John P. Feiner (SC Bar # 77460); Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109, Columbia, SC 29210
telephone: 803-744-4444 fax: 803-343-7013

Name, S.C. Bar no. and address of Defendant's attorney

telephone: fax:
email: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (Complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: YES/NO

SECTION II: Motion Fee

☒ PAID —AMOUNT: \$25.00

☐ EXEMPT:

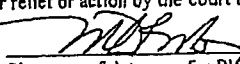
- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

SECTION III: Motion Type

☐ Written motion attached

☒ Form Motion —

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff/Defendant

June 17, 2010
Date submitted

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other

JUDGE
CODE: _____

Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED—AMOUNT DUE: _____

SCCA/233 (11/2003) 011671-01281

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

AFFIDAVIT IN SUPPORT OF SECOND
SUPPLEMENTAL JUDGMENT
Deficiency Judgment Waived

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
JUN 20 10 8:56

(011671-01281)

Personally appeared, the undersigned, who being duly sworn, deposes and says:

I am one of the attorneys for the Plaintiff in the above captioned action. On March 17, 2009, a Judgment of Foreclosure and Sale was issued. Prior to the scheduled sales date, the Plaintiff began negotiations for a potential loss mitigation workout with the Defendant, Vanessa Y. Bradley. A loss mitigation workout did not occur and a Supplemental Order Post Judgment was filed on June 29, 2010. Prior to the scheduled sales date, the Plaintiff entered into a forbearance agreement with the Defendant, Vanessa Y. Bradley. The defendant has now defaulted on the terms of the forbearance agreement, and thus the Plaintiff wishes to proceed with the foreclosure and sale and to supplement the previous Judgment of Foreclosure and Sale to reflect the amount of payments, if any, made.

The following principal, interest and escrow/corporate advances which are secured by the mortgage being foreclosed, have been incurred to the date of hearing shown herein below (see also attached, as Exhibit "A", the itemized debt printout from the Plaintiff):

1. Amended judgment debt is as follows:
 - (a) Principal now due..... \$94,185.23
 - (b) Interest from October 1, 2008 through
August 31, 2010 at 6.875% per annum \$12,410.80
 - (c) Advances (Escrow Advances, Corporate Charges including attorney
fees, costs, and other charges previously paid) \$804.30
 - (d) Allowable Late Charges..... \$0.00
 - (e) Additional Costs of collection since previous
hearing..... \$25.00
 - (f) Attorney's Fees..... \$3,385.00

NEW TOTAL DEBT now secured by Note and Mortgage
including interest to date shown..... \$110,810.33

The new total debt shall accrue interest hereafter at the rate of 6.875% per annum.

2. An affidavit asserting HMP non-eligibility was served on May 17, 2010. No counter affidavits have been received by Plaintiff's counsel in the above-captioned action.


Rogers Townsend & Thomas, PC

ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) Shawn R. Willis (SC Bar # 71155)
William S. Kochler (SC Bar # 74935) Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205) John P. Feiner (SC Bar # 77460)
Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina

Sworn to before me this 11 day of August, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 8/20/2020

PAY4 AS-OF 08/31/10 PAYOFF CALCULATION TOTALS 08/09/10 12:57:28
 NAME VY BRADLEY CONTACT NAME VANESSA Y BRADLEY

PRINCIPAL BALANCE	94,185.23	----- RATE CHANGES -----		
INTEREST 08/31/10	12,410.80	CALC	INT FROM	RATE AMOUNT
PRD RATA MIP/PMI	.00		10/01/08	6.87500 12,410.80
ESCROW ADVANCE	1,301.72		09/01/10	
ESCROW BALANCE	.00			
SUSPENSE BALANCE	3,252.50-			
HUD BALANCE	.00			
REPLACEMENT RESERVE	.00			
RESTRICTED ESCROW	.00			
TOTAL-FEES	95.00			
ACCUM LATE CHARGES	.00			
ACCUM NSF CHARGES	.00			
OTHER FEES DUE	77.90			
PENALTY INTEREST	.00			
FLAT/OTHER PENALTY FEE	.00		TOTAL INTEREST	12,410.80
CR LIFE/ORIG FEE RBATE	.00		TOTAL TO PAYOFF	107,495.33
RECOVERABLE BALANCE	2,677.18	NUMBER OF COPIES: 1	PRESS PF1 TO PRINT	

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

JPMorgan Chase Bank, National Association,

Plaintiff,

v.

Vanessa Y. Bradley;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-39-2120

CERTIFICATE OF MAILING
Deficiency Judgment Waived

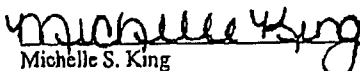
(011671-01281)

I, Michelle S. King, an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have served a copy of the Supplemental Order Post Judgment, which is attached hereto and incorporated herein by reference, dated August 11, 2010 and in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to the below-listed parties in separate envelopes, at each of their respective addresses shown thereon, this 13 day of August, 2010.

Persons Served:

Vanessa Y. Bradley

Central, SC 29630


Michelle S. King

CLERK U. COURT
PICKENS COUNTY
SOUTH CAROLINA
2010 AUG 20 A 8:56



LEXSEE 2010 U.S. DIST. LEXIS 61489

Andrea Marks, Plaintiff, vs. BANK OF AMERICA, N.A.; a foreign corporation,
FEDERAL NATIONAL MORTGAGE ASSOCIATION dba Fannie Mae, a Feder-
ally Chartered Corporation, Black Corporations 1-5, White Partnerships 1-5, John
Does 1-5 and Jane Does 1-5, Defendant

No. 03:10-cv-08039-PHX-JAT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

2010 U.S. Dist. LEXIS 61489

June 21, 2010, Decided
June 22, 2010, Filed

COUNSEL: [*1] For Andrea Marks, a single woman,
Plaintiff: Lisa Jeanette Counters, The Counters Firm,
Maricopa, AZ.

For Bank of America, N.A., a foreign corporation, Fed-
eral National Mortgage Association, a Federally Char-
tered Corporation doing business as Fannie Mae, Defen-
dants: Anu-Martha Andrews, David Winthrop Cowles,
Emily Snow Cates, Lewis & Roca LLP, Phoenix, AZ.

JUDGES: James A. Teilborg, United States District
Judge.

OPINION BY: James A. Teilborg

OPINION

ORDER

Plaintiff Andrea Marks argues that Defendant Bank
of America N.A. ("Defendant") breached an agreement
with the U.S. Treasury in which she was a third-party
beneficiary. Plaintiff argues that Defendant did not fulfill
contractual obligations per the Home Affordable Modifi-
cation Program ("HAMP") Guidelines. As such, Plaintiff
maintains that a suspension of any foreclosure or trus-
tee's sale pending disposition of her request is mandated.
(Pl. Amended Complaint P 21). Pending before the Court
is Defendant's Rule 12(b)(6) Motion to Dismiss. (Doc. #
15). For the reasons that follow, the Court dismisses
Plaintiff's complaint with prejudice.

I. Background

Plaintiff's property ("the Property") is located in
Prescott Valley, Arizona. (Pl. Amended Complaint P 1).
Plaintiff financed [*2] the purchase of the Property with
funds underwritten or otherwise backed by Defendant
Fannie Mae. (Pl. Amended Complaint P 2). Defendant
Bank of America N.A. ("Defendant") is now servicing
loans formerly owned by Countrywide Mortgage as a
result of Defendant's acquisition of Countrywide Mort-
gage. (Pl. Amended Complaint P 6).

On August 17, 2009, Plaintiff retained New York
Financial to assist her in submitting an application to
Defendant for a loan modification under HAMP. (Pl.
Amended Complaint P 8). Plaintiff submitted her appli-
cation on October 2, 2009. (Pl. Amended Complaint P
9). Defendant advised her that Plaintiff qualified for as-
sistance and modification of her loan. (*Id.*). Defendant
informed Plaintiff that her mortgage payment would be
reduced by almost fifty percent. (*Id.*). Plaintiff accepted
the offer and requested the loan modification paperwork.
(*Id.*). Plaintiff offered to make a payment and Defendant
sought to obtain the modified payment from Plaintiff;
however, Defendant was unable to process the payment.
(*Id.*). Defendant advised her to send the payment with the
signed loan modification documents she would receive
within two weeks. (*Id.*).

Plaintiff waited for loan documents [*3] for two
weeks. (Pl. Amended Complaint P 11). Defendant then
informed Plaintiff that "there could be more delay in
getting the paper work for her signature." (*Id.*). During a
November 2009 call between Plaintiff and Defendant,
Defendant told Plaintiff it had "45 days to get the paper-

EXHIBIT 4

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work" to her. (Pl. Amended Complaint P 12). Two weeks later, Defendant advised Plaintiff that the foreclosure date had been "pushed back" and that the paperwork delay seemed to be some sort of a "bank error" that would be corrected. (Pl. Amended Complaint P 12-13).

In January 2010, Defendant foreclosed the Property and initiated a Forcible Entry and Detainer action. (Pl. Amended Complaint P 16).

II. Legal Standard

To survive a 12(b)(6) motion for failure to state a claim, a complaint must meet the requirements of *Federal Rule of Civil Procedure* 8(a)(2). Rule 8(a)(2) requires a "short and plain statement of the claim showing that the pleader is entitled to relief," so that the defendant has a "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)).

Although a complaint attacked for failure [*4] to state a claim does not need detailed factual allegations, the pleader's obligation to provide the grounds for relief requires "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (internal citations omitted). The factual allegations of the complaint must be sufficient to raise a right to relief above a speculative level. *Id.* Rule 8(a)(2) "requires a 'showing,' rather than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." *Id.* (citing 5 C. WRIGHT & A. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 1202, pp. 94, 95 (3d ed. 2004)).

The Rule 8 pleading standard demands more than "an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (citing *Twombly*, 550 U.S. at 555). A complaint that offers nothing more than naked assertions will not suffice. To survive a motion to dismiss, a complaint must contain sufficient factual matter, which, if accepted [*5] as true, states a claim to relief that is "plausible on its face." *Iqbal*, 129 S.Ct. at 1949. Facial plausibility exists if the pleader pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* Plausibility does not equal "probability," but plausibility requires more than a sheer possibility that a defendant has acted unlawfully. *Id.* "Where a complaint pleads facts that are 'merely consistent' with a defendant's liability, it 'stops short of the line between possibility and

plausibility of 'entitlement to relief.'" *Id.* (citing *Twombly*, 550 U.S. at 557).

In deciding a motion to dismiss under Rule 12(b)(6), the Court must construe the facts alleged in the complaint in the light most favorable to the drafter¹ of the complaint and the Court must accept all well-pleaded factual allegations as true. See *Schwarz v. U.S.*, 234 F.3d 428, 435 (9th Cir. 2000).

1 Given the procedural posture of the case and the pending Motion, the Court must construe the facts alleged in the Amended Complaint in the light most favorable to Plaintiff.

III. Analysis

In support of Defendant's Motion to Dismiss, Defendant argues that Plaintiff [*6] does not have: (1) standing to bring a suit for breach of contract; (2) an express, private right of action to sue for a violation of the HAMP; and (3) an implied, private right of action to sue for a violation of the HAMP. Based on the following reasons, the Court grants Defendant's Motion to dismiss with prejudice.

A. No Standing to State a Claim for Breach of Contract

Plaintiff attempts to sue on an agreement between Defendant and the U.S. Department of Treasury as a third-party beneficiary.² (Doc. # 1-2, p. 5-6). Defendant maintains that Plaintiff lacks standing to make a breach of contract claim because Plaintiff is not an intended beneficiary. (Doc. # 15, p.1, 4-6). The Court agrees with Defendant and finds that Plaintiff lacks standing to bring suit for breach of contract because Plaintiff is, at most, an incidental beneficiary.

2 Plaintiff has not provided the Court with a copy of the agreement referred to in Plaintiff's Amended Complaint (Doc. # 1-2) or in Plaintiff's Response to Defendant's Motion to Dismiss (Doc. # 23).

In order to present a claim for breach of contract, a plaintiff must allege the formation of a contract, its breach, and damages. E.g., *Chartone, Inc. v. Bernini*, 207 Ariz. 162, 83 P.3d 1103, 1111 (Ariz. App. 2004). [*7] Before a third party can present a claim for breach of contract, they must show that the contract was made for their direct benefit—that they are an intended beneficiary of the contract. *Klamath Water Users Protective Ass'n v. Patterson*, 204 F.3d 1206 (9th Cir. 2000). The Ninth Circuit defines third party beneficiaries as:

(1) Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and . . . (b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

(2) An incidental beneficiary is a beneficiary who is not an intended beneficiary.

Id. at 1211. (citing the *RESTATEMENT (SECOND) OF CONTRACTS* § 302 (1979)). "To sue as a third-party beneficiary of a contract, the third party must show that the contract reflects the express or implied intention of the parties to the contract to benefit the third party." *Klamath*, 204 F.3d at 1211.

"One way to ascertain such intent is to ask whether the beneficiary would be reasonable in relying on the promise as manifesting an intention [*8] to confer a right on him or her." *Id.* (citing *RESTATEMENT OF CONTRACTS* § 302(1)(b) cmt. d.). Under the HAMP, a qualified borrower would not be reasonable in relying on an agreement between a participating servicer and the U.S. Department of Treasury as manifesting an intention to confer a right on the borrower because the agreement does not require that the participating servicer modify eligible loans.³ *Escobedo*, 2009 U.S. Dist. LEXIS 117017, 2009 WL 4981618, *3. Even Fannie Mae, which has rights under the Agreement, cannot force a participating servicer to make a particular loan modification. *Id.* Fannie Mae can take steps against a participating servicer, but cannot impose a modification. *Id.* Thus, a borrower could not require the servicer to make any particular loan modification under the HAMP Agreement.

3 The agreement in *Escobedo* set forth Home Affordable Modification Program Guidelines. The Guidelines set forth eligibility requirements and state: "[P]articipating servicers are required to consider all eligible loans under the program guidelines unless prohibited by the rules of the applicable PSA and/or other investor servicing agreements." *Escobedo v. Countrywide Home Loans, Inc.*, 2009 U.S. Dist. LEXIS 117017, 2009 WL 4981618, at *3 (S.D. Cal. 2009).

Furthermore, [*9] the Ninth Circuit has held that parties who benefit from government contracts are generally assumed to be incidental beneficiaries, and may not enforce the contract absent clear intent to the contrary. *Klamath*, 204 F.3d 1206, 1210-11 (9th Cir. 2000)

(emphasis added). See *RESTATEMENT OF CONTRACTS* § 313(cmt. a) ("governmental contracts often benefit the public, but individual members of the public are treated as incidental beneficiaries unless a different intention is manifested."). See also *County of Santa Clara v. Astra USA, Inc.*, 588 F.3d 1237, 1244 (9th Cir. 2009) (outlining the difficulty of demonstrating third-party beneficiary status in the context of government contracts).

"Clear intent" is not shown "by a contract's recitation of interested constituencies, [v]ague, hortatory pronouncements, statement[s] of purpose, explicit reference to a third party or even a showing that the contract 'operates to the [third parties'] benefit and was entered into with [them] in mind." *County of Santa Clara*, 588 F.3d at 1244 (internal quotations and citations omitted). Instead, the contract's precise language must demonstrate a clear intent to rebut the presumption that the plaintiff is an incidental [*10] beneficiary. *Id.*

For example, in *Klamath* the Ninth Circuit held that although a contract between the United States and a dam operator operated to the irrigators' benefit and was "undoubtedly entered into with the irrigators in mind," nothing in the contract evinced an intention of the parties to the contract to grant the irrigators enforceable rights. 204 F.3d at 1211-12. As the Ninth Circuit explained, "[T]o allow them intended third-party beneficiary status would open the door to all users receiving a benefit from the Project achieving similar status, a result not intended by the Contract." *Id.* at 1212.

By applying the *Klamath* reasoning, the *Escobedo* court found that the Plaintiff was an incidental beneficiary of the HAMP agreement. *Escobedo*, 2009 U.S. Dist. LEXIS 117017, WL 4981618, at *2-3. As such, the court denied plaintiffs' cause of action for breach of contract under the HAMP agreement. *Id.* The court reasoned that the agreement between Countrywide Home Loans and the U.S. Treasury was entered into in part for the benefit of qualified borrowers, but the language of the contract does not show that the parties intended to grant qualified borrowers the right to enforce the agreement. 2009 U.S. Dist. LEXIS 117017, [WL] at *2. See *Villa v. Wells Fargo Bank N.A.*, 2010 U.S. Dist. LEXIS 23741, 2010 WL 935680, at *3 (S.D. Cal. 2010).

Even [*11] though one District Court in California allowed Plaintiff to proceed with a breach of contract claim, that Plaintiff had plead sufficient facts to plausibly support his third-party beneficiary theory by identifying the contract at issue and attaching a copy of the contract to his complaint. *Reyes v. Saxon Mortgage Servs.*, 2009 U.S. Dist. LEXIS 125235, 2009 WL 3738177 (S.D. Cal. 2009). However, another District Court recently noted that, "although the overall HAMP program undoubtedly

has a goal of assisting homeowners, the HAMP Agreement does not express any intent to grant borrowers a right to enforce the HAMP contract between the government and loan servicer." *Benito v. Indymac Mortgage Serv.*, 2010 U.S. Dist. LEXIS 51259, 2010 WL 2130648, *7 (D. Nev. 2010) (emphasis added).

Here, Defendant was not obligated to modify Plaintiff's loan. As a result, the Agreement does not grant Plaintiff the right to enforce the provisions of the agreement. Because Defendant was not required to admit or deny Plaintiff's loan, only to consider, Plaintiff could not have been reasonably believed that Defendant was obligated to modify her loan.

In addition, Plaintiff is not an intended beneficiary. If the Court were to grant Plaintiff third-party beneficiary status, [*12] the Court would be opening the door to potentially 3-4 million homeowners filing individual claims. See *Villa*, 2010 U.S. Dist. LEXIS 23741, 2010 WL 935680, at *1 (stating that the breadth and indefiniteness of a class of beneficiaries is entitled to some weight in negating the inference of intended beneficiary status). Allowing such a large number of potential plaintiffs clearly contravenes the purpose of the HAMP as an administrative tool to effectuate the goals of the EESA. *Williams v. Geithner*, 2009 U.S. Dist. LEXIS 104096, 2009 WL 3757370, *2 (D. Minn. 2009). Also, permitting these individual claims would undermine Freddie Mac's role as the compliance officer for the HAMP. U.S. Dep't of Treasury, Supplemental Directive 2009-08, at 4 (Nov. 3, 2009).⁴

4 For further discussion, see *infra* II.B.

As in *Klamath* and *Escobedo*, Plaintiff is an incidental beneficiary to a governmental contract between Defendant and the U.S. Treasury. Plaintiff claims that the contract was intended to benefit homeowners like her. However, Plaintiff's claim does not plausibly meet the requisite "clear intent" standard. While the intent of the HAMP might be to benefit qualified borrowers, statements of purpose are not enough to defeat the presumption against intended [*13] beneficiaries under government contracts. Rather, Plaintiff is an incidental beneficiary because there is no clear intent to the contrary.

Because Plaintiff is not an intended beneficiary of the agreement between Defendant and the U.S. Dept. of Treasury, Plaintiff does not have standing to sue for a breach of contract claim. As such, the Court grants Defendant's Motion to Dismiss.

B. No Express Private Right of Action Exists Under HAMP.

Furthermore, Plaintiff's allegations regarding breach of contract are simply an attempt at enforcing a private

right of action under HAMP. See *Aleen v. Bank of Am., N.A.*, 2010 U.S. Dist. LEXIS 11944, 2010 WL 532330, *4 (C.D. Cal. 2010). See also *Ung v. GMAC Mortg.*, 2009 U.S. Dist. LEXIS 115900, 2009 WL 2902434, *9-11 (C.D. Cal. 2009) (dismissing, with prejudice, TARP-based claims pled as the basis for state law claims). Plaintiff's arguments under HAMP refer to recently enacted and rapidly evolving areas of legislative and administrative action. Below, the Court provides the requisite history to explain that an express right to sue fund recipients, like Defendant, does not exist under the HAMP. See *id.*

On October 8, 2008, President Bush signed into law the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 [*14] (codified 12 U.S.C. § 5201 *et seq.*) ("EESA"). Section 109 required the Secretary of the Treasury ("the Secretary") to take certain measures in order to encourage and facilitate loan modifications. 12 U.S.C. § 5219. However, Section 109 did not create any private right of action against servicers for grievances relating to the EESA. *Ramirez v. Lifton Loan Serv., LP*, 2009 U.S. Dist. LEXIS 52484, 2009 WL 1750617, *1 (D. Ariz. 2009); *Barrey v. Ocwen Loan Serv., LLC*, 2009 U.S. Dist. LEXIS 109848, 2009 WL 1940717, *1 (D. Ariz. 2009).

The EESA authorized the Secretary of the Treasury, FHFA, Fannie Mae, and Freddie Mac to create the Making Home Affordable Program on February 18, 2009, which consists of two components: (1) the Home Affordable Refinance Program, and (2) the HAMP. *Williams*, 2009 U.S. Dist. LEXIS 104096, 2009 WL 3757370, *2. The HAMP aims to financially assist three to four million homeowners who have defaulted on their mortgages or who are in imminent risk of default by reducing monthly payments to sustainable levels.

The HAMP works by providing financial incentives to participating mortgage servicers to modify the terms of eligible loans. On March 4, 2009, the Secretary issued guidelines under the HAMP requiring lenders to consider borrowers for loan modifications [*15] and suspend foreclosure activities while a given borrower was being evaluated for a modification. U.S. Dep't of the Treasury, Home Affordable Modification Program Guidelines (Mar. 4, 2009).⁵

⁵ The HAMP guidelines are available at http://www.ustreas.gov/press/releases/reports/modification_program_guidelines.pdf (last visited on June 15, 2010).

Per designation by the Secretary, Freddie Mac serves as compliance officer for the HAMP. U.S. Dep't of Treasury, Supplemental Directive 2009-08, at 4 (Nov. 3, 2009).⁶ The HAMP requires mortgagees to collect,

retain, and transmit mortgagor and property data to Freddie Mac in order to ensure compliance with the program. See Supplemental Directive 2009-01, at 13-14, 19-21 (Apr. 6, 2009); Supplemental Directive 2009-06 (Sept. 11, 2009). As the compliance agent, Freddie Mac is charged with conducting "independent compliance assessments" including "evaluation of documented evidence to confirm adherence . . . to HAMP requirements" such as the evaluation of borrower eligibility. Supplemental Directive 2009-01, at 25-26.

6 Supplemental Directives cited herein are available at www.hmpadmin.com/portal/programs/hamp/server.html [*16] (last visited on June 15, 2010).

Nowhere in the HAMP Guidelines, nor in the EESA, does it expressly provide for a private right of action. Rather, Congressional intent expressly indicates that compliance authority was delegated solely to Freddie Mac. By delegating compliance authority to one entity, Freddie Mac, Congress intended that a private cause of action was not permitted. See *Reyes-Gaona v. N.C. Growers Ass'n*, 250 F.3d 861, 865 (4th Cir. 2001) (reiterating that "the doctrine of *expressio unius est exclusio alterius* instructs that where a law expressly describes a particular situation to which it shall apply, what was omitted or excluded was intended to be omitted or excluded.").

Because Plaintiff is precluded from asserting a private cause of action under the HAMP, even disguised as a breach of contract claim, Defendant's Motion to Dismiss is warranted.

2. No Implied Right of Action under the HAMP

In addition to not expressly intending a private cause of action, the Court will not imply a right of action under the HAMP either.

"In the absence of clear evidence of congressional intent, [a court] may not usurp the legislative power by unilaterally creating a cause of action." *In re Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1230-31 (9th Cir. 2008). [*17] Thus, to determine whether a federal statute was intended to create a private cause of action, the Supreme Court requires consideration of the following four factors: (1) whether the plaintiff is "one of the class for whose especial benefit the statute was enacted—that is, [whether] the statute create[s] a federal right in favor of the plaintiff"; (2) whether "there [is] any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one"; (3) whether the cause of action is "consistent with the underlying purposes of the legislative scheme"; and (4) whether "the cause of action [is] one traditionally relegated to state

law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law." *Id.* (quoting *Cort v. Ash*, 422 U.S. 66, 78, 95 S. Ct. 2080, 45 L. Ed. 2d 26 (1975)).

First, Plaintiff is not one of the class for whose "especial benefit" the HAMP was enacted. While Plaintiff may be a part of a class of homeowners whom EESA and HAMP are intended to benefit, the statute sweeps much more broadly than their "especial benefit." These statutes are addressed to large-scale economic phenomena affecting not only [*18] distressed homeowners, but also financial institutions and homeowners at large. The statutes alter the mechanics of home foreclosure in an effort to stem the downward spiral of home prices as a national phenomenon. The economic stimulus effort attempts to promote the welfare of foreclosure parties generally, but it does not connote the power to delay foreclosures.

Second, legislative intent does not create a cause of action under the HAMP. The HAMP eases restrictions on lenders and servicers and encourages loan modifications. 12 U.S.C. § 5219. Specifically, the HAMP was intended to effectuate the goals of the EESA. *Williams*, 2009 U.S. Dist. LEXIS 104096, 2009 WL 3757370, *2. In addition, legislative history indicates that the right to initiate a cause of action lies with the Secretary via the Administrative Procedure Act.⁷ Allowing the Plaintiff to assert a private cause of action would contravene clear legislative intent. See *Alexander v. Sandoval*, 532 U.S. 275, 290, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001) (stating that the express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others).

7 Under the Administrative Procedure Act ("APA"), any judicial review would be limited due to the strictures [*19] of the delegating statute, the EESA, in addition to rule and adjudication guidelines set forth under the APA. See 12 U.S.C. § 5229(a); 5 U.S.C. §§ 553, 554, 556, and 706.

Next, Plaintiff's proposed cause of action would not further the underlying legislative scheme. As previously mentioned, Freddie Mac was designated as the compliance officer. As such, the enforcement of the modification program is contemplated only from the top down. Furthermore, the HAMP Guidelines already impose extensive data reporting requirements on servicers. See Supplemental Directive 2009-01, at 13-14, 19-21. Plaintiff's cause of action would not further the legislative intent because the HAMP Guidelines already designated a scheme to correct for any mortgagee wrongdoing.

Last, loan modification requirements for pending foreclosure proceedings, are generally relegated to state

law. Real property interests and contract rights are paradigms of state law concern. In Arizona, the courts have already expressly rejected the suggestion that EESA creates a private right of action against lenders. *See Ramirez*, 2009 U.S. Dist. LEXIS 52484, 2009 WL 1750617, at *1; *Barrey*, 2009 U.S. Dist. LEXIS 109848, 2009 WL 1940717, at *1. Because the HAMP is the administrative program to accomplish [*20] the EESA's goals, a private right of action is clearly precluded.

Because Plaintiff's claim fails to meet the requisite four factors to allow for an implied private right of action, the Court finds that Defendant's Motion to Dismiss with prejudice is further warranted.

C. Quiet Title

Plaintiff's quiet title claim is based on the claim for breach of contract as explained above. Since that claim fails, Plaintiff's quiet title claim also fails.

D. Declaratory and Injunctive Relief

Plaintiff's claim for declaratory and injunctive relief is also based on the claim for breach of contract. Again,

since the claim for breach of contract fails, Plaintiff's claim for declaratory and injunctive relief also fails.

IV. Conclusion

Because Plaintiff is an incidental and not an intended beneficiary, Plaintiff lacks standing to bring a suit for breach of contract. Furthermore, Plaintiff does not have an express or implied private right of action to sue for violations of the HAMP.

Accordingly,

IT IS ORDERED that Defendant's 12(b)(6) Motion to Dismiss (Doc. # 15) is granted with prejudice.

IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment accordingly and close this case.

DATED this 21st day [*21] of June, 2010.

/s/ James A. Teilborg

James A. Teilborg

United States District Judge

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes, Special Referee

Case No. 2008-CP-39-2120

JPMorgan Chase Bank, National Association,

Respondent,

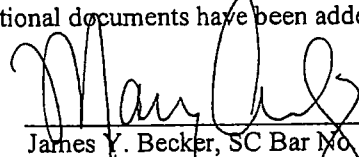
v.

Vanessa Y. Bradley,

Appellant.

CERTIFICATE OF COUNSEL

As Legal Counsel for the Respondent, I do hereby certify that the Appendix to Record on Appeal includes all of the documents agreed to be included by the parties and no additional documents have been added.



James Y. Becker, SC Bar No. 64991
Sarah P. Spruill, SC Bar No. 68337
Mary M. Caskey, SC Bar No. 76198
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, Suite 2200 (29201)
Post Office Box 11889 (29211)
Columbia, South Carolina
Attorneys for Respondent

September 27, 2012

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes, Special Referee

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank..... Respondent,

v.

Vanessa Y. Bradley..... Appellant,

SECOND APPENDIX TO THE RECORD ON APPEAL

Susan Ingles, S.C. Bar No. 4577
South Carolina Legal Services
701 South Main Street
Greenville, SC 29601
(864) 679-3244
Attorney for Appellant

James Y. Becker, S.C. Bar No. 64991
Sarah P. Spruill, S.C. Bar No. 68337
Mary M. Caskey, S.C. Bar No. 76198
Haynesworth, Sinkler & Boyd, PA
Post Office Box 11889
Columbia, SC 29211-1889
(803) 540-7870
Attorneys for Respondent

HEARING EXHIBITS

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Defendant's Exhibit 8	Fax from Bradley to Chase; 8/31/10	399
Defendant's Exhibit 9	Letter from Rogers, Townsend & Thomas To Hughes; 6/22/10	413
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Chase Fulfillment Center
PO BOX 469030
Glendale, CO 80246-9030

September 21, 2010

VANESSA Y BRADLEY
[REDACTED]
CENTRAL, SOUTH CAROLINA 29630

Making Home Affordable Modification Trial Period Plan Offer – Notice of Expiration

Account: [REDACTED] 3657 (the "Loan")

Property Address: [REDACTED]
CENTRAL, SOUTH CAROLINA 29630 (the "Property")

Dear Mortgagor(s):

Chase Home Finance LLC ("Chase") is writing to notify you that the Trial Period Plan Offer through the Making Home Affordable ("MHA") modification program for the above-referenced account has expired for the following reason(s):

We are unable to offer you a Home Affordable Modification because you did not make all of the required Trial Period Plan payments by the end of the trial period.

If you were previously on a Trial Period Plan making reduced payments, please be advised that the actual payment status under the original terms of your Loan will begin to be reported to the credit bureaus, which may result in negative credit reporting if you do not cure any delinquency. In addition, if your Loan was in foreclosure at the time of the Trial Period Plan Offer, the foreclosure process may resume without further notice.

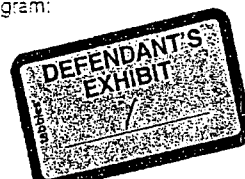
We may be able to offer other alternatives to help avoid the negative impact a possible foreclosure may have on your credit rating, the risk of a deficiency judgment being filed against you, and the possible adverse tax effects of a foreclosure on your Property, but we need to talk with you to determine which option might best fit your needs. If you are interested in discussing these possible alternatives, please contact our Homeowner's Assistance Department immediately at (888) 708-7105.

If you intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available for you to consider:

- Forbearance Plan: A temporary reduction in your current payment to provide time for you to improve your financial circumstances.
- Repayment Plan: An agreement structured to cure the delinquency over a period of months while continuing to make contractual payments.
- Refinancing Settlement: Use of an external lender to pay off the Loan, possibly for less than the full amount owed.

If you do not intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available to you under the Home Affordable Foreclosure Alternative ("HAFA") program:

OF615
PBL



FOR CALIFORNIA CUSTOMERS ONLY:

- For California customers, the state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at (877) FTC-HELP or www.ftc.gov.

OP615
PBL

Page 3 of 3



Loan Number 3557

Chase Fulfillment Center
PO BOX 469030
Glendale, CO 80246-9030

CHASE

August 19, 2010

VANESSA Y BRADLEY
CENTRAL, SOUTH CAROLINA 29630

Statement of Eligibility for Loan Modification
Account: 3557 (the "Loan")
Property Address: CENTRAL, SOUTH CAROLINA 29630

Dear Mortgagor(s):

Chase Home Finance LLC ("Chase") is writing in response to your recent request regarding a loan modification on the above-referenced account. After researching your account, we have determined that you do not qualify for a modification through the Making Home Affordable ("MHA") modification program or through other modification programs offered by Chase at this time. You have been deemed ineligible for the following reason(s):

The Home Affordable Modification Program requires a calculation of the Net Present Value (NPV) of a modification using a formula developed by the Department of the Treasury. The NPV calculation requires us to input certain financial information about your income and your Loan including the factors listed below. When combined with other data in the Treasury model, these inputs estimate the cash flow the investor (owner) of your Loan is likely to receive if the Loan is modified and the investor's cash flow if the Loan is not modified. Based on the NPV results, the owner of your Loan has not approved a modification.

If we receive a request from you within thirty (30) calendar days from the date of this letter, we will provide you with the date the NPV calculation was completed and the input values noted below. If, within thirty (30) calendar days of receiving this information you provide us with evidence that any of these input values are inaccurate, and those inaccuracies are material, for example a significant difference in your gross monthly income or an inaccurate zip code, we will conduct a new NPV evaluation. While there is no guarantee that a new NPV evaluation will result in the owner of your Loan approving a modification, we want to ensure that the NPV evaluation is based on accurate information.

Available NPV Inputs:

- A. Unpaid balance on the original Loan as of the date we reviewed your Loan
- B. Interest rate before modification as of the date we reviewed your Loan
- C. Months delinquent as of the date we reviewed your Loan
- D. Next ARM reset date (if applicable)
- E. Next ARM reset rate (if applicable)
- F. Principal and interest payment before modification
- G. Monthly insurance payment

P302-AA

Page 1 of 4

EXHIBIT 3



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- H. Monthly real estate taxes
- I. Monthly Homeowner Association fees (if applicable)
- J. Monthly gross income
- K. Borrower's Total Monthly Obligations
- L. Borrower FICO
- M. Co-borrower FICO (if applicable)
- N. Zip Code
- O. State

Unless otherwise specifically provided for in your denial reason description, you have thirty (30) days from the date of this letter to contact Chase to discuss the reason for non-approval under the Home Affordable Modification Program or to discuss alternative loss mitigation options that may be available to you. Your loan may be referred to foreclosure during this time, or any pending foreclosure action may continue. However, no foreclosure sale will be conducted and you will not lose your home during this thirty (30)-day period.

If your loan is delinquent, we may be able to offer other alternatives to help avoid the negative impact a possible foreclosure may have on your credit rating, the risk of a deficiency judgment being filed against you, and the possible adverse tax effects of a foreclosure on your Property. If you are interested in discussing these possible alternatives, please contact us immediately at (888) 708-7105.

If you intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available for you to consider:

- **Forbearance Plan:** A temporary reduction in your current payment to provide time for you to improve your financial circumstances.
- **Repayment Plan:** An agreement structured to cure the delinquency over a period of months while continuing to make contractual payments.
- **Refinancing Settlement:** Use of an external lender to pay off the Loan, possibly for less than the full amount owed.

If you do not intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available to you under the Home Affordable Foreclosure Alternatives ("HAFA") program:

- **Short Sale of the Property,** where we may accept less than the full amount owed.*
- **Deed-in-Lieu of Foreclosure,** whereby you deed the Property to your servicer in exchange for forgiveness of all or a portion of the Loan.*

* Forgiveness of debt may have federal tax consequences. Consult with a tax professional.

If your existing Loan did not include escrows, Chase may have started to review your property tax and insurance obligations in order to establish an escrow account. As a result, we may have paid items on your behalf. We may at our option continue to now require escrows on your account, or require that you repay any advances over no less than twelve (12) months. You will be responsible for any past due tax or insurance obligations and all items going forward. If your account was previously escrowed, your escrow account will remain in effect.

Our credit decision was based in whole or in part on information compiled from reports obtained from one or more of the three consumer reporting agencies listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. These reporting agencies played no part in our decision and are unable to supply specific reasons we have denied credit to you. You have a right to receive a free copy of your report from these reporting agencies, if you request it no later than sixty (60) days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the applicable reporting agency by contacting that agency at the number provided below:

Loan Number 3657

Equifax: PO BOX 740241
Atlanta, GA 30374-0241
(800) 685-1111

Experian: PO BOX 9701
Allen, TX 75013-9701
(888) 397-3742

TransUnion: PO BOX 2000
Chester, PA 19022-2000
(800) 916-8800

FEDERAL ECOA NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-2050.

If you have questions about the Program or this Borrower Notice, please contact us at (888) 708-7105. You may also contact the U.S. Treasury sponsored HOPE Hotline Number (888) 995-HOPE and ask for "MHA Help". Assistance is free of charge. Chase also offers homeownership counseling services to borrowers in some areas; please contact us at the number below for information.

If you have any questions, please contact your relationship manager or call the number provided below. At Chase, we value you as a customer and want to ensure your continued satisfaction.

Sincerely,
Homeowner's Assistance Department
Chase Home Finance LLC
(888) 708-7105
(800) 552-0542 TDD / Text Telephone
(666) 221-1019 Fax

Chase Home Finance LLC is attempting to collect a debt, and any information obtained will be used for that purpose.

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation.

FOR CALIFORNIA CUSTOMERS ONLY:

- For California customers, the state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 6 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene

Loan Number 3857

language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at (877) FTC-HELP or www.ftc.gov.

TRANSMISSION VERIFICATION REPORT

TIME : 05/28/2010 05:30

DATE, TIME	05/28 05:23
FAX NO./NAME	18562211019
DURATION	00:00:24
PAGE(S)	01
RESULT	OK
MODE	STANDARD ECM



Homeowner's Assistance Department
Chase Home Finance, LLC
VIA FACSIMILE: 1-866-221-1019

Re: Vanessa Y. Bradley
Account [REDACTED] 3657
[REDACTED]
Central, S.C. 29630

Dear Homeowner's Assistance Department:

Your letter dated August 19, 2010 indicated that I do not qualify for a loan modification through the Home Affordable Modification Program based on the NPV results.

BY this letter, I request that you provide all NPV inputs used to make the determination stated in your letter including, but not limited to, the following:

- A. Unpaid balance on the original Loan as of the date you reviewed my loan
- B. Interest rate before modification as of the date you reviewed my loan
- C. Months delinquent as of the date you reviewed my loan
- D. Principal and interest payment before modification
- E. Monthly insurance payment
- F. Monthly real estate taxes
- G. Monthly gross income used
- H. Borrower's total monthly obligations used
- I. Borrower FICO
- J. Zip code
- K. State

I am also sending you a Qualified Written Request in order for me to have the remaining information necessary to determine if you have treated me properly under applicable law.

Sincerely,

Vanessa Bradley Temple

TRANSMISSION VERIFICATION REPORT

TIME : 09/20/2010 05:33

DATE, TIME	09/20 05:31
FAX NO. / NAME	16144227575
DURATION	00:02:04
PAGE(S)	04
RESULT	OK
MODE	STANDARD



Chase Home Finance, LLC
Customer Care
P.O. Box 24696
Columbus, OH 43224-0696
VIA CERTIFIED MAIL AND
VIA FACSIMILE: 1-614-422-7575

Re: Vanessa Y. Bradley nka Vanessa Temple
Account [REDACTED] 3657
[REDACTED]
Central, S.C. 29630

Dear Sir/Madam:

I have received a letter indicating that my loan cannot be modified due to failure of the NPV test. In order to determine if this determination is correct I will need certain information related to the servicing of the loan. Please treat this letter as a "qualified written request" under the Federal Servicer Act, which is a part of the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(e). Specifically, I am requesting the following information:

Relative to the NPV calculation, please provide:

- A. Discount rate used
- B. Foreclosure Recovery amount used
- C. Property value used

In addition, please provide the following:

1. A complete and itemized statement of the loan history from the date of the loan to the date of this letter including, but not limited to, all receipts by way of payment of otherwise and all charges to the loan in whatever form. This history should include the date of each and every debit and credit to any account related to this loan, and the nature and purpose of each such debit and credit, and the name and address of the payee of any type of disbursement related to this account.
2. A complete and itemized statement of all advances or charges against this loan for any purpose that are not reflected on the loan history transaction statement provided in answer to question #1.
3. A complete and itemized statement of the escrow account of the loan, if any, from the date of the loan to the date of this letter, including, but not limited to, any receipts for

disbursements with respect to real estate property taxes, fire or hazard insurance, flood insurance, mortgage insurance, credit insurance, or any other insurance product.

4. Have you purchased and charged to the account any Vendor's Single Interest Insurance?
5. A complete and itemized statement from the date of the loan to the date of this letter of any forced-placed insurance and expenses related thereto, related in any way to this loan.
6. A complete and itemized statement from the date of the loan to the date of this letter of any suspense account entries and/or any corporate advance entries related in any way to this loan.
7. A complete and itemized statement from the date of the loan to the date of this letter of any property inspection fees, property preservation fees, broker opinion fees, appraisal fees, bankruptcy monitoring fees, or other similar fees or expenses related in any way to this loan.
8. Identify the provision under the mortgage and/or note that authorizes charging each and every such fee against the loan of the debtors.
9. Please attach copies of all property inspection reports and appraisals.
10. A complete and itemized statement of any and all arrears including each month in which the default occurred, and the amount of each monthly default.
11. A complete and itemized statement of any late charges to this loan from the date of this loan to the date of this letter.
12. The amount, if applicable, of any "satisfaction fees."
13. A complete and itemized statement from the date of the loan to the date of this letter of any fees incurred to modify, extend, or amend the loan or to defer any payment due under the terms of the loan.
14. The current amount needed to pay-off the loan in full.
15. A full and complete comprehensible definitional dictionary of all transaction codes and other similar terms used in the statements requested above.
16. A complete and itemized statement of any funds deposited in any suspension account(s) or corporate advance account(s), including, but not limited to, the balance in any such account or accounts and the nature, source, and date of any and all funds deposited in such account or accounts.

17. A complete and itemized statement from the date of this loan to the date of this letter of the amount, payment date, purpose and recipient of all foreclosure expenses, NSF check charges, legal fees, attorney fees, professional fees, and other expenses and costs that have been charged against or assessed to this mortgage.
18. The full name, address, and phone number of the current holder of this debt including the name, address, and phone number of any trustee or fiduciary.
19. The name, address, and phone number of any master servicers, servicers, sub-servicers, contingency servicers, back-up servicers, or special servicers for the underlying mortgage debt.
20. A copy of any mortgage Pooling and Servicing Agreement and all Disclosure Statements provided to any Investors with respect to any mortgage-backed security trust or other special purpose vehicle related to the said Agreement and any and all Amendments and Supplements thereto.
21. If a copy of the Pooling and Servicing Agreement has been filed with the SEC, provide a copy of the SEC Form 8k and the Prospectus Supplement, SEC Form 424b5.
22. The name, address, and phone number of any Trustee under any pooling or servicing agreement related to this loan.
23. A copy of the Prospectus offered to investors in the trust.
24. Copies of all servicing, master servicing, sub-servicing, contingency servicing, special servicing, or back-up servicing agreements with respect to this account.
25. All written loss-mitigation rules and work-out procedures related to any defaults regarding this loan and similar loans.
26. The procedural manual used with respect to the servicing or sub-servicing of this loan.
27. A summary of all fixed or standard legal fees approved for any form of legal services rendered in connection with this account.
28. Is this loan subject to any Electronic Tracking Agreement? If the answer is yes, then state the full name and address of the Electronic Agent and the full name and address of the Mortgage Electronic Registration System.
29. Is the servicing of this loan provided pursuant to any type of mortgage electronic registration system? If the answer is yes, then attach a copy of the mortgage electronic registration system procedures manual.

30. A copy of the LSAMS Transaction History Report for the debtors' mortgage loan account, with a detailed description of all fee codes.

31. Is this mortgage part of a Mortgage Warehouse Loan? If so, then state the full name and address of the Lender and attach a copy of the Warehouse Loan Agreement.

32. Upon any default or notice of default, state whether or not the Mortgage Warehouse Lender has the right to override any servicers or sub-servicers and provide instructions directly to the Electronic Agent? If the answer is yes, then specifically identify the legal basis for such authority.

33. Is this mortgage part of a Whole Loan Sale Agreement? If the answer is yes, then state the name and address of the Purchaser, the Custodian, the Trustee, the Electronic Agent, and any Servicer or Sub-servicers.

- D. Property Value
- E. Discount rate
- F. Foreclosure Recovery amount

Thank you for taking the time to acknowledge and answer this qualified written request pursuant to 12 U.S.C. Section 2605(e)(1)(A) and Reg. X Section 3500.21(e)(1).

RESPA states that my written request must be acknowledged within 20 days and you must try to resolve the issue within 60 business days. I look forward to hearing from you so we may work together to resolve this matter.

Sincerely,

Vanessa Y. Bradley
nka Vanessa Temple

7009 1600 0000 6207 7092

OFFICIAL USE	
Postage	\$ 1.57
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Registered Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 1.57
Sent to	
Street, Apt. No., or PO Box No.	
City, State, ZIP+4	

LIBERTY
SEP 2 1992
U.S. POSTAL SERVICE

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National
Association,

Plaintiff,

vs.

Vanessa Y. Bradley,

Defendant.

AFFIDAVIT OF CHARLES HERNDON

Personally appeared before me, Charles Herndon, who, being duly sworn, deposes and states as follows:

1. I am a Vice President of Chase Home Finance, LLC ("Chase"). Chase is the servicer of the mortgage loan of Vanessa Bradley (the "Borrower"), loan number [REDACTED] 3657 (the "Loan"), which is the subject of this foreclosure action. I am duly authorized to make this Affidavit.

2. I am familiar with the books and business records that Chase maintains for mortgage loans, have personal knowledge of how those records are created and maintained, and understand how to read and interpret those records. The statements made herein are based on my review of Chase's business records to which I have access.

3. The Loan consists of a promissory note ("Note") and Mortgage executed by the Borrower on or about January 30, 2001. The real property that is the subject of the Mortgage and the foreclosure action is located in Pickens County, commonly known as [REDACTED], Central, South Carolina 29630-8810 (the "Property").

Columbia: 1449790 v.6



4. Chase is the servicer of the Loan, and as servicer, Chase is responsible for collecting and applying payments on the Loan account and taking any appropriate actions to collect the Loan and preserve the Property.

5. The Loan was originated by Schmidt Mortgage on or about January 30, 2001, and assigned to Fleet National Bank on or about January 30, 2001. Fleet National Bank assigned the Mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for Fleet National Bank on February 7, 2001, and JPMorgan Chase Bank, NA, as attorney in fact for Bank of America N.A. f/k/a Fleet National Bank, N.A. assigned the Mortgage to JPMorgan Chase Bank, National Association c/o Washington Mutual Bank ("WaMu") on January 13, 2009. JPMorgan Chase Bank, National Association is the successor in interest to WaMu.

6. The Loan has been modified twice since its origination in January 2001. The Loan was first modified by a Loan Modification Agreement dated April 11, 2005, and second by a Loan Modification Agreement dated March 24, 2008. Despite the modifications to the terms of the Loan, however, the Borrower was still unable to make the payments due on the Loan.

7. On December 30, 2008, Chase filed this foreclosure action, based on the Borrower's failure to make payments when due. At the time the foreclosure complaint was filed, the Borrower was due for her August 1, 2008, payment. After a hearing on March 12, 2009, a Judgment of Foreclosure and Sale was issued on March 17, 2009, and a foreclosure sale was scheduled to occur on April 6, 2009.

8. Chase's customer service notes for the Loan indicate that prior to the scheduled foreclosure sale, Chase was contacted by First Foreclosure Solutions ("FFS"), a representative of the Borrower, who wanted to apply for a modification of the Loan on the Borrower's behalf. FFS submitted a completed modification application for the Borrower on or about January 14,

2009, and was advised by Chase that the modification review process would take approximately 8-10 weeks.

9. On or about March 25, 2009, an FFS representative contacted Chase to request that Chase postpone the foreclosure sale scheduled for April 6, 2009. Chase agreed to postpone the foreclosure sale to allow the Borrower and her representatives to continue to negotiate a possible workout of the Loan.

10. To assist the Borrower, Chase extended a trial period plan ("Trial Plan") under the Making Home Affordable Modification Program ("HAMP"), which the Borrower accepted on or about June 24, 2009. A copy of the signed Trial Plan extended to the Borrower is attached hereto as Exhibit 1.

11. Under the Trial Plan, the Borrower agreed to make three monthly payments, each in the amount of \$517.29, due on July 1, 2009, August 1, 2009, and September 1, 2009. The Borrower made the first and second payments due under the Trial Plan, on June 26, 2009, and August 5, 2009, respectively. However, the Borrower failed to submit the full balance of the third payment due on September 1, 2009, and instead remitted a payment in the insufficient amount of \$368.00, on September 22, 2009. The Borrower did not pay the balance of the third Trial Plan payment until October 19, 2009, when she submitted a payment in the amount of \$150.00.

12. By letter dated March 4, 2010, Chase notified the Borrower that her Loan was not eligible for modification because the net present value of her Loan did not meet HAMP guidelines for a modification. A copy of the March 4, 2010, letter to the Borrower is attached as Exhibit 2.

13. Chase's customer service notes indicate that throughout May, June, and July 2010, Chase continued to communicate with the Borrower and her representatives concerning the Loan, but Chase and the Borrower were unable to reach a workout agreement due to the Borrower's lack of income.

14. Because Chase was unable to offer the Borrower a loan modification or other workout option, Chase instructed its attorneys to move forward with the foreclosure sale. A second foreclosure sale was scheduled for August 2, 2010, but immediately prior to the sale, the Borrower telephoned Chase and informed it that her income had changed and that she wanted to be reconsidered for a loan modification.

15. Chase again agreed to postpone the sale to discuss a possible loss mitigation workout with the Borrower. After reviewing the Borrower's request, however, Chase determined that the Borrower was not eligible for a modification, and on August 19, 2010, Chase notified the Borrower by letter that she had again been denied a modification under HAMP because the net present value of her Loan did not meet HAMP guidelines for a modification. A copy of the August 19, 2010, letter is attached as Exhibit 3.

16. After Chase notified the Borrower that she was ineligible for a loan modification, Chase instructed its attorneys to move forward with the foreclosure sale, and a third foreclosure sale of the Property was scheduled for September 7, 2010.

17. Prior to the September 7th foreclosure sale, the Borrower again requested that Chase reconsider her for a loan modification. The customer service notes indicate that between August 25, 2010, and August 31, 2010, Chase communicated with the Borrower concerning her modification request, and informed her that it could not reconsider her for a modification without updated financial information about her income and expenses. Chase also informed the Borrower that it

would not request that the foreclosure sale be postponed until all the required documentation for the modification request was received by Chase. The Borrower provided the missing financial documents needed to complete the Borrower's request for a modification on September 1, 2010.

18. On September 2, 2010, Chase advised the Borrower that her request for a modification was under review. Chase also advised the Borrower that it would request that the foreclosure sale be postponed, but that the request to postpone the sale would have to be approved by the Federal National Mortgage Association, the investor on the Loan. The Borrower contacted Chase via telephone on September 4, 2010, and was advised that the foreclosure sale had not been postponed.

19. The Property was sold on September 7, 2010, and Chase was the successful bidder of the Property. Chase assigned its bid to the Federal National Mortgage Association.

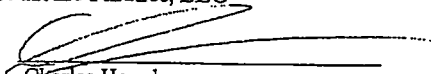
20. Chase notified the Borrower by letter dated September 21, 2010, that her Loan was not eligible for modification under the HAMP because she had previously failed to complete a HAMP trial period plan. A copy of this letter is attached hereto as **Exhibit 4**.

21. Chase also notified the Borrower by letter dated October 5, 2010, providing the Borrower with the net present value data inputs that were used to determine that she was not eligible for a modification. A copy of this letter is attached hereto as **Exhibit 5**.

Further Affiant sayeth not.

Chase Home Finance, LLC

By:


Charles Herndon

Its: Vice President

SWORN to and subscribed before me
on this 10 day of March, 2011


Notary Public for the State of Florida
My commission expires: 9-19-2014



Loan Number 657

Investor Loan # _____

HOME AFFORDABLE MODIFICATION TRIAL PERIOD PLAN (Step One of Two-Step Documentation Process)

Trial Period Plan Effective Date: JULY 01, 2009
Borrower ("I"): VANESSA Y BRADLEY
Lender ("Lender"): JPMORGAN CHASE BANK, NA, SUCCESSOR TO WASHINGTON MUTUAL BANK
Date of first lien Security Instrument ("Mortgage") and Note ("Note"): January 30, 2001
Loan Number: 657
Property Address ("Property"): CENTRAL, SOUTH CAROLINA 29630

If I am in compliance with this Trial Period Plan (the "Plan") and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Home Affordable Modification Agreement ("Modification Agreement"), as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage. The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Plan and not defined have the meaning given to them in the Loan Documents.

If I have not already done so, I am providing confirmation of the reasons I cannot afford my mortgage payment and documents to permit verification of all of my income (except that I understand that I am not required to disclose any child support or alimony unless I wish to have such income considered) to determine whether I qualify for the offer described in this Plan (the "Offer"). I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of this Plan if I qualify for the Offer or will send me written notice that I do not qualify for the Offer. This Plan will not take effect unless and until both I and the Lender sign it and Lender provides me with a copy of this Plan with the Lender's signature.

1. My Representations. I certify, represent to Lender and agree:

- A. I am unable to afford my mortgage payments for the reasons indicated in my Hardship Affidavit and as a result, (i) I am either in default or believe I will be in default under the Loan Documents in the near future, and (ii) I do not have sufficient income or access to sufficient liquid assets to make the monthly mortgage payments now or in the near future;
- B. I live in the Property as my principal residence, and the Property has not been condemned;
- C. There has been no change in the ownership of the Property since I signed the Loan Documents;
- D. I am providing or already have provided documentation for all income that I receive (and I understand that I am not required to disclose any child support or alimony that I receive, unless I wish to have such income considered to qualify for the Offer);
- E. Under penalty of perjury, all documents and information I have provided to Lender pursuant to this Plan, including the documents and information regarding my eligibility for the program, are true and correct; and
- F. If Lender requires me to obtain credit counseling, I will do so.

If there is more than one Borrower or Mortgagee executing this document, each is referred to as "I". For purposes of this document words signifying the singular (such as "I") shall include the plural (such as "we") and vice versa where appropriate.

HOME AFFORDABLE MODIFICATION TRIAL PERIOD PLAN - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3156 3/09 (rev. 3/09) (page 1 of 2 pages)



EXHIBIT 1

Loan Number 3657

2. The Trial Period Plan. On or before each of the following due dates, I will pay the Lender the amount set forth below ("Trial Period Payment"), which includes payment for Escrow Items, including real estate taxes, insurance premiums and other fees, if any, of U.S. \$517.29.

Trial Period Payment #	Trial Period Payment	Due Date On or Before
1	\$517.29	07/01/2009
2	\$517.29	08/01/2009
3	\$517.29	09/01/2009

The Trial Period Payment is an estimate of the payment that will be required under the modified loan terms, which will be finalized in accordance with Section 3 below.

During the period (the "Trial Period") commencing on the Trial Period Effective Date and ending on the earlier of: (i) the first day of the month following the month in which the last Trial Period Payment is due (the "Modification Effective Date") or (ii) termination of this Plan, I understand and acknowledge that:

- A. TIME IS OF THE ESSENCE under this Plan;
- B. Except as set forth in Section 2.C. below, the Lender will suspend any scheduled foreclosure sale, provided I continue to meet the obligations under this Plan, but any pending foreclosure action will not be dismissed and may be immediately resumed from the point at which it was suspended if this Plan terminates, and no new notice of default, notice of intent to accelerate, notice of acceleration, or similar notice will be necessary to continue the foreclosure action, all rights to such notices being hereby waived to the extent permitted by applicable law;
- C. If my property is located in Georgia, Hawaii, Missouri, or Virginia and a foreclosure sale is currently scheduled, the foreclosure sale will not be suspended and the lender may foreclose if I have not made each and every Trial Period Payment that is due before the scheduled foreclosure sale. If a foreclosure sale occurs pursuant to this Section 2.C., this agreement shall be deemed terminated;
- D. The Lender will hold the payments received during the Trial Period in a non-interest bearing account until they total an amount that is enough to pay my oldest delinquent monthly payment on my loan in full. If there is any remaining money after such payment is applied, such remaining funds will be held by the Lender and not posted to my account until they total an amount that is enough to pay the next oldest delinquent monthly payment in full;
- E. When the Lender accepts and posts a payment during the Trial Period it will be without prejudice to, and will not be deemed a waiver of, the acceleration of the loan or foreclosure action and related activities and shall not constitute a cure of my default under the Loan Documents unless such payments are sufficient to completely cure my entire default under the Loan Documents;
- F. If prior to the Modification Effective Date, (i) the Lender does not provide me a fully executed copy of this Plan and the Modification Agreement; (ii) I have not made the Trial Period payments required under Section 2 of this Plan; or (iii) the Lender determines that my representations in Section 1 are no longer true and correct, the Loan Documents will not be modified and this Plan will terminate. In this event, the Lender will have all of the rights and remedies provided by the Loan Documents, and any payment I make under this Plan shall be applied to amounts I owe under the Loan Documents and shall not be refunded to me; and



Loan Number 3657

G. I understand that the Plan is not a modification of the Loan Documents and that the Loan Documents will not be modified unless and until (i) I meet all of the conditions required for modification, (ii) I receive a fully executed copy of a Modification Agreement, and (iii) the Modification Effective Date has passed. I further understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Plan.

3. The Modification. I understand that once Lender is able to determine the final amounts of unpaid interest and any other delinquent amounts (except late charges) to be added to my loan balance and after deducting from my loan balance any remaining money held at the end of the Trial Period under Section 2.D. above, the Lender will determine the new payment amount. If I comply with the requirements in Section 2 and my representations in Section 1 continue to be true in all material respects, the Lender will send me a Modification Agreement for my signature which will modify my Loan Documents as necessary to reflect this new payment amount and waive any unpaid late charges accrued to date. Upon execution of a Modification Agreement by the Lender and me, this Plan shall terminate and the Loan Documents, as modified by the Modification Agreement, shall govern the terms between the Lender and me for the remaining term of the loan.

4. Additional Agreements. I agree to the following:

- A. That all persons who signed the Loan Documents or their authorized representative(s) have signed this Plan, unless a borrower or co-borrower is deceased or the Lender has waived this requirement in writing.
- B. To comply, except to the extent that they are modified by this Plan, with all covenants, agreements, and requirements of Loan Documents, including my agreement to make all payments of taxes, insurance premiums, assessments, Escrow Items, impounds, and all other payments, the amount of which may change periodically over the term of my loan.
- C. That this Plan constitutes notice that the Lender's waiver as to payment of Escrow Items, if any, has been revoked, and I have been advised of the amount needed to fully fund my Escrow Account.
- D. That all terms and provisions of the Loan Documents remain in full force and effect; nothing in this Plan shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents. The Lender and I will be bound by, and will comply with, all of the terms and provisions of the Loan Documents.

In Witness Whereof, the Lender and I have executed this Plan.

Lender JPMORGAN CHASE BANK, NA, SUCCESSOR TO WASHINGTON MUTUAL BANK

By: _____

Date _____

X Vanessa Y. Bradley
Borrower - VANESSA Y. BRADLEY

(Seal) Date: 6/24/09

HOME AFFORDABLE MODIFICATION TRIAL PERIOD PLAN - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3156 3/09 (rev. 3/09) (page 3 of 3 pages)



Loan Number 3657

Chase Fulfillment Center
PO BOX 469030
Glendale, CO 80246-9030



March 04, 2010

VANESSA Y BRADLEY

CENTRAL, SOUTH CAROLINA 29630

Statement of Eligibility for Loan Modification

Account: 3657 (the "Loan")

Property Address: CENTRAL, SOUTH CAROLINA 29630

Dear Mortgagor(s):

Chase Home Finance LLC ("Chase") is writing in response to your recent request regarding a loan modification on the above-referenced account. After researching your account, we have determined that you do not qualify for a modification through the Making Home Affordable ("MHA") modification program at this time; however, we are happy to tell you that you may be eligible for other modification programs offered by Chase. You will be hearing from us regarding the other programs we have available for you very soon.

Federal guidelines require lenders to disclose why you did not qualify for the MHA program. You have been deemed ineligible for the MHA program for the following reason(s):

The Home Affordable Modification Program requires a calculation of the Net Present Value (NPV) of a modification using a formula developed by the Department of the Treasury. The NPV calculation requires us to input certain financial information about your income and your Loan including the factors listed below. When combined with other data in the Treasury model, these inputs estimate the cash flow the investor (owner) of your Loan is likely to receive if the Loan is modified and the investor's cash flow if the Loan is not modified. Based on the NPV results, the owner of your Loan has not approved a modification.

If we receive a request from you within thirty (30) calendar days from the date of this letter, we will provide you with the date the NPV calculation was completed and the input values noted below. If, within thirty (30) calendar days of receiving this information you provide us with evidence that any of these input values are inaccurate, and those inaccuracies are material, for example a significant difference in your gross monthly income or an inaccurate zip code, we will conduct a new NPV evaluation. While there is no guarantee that a new NPV evaluation will result in the owner of your Loan approving a modification, we want to ensure that the NPV evaluation is based on accurate information.

Available NPV Inputs:

OF303-AA

Page 1 of 4

EXHIBIT 2

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381

- A. Unpaid balance on the original Loan as of the date we reviewed your Loan
- B. Interest rate before modification as of the date we reviewed your Loan
- C. Months delinquent as of the date we reviewed your Loan
- D. Next ARM reset date (if applicable)
- E. Next ARM reset rate (if applicable)
- F. Principal and interest payment before modification
- G. Monthly insurance payment
- H. Monthly real estate taxes
- I. Monthly Homeowner Association fees (if applicable)
- J. Monthly gross income
- K. Borrower's Total Monthly Obligations
- L. Borrower FICO
- M. Co-borrower FICO (if applicable)
- N. Zip Code
- O. State

If your Loan is delinquent, we may be able to offer other alternatives to help avoid the negative impact a possible foreclosure may have on your credit rating, the risk of a deficiency judgment being filed against you, and the possible adverse tax effects of a foreclosure on your Property. If you are interested in discussing these possible alternatives, please contact us immediately at (888) 708-7105.

We hope you will find the alternative offers to the federal program acceptable. If you feel the offer we send you is unacceptable and if you intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available for you to consider. If you are interested in discussing these possible alternatives, please contact our Homeowner's Assistance Department immediately at (888) 708-7105.

If you intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available for you to consider:

- **Forbearance Plan:** A temporary reduction in your current payment to provide time for you to improve your financial circumstances.
- **Repayment Plan:** An agreement structured to cure the delinquency over a period of months while continuing to make contractual payments.
- **Refinancing Settlement:** Use of an external lender to pay off the Loan, possibly for less than the full amount owed.

If you do not intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available for you to consider:

- Short Sale of the Property, where we may accept less than the full amount owed. *
- Deed-in-Lieu of Foreclosure, whereby you deed the Property to your servicer in exchange for forgiveness of all or a portion of the Loan *

* Forgiveness of debt may have federal tax consequences. Consult with a tax professional.

As indicated in your trial plan documentation, if your existing Loan did not include escrows, Chase started to review your property tax and insurance obligations in order to establish an escrow account. As a result, we may have paid items on your behalf. In that case, if any escrow items were paid during the trial period, your mortgage payment will be adjusted to include an amount necessary to repay those funds over a sixty (60) month re-payment period. If your account was not escrowed prior to the trial period, your account will remain non-escrowed, and you will be responsible for any past due tax or insurance obligations and all items going forward. If your account was previously escrowed, your escrow account

Loan Number: 3657

will remain in effect. Chase reserves the right in the future to require an escrow on your account if you fail to pay the tax and/or insurance obligations under the terms of your mortgage.

Our credit decision was based in whole or in part on information compiled from reports obtained from one of the three consumer reporting agencies listed below. These reporting agencies played no part in our decision and are unable to supply specific reasons we have denied credit to you. You have a right to receive a free copy of your report from these reporting agencies, if you request it no later than sixty (60) days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the applicable reporting agency by contacting that agency at the number provided below:

Equifax: PO BOX 740241
Atlanta, GA 30374-0241
(800) 685-1111

Experian: PO BOX 9701
Allen, TX 75013-9701
(888) 397-3742

TransUnion: PO BOX 2000
Chester, PA 19022-2000
(800) 916-8800

FEDERAL ECOA NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050.

Chase offers homeownership counseling services to borrowers in some areas. Counseling is also available through a variety of nonprofit organizations experienced in homeownership counseling and approved by the Secretary of Housing and Urban Development (HUD). A listing of such organizations may be obtained by calling the HOPE Hotline Number: (888) 993-HOPE. When you call, please ask for "MHA help."

If you have any questions, please contact us at the number provided below. At Chase, we value you as a customer and want to ensure your continued satisfaction.

Sincerely,
Homeowner's Assistance Department
Chase Home Finance LLC
(888) 708-7105
(800) 582-0542 TDD / Text Telephone

An important reminder for all our customers: As stated in the "Questions and Answers for Borrowers about the Homeowner Affordability and Stability Plan" distributed by the Obama Administration, "Borrowers should beware of any organization that attempts to charge a fee for housing counseling or modification of a delinquent loan; especially if they require a fee in advance." Chase offers loan modification assistance free of charge (i.e., no

modification fee required). Please call us immediately at (888) 708-7105 to discuss your options. The longer you delay, the fewer options you may have.

Chase Home Finance LLC is attempting to collect a debt, and any information obtained will be used for that purpose.

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code; this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation.

FOR CALIFORNIA CUSTOMERS ONLY:

- The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at (877) FTC-HELP or www.ftc.gov.

Chase Fulfillment Center
PO BOX 469030
Glendale, CO 80246-9030



August 19, 2010

VANESSA Y BRADLEY
CENTRAL, SOUTH CAROLINA 29630

Statement of Eligibility for Loan Modification
Account: 0010718657 (the "Loan")
Property Address: [REDACTED]
CENTRAL, SOUTH CAROLINA 29630

Dear Mongagor(s):

Chase Home Finance LLC ("Chase") is writing in response to your recent request regarding a loan modification on the above-referenced account. After researching your account, we have determined that you do not qualify for a modification through the Making Home Affordable ("MHA") modification program or through other modification programs offered by Chase at this time. You have been deemed ineligible for the following reason(s):

The Home Affordable Modification Program requires a calculation of the Net Present Value (NPV) of a modification using a formula developed by the Department of the Treasury. The NPV calculation requires us to input certain financial information about your income and your Loan including the factors listed below. When combined with other data in the Treasury model, these inputs estimate the cash flow the investor (owner) of your Loan is likely to receive if the Loan is modified and the investor's cash flow if the Loan is not modified. Based on the NPV results, the owner of your Loan has not approved a modification.

If we receive a request from you within thirty (30) calendar days from the date of this letter, we will provide you with the date the NPV calculation was completed and the input values noted below. If, within thirty (30) calendar days of receiving this information you provide us with evidence that any of these input values are inaccurate, and those inaccuracies are material, for example a significant difference in your gross monthly income or an inaccurate zip code, we will conduct a new NPV evaluation. While there is no guarantee that a new NPV evaluation will result in the owner of your Loan approving a modification, we want to ensure that the NPV evaluation is based on accurate information.

Available NPV inputs.

- A. Unpaid balance on the original Loan as of the date we reviewed your Loan
B. Interest rate before modification as of the date we reviewed your Loan
C. Months delinquent as of the date we reviewed your Loan
D. Next ARM reset date (if applicable)
E. Next ARM reset rate (if applicable)
F. Principal and interest payment before modification
G. Monthly insurance payment

OP302-AA
DL

Page 1 of 4

EXHIBIT 3

- H. Monthly real estate taxes
- I. Monthly Homeowner Association fees (if applicable)
- J. Monthly gross income
- K. Borrower's Total Monthly Obligations
- L. Borrower FICO
- M. Co-borrower FICO (if applicable)
- N. Zip Code
- O. State

Unless otherwise specifically provided for in your denial reason description, you have thirty (30) days from the date of this letter to contact Chase to discuss the reason for non-approval under the Home Affordable Modification Program or to discuss alternative loss mitigation options that may be available to you. Your loan may be referred to foreclosure during this time, or any pending foreclosure action may continue. However, no foreclosure sale will be conducted and you will not lose your home during this thirty (30) day period.

If your Loan is delinquent, we may be able to offer other alternatives to help avoid the negative impact a possible foreclosure may have on your credit rating, the risk of a deficiency judgment being filed against you, and the possible adverse tax effects of a foreclosure on your Property. If you are interested in discussing these possible alternatives, please contact us immediately at (888) 708-7105.

If you intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available for you to consider:

- Forbearance Plan: A temporary reduction in your current payment to provide time for you to improve your financial circumstances.
- Repayment Plan: An agreement structured to cure the delinquency over a period of months while continuing to make contractual payments.
- Refinancing Settlement: Use of an external lender to pay off the Loan, possibly for less than the full amount owed.

If you do not intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available to you under the Home Affordable Foreclosure Alternatives ("HAFA") program:

- Short Sale of the Property, where we may accept less than the full amount owed.*
- Deed-in-Lieu of Foreclosure, whereby you deed the Property to your servicer in exchange for forgiveness of all or a portion of the Loan.*

* Forgiveness of debt may have federal tax consequences. Consult with a tax professional.

If your existing Loan did not include escrows, Chase may have started to review your property tax and insurance obligations in order to establish an escrow account. As a result, we may have paid items on your behalf. We may at our option continue to now require escrows on your account, or require that you repay any advances over no less than twelve (12) months. You will be responsible for any past due tax or insurance obligations and all items going forward. If your account was previously escrowed, your escrow account will remain in effect.

Our credit decision was based in whole or in part on information compiled from reports obtained from one or more of the three consumer reporting agencies listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. These reporting agencies played no part in our decision and are unable to supply specific reasons we have denied credit to you. You have a right to receive a free copy of your report from these reporting agencies, if you request it no later than sixty (60) days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the applicable reporting agency by contacting that agency at the number provided below:

Loan Number 3657

Equifax: PO BOX 740241
Atlanta, GA 30374-0241
(800) 685-1111

Experian: PO BOX 9701
Allen, TX 75013-9701
(888) 337-3742

TransUnion: PO BOX 2000
Chester, PA 19022-2000
(800) 916-6800

FEDERAL ECOA NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050.

If you have questions about the Program or this Borrower Notice, please contact us at (888) 708-7105. You may also contact the U.S. Treasury sponsored HOPE Hotline Number (888) 995-HOPE and ask for "MHA Help". Assistance is free of charge. Chase also offers homeownership counseling services to borrowers in some areas; please contact us at the number below for information.

If you have any questions, please contact your relationship manager or call the number provided below. At Chase, we value you as a customer and want to ensure your continued satisfaction.

Sincerely,
Homeowner's Assistance Department
Chase Home Finance LLC
(888) 708-7105
(800) 582-0542 TDD / Text Telephone
(866) 221-1019 Fax

Chase Home Finance LLC is attempting to collect a debt, and any information obtained will be used for that purpose.

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation.

FOR CALIFORNIA CUSTOMERS ONLY:

- For California customers, the state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene

Loan Number 3657

language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at (877) FTC-HELP or www.ftc.gov.

CP302-AA
DL

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Loan Number 3657

Chase Fulfillment Center
PO BOX 459030
Glendale, CO 80246-9030



September 21, 2010

VANESSA Y BRADLEY

CENTRAL, SOUTH CAROLINA 29930

Making Home Affordable Modification Trial Period Plan Offer – Notice of Expiration

Account: 3657 (the "Loan")

Property Address: CENTRAL, SOUTH CAROLINA 29930 (the "Property")

Dear Mortgagor(s):

Chase Home Finance LLC ("Chase") is writing to notify you that the Trial Period Plan Offer through the Making Home Affordable ("MHA") modification program for the above-referenced account has expired for the following reason(s):

We are unable to offer you a Home Affordable Modification because you did not make all of the required Trial Period Plan payments by the end of the trial period.

If you were previously on a Trial Period Plan making reduced payments, please be advised that the actual payment status under the original terms of your Loan will begin to be reported to the credit bureaus, which may result in negative credit reporting if you do not cure any delinquency. In addition, if your Loan was in foreclosure at the time of the Trial Period Plan Offer, the foreclosure process may resume without further notice.

We may be able to offer other alternatives to help avoid the negative impact a possible foreclosure may have on your credit rating, the risk of a deficiency judgment being filed against you, and the possible adverse tax effects of a foreclosure on your Property, but we need to talk with you to determine which option might best fit your needs. If you are interested in discussing these possible alternatives, please contact our Homeowner's Assistance Department immediately at (888) 708-7105.

If you intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available for you to consider:

- **Forbearance Plan:** A temporary reduction in your current payment to provide time for you to improve your financial circumstances.
- **Repayment Plan:** An agreement structured to cure the delinquency over a period of months while continuing to make contractual payments.
- **Refinancing Settlement:** Use of an external lender to pay off the Loan, possibly for less than the full amount owed.

If you do not intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available to you under the Home Affordable Foreclosure Alternative ("HAFA") program:

OP615
PSL

Page 1 of 3



EXHIBIT 4

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- Short Sale of the Property where we may accept less than the full amount owed.*
- Deed-in-Lieu of Foreclosure whereby you deed the Property to your servicer in exchange for forgiveness of all or a portion of the Loan.*
- * Forgiveness of debt may have federal tax consequences. Consult with a tax professional.

You have thirty (30) days from the date of this letter to contact Chase to discuss the reason for non-approval under the Home Affordable Modification Program or to discuss alternative loss mitigation options that may be available to you. Your loan may be referred to Foreclosure during this time, or any pending foreclosure action may continue. However, no foreclosure sale will be conducted and you will not lose your home during this thirty (30) day period.

If your account was not escrowed prior to the trial period, we will at our option either require escrows on your loan account, or adjust your payment to repay any advances made on your behalf over a repayment period of not less than twelve (12) months. If your account was previously escrowed, your escrow account will remain in effect.

If you have questions about the Program or this Borrower Notice, please contact us at (866) 708-7105. You may also contact the U.S. Treasury sponsored HOPE Hotline Number (888) 995-HOPE and ask for "MHA Help". Assistance is free of charge. Chase also offers homeownership counseling services to borrowers in some areas; please contact us at the number below for information.

If you have any questions, please contact your relationship manager or call the number provided below. At Chase, we value you as a customer and want to ensure you understand your options.

Sincerely,
Homeowner's Assistance Department
Chase Home Finance LLC
(888) 708-7105
(800) 562-0542 TDD / Text Telephone
(866) 221-1019 Fax

An important reminder for all our customers: As stated in the "Questions and Answers for Borrowers about the Homeowner Affordability and Stability Plan" distributed by the Obama Administration, "Borrowers should beware of any organization that attempts to charge a fee for housing counseling or modification of a delinquent loan, especially if they require a fee in advance." Loan modification scams should be reported to PreventLoanScams.org, or by calling (888) 995-HOPE. Chase offers loan modification assistance free of charge (i.e., no modification fee required). Please call us immediately at (888) 708-7105 to discuss your options. The longer you delay, the fewer options you may have.

Chase Home Finance LLC is attempting to collect a debt, and any information obtained will be used for that purpose.

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation.

OP615
P8L

Page 2 of 3



Loan Number 8657

FOR CALIFORNIA CUSTOMERS ONLY:

- For California customers, the state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at (877) FTC-HELP or www.ftc.gov.

OP615
FBL



Page 3 of 3



Chase Fulfillment Center
3801 S. Collins St.
TX1-1814
Arlington, TX 76014

October 5, 2010

VANESSA Y BRADLEY

[REDACTED]
CENTRAL SC 29630

Your Net Present Value ("NPV") Calculation
Account: [REDACTED] 3657 (the "Loan")
Property Address: [REDACTED]
CENTRAL SC 29630

Dear Mortgage(s):

Chase Home Finance LLC ("Chase") is writing in response to your request for the Net Present Value (NPV) data inputs used to determine you are not eligible for a loan modification under the Making Home Affordable ("MHA") modification program.

The MHA program requires us to use an NPV formula developed by the Department of the Treasury that uses certain specific information about your financial situation, including the factors listed below.

The NPV input values we used as of September 13, 2010 are listed below:

- A. Unpaid balance on the original loan = \$94,185.23
- B. Interest rate before modification = 6.875%
- C. Months delinquent = 19
- D. Next ARM reset date (if applicable) = N/A
- E. Next ARM reset rate (if applicable) = N/A
- F. Principal and interest payment before modification = \$603.12
- G. Monthly insurance payment = \$37.58
- H. Monthly real estate taxes = \$40.29
- I. Monthly HOA fees (if applicable) = N/A
- J. Monthly gross income = \$1,613.73
- K. Borrower's Total Monthly Obligations = \$1,360.78
- L. Borrower FICO = 551
- M. Co-borrower FICO (if applicable) = N/A
- N. Zip Code = 29630
- O. State = SC

EXHIBIT 5

390

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Doesn't list:
Prop. Value used
Mos. Remaining
Mtg Ins Crg 90
Mod fees pd by investor

If within thirty (30) calendar days of the date of this letter, you provide us with evidence that any of these input values are inaccurate, and we are able to confirm these new values are both correct and material to the calculation (for example a significant difference in your gross monthly income or an inaccurate zip code) we will conduct a new NPV evaluation using this corrected information. While there is no guarantee that a new NPV evaluation will result in us approving a modification, we want to ensure that the NPV evaluation is based on accurate information.

All evidence used to dispute any of the NPV inputs should be supported by documentation and should be returned to us in one package, as incomplete packages will cause further delay in the review process. Please submit the items by fax or mail to the address below, along with the attached cover sheet, in time for us to receive them within thirty (30) days of the date of this letter.

Regular/Overnight Mail: Chase Fulfillment Services
3801 S. Collins St.
TX1-1814
Arlington, TX 76014

Fax: (866) 331-2659

Chase offers homeownership counseling services to borrowers in some areas. Counseling is also available through a variety of nonprofit organizations experienced in homeownership counseling and approved by the Secretary of Housing and Urban Development (HUD). A listing of such organizations may be obtained by calling the HOPE Hotline Number: (888) 995-HOPE. When you call, please ask for "MHA help."

If you have any questions, please contact us at the number provided below. At Chase, we value you as a customer and want to ensure your continued satisfaction.

Sincerely,
Homeowner's Assistance Department
Chase Home Finance LLC
(888) 708-7105
(800) 582-0542 TDD/Text Telephone
(866) 331-2659 Fax

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If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

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OP306-J

TO ENSURE THE PROPER HANDLING OF YOUR DOCUMENTS, PLEASE INCLUDE THIS
ROUTING SHEET WITH YOUR FAX OR REMITTANCE

MORTGAGOR NAME:
VANESSA Y BRADLEY

«Mortgagor3»

PROPERTY ADDRESS:

CENTRAL, SC 29630

«Property City, State, Zip»

LOAN NUMBER:

«Loan Number»

ROGERS TOWNSEND & THOMAS, PC

ATTORNEYS AND COUNSELLORS AT LAW

Samuel C. Waters

tel 803-227-7760

web www.rtt-law.com

mail PO Box 100200

Columbia, South Carolina 29220

714580-00518

NOTICE TO VACATE PROPERTY

TO: All occupants residing at: 454 Johnson Rd, Central, SC 29630

NOTICE IS HEREBY GIVEN THAT Federal National Mortgage Association,, or its predecessor in interest, purchased the property located at 454 Johnson Rd, Central, SC 29630 (the "Premises") at the foreclosure sale held on September 7, 2010 by the Special Referee for Pickens County.

NOTICE IS FURTHER GIVEN THAT:

within TEN (10) of the date of this Notice, if you are any person who is not a bona fide tenant or subtenant, you are required to vacate and surrender possession of the Premises or the portion in which you reside, to Federal National Mortgage Association, through Charlene Dryden, its agent, who can be reached at 864-225-1202 ext. 126 from 9:00 a.m. to 5:00 p.m. on all business days, unless you provide evidence that you are a bona fide tenant pursuant to Section 702(a)(2)(A) of the federal "Protecting Tenants at Foreclosure Act of 2009" ("PTFA") or are protected by Section 703 of the PTFA. Please see the Addendum of this Notice for instructions on how to deliver this evidence.

If within the applicable period as set forth above, EITHER if you fail to surrender possession OR if you fail to provide evidence you are a bona fide tenant pursuant to Section 702(a)(2)(A) of the PTFA or are protected by Section 703 of the PTFA, Federal National Mortgage Association, will commence eviction proceedings against you to recover possession of the Premises.

If you can provide evidence that you are a bona fide tenant, your continued use of the property is contingent upon your making timely rental payments to the new owner or its agent until you actually vacate the property. Your former landlord is no longer entitled to collection of the rental payments. You will be contacted shortly with instructions detailing where to forward your payments. Return of your security deposit is not the obligation of Federal National Mortgage Association.

Fannie Mae previously delivered its "Knowing Your Options" Document to you. Fannie Mae has either not received a response from you or has not received information that you are entitled to additional protections under the Protecting Tenants at Foreclosure Act of 2009. If you did not receive Fannie Mae's "Knowing Your Options" Document or your



believe you are entitled to additional protections under state or federal law, please contact
this office immediately.

Dated September 22, 2010

Rogers Townsend & Thomas, PC
By: Samuel C. Waters

ADDENDUM

TENANT INFORMATION

IF YOU ARE A TENANT of the prior owner, you must provide the following documents:

- ☐ A copy of your lease
- ☐ A return phone number and the time best to reach you
- ☐ The receipt for the last six (6) payments made to the landlord for the residence

By either mail, fax or email

Mail:
ReMax Foothills
ATTN: Charlene Dryden
4022 Clemson Blvd. Anderson, SC 29621

Email:
cjdryden@carol.net

864-225-1202

TRANSMISSION VERIFICATION REPORT

TIME : 00/02/2010 02:24

DATE, TIME	00/02 02:23
FAX NO. /NAME	18775332107
DURATION	00:00:43
PAGE(S)	01
RESULT	OK
MODE	STANDARD
	ECM



3657

REQUEST FOR MODIFICATION AND AFFIDAVIT (RMA) page 2

REVIEW AND COMPLETE ALL FOUR PAGES OF THIS FORM

INCOME/EXPENSES FOR HOUSEHOLD¹

Number of People in Household:

Monthly Household Income		Monthly Household Expenses/Debt		Household Assets	
Monthly Gross Wages	\$1489.60	First Mortgage Payment	\$672.11	Checking Account(s)	\$ 0
Overtime	\$ —	Second Mortgage Payment	\$ —	Checking Account(s)	\$ —
Child Support / Alimony / Separation ²	\$ —	Insurance	\$ —	Savings/ Money Market	\$ —
Social Security/SSDI	\$ —	Property Taxes	\$ —	CDs	\$ —
Other monthly income from pensions, annuities or retirement plans	\$ —	Credit Cards / Installment Loans (total minimum payment per month)	\$ —	Stocks / Bonds	\$ —
Tips, commissions, bonus and self-employed income	\$ —	Alimony, child support payments	\$ —	Other Cash on Hand	\$ —
Rents Received	\$ —	Net Rental Expenses	\$ —	Other Real Estate (estimated value)	\$ —
Unemployment Income	\$ —	HOA/Condo Fees/Property Maintenance	\$ —	Other	\$ —
Food Stamps/Welfare	\$ —	Car Payments	\$327.44	Other	\$ —
Other (investment income, royalties, interest, dividends etc.)	\$ —	Other (for example, cell phone, utilities, etc.)	305	Do not include the value of life insurance or retirement plans when calculating assets (401k, pension funds, annuities, IRAs, Keogh plans, etc.)	
Total (Gross Income)	\$1489.60	Total Debt/Expenses	\$1304.44	Total Assets	\$ 0

INCOME MUST BE DOCUMENTED

¹Include combined income and expenses from the borrower and co-borrower (if any). If you include income and expenses from a household member who is not a borrower, please specify using the back of this form if necessary.

²You are not required to disclose Child Support, Alimony or Separation Maintenance income, unless you choose to have it considered by your servicer.

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. If you do not wish to furnish the information, please check the box below.

CO-BORROWER ☒ I do not wish to furnish this information	CO-BORROWER ☐ I do not wish to furnish this information
Ethnicity: ☐ Hispanic or Latino ☐ Not Hispanic or Latino	Ethnicity: ☐ Hispanic or Latino ☐ Not Hispanic or Latino
Race: ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White	Race: ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White
Sex: ☐ Female ☐ Male	Sex: ☐ Female ☐ Male

To be completed by interviewer

This request was taken by: ☐ Face-to-face interview ☐ Mail ☐ Telephone ☐ Internet	Interviewer's Name (print or type) & ID Number	Name/Address of Interviewer's Employer
	Interviewer's Signature Date	
	Interviewer's Phone Number (include area code)	

Cover Sheet

To:	Chase Fulfillment Center 4500 CHERRY CREEK DR SOUTH STE 100 MAIL STOP - Letters GLENDALE, CO 80246-1531	Fax Number:	(866) 221-1019
From:	MORTGAGOR NAME: Vanessa Y. Bradley PROPERTY ADDRESS: [REDACTED] Central, SC 29630-0000 LOAN NUMBER: [REDACTED] 3657	Date:	8/31-10
Re:	Modification Program	Pages:	12



- Notes:
- ① authorization form
 - ② IRS- 4506-T
 - ③ Wage Notice
 - ④ pay check stub
 - ⑤ 2 bank statements
 - ⑥ letter verifying why I only had 1 pay check stub
 - ⑦ letter stating I do not have home owner association dues

confidential

TO ENSURE THE PROPER HANDLING OF YOUR
DOCUMENTS, PLEASE INCLUDE THIS COVER SHEET
WITH YOUR FAX OR REMITTANCE.



TRANSMISSION VERIFICATION REPORT

TIME : 08/31/2010 06:22

DATE, TIME	08/31 06:15
FAX NO./NAME	18662211019
DURATION	00:06:18
PAGE(S)	13
RESULT	OK
MODE	STANDARD ECM

Form **4506-T**

(Rev. January 2010)

Department of the Treasury
Internal Revenue Service

Request for Transcript of Tax Return

Request may be rejected if the form is incomplete or illegible.

Loan Number:

OMB No. 1545-1872

Tip. Use Form 4506-T to order a transcript or other return information free of charge. See the product list below. You can also call 1-800-829-1040 to order a transcript. If you need a copy of your return, use Form 4506, Request for Copy of Tax Return. There is a fee to get a copy of your return.

1a Name shown on tax return. If a joint return, enter the name shown first.

Vanessa B. Bradley Temple

1b First social security number on tax return or employer identification number (see instructions)

2a If a joint return, enter spouse's name shown on tax return.

2b Second social security number if joint tax return

3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code

Central, SC 29630

4 Previous address shown on the last return filed if different from line 3

5 If the transcript or tax information is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number. The IRS has no control over what the third party does with the tax information.

Regular Mail:
Chase Fulfillment Center
PO Box 469030
Glendale, CO 80246Overnight Mail:
Chase Fulfillment Center
710 South Ash Street, Suite #200
Glendale, CO 80246Phone Number:
866-550-5705

Caution. If the transcript is being mailed to a third party, ensure that you have filled in line 6 and line 9 before signing. Sign and date the form once you have filled in these lines. Completing these steps helps to protect your privacy.

6 Transcript requested. Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. **1040**a Return Transcript, which includes most of the line items of a tax return as filed with the IRS. A tax return transcript does not reflect changes made to the account after the return is processed. Transcripts are only available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120A, Form 1120H, Form 1120L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days. ☒b Account Transcript, which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 30 calendar days. ☐c Record of Account, which is a combination of line item information and later adjustments to the account. Available for current year and 3 prior tax years. Most requests will be processed within 30 calendar days. ☐7 Verification of Nonfiling, which is proof from the IRS that you did not file a return for the year. Current year requests are only available after June 15th. There are no availability restrictions on prior year requests. Most requests will be processed within 10 business days. ☐8 Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript. The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2007, filed in 2008, will not be available from the IRS until 2009. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 45 days. ☐

Caution. If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

9 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T. For requests relating to quarterly tax returns, such as Form 941, you must enter each quarter or tax period separately.

2008

2009

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer. Note: For transcripts being sent to a third party, this form must be received within 120 days of signature date.

Signature (see instructions)

Date

Telephone number of taxpayer on line 1a or 2a
(864) 508-0196

Sign Here

Title (if line 1a above is a corporation, partnership, estate, or trust)

Spouse's signature

Date

For Privacy Act and Paperwork Reduction Act Notice, see page 2.

Cat. No. 37667N

Form 4506-T (Rev. 1-2010)

8740B HIP 08/10A (Chase fill)

Homeowner Information Packet Page 7 of 8

402

404

3657

Notice to Employee of Payroll Deductions and Special Needs

Employee Wage Notice:

Vanessa Temple
Name of Employee

7-6-2010
Date of Hire

In compliance with Section 41-11-140 of South Carolina Code of Laws of 1976, as amended, you are hereby notified that your pay as an employee of [REDACTED] is \$ 9.31 Bi-weekly \$ _____ Hourly effective 7-23-2010.

Payment will be made to you, by direct deposit into your account at your designated financial institution or by check no later than 4pm on Thursday, according to the bi-weekly payroll schedule for PCBDN. Payroll checks and direct deposit remittance vouchers will be available for pick up by residential staff at the assigned residential homes. Payroll checks and direct deposit remittance vouchers will be available for pick up by Non-Residential staff at PCBDN administrative office located at 1308 Griffin Mill Rd. Easley, SC 29640.

Your hours of employment per day will be PRN and hours per week will be _____, unless otherwise notified.

7-22-2010
Today's Date:

[Signature]
HRO/Supervisor signature

.....
I, Vanessa Temple, do hereby certify that I have been notified in writing of the day, the hour and the place of payment, of the rate of pay and hours of employment per day and week by the employer. I also understand that the standard deductions for Federal and State and other designated taxes will be deducted from each check, as well as any elective benefits I may have chosen to have payroll deducted. I also understand that these deductions will be itemized on each check stub or direct deposit remittance voucher. I further understand and certify that if I should resign or be terminated, any outstanding financial obligations to [REDACTED] will be deducted from my final pay. I also understand that I have been notified and do understand the Employment-at-will policy.
Rate of Pay \$ 9.31

Should any changes to the above be required, I will be notified seven (7) days prior to the change

Vanessa B. Temple
Employee Signature

7-22-10
Date

3657

[REDACTED]

Pay Period 08/19/2010 Check Date 08/26/2010 Check No 6694

Employee: Vanessa B Temple

SSN: ***-**-7363 LOC: 30
Leave Balance as of 08/19/2010

	Hours	Current	Y-T-D	Deduction	Current	Y-T-D
REGULAR	80.00	744.80	1,292.17	PHYSICAL		111.00
OVERTIME	4.75	66.33	77.21			

Gross Wage	811.13	1,369.58
FICA/Medicare	62.05	104.75
Federal	57.29	61.85
State	33.37	43.91
Total Deductions	0.00	111.00
Net Pay	658.42	1,047.87

Exemptions
Fed: 1
State: 1
MS: S
Additional Tax
Fed: 0.00
State: 0.00
Pay Rate: 9.31

THIS CHECK IS NOT VALID UNLESS IT IS SIGNED BY THE CASHIER AND THE SIGNATURE IS VERIFIED BY THE BANK

6694

SIX HUNDRED FIFTY-EIGHT AND 42 / 100 DOLLARS

08/26/2010 *****658.42

Vanessa B Temple
[REDACTED]
Central, SC 29630

30

*****1487

*****5309

SECURITY FEATURES INCLUDED. DETAILS ON BACK.



1230 Main Street
P.O. Box 29
Columbia, SC 29202-0029

3657



SC06

03301
VANESSA B TEMPLE
CENTRAL SC 29630-8810

ZE
414

Your Account(s) At A Glance
Checking Balance: 3.92+



Statement Period: June 5, 2010 Thru July 7, 2010

Account Number: [REDACTED]



FREE CHECKING

Account Number: [REDACTED]

Enclosures In Statement: 0

Beginning Balance	12.45+	Statement Period Days	33
2 Deposits	170.00+	Average Ledger Balance	5.00-
1 Other Credits	38.00+		
1 Checks	41.00-		
10 Other Debits	175.53-		
Monthly Service Charge	0.00		
Ending Balance	3.92+		

Deposits To Your Account

Date	Description	Amount
06-21	Customer Deposit	120.00
06-24	Customer Deposit	50.00
Total		170.00

Other Credits To Your Account

Date	Description	Amount
06-21	Service Charge Refund	38.00
Total		38.00

Checks Paid From Your Account

Check No.	Date	Amount
657	06-28	41.00

*Prior Check Number(s) Not Included or Out of Sequence

Other Debits From Your Account

Date	Description	Amount
06-07	FDR Debit Card Visa Debit Hot Spot # 8001 Greenville SC	6.10
06-07	FDR Debit Card Visa Debit McDonald's F10067 Greenville SC	3.24
06-09	Purchase [REDACTED] ATM 612832 Seq # 59565	3.00
	Spinx #199 7252 Moorefield Liberty SC	
06-09	Overdrawn Account Fee	5.00
06-10	Insufficient Funds Fee from 060910	33.00
06-16	Insufficient Funds Fee from 061510	33.00
06-21	Withdrawal 10 State Park Ro Greenville SC X947 06-21 [REDACTED]	40.00



Direct Customer Inquiry Calls To
FIRST CITIZENS
Hotline At 1-888-612-4444.

Page 1 of 3

405

407

3657

Statement Period: June 5, 2010 Thru July 7, 2010

Account Number: 1111111111

Other Debits From Your Account

Date	Description	Amount
06-22	FDR Debit Card Visa Debit McDonald's F6142 Pickens SC	2.18
06-22	FDR Debit Card Visa Debit Murphy6940atwalmart Central SC	30.00
06-28	FDR Debit Card Visa Debit Murphy6940atwalmart Central SC	20.01
Total		175.53

	Total Statement Cycle	Total Year-To-Date
Total Overdraft Fees	5.00	5.00
Total Return Item Fees	66.00	66.00

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
06-07	3.11+	06-16	70.89-	06-24	64.93+
06-09	4.89-	06-21	47.11+	06-28	3.92+
06-10	37.89-	06-22	14.93+		

Get \$50 when you refer a friend to First Citizens. For details, visit FirstCitizensonline.com/refer-a-friend or stop by your local branch.

Go Green, Go Paperless. It's good for the environment and good for you, too. When you receive your statement through Online Banking you'll reduce your monthly paperwork and your risk of fraud. To switch to e-statements, just click on the Customer Service tab in Online Banking. If you're not enrolled in Online Banking, visit FirstCitizensonline.com, call 888-612-4444 or visit your local branch to sign up.

Enclosed is our annual privacy notification to you. You may receive this notification more than one time if you have multiple accounts with us. Please review it and be assured that we are committed to protecting your privacy.



03301

3657



Statement Period: June 5, 2010 Thru July 7, 2010

Account Number: [REDACTED]

FOLLOW THESE EASY STEPS TO BALANCE YOUR CHECKING ACCOUNT

- 1 Write here the ending balance shown on the front of this statement
- 2 Add deposits not credited in this statement (Use table A.)
- 3 Total of lines 1 and 2.
- 4 Checks and other debits outstanding not charged to your account. (Use table B.)
- 5 Subtract line 4 from line 3. This should be your current checkbook balance.

1	\$	
2	+\$	
3	= \$	
4	-\$	
5	= \$	

A. Deposits/Credits

Date	Amount
Total Amount	

B. Outstanding Checks/Debits

Number	Amount
Total Amount	

Note: If your statement does not balance, please check to be sure you have entered in your check register all automatic transactions (service charges, advances, payments, drafts etc.) shown on the front of your statement. Please notify the Bank promptly of any discrepancy in your account statement.

How to Compute Interest Charges on Your Line of Credit

We figure the interest charge on your account by applying the periodic rate to your "average daily balance" (including current transactions). To get the "average daily balance," we first determine the daily balance of your Account each day. For SC accounts, we take the beginning balance of your account each day, add any new advances and charges, and subtract any new payments or credits (for GA accounts we also subtract unpaid interest charges, credit insurance premiums, and other fees and charges). These calculations give us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "average daily balance." Next, we multiply the "average daily balance" by the daily periodic rate applicable to your account. The daily periodic rate is determined by dividing the Annual Percentage Rate by 365. That result is then multiplied by the number of days in the billing cycle to obtain the monthly interest charge. Automatic payment debits are posted to your account after your "average daily balance" is calculated. Interest charges and any credit insurance premiums that accrue during each billing cycle are added to the balance of your account on the last day of the billing cycle prior to the calculation of your minimum payment.

Variable Rate. Unless the terms of your revolving line of credit specify that the rate is fixed, your daily periodic rate and Annual Percentage Rate are variable rates subject to change each month.

What To Do If You Think You Find A Mistake On Your Statement (Consumer Accounts Only)

If you think there is an error on your statement, write to us at the address shown on page one of your statement. In your letter, give us the following information: (1) **Account information:** Your name and account number; (2) **Dollar amount:** The dollar amount of the suspected error; (3) **Description of Problem:** If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake. You must contact us within 60 days after the error appeared on your statement. You must notify us of any potential errors in writing. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question. While we investigate whether or not there has been an error, the following are true: (1) We cannot try to collect the amount in question, or report you as delinquent on that amount; (2) The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount; (3) While you do not have to pay the amount in question, you are responsible for the remainder of your balance; (4) We can apply any unpaid amount against your credit limit.

Credit History Errors. If you believe we have inaccurately reported information about your account history to a consumer reporting agency, please notify us in writing at the Bank address stated on page one of your statement.

Prompt Crediting of Payments. To receive credit for a payment on the date we receive the payment, we must receive your payment prior to 5:00 p.m. on a Bank business day (any day except Saturday, Sunday or a bank holiday). If paying at a branch or by mail, then payments must include the payment coupon. In addition, if paying by mail, payment must be mailed to the specific address furnished by the Bank. Payments received at any of our ATMs, payments received on a business day after 5:00 p.m.; payments received at a branch or by mail without a coupon; and, payments received on a day that is not a Bank business day, will be credited to your account no later than the next Bank business day.

Preauthorized Deposits. If direct deposits are made to your account at least every 60 days by the same person or entity, you can call us at the telephone number shown on page one of your statement to find out whether the deposit has been made.

In Case of Errors or Questions About Your Electronic Transfers (Consumer Accounts Only). If you think your statement or receipt is wrong or if you need more information about a transfer on a statement or receipt, telephone or write us as soon as you can at the telephone number or address which appears on page one of your statement. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared. You must: (1) tell us your name and account number; (2) describe the error or the transfer you are unsure about (including the date it occurred), and explain as clearly as you can why you believe it is in error or why you need more information; and (3) tell us the dollar amount of the suspected error. We will investigate your complaint and correct any error promptly. We may take up to 45 days to complete our investigation (90 days for transfers initiated outside the U.S. or resulting from point-of-sale debit-card transactions). If we take more than 10 business days (5 days for certain Visa® Check Card transactions; 20 days for certain new accounts), we will recredit your account for the amount you think is in error, so that you will have the use of the money during the time it takes to complete our investigation.



1230 Main Street
PO Box 29
Columbia, SC 29202-0029



SC08

03298

VANESSA B TEMPLE

CENTRAL SC 29630-8810

ZE
414

Your Account(s) At A Glance
Checking
Balance 1,733.63+

Statement Period: July 8, 2010 Thru August 5, 2010

Account Number: [REDACTED]



FREE CHECKING

Account Number: [REDACTED]

Enclosures In Statement: 0

Beginning Balance	3.92+	Statement Period Days	29
0 Deposits	0.00	Average Ledger Balance	941.00+
3 Other Credits	5,851.88+		
9 Checks	1,912.22-		
26 Other Debits	2,209.95-		
Monthly Service Charge	0.00		
Ending Balance	1,733.63+		

Other Credits To Your Account

Date	Description	Amount
07-26	Univ Credit *****2274	2,727.58
07-28	UI Benefit *****7363	2,808.00
07-29	Payroll *****7363	316.30
Total		5,851.88

Checks Paid From Your Account

Check No.	Date	Amount	Check No.	Date	Amount	Check No.	Date	Amount
660	07-27	30.00	663	07-28	183.55	666	07-29	60.00
661	07-27	700.00	664	08-02	45.00	667	07-30	500.00
662	07-28	42.67	665	07-29	51.00	668	08-02	300.00

*Prior Check Number(s) Not Included or Out of Sequence.

Other Debits From Your Account

Date	Description	Amount
07-27	Purchase [REDACTED] 07-27 ATM 001 Seq # 1099	223.09
07-27	Vzwiss Debitma Vzwiss Debitma Warren NJ	
07-27	Withdrawal 10 State Park Ro Greenville SC X947 07-26 [REDACTED]	200.00
07-28	Purchase [REDACTED] 07-27 ATM 064100 Seq # 50445	391.85
07-28	Wal-Mart Super 0641 Wal-Sams Gr Eenville (Ws C	
07-28	Purchase [REDACTED] 07-27 ATM Lk5447 Seq # 35167	45.12
07-28	Westside Quick 821 W Parker RD Greenville S C	
07-29	Withdrawal Clemson Main Clemson SC X998 07-29 [REDACTED]	300.00
07-29	Purchase [REDACTED] 07-29 ATM 298271 Seq # 6183	169.79
07-29	USPS 4514200630 1205 W Main St C Entral SC	
07-29	Purchase [REDACTED] 07-29 ATM Lk4916 Seq # 58795	35.00
07-29	Slop A Minit 12 578 W Main St Li Berty SC	



Direct Customer Inquiry Calls To
FIRST CITIZENS
Hotline At 1-888-612-4444.

Page 1 of 3

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03298



Statement Period: July 8, 2010 Thru August 5, 2010

Account Number: 3657

FOLLOW THESE EASY STEPS TO BALANCE YOUR CHECKING ACCOUNT

1. Write here the ending balance shown on the front of this statement.
2. Add deposits not credited in this statement. (Use table A.)
3. Total of lines 1 and 2.
4. Checks and other debits outstanding not charged to your account. (Use table B.)
5. Subtract line 4 from line 3. This should be your current checkbook balance.

1	\$	
2	+\$	
3	= \$	
4	- \$	
5	= \$	

B. Outstanding Checks/Debits

Number	Amount
Total Amount	

A. Deposits/Credits

Date	Amount
Total Amount	

Note: If your statement does not balance, please check to be sure you have entered in your check register all automatic transactions (service charges, advances, payments, drafts etc.) shown on the front of your statement. Please notify the Bank promptly of any discrepancy in your account statement.

How to Compute Interest Charges on Your Line of Credit. We figure the interest charge on your account by applying the periodic rate to your "average daily balance" (including current transactions). To get the "average daily balance," we first determine the daily balance of your Account each day. For SC accounts, we take the beginning balance of your account each day, add any new advances and charges, and subtract any new payments or credits (for GA accounts we also subtract unpaid interest charges, credit insurance premiums, and other fees and charges). These calculations give us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "average daily balance." Next, we multiply the "average daily balance" by the daily periodic rate applicable to your account. The daily periodic rate is determined by dividing the Annual Percentage Rate by 365. That result is then multiplied by the number of days in the billing cycle to obtain the monthly interest charge. Automatic payment debits are posted to your account after your "average daily balance" is calculated. Interest charges and any credit insurance premiums that accrue during each billing cycle are added to the balance of your account on the last day of the billing cycle prior to the calculation of your minimum payment.

Variable Rate. Unless the terms of your revolving line of credit specify that the rate is fixed, your daily periodic rate and Annual Percentage Rate are variable rates subject to change each month.

What To Do If You Think You Find A Mistake On Your Statement (Consumer Accounts Only). If you think there is an error on your statement, write to us at the address shown on page one of your statement. In your letter, give us the following information: (1) **Account Information:** Your name and account number. (2) **Dollar amount:** The dollar amount of the suspected error. (3) **Description of Problem:** If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake. You must contact us within 60 days after the error appeared on your statement. You must notify us of any potential errors in writing. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question. While we investigate whether or not there has been an error, the following are true: (1) We cannot try to collect the amount in question, or report you as delinquent on that amount; (2) The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount; (3) While you do not have to pay the amount in question, you are responsible for the remainder of your balance; (4) We can apply any unpaid amount against your credit limit.

Credit History Errors. If you believe we have inaccurately reported information about your account history to a consumer reporting agency, please notify us in writing at the Bank address stated on page one of your statement.

Prompt Crediting of Payments. To receive credit for a payment on the date we receive the payment, we must receive your payment prior to 5:00 p.m. on a Bank business day (any day except Saturday, Sunday or a bank holiday). If paying at a branch or by mail, then payments must include the payment coupon. In addition, if paying by mail, payment must be mailed to the specific address furnished by the Bank. Payments received at any of our ATM's payments received on a business day after 5:00 p.m.; payments received at a branch or by mail without a coupon; and, payments received on a day that is not a Bank business day, will be credited to your account no later than the next Bank business day.

Preauthorized Deposits. If direct deposits are made to your account at least every 60 days by the same person or entity, you can call us at the telephone number shown on page one of your statement to find out whether the deposit has been made.

In Case of Errors or Questions About Your Electronic Transfers (Consumer Accounts Only). If you think your statement or receipt is wrong or if you need more information about a transfer on a statement or receipt, telephone or write us as soon as you can at the telephone number or address which appears on page one of your statement. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared. You must: (1) tell us your name and account number; (2) describe the error or the transfer you are unsure about (including the date it occurred), and explain as clearly as you can why you believe it is in error or why you need more information; and (3) tell us the dollar amount of the suspected error. We will investigate your complaint and correct any error promptly. We may take up to 45 days to complete our investigation (90 days for transfers initiated outside the U.S. or resulting from point-of-sale debit-card transactions). If we take more than 10 business days (5 days for certain Visa® Check Card transactions, 20 days for certain new accounts), we will recredit your account for the amount you think is in error, so that you will have the use of the money during the time it takes to complete our investigation.

Statement Period: July 8, 2010 Thru August 5, 2010

Account Number: 3607

Other Debits From Your Account

Date	Description	Amount
07-29	FDR Debit Card Visa Debit McDonald's F10067 Greenville SC	21.32
07-29	FDR Debit Card Visa Debit McDonald's F10067 Greenville SC	11.96
07-30	Purchase 07-30 ATM 432220 Seq # 3151	82.91
07-30	Wal-Mart #3222 1286 Eighteen Mi LeCentral SC	62.48
07-30	FDR Debit Card Visa Debit Rugged Wearhouse-Ander Anderson SC	41.47
07-30	Purchase 07-29 ATM 119800 Seq # 16378	
07-30	Target T1198 An 3519 Clemson Blv Anderson SC	
07-30	Purchase 07-29 ATM 077590 Seq # 3709	10.59
08-02	Kmart 3801 B Clemson B LvAnderson S C	
08-02	Purchase 07-31 ATM 000000 Seq # 26100	64.14
08-02	Jcpenney Store 6101 Calhoun Mem Easley SC	
08-02	Purchase 07-31 ATM 007235 Seq # 84225	58.84
08-02	Shoe Dept 0723 Rockville Center Easley SC	
08-02	FDR Debit Card Visa Debit Clemson Cleaners Clemson SC	39.82
08-02	Purchase 08-02 ATM 298271 Seq # 5248	6.64
08-02	USPS 4514200630 1205 W Main St C Entral SC	
08-02	FDR Debit Card Visa Debit Murphy6940atwalmart Central SC	30.00
08-03	Purchase 08-03 ATM 432220 Seq # 9265	78.00
08-03	Wal-Mart #3222 1286 Eighteen Mi LeCentral SC	
08-03	Purchase 08-03 ATM 000812 Seq # 51600	62.04
08-03	Hibbett Sports 1280 Eighteen Mi Central SC	
08-04	Purchase 08-03 ATM 006532 Seq # 54700	95.40
08-04	Hibbett Sports 1526 Poinsett Hw Greenville SC	
08-04	FDR Debit Card Visa Debit Great Wall II Greenville SC	20.68
08-04	FDR Debit Card Visa Debit Rugged Wearhouse-Ander Anderson SC	9.53
08-04	FDR Debit Card Visa Debit Murphy6940atwalmart Central SC	35.00
08-05	Purchase 08-05 ATM 322200 Seq # 86056	60.99
08-05	Wal-Mart Super 3222 Wal-Sams Ce Ntral SC	
08-05	Purchase 08-05 ATM 000812 Seq # 72800	53.49
08-05	Hibbett Sports 1280 Eighteen Mi Central SC	
Total		2,209.95

	Total Statement Cycle	Total Year-To-Date
Total Overdraft Fees	0.00	5.00
Total Return Item Fees	0.00	66.00

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
07-26	2,731.50+	07-29	3,390.45+	08-03	2,008.72+
07-27	1,578.41+	07-30	2,693.00+	08-04	1,848.11+
07-28	3,723.22+	08-02	2,148.76+	08-05	1,733.63+

August 31, 2010

I Vanessa Bradley Temple do hereby verify I am submitting 1 pay check stub and a notice from my employer to verify my income. I was offered employment with the [REDACTED] on July 22, 2010, my first day of employment was August 6, 2010. My first paycheck is dated August 26, 2010 (included).

Vanessa Bradley Temple
Signature

August 31, 2010

I Vanessa Bradley Temple do hereby verify I do not pay Homeowner Association dues. The community in which my property, [REDACTED] Central, SC 29630, is located does not have a Homeowner Association.

Vanessa Bradley Temple
Signature

♦ ♦ ♦ ♦ ♦
♦ ♦ ♦ ♦ ♦
♦ ♦ ♦ ♦ ♦

ROGERS TOWNSEND & THOMAS, PC
ATTORNEYS AND COUNSELORS AT LAW

Default Services Department Attorneys

Samuel C. Waters	Cheryl H. Fisher	Reginald P. Corley	Jennifer W. Rubin	Ellie C. Floyd
Michael P. Morris	Mary R. Powers	Robert P. Davis	William S. Koehler	
Eve Moredock Stacey	Kelsey K. Brockbank	John P. Fetner	Kevin T. Hardy	Benjamin J. Powell

June 22, 2010

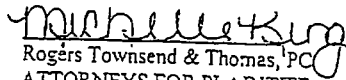
Mr. R. Murray Hughes
Special Referee for Pickens County
Post Office Box 1389
Pickens, SC 29671

Re: JPMorgan Chase Bank, National Association vs. Vanessa Bradley
Case No. 08-CP-39-2120; Pickens County
Our File No. 011671-01281

Dear Sir/Madam:

I am enclosing originals and copies of a proposed Supplemental Order and Notice of Sale on the above-referenced case. If this order meets with your approval, please sign and have clocked copies returned to me in the envelope provided. We are planning to advertise this property for the next available sales date, so please let us know if there are any problems. Thank you for your kind assistance in this matter. Do not hesitate to contact me should you have any questions or need anything further.

Sincerely,

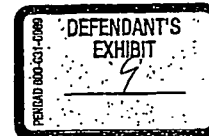

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)	Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453)	Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635)	Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300)	Mary R. Powers (SC Bar #16334)
Robert P. Davis (SC Bar # 74030)	William S. Koehler (SC Bar # 74935)
Kevin T. Hardy (SC Bar #75015)	Benjamin J. Powell (SC Bar #77205)
John P. Fetner (SC Bar # 77460)	Kelsey K. Brockbank (SC Bar # 77519)

220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

/msk
Enclosures.
cc: Vanessa Y. Bradley

Central, SC 29630





ROGERS TOWNSEND & THOMAS, PC
ATTORNEYS AND COUNSELORS AT LAW

Default Services Department Attorneys

Samuel C. Waters	Cheryl H. Fisher	Reginald P. Corley	Jennifer W. Rubin	Ellie C. Floyd
Michael P. Morris	Mary R. Powers	Robert P. Davis	William S. Kochler	Shawn R. Willis
Eve Moredock Stacey	Kelsey K. Brockbank	John P. Fetner	Kevin T. Hardy	Benjamin J. Powell

August 13, 2010

Mr. R. Murray Hughes
Special Referee for Pickens County
Post Office Box 1389
Pickens, SC 29671

Re: JPMorgan Chase Bank, National Association vs. Vanessa Bradley
Case No. 08-CP-39-2120; Pickens County
Our File No. 011671-01281

Dear Sir/Madam:

I am enclosing originals and copies of a proposed Supplemental Order and Notice of Sale on the above-referenced case. If this order meets with your approval, please sign and have clocked copies returned to me in the envelope provided. We are planning to advertise this property for the next available sales date, so please let us know if there are any problems. Thank you for your kind assistance in this matter. Do not hesitate to contact me should you have any questions or need anything further.

Sincerely,

Michelle King

Paralegal for:

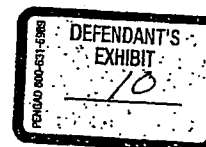
Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar #68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar #5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar #74030) Shawn R. Willis (SC Bar #71155)
William S. Kochler (SC Bar #74935) Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205) John P. Fetner (SC Bar #77460)
Kelsey K. Brockbank (SC Bar #77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

/msk

Enclosures.

cc: Vanessa Y. Bradley

Central, SC 29630



Occupant

Central, SC 29630

415

417

Loan Number 3657

Investor Loan # _____

HOME AFFORDABLE MODIFICATION TRIAL PERIOD PLAN (Step One of Two-Step Documentation Process)

Trial Period Plan Effective Date: JULY 01, 2009

Borrower ("I"): VANESSA Y BRADLEY

Lender ("Lender"): JPMORGAN CHASE BANK, NA, SUCCESSOR TO WASHINGTON MUTUAL BANK

Date of first lien Security Instrument ("Mortgage") and Note ("Note"): January 30, 2001

Loan Number: 3657

Property Address ("Property"): _____ CENTRAL, SOUTH CAROLINA 29630

If I am in compliance with this Trial Period Plan (the "Plan") and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Home Affordable Modification Agreement ("Modification Agreement"), as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage. The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Plan and not defined have the meaning given to them in the Loan Documents.

If I have not already done so, I am providing confirmation of the reasons I cannot afford my mortgage payment and documents to permit verification of all of my income (except that I understand that I am not required to disclose any child support or alimony unless I wish to have such income considered) to determine whether I qualify for the offer described in this Plan (the "Offer"). I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of this Plan if I qualify for the Offer or will send me written notice that I do not qualify for the Offer. This Plan will not take effect unless and until both I and the Lender sign it and Lender provides me with a copy of this Plan with the Lender's signature.

1. My Representations. I certify, represent to Lender and agree:

- A. I am unable to afford my mortgage payments for the reasons indicated in my Hardship Affidavit and as a result, (i) I am either in default or believe I will be in default under the Loan Documents in the near future, and (ii) I do not have sufficient income or access to sufficient liquid assets to make the monthly mortgage payments now or in the near future;
- B. I live in the Property as my principal residence, and the Property has not been condemned;
- C. There has been no change in the ownership of the Property since I signed the Loan Documents;
- D. I am providing or already have provided documentation for all income that I receive (and I understand that I am not required to disclose any child support or alimony that I receive, unless I wish to have such income considered to qualify for the Offer);
- E. Under penalty of perjury, all documents and information I have provided to Lender pursuant to this Plan, including the documents and information regarding my eligibility for the program, are true and correct; and
- F. If Lender requires me to obtain credit counseling, I will do so.

If there is more than one Borrower or Mortgagor executing this document, each is referred to as "I". For purposes of this document words signifying the singular (such as "I") shall include the plural (such as "we") and vice versa where appropriate.

HOME AFFORDABLE MODIFICATION TRIAL PERIOD PLAN - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3155 3/09 (rev. 3/09) (page 1 of 3 pages)



EXHIBIT 1



Loan Number ~~2015~~ 3657

2. The Trial Period Plan. On or before each of the following due dates, I will pay the Lender the amount set forth below ("Trial Period Payment"), which includes payment for Escrow items, including real estate taxes, insurance premiums and other fees, if any, of U.S. \$517.29.

Trial Period Payment #	Trial Period Payment	Due Date On or Before
1	\$517.29	07/01/2009
2	\$517.29	08/01/2009
3	\$517.29	09/01/2009

The Trial Period Payment is an estimate of the payment that will be required under the modified loan terms, which will be finalized in accordance with Section 3 below.

During the period (the "Trial Period") commencing on the Trial Period Effective Date and ending on the earlier of: (i) the first day of the month following the month in which the last Trial Period Payment is due (the "Modification Effective Date") or (ii) termination of this Plan, I understand and acknowledge that:

- A. TIME IS OF THE ESSENCE under this Plan;
- B. Except as set forth in Section 2.C. below, the Lender will suspend any scheduled foreclosure sale, provided I continue to meet the obligations under this Plan, but any pending foreclosure action will not be dismissed and may be immediately resumed from the point at which it was suspended if this Plan terminates, and no new notice of default, notice of intent to accelerate, notice of acceleration, or similar notice will be necessary to continue the foreclosure action, all rights to such notices being hereby waived to the extent permitted by applicable law;
- C. If my property is located in Georgia, Hawaii, Missouri, or Virginia and a foreclosure sale is currently scheduled, the foreclosure sale will not be suspended and the lender may foreclose if I have not made each and every Trial Period Payment that is due before the scheduled foreclosure sale. If a foreclosure sale occurs pursuant to this Section 2.C., this agreement shall be deemed terminated;
- D. The Lender will hold the payments received during the Trial Period in a non-interest bearing account until they total an amount that is enough to pay my oldest delinquent monthly payment on my loan in full. If there is any remaining money after such payment is applied, such remaining funds will be held by the Lender and not posted to my account until they total an amount that is enough to pay the next oldest delinquent monthly payment in full;
- E. When the Lender accepts and posts a payment during the Trial Period it will be without prejudice to, and will not be deemed a waiver of, the acceleration of the loan or foreclosure action and related activities and shall not constitute a cure of my default under the Loan Documents unless such payments are sufficient to completely cure my entire default under the Loan Documents;
- F. If prior to the Modification Effective Date, (i) the Lender does not provide me a fully executed copy of this Plan and the Modification Agreement; (ii) I have not made the Trial Period payments required under Section 2 of this Plan; or (iii) the Lender determines that my representations in Section 1 are no longer true and correct, the Loan Documents will not be modified and this Plan will terminate. In this event, the Lender will have all of the rights and remedies provided by the Loan Documents, and any payment I make under this Plan shall be applied to amounts I owe under the Loan Documents and shall not be refunded to me; and



Loan Number 3657

G. I understand that the Plan is not a modification of the Loan Documents and that the Loan Documents will not be modified unless and until (i) I meet all of the conditions required for modification, (ii) I receive a fully executed copy of a Modification Agreement, and (iii) the Modification Effective Date has passed. I further understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Plan.

3. The Modification. I understand that once Lender is able to determine the final amounts of unpaid interest and any other delinquent amounts (except late charges) to be added to my loan balance and after deducting from my loan balance any remaining money held at the end of the Trial Period under Section 2.D. above, the Lender will determine the new payment amount. If I comply with the requirements in Section 2 and my representations in Section 1 continue to be true in all material respects, the Lender will send me a Modification Agreement for my signature which will modify my Loan Documents as necessary to reflect this new payment amount and waive any unpaid late charges accrued to date. Upon execution of a Modification Agreement by the Lender and me, this Plan shall terminate and the Loan Documents, as modified by the Modification Agreement, shall govern the terms between the Lender and me for the remaining term of the loan.

4. Additional Agreements. I agree to the following:

- A. That all persons who signed the Loan Documents or their authorized representative(s) have signed this Plan, unless a borrower or co-borrower is deceased or the Lender has waived this requirement in writing.
- B. To comply, except to the extent that they are modified by this Plan, with all covenants, agreements, and requirements of Loan Documents, including my agreement to make all payments of taxes, insurance premiums, assessments, Escrow Items, impounds, and all other payments, the amount of which may change periodically over the term of my loan.
- C. That this Plan constitutes notice that the Lender's waiver as to payment of Escrow Items, if any, has been revoked, and I have been advised of the amount needed to fully fund my Escrow Account.
- D. That all terms and provisions of the Loan Documents remain in full force and effect; nothing in this Plan shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents. The Lender and I will be bound by, and will comply with, all of the terms and provisions of the Loan Documents.

In Witness Whereof, the Lender and I have executed this Plan.

Lender JPMORGAN CHASE BANK, NA, SUCCESSOR TO WASHINGTON MUTUAL BANK

By: _____

Date _____

x Vanessa Y. Bradley
Borrower - VANESSA Y. BRADLEY

(Seal) Date: 6/21/09

HOME AFFORDABLE MODIFICATION TRIAL PERIOD PLAN - Single Family - Farinto Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3156 3/09 (rev. 3/09) (page 3 of 3 pages)



Loan Number 015657

Chase Fulfillment Center
PO BOX 469050
Glendale, CO 80246-9050

CHASE

March 04, 2010

VANESSA Y BRADLEY
CENTRAL, SOUTH CAROLINA 29630

Statement of Eligibility for Loan Modification
Account: 015657 (the "Loan")
Property Address: CENTRAL, SOUTH CAROLINA 29630

Dear Mortgagor(s):

Chase Home Finance LLC ("Chase") is writing in response to your recent request regarding a loan modification on the above-referenced account. After researching your account, we have determined that you do not qualify for a modification through the Making Home Affordable ("MHA") modification program at this time; however, we are happy to tell you that you may be eligible for other modification programs offered by Chase. You will be hearing from us regarding the other programs we have available for you very soon.

Federal guidelines require lenders to disclose why you did not qualify for the MHA program. You have been deemed ineligible for the MHA program for the following reason(s):

The Home Affordable Modification Program requires a calculation of the Net Present Value (NPV) of a modification using a formula developed by the Department of the Treasury. The NPV calculation requires us to input certain financial information about your income and your Loan including the factors listed below. When combined with other data in the Treasury model, these inputs estimate the cash flow the investor (owner) of your Loan is likely to receive if the Loan is modified and the investor's cash flow if the Loan is not modified. Based on the NPV results, the owner of your Loan has not approved a modification.

If we receive a request from you within thirty (30) calendar days from the date of this letter, we will provide you with the date the NPV calculation was completed and the input values noted below. If, within thirty (30) calendar days of receiving this information you provide us with evidence that any of these input values are inaccurate, and those inaccuracies are material, for example a significant difference in your gross monthly income or an inaccurate zip code, we will conduct a new NPV evaluation. While there is no guarantee that a new NPV evaluation will result in the owner of your Loan approving a modification, we want to ensure that the NPV evaluation is based on accurate information.

Available NPV Inputs:

OP363-AA

EXHIBIT 2



- A. Unpaid balance on the original Loan as of the date we reviewed your Loan
- B. Interest rate before modification as of the date we reviewed your Loan
- C. Months delinquent as of the date we reviewed your Loan
- D. Next ARM reset date (if applicable)
- E. Next ARM reset rate (if applicable)
- F. Principal and interest payment before modification
- G. Monthly insurance payment
- H. Monthly real estate taxes
- I. Monthly Homeowner Association fees (if applicable)
- J. Monthly gross income
- K. Borrower's Total Monthly Obligations
- L. Borrower FICO
- M. Co-borrower FICO (if applicable)
- N. Zip Code
- O. State

If your Loan is delinquent, we may be able to offer other alternatives to help avoid the negative impact a possible foreclosure may have on your credit rating, the risk of a deficiency judgment being filed against you, and the possible adverse tax effects of a foreclosure on your Property. If you are interested in discussing these possible alternatives, please contact us immediately at (888) 708-7105.

We hope you will find the alternative offers to the federal program acceptable. If you feel the offer we send you is unacceptable and if you intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available for you to consider. If you are interested in discussing these possible alternatives, please contact our Homeowner's Assistance Department immediately at (888) 708-7105.

If you intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available for you to consider:

- **Forbearance Plan:** A temporary reduction in your current payment to provide time for you to improve your financial circumstances.
- **Repayment Plan:** An agreement structured to cure the delinquency over a period of months while continuing to make contractual payments.
- **Refinancing Settlement:** Use of an external lender to pay off the Loan, possibly for less than the full amount owed.

If you do not intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available for you to consider:

- **Short Sale of the Property,** where we may accept less than the full amount owed.*
- **Deed-in-Lieu of Foreclosure,** whereby you deed the Property to your servicer in exchange for forgiveness of all or a portion of the Loan.*
- * Forgiveness of debt may have federal tax consequences. Consult with a tax professional.

As indicated in your trial plan documentation, if your existing Loan did not include escrows, Chase started to review your property tax and insurance obligations in order to establish an escrow account. As a result, we may have paid items on your behalf. In that case, if any escrow items were paid during the trial period, your mortgage payment will be adjusted to include an amount necessary to repay those funds over a sixty (60) month re-payment period. If your account was not escrowed prior to the trial period, your account will remain non-escrowed, and you will be responsible for any past due tax or insurance obligations and all items going forward. If your account was previously escrowed, your escrow account

~~SECRET~~ 3657

will remain in effect. Chase reserves the right in the future to require an escrow on your account if you fail to pay the tax and/or insurance obligations under the terms of your mortgage.

Our credit decision was based in whole or in part on information compiled from reports obtained from one of the three consumer reporting agencies listed below. These reporting agencies played no part in our decision and are unable to supply specific reasons we have denied credit to you. You have a right to receive a free copy of your report from these reporting agencies, if you request it no later than sixty (60) days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the applicable reporting agency by contacting that agency at the number provided below:

Equifax: PO BOX 740241
Atlanta, GA 30374-0241
(800) 685-1111

Experian: PO BOX 9701
Allen, TX 75013-9701
(888) 397-3742

TransUnion: PO BOX 2000
Chester, PA 19022-2000
(800) 916-8800

FEDERAL ECOA NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050.

Chase offers homeownership counseling services to borrowers in some areas. Counseling is also available through a variety of nonprofit organizations experienced in homeownership counseling and approved by the Secretary of Housing and Urban Development (HUD). A listing of such organizations may be obtained by calling the HOPE Hotline Number: (888) 995-HOPE. When you call, please ask for "MHA help."

If you have any questions, please contact us at the number provided below. At Chase, we value you as a customer and want to ensure your continued satisfaction.

Sincerely,
 Homeowner's Assistance Department
 Chase Home Finance LLC
 (888) 708-7105
 (800) 582-0542 TDD / Text Telephone

An important reminder for all our customers: As stated in the "Questions and Answers for Borrowers about the Homeowner Affordability and Stability Plan" distributed by the Obama Administration, "Borrowers should beware of any organization that attempts to charge a fee for housing counseling or modification of a delinquent loan, especially if they require a fee in advance." Chase offers loan modification assistance free of charge (i.e., no

Loan Number 3657

modification fee required). Please call us immediately at (888) 708-7105 to discuss your options. The longer you delay, the fewer options you may have.

Chase Home Finance LLC is attempting to collect a debt, and any information obtained will be used for that purpose.

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation.

FOR CALIFORNIA CUSTOMERS ONLY:

- The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at (877) FTC-HELP or www.ftc.gov.

Loan Number 0000003657

Chase Fulfillment Center
PO BOX 469030
Glendale, CO 80246-9030



August 19, 2010

VANESSA Y BRADLEY

CENTRAL, SOUTH CAROLINA 29630

Statement of Eligibility for Loan Modification

Account: 0000003657 (the "Loan")

Property Address: 0000000000000000

CENTRAL, SOUTH CAROLINA 29630

Dear Mortgagor(s):

Chase Home Finance LLC ("Chase") is writing in response to your recent request regarding a loan modification on the above-referenced account. After researching your account, we have determined that you do not qualify for a modification through the Making Home Affordable ("MHA") modification program or through other modification programs offered by Chase at this time. You have been deemed ineligible for the following reason(s):

The Home Affordable Modification Program requires a calculation of the Net Present Value (NPV) of a modification using a formula developed by the Department of the Treasury. The NPV calculation requires us to input certain financial information about your income and your Loan including the factors listed below. When combined with other data in the Treasury model, these inputs estimate the cash flow the investor (owner) of your Loan is likely to receive if the Loan is modified and the investor's cash flow if the Loan is not modified. Based on the NPV results, the owner of your Loan has not approved a modification.

If we receive a request from you within thirty (30) calendar days from the date of this letter, we will provide you with the date the NPV calculation was completed and the input values noted below. If, within thirty (30) calendar days of receiving this information you provide us with evidence that any of these input values are inaccurate, and those inaccuracies are material, for example a significant difference in your gross monthly income or an inaccurate zip code, we will conduct a new NPV evaluation. While there is no guarantee that a new NPV evaluation will result in the owner of your Loan approving a modification, we want to ensure that the NPV evaluation is based on accurate information.

Available NPV Inputs:

- A. Unpaid balance on the original Loan as of the date we reviewed your Loan
- B. Interest rate before modification as of the date we reviewed your Loan
- C. Months delinquent as of the date we reviewed your Loan
- D. Next ARM reset date (if applicable)
- E. Next ARM reset rate (if applicable)
- F. Principal and interest payment before modification
- G. Monthly insurance payment

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Page: 1 of 4

EXHIBIT 3



423

425

- H. Monthly real estate taxes
- I. Monthly Homeowner Association fees (if applicable)
- J. Monthly gross income
- K. Borrower's Total Monthly Obligations
- L. Borrower FICO
- M. Co-borrower FICO (if applicable)
- N. Zip Code
- O. State

Unless otherwise specifically provided for in your denial reason description, you have thirty (30) days from the date of this letter to contact Chase to discuss the reason for non-approval under the Home Affordable Modification Program or to discuss alternative loss mitigation options that may be available to you. Your loan may be referred to foreclosure during this time, or any pending foreclosure action may continue. However, no foreclosure sale will be conducted and you will not lose your home during this thirty (30) day period.

If your loan is delinquent, we may be able to offer other alternatives to help avoid the negative impact a possible foreclosure may have on your credit rating, the risk of a deficiency judgment being filed against you, and the possible adverse tax effects of a foreclosure on your Property. If you are interested in discussing these possible alternatives, please contact us immediately at (888) 708-7105.

If you intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available for you to consider:

- **Forbearance Plan:** A temporary reduction in your current payment to provide time for you to improve your financial circumstances.
- **Repayment Plan:** An agreement structured to cure the delinquency over a period of months while continuing to make contractual payments.
- **Refinancing Settlement:** Use of an external lender to pay off the Loan, possibly for less than the full amount owed.

If you do not intend to retain the Property and cannot cure a delinquency, one of the following workout options may be available to you under the Home Affordable Foreclosure Alternatives ("HAFA") program:

- **Short Sale of the Property,** where we may accept less than the full amount owed.*
- **Deed-in-Lieu of Foreclosure,** whereby you deed the Property to your servicer in exchange for forgiveness of all or a portion of the Loan.*

* Forgiveness of debt may have federal tax consequences. Consult with a tax professional.

If your existing Loan did not include escrows, Chase may have started to review your property tax and insurance obligations in order to establish an escrow account. As a result, we may have paid items on your behalf. We may at our option continue to now require escrows on your account, or require that you repay any advances over no less than twelve (12) months. You will be responsible for any past due tax or insurance obligations and all items going forward. If your account was previously escrowed, your escrow account will remain in effect.

Our credit decision was based in whole or in part on information compiled from reports obtained from one or more of the three consumer reporting agencies listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. These reporting agencies played no part in our decision and are unable to supply specific reasons we have denied credit to you. You have a right to receive a free copy of your report from these reporting agencies, if you request it no later than sixty (60) days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the applicable reporting agency by contacting that agency at the number provided below:

Loan Number 13657

Equifax: PO BOX 740241
Atlanta, GA 30374-0241
(800) 685-1111

Experian: PO BOX 9701
Allen, TX 75013-9701
(888) 397-3742

TransUnion: PO BOX 2000
Chester, PA 19022-2000
(800) 916-8800

FEDERAL ECOA NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-8050.

If you have questions about the Program or this Borrower Notice, please contact us at (888) 708-7105. You may also contact the U.S. Treasury sponsored HOPE Hotline Number (888) 995-HOPE and ask for "MHA Help". Assistance is free of charge. Chase also offers homeownership counseling services to borrowers in some areas; please contact us at the number below for information.

If you have any questions, please contact your relationship manager or call the number provided below. At Chase, we value you as a customer and want to ensure your continued satisfaction.

Sincerely,
Homeowner's Assistance Department
Chase Home Finance LLC
(888) 708-7105
(800) 582-0542 TDD / Text Telephone
(866) 221-1019 Fax

Chase Home Finance LLC is attempting to collect a debt, and any information obtained will be used for that purpose.

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation.

FOR CALIFORNIA CUSTOMERS ONLY:

- For California customers, the state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene

Loan Number [REDACTED] 3657

language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at (877) FTC-HELP or www.ftc.gov.

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Page 4 of 4

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428

Chase Fulfillment Center
PO BOX 469030
Glendale, CO 80246-9030



September 3, 2010



00004147 EMV ZA 10246 - 8015713657 P156

VANESSA Y BRADLEY

CENTRAL SC 29630

MHA Modification Request Confirmation

Account: [REDACTED] 3657 (the "Loan")

Property Address: [REDACTED]
CENTRAL, SC 29630



Dear Mortgagor(s):

Chase Home Finance LLC ("Chase") is writing to confirm receipt of your recently submitted request for a modification under the Making Home Affordable ("MHA") program. This program can help homeowners stay in their homes and avoid foreclosure by giving eligible borrowers a modified set of loan terms that promotes long-term affordability. You may even qualify for monetary incentives that will be used to pay down the principal balance of your loan if you make your modified payments on time. Generally, in order to qualify for the MHA program you will need to:

- Explain in writing the financial hardship that makes it difficult for you to pay your mortgage loan.
- Submit the required documentation of your income.
- Make timely monthly trial-period payments.
- Begin escrowing for taxes and insurance if you do not already do so.

If you meet the eligibility criteria, including submitting all of the required documentation, we will offer you a Trial Period Plan. The monthly trial period payments will be based on the income documentation that you provide. They will be an estimate of what your payment will be if we are able to modify your Loan under the terms of the program.

If you do not qualify for a loan modification, we will work with you to explore other options available to help you keep your home or ease your transition to a new home.

Additional information regarding the program and a full set of documentation that we require to evaluate your request can be found at www.chase.com/chf/mortgage/hrm_documents. To make sure the process continues without delays, please download these documents, complete them as indicated, and send them (if you have not already done so) along with the supporting documentation to the address listed in the packet. If you prefer, call us at the number listed below and we can send you a document package for you to use.

If we determine that your documentation supporting your request is incomplete, we will notify you of the specific information required. It is important that you respond to any request for additional information within the specified time period, or your modification request could be denied. Once we have all the necessary documents to evaluate your request, we will contact you with a decision within thirty (30) days thereafter.

Documentation can be mailed or faxed at the following:

Overnight/Regular Mail: Chase Fulfillment Center
4500 Cherry Creek Drive South Suite 100
Glendale, CO 80246-1518

Fax: (866) 221-1019

During the MHA eligibility evaluation period, if your home has not yet been referred to foreclosure, we will not refer it to foreclosure or sell it at a foreclosure sale. However, you may receive collection and legal notices that are required to be sent prior to filing a foreclosure action.

If your loan has already been referred to foreclosure, we will not sell it at a foreclosure sale, subject to applicable law and judicial rules that may limit our ability to prevent or cancel any pending sale. NOTE: If your initial request for evaluation was received less than seven (7) business days prior to a scheduled sale, we are not required to complete the evaluation for HAMP. Please be aware that during the evaluation period, the foreclosure process may continue at the same time. You may receive foreclosure and/or eviction notices - delivered to you by mail or in person - or you may even notice steps being taken to proceed with a foreclosure sale of your home. Do not ignore any foreclosure notices. While you will not lose your home during evaluation (subject to applicable law), to protect your rights under applicable foreclosure law, you may need to respond to these foreclosure notices or take other actions. If you have any questions about the foreclosure process and the evaluation of your modification request, contact us at (866) 550-5705.

Chase offers homeownership counseling services to borrowers in some areas. Counseling is also available through a variety of nonprofit organizations experienced in homeownership counseling and approved by the Secretary of Housing and Urban Development (HUD). A listing of such organizations may be obtained by calling the HOPE Hotline Number: (888) 995-HOPE. Assistance is free of charge to speak to HUD-approved housing counselors in understanding the Borrower Notice by asking for "MHA help."

In the meantime, please continue to make your regular monthly payments on time. Thank you for your interest in the MHA program.

If you have any questions, please contact us at the number provided below. At Chase, we value you as a customer and want to ensure your continued satisfaction.

Sincerely,
Chase Home Finance LLC
(866) 550-5705
(800) 582-0542 TDD / Text Telephone
(866) 221-1019 Fax

An important reminder for all our customers: As stated in the "Questions and Answers for Borrowers about the Homeowner Affordability and Stability Plan" distributed by the Obama Administration, "Borrowers should beware of any organization that attempts to charge a fee for housing counseling or modification of a delinquent loan, especially if they require a fee in advance." Loan modification scams should be reported to PreventLoanScams.org, or by calling (888) 995-HOPE. Chase offers loan modification assistance free of charge (i.e., no modification fee required). Please call us immediately at (866) 550-5705 to discuss your options. The longer you delay the fewer options you may have.

Chase Home Finance LLC is attempting to collect a debt, and any information obtained will be used for that purpose.

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

To the extent your original obligation has been discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation.

FOR CALIFORNIA CUSTOMERS ONLY:

- For California customers, the state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission toll-free at (877) FTC-HELP or www.ftc.gov.

OP313

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KNOWING YOUR OPTIONS

Important Notice to Occupants

Property Address:

Central S.C.

Date of Notice:

9/9/10

This property is now owned by Fannie Mae. If you are living in this property, you have several options. Fannie Mae has engaged a real estate agent to manage this property, and as an occupant of this property, to make you aware of some options that may be available. Please review the information within this notice thoroughly and contact the agent listed below immediately to advise of your intentions. If you have questions regarding your rights, you should seek the advice of an attorney – find attorneys in your area at www.findlegalhelp.org.

Option 1: Rent This Property

If you are renting this property, you might have the right to continue living in the property under your existing lease or tenancy. Many tenancies are protected by the *Protecting Tenants at Foreclosure Act of 2009* or other applicable law.

Fannie Mae also offers the following lease options to eligible occupants in eligible properties:

- ☐ 12-month term lease with relocation assistance at the end of the lease (no security deposit or credit check required)
- ☐ Month-to-month (no security deposit or credit check required)

Option 2: Relocate With Assistance

Renters and former borrowers might be eligible for financial relocation assistance to help cover expenses associated with moving. To qualify, you must:

- ☐ Sign an agreement with Fannie Mae to move out of the property
- ☐ Leave the property in broom-swept condition before you can receive payment

Next Steps – Contact Information

Call the agent listed below within 10 days to let us know if you wish to pursue either of the options described above or if you wish to purchase the property. If we do not hear from you within ten (10) days from the date of this notice, we will assume that you are not seeking any of these options, although failure to notify Fannie Mae within ten (10) days will not result in a waiver of any of your rights.

- ☐ If you communicate your desire to continue renting, a Property Manager will contact you within a few days to evaluate your lease options.
- ☐ Rent payments due should no longer be sent to the previous owner and should instead be paid to the Property Manager or the agent listed below.

Fannie Mae Assigned Real Estate Agent – Contact Information

Agent Name: Charlene Dryden
Company Name: Re/Max Foothills Realty
Company Address: 4022 Clemson Blvd. Anderson SC
Office Phone: 864-225-1202
Cell Phone: _____
E-mail: cjdryden@carol.net

If no agent contact information is provided here, or if you have any concerns regarding the broker or property manager assigned to manage your property, please call Fannie Mae at 1-800-732-6643.

ON_KYO1002F



**Fannie Mae****CONOZCA SUS OPCIONES****Notificación importante para ocupantes**

Dirección de la propiedad: _____

Fecha de notificación: _____

Esta propiedad ahora le pertenece a Fannie Mae. Si usted está viviendo en esta propiedad, tiene varias opciones. Fannie Mae ha contratado un agente de bienes raíces para administrar esta propiedad y para que usted tenga conocimiento de algunas opciones que pueden estar disponibles para usted como ocupante de esta propiedad. Por favor, revise la información incluida en esta notificación detenidamente y comuníquese con el agente indicado más abajo de inmediato para informarle sus intenciones. Si tiene preguntas acerca de sus derechos, debería solicitar la asesoría de un abogado. Busque abogados en su área en www.findlegalhelp.org

Opción 1: Alquile esta propiedad

Si está alquilando esta propiedad, es posible que tenga el derecho de continuar viviendo en la propiedad en virtud de su alquiler o arrendamiento existentes. Muchos arrendamientos están protegidos por la *Ley de Protección de Inquilinos en caso de Ejecución Hipotecaria* (Protecting Tenants at Foreclosure Act) de 2009 u otra ley aplicable.

Fannie Mae también ofrece las siguientes opciones de arrendamiento a los ocupantes elegibles de propiedades elegibles:

- ☐ Un contrato de arrendamiento de 12 meses con ayuda para reubicación al finalizar el arrendamiento (no requiere un depósito de garantía ni un análisis de crédito)
- ☐ Un arrendamiento mes a mes (no requiere un depósito de garantía ni un análisis de crédito)

Opción 2: Reubíquese con ayuda

Los inquilinos y los ex deudores pueden ser elegibles para recibir ayuda financiera para reubicación a fin de cubrir los gastos asociados con la mudanza. Para calificar, usted debe:

- ☐ Firmar un acuerdo con Fannie Mae para mudarse de la propiedad
- ☐ Dejar la propiedad en condiciones limpias antes de que pueda recibir el pago

Siguientes pasos — Información de contacto

Llame al agente indicado más abajo en un término de 10 días para informarnos si desea proceder con alguna de las opciones descritas anteriormente o si desea comprar la propiedad. Si no tenemos noticias suyas en un término de diez (10) días a partir de la fecha de esta notificación, asumiremos que usted no está solicitando ninguna de estas opciones, aunque la falta de notificación a Fannie Mae en un término de diez (10) días no provocará la renuncia a ninguno de sus derechos.

- ☐ Si usted comunica su deseo de continuar alquilando, un administrador de la propiedad se comunicará con usted en el término de unos pocos días para evaluar sus opciones de arrendamiento.
- ☐ Los pagos vencidos del alquiler ya no deberán ser enviados al propietario anterior, sino que deberán realizarse al administrador de la propiedad o al agente indicado más abajo.

Agente de bienes raíces designado por Fannie Mae — Información de contacto

Nombre del agente: Charlene Dryden
 Nombre de la compañía: Kelmax Foothills Realty
 Dirección de la compañía: 4022 Clemson Blvd, Anderson, SC
 Teléfono de la oficina: 864-225-1202
 Teléfono celular: _____
 Correo electrónico: cjdryden@carol.net

Si aquí no se proporciona ninguna información de contacto del agente o si tiene alguna inquietud acerca del corredor o del administrador de la propiedad designado para administrar su propiedad, llame a Fannie Mae al 1-800-732-6643.

ON_KYC1002F

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes
Special Referee

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank
Respondents,

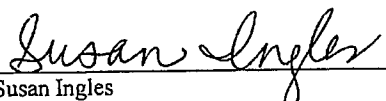
v.

Vanessa Y. Bradley
Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellant certifies that the Second Appendix to the Record on Appeal contains exhibits that were inadvertently omitted from the Record on Appeal and no additional documents have been added.

January 29, 2013


Susan Ingles
SOUTH CAROLINA LEGAL SERVICES
701 South Main Street
Greenville, SC 29601
Attorney for Appellant Vanessa Y. Bradley

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes
Special Referee

Case No. 2008-CP-39-2120

JP Morgan Chase Bank, National Bank
Respondents,

v.

Vanessa Y. Bradley
Appellant.

FINAL BRIEF OF APPELLANT

Susan Ingles
SOUTH CAROLINA LEGAL SERVICES
701 South Main Street
Greenville, SC 29601
Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Special Referee err as a matter of law when he denied the Appellant's motion to set aside the foreclosure sale of her property because holding the sale during the temporary suspension of the foreclosure action violated federal and state law set forth in HAMP, the TRO and the S.C. Supreme Court's Administrative Order governing foreclosures.
- II. Did the Special Referee err as a matter of law in holding that the forbearance granted by Respondent to Appellant did not affect Respondent's rights to move forward with the Foreclosure Sale?
- III. Did the Special Referee violate the appellant's right to procedural due process by affirming the default judgment that had lain dormant for a year and entering two (2) supplemental orders post judgment without providing a hearing and meaningful opportunity to respond?
- IV. Did the Special Referee err as a matter of law in declining to grant discovery by Appellant and an evidentiary hearing pursuant to the 2009 AO?
- V. Did the Special Referee abuse his discretion amounting to an error of law when he denied the Appellant's Motion under Rule 60(b)(3).

INTRODUCTION

"No foreclosure sale will be conducted and you will not lose your home during this 30 day period" (Chase Letters dated 8-19-10 and 9-21-10 attached to 3-14-11; R. pp. 307-312). The Respondent sold Appellant's home at a foreclosure sale during the very thirty day period referred to in this letter, thus violating of The Homes Affordable Modification Program (hereinafter referred to as both "HAMP" and "HMP"), South Carolina Supreme Court Administrative Order 2009-05-04-01 on Mortgage Foreclosures and the Home Affordable Modification Program (HMP) (herein referred to as the "TRO") and the S.C. Supreme Court Administrative Order 2009-05-22-01 which rescinded and replaced the TRO (hereinafter referred to as the "2009

AO") in the process. These federal and state law imperatives required Mortgagees¹ to evaluate borrowers for loan modification and provide mortgagors the opportunity to challenge the decision on their application for modification. The Appellant's loan was subject to HAMP, the TRO and the 2009 AO. The Special Referee abused his discretion and erred as a matter of law when he denied the Appellant's Motion to Set Aside the Sale.² The Special Referee further erred as a matter of law in denying Appellant's Motion pursuant to Rule 59 (hereinafter referred to as "Motion to Reconsider") and failing to correct the errors outlined therein. Finally, the Special Referee erred as a matter of law in declining to vacate the orders issued in this case pursuant to Rule 60(b)(3) due to fraud, misrepresentation, misconduct, lack of due process, violation of the 2009 AO governing foreclosures in South Carolina and the TRO it replaced. If the Special Referee's judgment is allowed to stand it effectively renders the carefully crafted federal and state laws governing foreclosure unenforceable and the homeowners of this state unprotected from the arbitrary actions of mortgagees typified by this case.

STATEMENT OF THE CASE

This action commenced on December 30, 2008 with the filing of an unverified Lis Pendens, Summons and Complaint for foreclosure of a mortgage. The Appellant was served on December 30, 2008. Shortly thereafter in January 2009, the parties entered into review for a loan modification pursuant to HAMP. R. p.307-312; Def. Ex. 5 Herndon Affidavit par. 5. Appellant did not file responsive pleadings as the parties continued to complete the HAMP

¹ Throughout this brief the term "mortgagee" is intended to refer to lenders, servicers, owners, holders and any other entity represented by the plaintiff designated in the caption of the case included, but not limited to, Federal National Mortgage Association ("Fannie Mae").

² The Motion to Set Aside Sale sought the following relief: 1) That the sale of the property herein and any deed arising therefrom be set aside; 2) That the Order and Supplemental Orders of Foreclosure be vacated and Defendant's default be set aside and the Defendant be allowed to file an Answer and Counterclaims; 3) That further action in this matter be stayed for at least 90 days or until such time as the permanent modification opportunities have been properly afforded to the Defendant; 4) That this Court order Plaintiff to supply Defendant with a sworn statement of the NPV values and of the specific facts showing that the loan is not eligible for a permanent modification under the Making Home Affordable Modification Program and state the facts showing that the modification process specified by the Guidelines has been completed properly. This should include all assumptions and calculations. 5) Grant such other and further relief as the Court deems just and proper.

evaluation, ultimately resulting in the granting of a Trial Period Plan under HAMP. R. p.131, Pl.

Ex. 1. Respondent filed an Affidavit of Default on February 23, 2009.

The Respondent then had the case referred to Pickens County Attorney R. Murray Hughes as Special Referee on February 24, 2009. The Master's Order of Foreclosure and Judgment was entered on March 17, 2009 at the same time a sale date was set for April 6, 2009. The sale never transpired as the property was withdrawn from the sale by the Respondent while the parties attempted to work out a modification under the newly enacted HAMP.³

In light of HAMP requirements that the parties to covered mortgages attempt to workout modifications prior to any foreclosure, on May 4, 2009, the Chief Justice of the South Carolina Supreme Court issued the TRO pursuant to the petition of the Federal National Mortgage Association, known as "Fannie Mae". The TRO stayed all mortgage foreclosure actions and required an Affidavit to be filed in all pending cases of which the case at bar was one. The Chief Justice required that:

"By May 15, 2009, the plaintiff in every mortgage foreclosure action stayed by this order shall serve on all other parties to the action (including petitioner and/or Freddie Mac as appropriate) an affidavit setting forth its belief whether the loan is subject to modification under the HMP. If the affidavit indicates that the loan is subject to modification under the HMP, the foreclosure shall be stayed pending a determination if the loan will be modified. If the loan is modified, the foreclosure action shall be dismissed. If the loan is not modified, the foreclosure may proceed.

The Respondent herein did not file the required Affidavit.

That Order was subsequently rescinded and replaced by the 2009 AO issued on May 22, 2009. The stated purpose of the order was to "insure that eligible homeowners have been afforded the benefits available under the HMP, the procedures for handling issues relating to the

³ A HAMP modification consists of 2 stages. First a Participating Servicer is required to gather information and, if appropriate, offer the homeowner a Trial Period Plan or TPP (See US Treasury SD 09-01). The TPP defines a 3 month period in which the homeowner makes mortgage payments based on a formula that uses the initial financial information provided. Chase offers Trial Period Plans to eligible homeowners by way of a TPP Agreement which describes the homeowner's duties and obligations under the plan and contractually promises a permanent HAMP modification for those homeowners that execute the agreement and fulfill the documentation and payment requirements. If the homeowner executes the TPP Agreement, complies with objective documentation requirements and makes all 3 TPP payments, the second stage of the HAMP process is triggered, in which the homeowner is offered a permanent modification.

HMP are handled uniformly throughout the State, and mortgage foreclosure actions are not unnecessarily dismissed or delayed while HMP issues are resolved". To effectuate and harmonize these purposes, the Chief Justice promulgated specific, mandatory procedures to be followed in these cases. The 2009 AO required the filing of an Affidavit that must state:

if the mortgage loan is owned, securitized or guaranteed by Fannie Mae or Freddie Mac, or if the servicer is participating in the HMP. If so as to either, the affidavit shall state the facts showing that the mortgage loan is not subject to modification under the HMP, or *state the facts* (emphasis added) showing that the HMP modification process specified by the Guidelines or Supplemental Directives has been completed without resulting in a modification. In the alternative, the affidavit may concede that the matter should be stayed until the HMP modification process is completed.

Respondent did not dismiss its action while the HAMP modification process proceeded, nor did it file any of the required Affidavits at that time. The parties entered into a temporary modification beginning in August 2009 which was performed by Appellant but not converted into a permanent modification after three months as contemplated by HAMP. R. p. 131 Pl.Tr. Ex. 1. Appellant continued making payments until April 2010 at the behest of Chase. 3-14-11 R. p.142 lines 18-19. No further filings in the dormant but un-dismissed foreclosure action occurred until May 17, 2010 when the Respondent filed an Affidavit of Non-eligibility for modification. The Affidavit simply stated:

"The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program, but the subject loan is not eligible for modification because the HMP modification process has been completed without a modification"

The Affidavit provided no explanation as to why there was no modification of the mortgage.

In June 2010, Chase offered, and Bradley accepted, a forbearance for the months of June, July and August while she tried to find employment. Despite the forbearance, a Notice of Foreclosure Sale (with sale date of August 2, 2010) was filed by the Respondent on June 25,

2010, along with Respondent's Affidavit in Support of Supplemental Judgment and a proposed Supplemental Order. The reason given in this Affidavit as authority to proceed was a reference to the outdated May 17, 2010 Affidavit. An Affidavit of Verified Statement of Account was filed by Chase on July 8, 2010. In July, Bradley notified Chase that she had obtained employment and a new loan modification application began. R. p.148 line 7- p. 149 line 19. Chase told Bradley that they would remove the property from the August 2, 2010 sale and it was in fact removed.

On August 19, 2010 Chase issued a HAMP denial notice to Bradley stating that she was denied a modification due to negative Net Present Value.⁴ The letter gave Bradley 30 days to challenge the denial (as required by HAMP) and further stated "No foreclosure sale will be conducted and you will not lose your home during this 30 day period". R. p. 131 Pl. Ex. 3. This required 30 day period would expire September 18, 2010. The following day on August 20, 2010 the Respondent filed a Notice of Sale (with sale date of September 7, 2010), a Second Supplemental Order Post Judgment and an Affidavit in Support of Second Supplemental Judgment. The sale was erroneously set 11 days prior to the expiration of the 30 day HAMP procedural window.

This Affidavit referred to the May 17, 2010 Affidavit of Non-Eligibility as the authority to proceed under the 2009 AÖ and further stated that

"prior to the scheduled sales date, the Plaintiff entered into a forbearance agreement with the Defendant, Vanessa Y. Bradley. The defendant has now defaulted on the terms of the forbearance agreement, and thus, the Plaintiff wished to proceed with the foreclosure and sale. . ."

The Affidavit did not explain what was meant by default on the terms of the forbearance.

⁴ The Net Present Value Determination ("NPV test") is one of the eligibility factors a servicer is to determine before agreeing to contract a Trial Period Plan. Essentially, it tries to determine if the mortgagee would be better off if the mortgage loan was foreclosed as opposed to modified. Bradley had already passed the NPV test before being granted the TPP that was never made permanent.

The parties continued the modification process with submission of documentation by Bradley and follow up requests by Chase during which Bradley was repeatedly told they were requesting that the foreclosure sale be postponed. R. p. 143 line 18- p.149 line 19. Nevertheless, the sale was ultimately not taken off the calendar as before and Appellant's house was sold on September 7 2010 to Chase as successful bidder and on September 14, 2010 a deed was issued by the Special Referee to Federal National Mortgage Association ("Fannie Mae") pursuant to an assignment of bid signed by Chase's attorney of record.

Appellant retained S.C. Legal Services and served and filed a Motion to Set Aside the Sale on September 20, 2010. The Master's Report of Sale, Disbursement and Order Confirming Sale were filed by the Special Referee's office on September 22, 2010 along with an Assignment of the Bid. The Affidavit of Publication of the Notice of the Sale was subsequently filed on September 29, 2010.

Pursuant to HAMP protocol,⁵ the Appellant sent a written request for the specific details of the denial and the NPV inputs to Chase on September 20, 2011. R. p. 130, Def. Tr. Ex. 3. Though her home had been sold, Appellant received another denial of modification by letter dated September 21, 2011. Attachments to R.p.130, Def Ex. 5 this time stating that the reason was failure to complete the Trial Period Plan and giving 30 days for the Appellant to challenge the decision. Subsequently, in response to Bradley's request, the NPV inputs were provided by Chase by letter dated October 5, 2011.

On December 2, 2010 Respondent filed a Proposed Order for Substitution of Counsel that was granted and the subsequent Order filed on December 22, 2010. A hearing was held March 14, 2011 on Appellant's Motion to Set Aside Sale. The Appellant testified in person and

⁵ The HAMP regulations require a 30 day challenge period after denial for modification. Specifically as to denial based on negative NPV, the borrower has the right to obtain all of the input data used to calculate the NPV, via written request during the 30 day window.

Respondent submitted the Affidavit of Charles Herndon, Vice President of the servicer Chase Home Finance, LLC in support of its position. An Order Denying the Appellant's Motion to Set Aside Sale was filed on April 29, 2011 and served on Appellant's counsel by mail from the Clerk of Court on May 9, 2011. Subsequently, the Appellant filed a Motion to Reconsider on May 24, 2011. Appellant filed a Notice of Appeal of the Order denying the Motion to Set Aside the Sale and underlying orders on May 25, 2011. An Order issued by the Special Referee was filed on Appellant's Motion to Reconsider was filed February 6, 2012 denying the Appellant's Motion to Reconsider and was served on Appellant's counsel on February 9, 2012. The appeal of that Order was filed February 22, 2012 and combined with the appeal of the April 29, 2011 order.

STATEMENT OF FACTS

Appellant was sued for foreclosure shortly after the Homes Affordable Modification Program (HAMP) came into existence, subjecting Fannie Mae, Freddie Mac or companies that accepted money under the TARP program to mandatory inclusion in HAMP. Therefore, the Respondent in this case "shall perform" the activities described in the program documentation "for all mortgage loans it services".⁶ She was contacted by Respondent and led to believe modification efforts were taking place. In reality, foreclosure litigation efforts were proceeding to a quick foreclosure judgment and sale. This dual tracking of modification efforts and foreclosure litigation is a widespread practice that the Chief Justice of the S.C. Supreme Court has addressed via Administrative Orders.

In the case at bar, the foreclosure judgment was obtained in March 2009 within three months of filing the lawsuit while Respondent was simultaneously seeking documentation and information from the Appellant to comply with its obligation under HAMP beginning in January

⁶ Under HAMP, the federal government incentivizes participating servicers to enter into agreements with struggling homeowners that will make adjustments to existing mortgage obligations in order to make monthly payments more affordable. Servicers receive \$1,000 for each HAMP modification.

2009. R. p. 130, Def. Ex. 5 par. 8. Appellant's home was removed from a sale scheduled for April 2009. 3-14-11 R. p. 130 Def. Ex. 5 par. 9. The first 2009 AO was issued one month after the scheduled sale. There was one year between the cancellation of the sale scheduled for April 2009 and the resumption of activity in the litigation in May 17, 2010 when Respondent filed a Certificate of Non-Eligibility that was required to have been filed fully one year before.

During that year, Appellant did receive an offer of a Trial Period Plan (hereinafter "TPP") requiring three payments of \$517.29 beginning July 1, 2009. R.p.131, Pl. Ex. 1. Under the HAMP regulations a TPP is required to last three months followed by permanent modification if the homeowner makes the TPP payments within the three month period. To complete a TPP, the borrower must make all of the trial payments within the three month window. Appellant made all three payments. However, her third payment was paid in 2 parts. She paid \$367.23 in September 2009. She received assistance from Clemson Community Cares and that portion (\$150) was received after the expiration of month three on October 19, 2009. After making the three required payments, she made six more when Respondent failed to follow up to make the TPP permanent as contemplated by HAMP.

During this time she was receiving unemployment benefits. Having not found a job when her unemployment benefits came to an end in May 2010, Appellant contacted Respondent by telephone with the assistance of a housing counselor and was verbally offered a three month forbearance of litigation and collection efforts (June, July and August of 2010) while she tried to find a job. She accepted the forbearance and continued looking for a job which she found in July 2010. Though the forbearance was granted, on May 17, 2010 the Respondent filed a Certificate of Non-Eligibility for modification that gave no reason for the denial of a modification as

required by HAMP and the 2009 AO. Appellant notified Respondent of her employment in July 2010. R. p. 148 line 7- p.149 line 19 and was told to reapply for a modification.

Despite these further modification efforts of the parties and the current forbearance, Respondent pursued the continuation of the litigation. Though it did not file a new certificate of non-eligibility (relying on the original one filed May 17, 2010 that was no longer applicable), Respondent submitted a proposed Supplemental Order and supporting Affidavit. No hearing was scheduled or held before the issuance of the Order, but it was signed and filed by the Special Referee and a sale date of August 2, 2010 was set. The property was unilaterally removed from the sale by Respondent, following the Appellant's disclosure that she had found employment.

Subsequently on August 11, 2011, and still during the forbearance period, Respondent submitted another proposed Supplemental Order and supporting Affidavit (still relying on the previous Certificate of Non-Eligibility). No hearing was scheduled or held, but the Order was signed and filed by the Special Referee on August 20, 2011. Throughout this period of forbearance in the summer of 2010 and while Respondent's attorneys were submitting further pleadings and proposed orders, and scheduling and publishing sales of the Appellant's home, the parties were working on a modification. As is often the case, the Appellant did not distinguish between the Chase modification representatives and their lawyers who were pursuing the litigation. When she did raise questions, she was told she was still in the forbearance and they would not sell her home. Appellant relied on these statements and believed Chase would be "honest and true" and "stand behind their word". R. p. 143. line 1-p. 146 line 23.

Instead, Chase instructed its attorneys to continue the litigation and schedule the sale of Bradley's home. Though the forbearance period did not expire until August 31, 2010, it is clear and undisputed that Respondent's attorneys pursued the litigation throughout June, July and

August, culminating in a sale of Appellant's home one week after the expiration of the forbearance period on September 7, 2010.

Though the Respondent's agents gave varying verbal statements to Appellant over the telephone about the pending sale of her home, it is undisputed and supported by their own Affidavit of Charles Hemdon that they sent a denial letter dated August 19, 2010 to Appellant that stated her home would not be sold for thirty days during which time, under the HAMP rules, she could challenge the denial. The letter stated that the denial of modification was based on a negative Net Present Value (NPV) test result, even though the granting of the original TPP presupposed a positive NPV.⁷

In fact, her home was sold during that 30 day period. Appellant retained counsel and immediately filed a Motion to Set Aside Sale and for related relief based upon, inter alia, the TRO, the 2009 Administrative Order, HAMP, due process and Rule 60(b)(3), SCRCF. That Motion, along with a later Rule 59 Motion, was denied. As set forth hereinafter, the sale should have been set aside in order for Vanessa Bradley to be accorded a full and fair opportunity to challenge the decision to deny her a loan modification under state and federal laws, as provided for in Chase's own August 19, 2010 letter to her. This was also required by the 2009 AO and HAMP itself.

STANDARD OF REVIEW

Though the standard of review in a case such as this is normally deferential, here it should be de novo. "A mortgage foreclosure is an action in equity. The scope of review of a case heard by a special referee who enters a final judgment of foreclosure is to determine the facts in accordance with the appellate court's own view of the preponderance of the evidence." *E. Sav.*

⁷ The Supplemental Directives regarding HAMP issued by the U.S. Treasury Department require the NPV test prior to granting a TPP.

Bank, FSB v. Sanders, 373 S.C. 349, 354, 644 S.E.2d 802, 805 (2007) (quoting *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997)).

Although the determination of whether a judicial sale should be set aside is a matter left to the sound discretion of the trial court. *Investors Sav. Bank v. Phelps*, 303 S.C. 15, 17, 397 S.E.2d 780, 781 (Ct.App.1990), this is an equitable matter and is therefore to be reviewed de novo. *Citimortgage, Inc. v. Freeman*, 2012-UP-195 (SCCA) ; *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008) (although the determination of whether a judicial sale should be set aside is a matter left to the sound discretion of the trial court, we review equitable matters de novo).

ARGUMENTS

DE NOVO REVIEW BY THIS COURT IS WARRANTED

All of respondent's evidence has been via Affidavit

The decision by the Special Referee herein, in particular, should be reviewed de novo because the sole evidence submitted by the Respondent at the motion hearing was the Affidavit of Charles Herndon. The earlier orders in the case were all based solely on Affidavits of the Respondent as well. Therefore, the reliance on the principle that the trial court heard the witnesses and was in a better position to judge their credibility would be misplaced. Indeed, the Special Referee should have given more weight to the live testimony of the Appellant who testified at the hearing on the Motion to Set Aside the Sale.

Violations of recent state and federal laws governing foreclosure

While Appellant contends the Special Referee abused his discretion as described hereinafter, she also contends this Court can and should review the facts de novo. De Novo review and reversal is called for because the Respondent violated the law by scheduling and holding a foreclosure sale. This action violated HAMP, violated the Supreme Court's TRO and

2009 AO, and violated Appellant's due process rights and the S.C. Rules of Civil Procedure. In fact, they violated their own forbearance granted to the Appellant.

These are legal questions and Appellant avers that the Special Referee had a duty to independently review and determine compliance with the 2009 AO even where, as here, the homeowner was in default. He committed an error of law by not setting aside a sale that was held in violation of the law and setting aside the underlying default and subsequent orders. Therefore, this Court should review de novo the Special Referee's procedural actions, findings of fact, conclusions of law and his interpretation of the 2009 AO and its application to the undisputed facts of this case. Indeed, his refusal to acknowledge the violation of HAMP, and thus the 2009 AO, that occurred when the property was sold during the 30 day period after the August 19, 2010 HAMP denial letter, warrants reversal.

"In determining whether there has been an abuse of discretion all of the facts and circumstances must be evaluated. If the requirements to vacate a judgment are met the judgment should be opened and the defendant permitted to answer." *Edwards v. Ferguson*, 254 S.C. 278, 175 S.E.2d 224, 226 (1970). Furthermore, the case should be reviewed de novo because the Special Referee does have a duty to independently determine if there was compliance with the 2009 AO even where the homeowner is in default.

Actions such as the failure to unwind the sale, when the Court is presented with evidence that the sale violated HAMP (and therefore the 2009 AO), renders the 2009 AO unenforceable. The purpose of the 2009 AO was to assure compliance with HAMP. Here, Chase "instructed its attorneys to move forward with the foreclosure sale". Herndon Affidavit par. 16. If lender-servicers are allowed to unilaterally move forward with foreclosure sales when the HAMP and AO prohibit it, the HAMP and the 2009 AO and its progeny are meaningless. These legal

safeguards must be enforceable by *both* parties if they are to have their intended effect. Where, as here, such violations are called to the Court's attention in a timely manner, the sale should be set aside. This is true whether or not the homeowner is in default.

I.

The Special Referee erred as a matter of law in denying the Appellant's Motion to Set Aside the foreclosure sale of her property. Holding the sale during the temporary suspension of the foreclosure action and during the pendency of mandatory modification review violated federal and state law imperatives governing foreclosures.

It is well established that a foreclosure sale may be set aside under circumstances that would make it inequitable to confirm the sale. *Farr v. Gilreath*, 23 S.C. 502, (indicating that whether a judicial sale should be upheld depends on whether it was "regularly made" and upholding it "can be done without violating principle or doing injustice") quoted with approval in *Jefferson Standard Life Ins. Co. v. Standard Bldg. Co.*, 174 S.C. 150, 177 S.E. 24, 27.

It is equally as well established as a rule of law in this jurisdiction that there are other circumstances that should sustain the Motion to Set Aside the Sale. To have the requisite effect, there must be such irregularity in the proceedings as to show that the sale was not fairly made, or that Appellant was defrauded or misled to his injury and loss, and the sale should be set aside. *Cumbie v. Newberry*, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968); *Wooten v. Seanch*, 187 S.C. 219, 222, 196 S.E. 877, 878 (1938).

All of these elements are present here. The fairness and honesty required by the cases in South Carolina revolving around problems in the bidding and consummation of the sale and deed, are applicable where, as here, the procedure that precedes and culminates in the sale violates federal and state law and due process.

The foreclosure sale herein was premature, contrary to law and not supported by proper procedure. It was initiated and consummated in violation of HAMP, the TRO, the 2009 AO and

violated the parties' own forbearance agreement. In particular, HAMP provides that no sale can occur within 30 days of the written notice of denial and the 2009 AO provides that no foreclosure action can proceed until an affidavit has been filed specifying the particulars of compliance with HAMP and the reasons for denial, all subject to discovery and further hearing as necessary.

Here the sale occurred inside the 30 day window, some 11 days after the August 19, 2010 denial letter and the final denial letter of September 21, 2010 was issued by Chase 14 days after the sale of Appellant's home had already taken place. Also, the only HAMP Affidavit of Non-Eligibility ever filed and relied on was non-specific as to the reason for denial and was never updated or replaced to comply with HAMP and the 2009 AO as subsequent modification efforts concluded. May 17, 2010 Affidavit of Non-Eligibility.

Under these circumstances, the Special Referee erred as a matter of law in denying Appellant's Motion to set Aside the Sale, Motion for Reconsideration pursuant to SCRPC Rule 59 and Motion for Relief from Judgment under SCRPC 60(b)(3) all on the basis that, in his view, the sale could not be set aside absent proof of actual fraud, which he did not find.

a. Respondent violated South Carolina Supreme Court Administrative Order 2009-05-04-01 on Mortgage Foreclosures and the Home Affordable Modification Program (HAMP)

On May 4, 2009, the Chief Justice of the South Carolina Supreme Court issued the TRO pursuant to the petition of the Federal National Mortgage Association, known as "Fannie Mae". The Petition of Fannie Mae requested an injunction. Absent injunction, it asserted, mortgagors eligible under the HAMP program could be denied their right to participate because their property was sold at the foreclosure sale. Fannie Mae claimed this would qualify as an

irreparable injury for which the court should provide redress in the form of a temporary injunction.

As granted at that time, the TRO stayed all mortgage foreclosure actions, thereby preventing servicers from pursuing them, thus preventing a determination of HAMP applicability. The Affidavit procedure prescribed in the TRO required an Affidavit to be served on the homeowner stating whether the loan was subject to modification under HAMP. The Respondent herein neither served nor filed any such Affidavit as required. This is just the first in a series of violations and irregularities demonstrating that the sale was not fairly made as a matter of law.

The failure to comply with conditions precedent to a foreclosure sale required by an Administrative Order of the Chief Justice of the S.C. Supreme Court warrants setting aside the sale. Fannie Mae itself sought the injunction that it then failed to follow in this case. The irreparable injury that Fannie Mae feared did happen in this case on one of its own loans. The failure to set aside the sale in a case such as this encourages the violation of the Administrative Orders governing foreclosure.

b. Respondent violated South Carolina Supreme Court Administrative Order 2009-05-22-01 on Mortgage Foreclosures and the Home Affordable Modification Program (HMP).

The Chief Justice subsequently issued the 2009 AO rescinding and replacing the TRO. In the Affidavit rubric set forth therein, the Chief Justice clearly mandated pre-litigation as well as pre-foreclosure sale. The purpose of HAMP and the Administrative Orders issued by the Chief Justice is to encourage the resolution of mortgage modifications.

Although the case herein was pending on May 4, 2009, and Respondent was aware of the Chief Justice's order, Respondent failed to serve the required affidavit.

The 2009 AO further provided:

- 1) If the party seeking a foreclosure did not serve the affidavit by May 15, 2009, as required by the TRO, the matter will be stayed until the party seeking foreclosure serves and files an affidavit regarding the applicability of the HMP to the matter.
- 2) If the affidavit is not served within ninety (90) days of the date of this order, the foreclosure action may be dismissed.

Again, Chase ignored the 2009 AO and did not serve an affidavit as it directed. Because Respondent failed to file or serve the affidavit within the 90 days required by 2009 AO, the case should have been dismissed. However the case and, therefore, Appellant's default status, remained pending.

Instead Chase kept the foreclosure case in place while at the same time lulling the Appellant into the belief that no action was necessary as to the foreclosure proceeding because they were working directly to achieve a loan modification. As part of this process, Respondent granted Appellant a three month Trial Period Plan under HMP beginning July 1, 2009. Under HAMP procedures, after 3 months, the temporary modification should have been converted to a permanent modification, which again would have led to dismissal of the foreclosure action. Respondent refused to convert the modification, however, but Appellant continued to make payments under this Agreement from August 2009 through April 2010 at the behest of Chase. R.p. 142 lines 2-20.

Having never filed the required affidavit with the court, having refused to convert the temporary modification to a permanent modification under HAMP procedures, Respondent ultimately filed an Affidavit of Non-Eligibility on May 17, 2010, after accepting 9 trial period payments, and nearly a year after entry of the foreclosure judgment. Not only was it filed a year

too late, Respondent's May 17, 2010 Affidavit R.p. 303 did not comply with the 2009 AO's directive in any event because it did not "state the facts" as to the application of HAMP.⁸

The 2009 AO additionally directed:

The judge shall consider the affidavit and any counter affidavit that may be filed to determine if there is any contested issue that must be resolved regarding the eligibility of the loan for modification under the HMP or satisfaction of the requirements of the HMP if it applies. If so, as to either, the judge shall resolve this issue like any other contested issue in a mortgage foreclosure action. If a counter affidavit is not timely served, the determination of whether there are HMP issues which need to be resolved before foreclosure is ordered or the sale is commenced shall be based on the affidavit alone unless the judge allows the late service and filing of the counter affidavit or allows the issue to become contested at some later stage of the proceeding (*emphasis added*). Sections (3) and (4) of this order relate to the effect of the HMP determinations made by the judge.

The case should have been dismissed because the Respondent did not follow the Affidavit procedure set forth in these first two Administrative Orders (the TRO and the 2009 AO). The irregularity in the proceedings set forth above demonstrates that the sale was not fairly and honestly made because the Respondent had not satisfied the conditions precedent to a foreclosure sale in South Carolina. At the very least, the Special Referee should have allowed the matter to "become contested at the later stage of the proceedings" when Appellant filed the Motion to Set Aside the Sale outlining Respondent's failures under HAMP, the TRO and the 2009 AO.

c. Appellant's initial default in answering the original complaint does not preclude relief for violation of HAMP, the TRO and the 2009 AO.

The fact that Appellant remained technically in default during this period neither excuses Respondent's failure to comply with the law nor precludes her from obtaining relief for these violations. After HAMP and the Administrative Orders brought the litigation to a halt, and the parties began the loan review required by HAMP and contemplated by the AO, there was no

⁸ The 2009 AO required that the affidavit state: if the mortgage loan is owned, securitized or guaranteed by Fannie Mae or Freddie Mac, or if the servicer is participating in the HMP. If so as to either, the affidavit shall state the facts showing that the mortgage loan is not subject to modification under the HMP, or state the facts showing that the HMP modification process specified by the Guidelines or Supplemental Directives has been completed without resulting in a modification. In the alternative, the

basis for the Appellant to appear in the foreclosure action which, as set forth above, should have been dismissed and, at a minimum was stayed by operation of the 2009 AO. This long period of inactivity during the stay of the 2009 AO had the effect of lulling the Appellant into a sense that her ongoing contact with the servicer to obtain a modification was the appropriate avenue for contact.

When Respondent later rushed to complete the foreclosure sale, Appellant was assured, as before, that this was an error and that, as before, the sale would be called off. Moreover, even apart from the binding statements made by Respondent, the sale was premature and defective as a matter of law because Appellant was not allowed the required 30 days to contest the denial or the affidavit of compliance with HAMP. [cite and explain reg stating that get 30 days]

In fact, in the court below Respondent relied on its very denial letter of August 19, 2010 as the authority to sell the property when the letter, per HAMP regulations stated the property could not be sold for 30 days from the date of the letter (*emphasis added*). P. 307 Herndon Affidavit par. 15; Ex. 5. That 30 day period did not expire until September 18, 2010, eleven days after Appellant's home was sold by the Special Referee at the Respondent's request.

d. The May 17, 2010 Affidavit of Non-Eligibility was of no force and effect

The 2009 AO required that the case had to be stayed until the required HAMP affidavit had been filed. Not only was the May 17, 2010 affidavit defective, it was irrelevant and could not serve as a basis for lifting the stay and going forward with the sale because the parties continued to pursue modification under HAMP after it was filed and so a new affidavit would have to have been filed upon the completion of that further process subsequent to Bradley's new employment. Respondent was duty bound to inform the Court of the true status of the ongoing HAMP review.

e. Respondent's violations were sufficient as reason to set aside the sale

In ruling on Appellant's Motion to Set Aside the Sale, the Special Referee ignored these plain violations of law and instead erroneously required a showing that Respondents conduct in violation of state and federal law amounted to fraud. As set forth in the Referee's ruling:

1. While the Defendant made extensive efforts to avoid foreclosure and was given varying explanations of the status of her request for a loan modification, none of the statements by Plaintiff's employees arose to the level of fraud, misrepresentation.
2. At the most critical time in August and early September 2010, Defendant was told that a request to postpone the Foreclosure Sale had been submitted, but she was never told that the sale would definitely be postponed.

Though Respondent did commit fraud, the sale should have been set aside at a minimum because of the violations of state and federal law. First, regardless of whether Respondents conduct amounted to fraud under SCRCP 60(b)(3), it was in violation of the requirements of HAMP and the 2009 AO and could not support upholding the improper sale of Appellant's home. Second, even on its own terms the order is based on factual conclusions that are without evidentiary support. *McChurg v. Deaton*. The Special Referee hangs his hat on a finding that Appellant "was never told that the sale would definitely be postponed." This single "non-statement" is belied by all of those affirmative statements indicating that the sale *would* be postponed. The record is replete with statements by the Respondent that the home "will not be sold" and the sale was "being postponed". R. pp. 22-33.

Chase did not comply with HAMP, the TRO, the 2009 AO, or its own letter when it pursued the sale of Appellant's home especially during the 30 day period. Whether or not its conduct amounted to fraud or misrepresentation (and the evidence clearly and convincingly establishes that it did) the fact that it violated the law as reflected in HAMP, the TRO and the 2009 AO is

sufficient grounds to set aside the sale. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct.App.1991). (where the Court held Rule 60b movant has the burden of proving facts essential to entitle him to relief by clear and convincing evidence). The Special Referee erred in applying a stricter "fraud" standard to Appellant's motion to set aside the sale as to these violations. Because the sale of Appellant's home herein did not comply with the law and conditions precedent to a foreclosure sale, the court should have set it aside. To deny such relief constitutes an error of law and should be reversed.

II.

The Special Referee erred in holding that the forbearance granted by Respondent to Appellant did not preclude the Foreclosure Sale

The lower court found that there was a forbearance agreement in place during June, July and August 2010. This is not disputed. What is disputed by Appellant is whether the collection efforts embodied in the litigation could go forward during that period of forbearance. The Respondent's letter of August 19, 2010 defined Forbearance Plan as "a temporary reduction in your current payment to provide time for you to improve your financial circumstances".⁹

The Special Referee ruled that the forbearance granted by respondent for the months of June July and August Of 2010 did not affect Plaintiff's rights to move forward with the Foreclosure Sale. (emphasis added). This referred to the sale on September 7, 2010. The court erred because the record established that the Respondent abused the forbearance by continuing to file pleadings and schedule sales during its pendency. That resulted in Appellant having insufficient time and meaningful notice to raise issues with the court once the forbearance ended, by indicating that the forbearance would continue as long as the parties continued to work

⁹ In fact, Bradley did improve her financial circumstance by obtaining employment during the forbearance period. Despite this, Respondent's Affidavit stated Bradley had "defaulted" on the forbearance but failed to explain how that could be. Her new income could not have been considered until she submitted her application August 31, 2010. Therefore, they clearly did not consider it.

towards a resolution and because as contemplated by the forbearance agreement, Appellant should have been allowed to proceed with a permanent modification of her mortgage under HAMP after she regained employment during the forbearance period and submitted an application August 31, 2010. R. p. 153 lines 12-21.

As a general rule, a forbearance is granted for a limited time for a specific purpose to allow the mortgagee to return to the state in which he or she is able to carry the mortgage. Here, after having successfully performed the obligations under the original 2009 temporary modification for 6 months longer than should have been required to convert to a permanent modification, Appellant lost her job. She was given a forbearance to allow her to return to employment and allow her to continue to perform her mortgage obligations. R. p. 143 line 18- p. 150 line 12. She did, in fact, obtain employment and was prepared to move forward in paying her mortgage. She never had the opportunity to do so, because respondent simply proceeded with a foreclosure sale based on its pre-HAMP judgment of foreclosure.

The Special Referee's conclusion that the forbearance was irrelevant to the sale elevates form over substance. During the period of forbearance, Respondent should not have been able to go forward with collection efforts in the litigation, including setting sale dates.

The Respondent granted a forbearance of payment the purpose of which was to alleviate the obligation of payment while she was seeking employment. The repeated assurances given by Respondent to Appellant that the forbearance was in place and she was being reviewed for modification, defrauded and misled her, and she lost her home. In its Petition for the TRO, Fannie Mae termed such a loss to be irreparable. However, it can be repaired by this Court granting what the Special Referee should have, the complete unwinding of the sale and underlying orders. It was precisely as a result of this double tracking, allowing the foreclosure

case to move forward while the HAMP modification process was still ongoing, that the sale was prematurely scheduled and occurred prior to the required 30 day period under HAMP in which Appellant was allowed to contest Respondent's denial of a HAMP modification. In addition, Respondent's conduct of continuously pursuing and then abandoning foreclosure filings because of ongoing HAMP review lulled Appellant into believing that the threatened foreclosure sale of September 7, 2010 would not go forward.

Thus there was clear and convincing evidence of both irregular procedure and sufficient unfairness to require setting aside this sale. Indicative of this are the laundry list of Respondent's conduct during the forbearance. The following actions took place during the period of the forbearance agreement:

June 22, 2010 - Appellant received Notice of Sale with date August 2, 2010

- Chase sent a second Supplemental Order Post Judgment
- In this, they state that Appellant entered into a forbearance agreement with Chase, however, they then claim Appellant defaulted on the terms of the Forbearance agreement – but don't mention any specific facts or what term was

August 2, 2010 - Appellant called Chase about obtaining a job and getting a new modification and sends in the appropriate paperwork

August 13, 2010 -Chase sent another Supplemental Order Post Judgment

August 16, 2010 - Appellant received another Notice of Sale (dated 8-13-10)

- Appellant called Chase and was assured everything was okay and that her request was currently in underwriting
- she was also told that they would contact the foreclosure attorney

August 19, 2010 - Letter of denial – stating that NPV was inadequate

- this letter also explicitly stated her home would not be sold in 30days
- Appellant timely requested inputs

August 25, 2010 -Appellant called Chase and was told the foreclosure sale date was September 2, 2010

- then told if she paid \$678 now, she could stop the foreclosure sale

August 30, 2010 -Appellant called Chase again and told sale date was 9-7-10

- also confirmed that Appellant had sent in all necessary paperwork except for paycheck stub

August 31, 2010 - Appellant faxed in paycheck stub

Further establishing the irregular procedure, unfairness and dishonesty, the Respondent took litigation action during the forbearance as set forth below, to effectuate either the sale scheduled for August 2, 2010, or the sale that took place in September 7, 2010:

Actions in June 2010
Submitted Affidavit and Proposed Supplemental Order
for sale to be held August 2, 2010
Actions in July 2010
Filed Affidavit of Verified Statement of Account
Cancelled August 2, 2010 sale
Actions in August 2010
Submitted Affidavit and Proposed Second Supplemental
Order for sale to be held September 7, 2010
Published Notice of Foreclosure Sale
Actions in September 2010
Respondent held sale, pursued assignment of bid, deed and confirmation of sale

As set forth in Appellant's Motion for Reconsideration:

The Court misinterprets the meaning of forbearance. The Court finds there was a forbearance agreement but ignores the fact that the procedure necessary to the September 7, 2010 sale and the sale that had also been scheduled for August 2, 2010 that was cancelled took place during the period of the forbearance when Plaintiff was to be taking no action. The sale took place 7 days after the end of the forbearance period. Neither the Defendant's due process rights in the litigation, nor her rights under HAMP could have possibly been followed during that short period.

The Special Referee simply ignored the fact that the Appellant's ability to challenge the modification decision was forestalled by the abrupt timing of the sale 7 days after the expiration of the forbearance and the cutting short of the 30 day window provided by HAMP to begin a challenge after denial. The uncertainty of the occurrence of the sale also hindered her ability to address the supplemental orders, sale notice, and other procedural actions that were carried out during the forbearance that immediately preceded the sale.¹⁰

¹⁰ In addition to the August 19, 2010 letter stating the negative NPV result as the reason for denial, the June 21, 2010 Affidavit in support of Supplemental Order Post Judgment simply referred to the outdated and un-replaced May 17, 2010 Affidavit of Non-Eligibility. The August 11, 2010 Affidavit in Support of Second Supplemental Order Post Judgment stated that the parties had entered into a forbearance agreement but went on to say Bradley had "defaulted" on the terms of the forbearance agreement. A September 21, 2010 letter sent by Chase after the sale stated

If Plaintiff had been given the requisite time to challenge the denial of modification, she likely would have been successful. The NPV test must be run in order to grant a Trial Period Plan ("TPP") and Appellant had already been granted one in August of 2009. There was never any showing by Respondent as to how Appellant's net present value (NPV) had changed from when she was granted a TPP in August 2009 and when she applied for modification again in August 2010. The TPP under which the Defendant paid for 9 months presupposed the requirements of the Net Present Value calculation were met.

None of the contradictory reasons offered by Respondent over the course of this litigation for going forward with the sale have merit and all should have been tested at a hearing.

The action taken by Respondent in pursuit of a foreclosure sale during the promised period of forbearance violated the agreement of the parties and constituted fraud, misrepresentation and misconduct toward the Court as well as the Appellant. While he acknowledged the forbearance, the Special Referee failed to recognize the legal significance of the action taken by Chase during the forbearance period. Respondent broke the promise of the forbearance and it deprived the Appellant of the benefit of the forbearance. In light of this, it was an error of law constituting an abuse of discretion by the Special Referee to deny the Appellant's Motion and Motion to Reconsider. The sale should have been set aside and full consideration given to Appellant's modification application made after she obtained employment and the forbearance period ended.

III

The Special Referee violated the appellant's right to procedural due process by issuing the original order of foreclosure during the HAMP evaluation, entering two (2) supplemental orders post judgment without benefit of hearing and meaningful opportunity to respond and denying Appellant's request for an evidentiary hearing and discovery.

"We are unable to offer you a Home Affordable Modification because you did not make all of the required Trial Period Plan payments by the end of the trial period."

Notwithstanding that Appellant had performed a Trial Period Plan that should have led to a permanent modification, and notwithstanding that the respondent had granted Appellant a forbearance to give Appellant the opportunity to become re-employed, Respondent, for reasons never properly tested in court, pursued and obtained a foreclose sale. The Respondent pursued and obtained a foreclosure order in March 2009 while Appellant's loan was under modification review in violation of HAMP. After continued modification review, including the initiation of a Trial Period Plan under HAMP, Respondent submitted 2 Supplemental Orders Post Judgment with Supporting Affidavits which were filed on June 29, 2010 and on August 20, 2010.

No hearing was held prior to the entry of the original order or either supplemental order post judgment, nor was Appellant served with the Orders once signed by the Special Referee. Appellant had no opportunity to contest the new and additional findings of the court as established through the supplement orders. Each order was entered while Appellant was in the period of forbearance, during which time Appellant was not required to make monthly mortgage payments. Respondent was to refrain from litigation activity while Appellant tried to obtain employment.

Instead, pursuant to the first Supplemental Order Post Judgment, a second foreclosure sale date was set for August 2, 2010. It was cancelled by Respondent, ostensibly because modification review remained ongoing. Appellant continued to communicate with Respondent and send in additional information, including the final requested information that was submitted on August 31, 2010. However, pursuant to the second Supplemental Order Post Judgment, signed August 16, 2010, the sale was rescheduled for September 7, 2010. Appellant's property was in fact sold on September 7, 2010.

Had the appellant been allowed the opportunity to present information regarding the ongoing modification review to the court prior to the entry of the orders, the matter should have been stayed and not resulted in the sale of her home. For example, she could have addressed the fact that the denial that led to the sale did not take into consideration the evidence of her new income submitted August 31, 2010. This was the main reason given by Chase for granting the forbearance.

Yet, by sworn Affidavit, Respondent's Attorney stated that during May, June and July 2010, Respondent was unable to reach a workout agreement with the appellant. However, without dispute, during the months of June and July 2010, Appellant was participating in a period of forbearance. This goes unacknowledged in the Herndon Affidavit. That Affidavit leaves only the implication that there were no options available to assist Appellant. The same lack of acknowledgement and disclosure to the court continues in the Affidavit in Support of Supplemental Judgment regarding the first supplement order. Instead it states:

"Prior to the scheduled sales date, the Plaintiff began negotiations for a potential loss mitigation workout with the Defendants, Vanessa Y. Bradley. Unfortunately, the loss mitigation workout did not occur, and the Plaintiff wishes to proceed with the foreclosure and sale and to supplement the previous Judgment of Foreclosure and Sale to reflect the amount of payments, if any, made."

Affidavit in Support of Supplemental Judgment by Michael P. Morris, June 21, 2010.

There is no mention or recognition of the ongoing forbearance period. However, in the second Affidavit in Support of Second Supplemental Judgment, Respondent's Attorney does acknowledge the forbearance. The attorney affiant states:

"Prior to the scheduled sales date, the Plaintiff entered into a forbearance agreement with the Defendant, Vanessa Y. Bradley. The defendant has now defaulted on the terms of the forbearance agreement, and thus the Plaintiff wishes to proceed with the foreclosure and sale and to supplement the previous Judgment of Foreclosure and Sale to reflect the payments, if any, made."

**Affidavit in Support of Supplemental Judgment by Michael P. Morris, Esquire,
August 11, 2010.**

The Respondent's claim in the second affidavit that the "defendant has now defaulted on the terms of the forbearance agreement," was false. Appellant was denied the opportunity to address this statement. Instead, an order was issued with the finding that she had in fact violated the forbearance. The sale of her home followed, without benefit of hearing and with conflicting notices.

These constitutional guarantees are paramount. In the case of *Koester v. Citizens' Pub. Co. Carolina National Bank v. Mergenthaler Linotype Co*, 154 S.C. 157, 151 S.E. 452, 455 (S.C. 1930) the Respondent set forth the argument that once the Appellant was served with the final order "he should have at once taken action to protest." However, as the court makes clear, "... to sustain this contention would be equivalent to substituting mere casual notice after the event of a judgment of a court for the due process of law which is guaranteed under the Constitution." *Id.* The Special Referee violated Appellant's right to due process of law when he signed the supplemental orders within days of submission without a hearing. This failure was compounded by the lack of service of the signed order and his refusal to correct the action pursuant to Appellant's Motion to Set Aside Sale.

"It is not enough that a person may by chance have notice or that he may, as a matter of favor or courtesy, have a hearing." 12 *Corpus Juris*, 1229 (Emphasis added). More importantly, "if a person's property rights can be confiscated, so to speak, by the unconstitutional act of a court without due process of law, and then, if a mere notice of such action after the event is equivalent to due process under the constitution, the constitutional guaranty would become a farce. *Koester* at 159-160, 457-458. Procedural due process also guarantees that one have an

"opportunity to be heard in a meaningful way" and with benefit of "judicial review." It is also critical that due process be "flexible and call for such procedural protections as the particular situation demands." *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 172, 656 S.E.2d 346, 350 (2008).

To grant a hearing on these supplemental orders and the affidavits supporting them would have brought forth no great fiscal or administrative burden. Appellant's private and vested property interest demands a litigant have the ability to be heard in each stage of her case in a meaningful way. Anything less opens the door to erroneous deprivation and demotes her right to be heard as nothing more than an "empty ritual." See, *LaSalle Bank National Association vs. Davidson*, 386 S.C. 176, 688 S.E.2d 121 (S.C. 2009). As the foreclosure sale took place after Respondent obtained orders through empty ritual and in contravention of the forbearance and state and federal law, it should have been set aside as being in violation thereof.

IV.

The Special Referee erred as matter of law in declining to grant discovery by Appellant along with an evidentiary hearing pursuant to the 2009 AO

Discovery

The 2009 AO provides for discovery by the mortgagor so that the results of the modification review can be examined by the mortgagor for accuracy. This can be followed by an evidentiary hearing if the mortgagor believes there were flaws in the process or decision-making. The decision that a mortgagor is not eligible for a HAMP modification is not a unilateral one and the decision of the mortgagee is not conclusive by any means. As part of her request to set aside the sale, Appellant sought an order to allow discovery on the denial decision and a hearing thereon. The Special Referee declined to allow Appellant such discovery and

evidentiary hearing, even when the record revealed the Respondent had submitted incomplete and misleading affidavits to the Court. This was error.

A party is entitled to discovery in anticipation of a hearing on a motion to set aside a judgment in order to fully explain the factual issues involved. In *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 721 S.E.2d 430 (S.C. 2012) the S.C. Supreme Court held that the trial court erred when it failed to grant Graham's request for discovery and cross-examination of witnesses in connection with a Rule 59(e) motion. In light of the determinative nature of the court's findings regarding his motion to set aside a judgment, the court held Graham should have been granted an opportunity to fully explore the factual issues involved through further discovery and cross-examination of witnesses. Similarly, discovery as contemplated by the AO and requested in Appellant's Motion to Set Aside Sale and Motion to Reconsider would have provided Appellant the opportunity established in the 2009 AO to fully explore the factual issues involved through further discovery and cross-examination of witnesses

"Where important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses." *Brown v. South Carolina State Board of Education*, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970)); see *South Carolina Department of Social Services v. Holden*, 319 S.C. 72, 459 S.E.2d 846 (1995) (right to confrontation applies in civil context).

Here discovery was well warranted in light of the boilerplate assertions contained in the affidavit of Barbara Hindman used to lift the stay and proceed to the foreclosure sale. This Affidavit of Non-Eligibility filed on May 17, 2010 R. p. 303 by Respondent stated the bare and erroneous allegation that the HAMP process had been completed and that that there had been no

modification. This violated the 2009 AO because the process had not been completed. After this filing, however, as required by HAMP, the parties continued the HAMP modification process which had not in fact been concluded. This original affidavit was never supplemented with an updated Affidavit to reflect whether, when and why the process was completed without modification so as to remove the stay. Instead, the original affidavit was improperly and deceptively reiterated by Respondent as the operative Affidavit of Non-Eligibility throughout the remainder of the case. Appellant herein showed that discovery was necessary inquire into the wildly conflicting decision making reflected in the mortgagee affidavits and in order to enable her to challenge the Respondent's decisions and assure a proper analysis, as contemplated by the 2009 AO. Her testimony provided what she said and was told and what documents she received and submitted. Otherwise, the only evidence available without discovery was the Affidavit of Charles Hemdon, V.P. of the servicer Chase Home Finance, LLC.

Discovery would include obtaining information about the decision making process used by Chase in her particular case and reveal whether the review was done properly. If the review and/or decision were defective or faulty in some way, Appellant would be entitled to a re-review and perhaps a modification.

Evidentiary Hearing

Not only has Appellant made a sufficient showing to entitle her to discovery on the issue of modification denials, but she must receive a full and fair opportunity to be heard on the matter, because the findings with regard to compliance with the requirements of HAMP, the TRO and the 2009 AO may determine the merits of the case in chief. See *Wetzel v. Woodside Development Limited Partnership*, 364 S.C. 589, 615 S.E.2d 437 (2005) (finding that an order granting a motion to set aside an entry of default for improper service effectively dismisses an improperly

served party from the action); *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187 (Colo.2005) (holding that a trial court's findings related to personal jurisdiction could later be preclusive).

If the conditions precedent to a foreclosure lawsuit and sale as outlined in HAMP, the TRO and the 2009 AO were not fulfilled, then denying an evidentiary hearing prevents the inquiry into the required HAMP review.

In the case at bar, where the Special Referee was told by Respondent to go forward with a foreclosure sale without a properly supported motion and order lifting the stay. The mortgagor was unable to exercise her rights under the 2009 AO and challenge the HAMP modification denial, Appellant was deprived of the right given in the 2009 AO to confront the mortgagee, and challenge the reasons for denial (as stated in Chase's own letters, as well as the 2009 AO).

On numerous prior occasions where Respondent had asserted that the modification process was complete, it subsequently conceded that it was not and discussions continued. Given the deficiencies in the affidavits and filings discussed above, Appellant likely would have been able to demonstrate that the sale was premature if only she had been given the opportunity to effectively address the HAMP affidavit as contemplated by the 2009 AO. Thus, due process requires that Appellant receive an opportunity to conduct adequate discovery on this question and confront adverse witnesses in an evidentiary hearing.

Bradley did not bear the burden of proof on this issue, Respondent did. The record in this case is replete with instances of the Respondent's failure to comply with the 2009 AO, their wildly varying reasons for denial, the use of the same Affidavit of Non-Eligibility for all denials, their action during the three month forbearance period and their failure to properly move for and obtain an order lifting the stay. It would be inequitable to hold Appellant to a strict standard on this issue. Whereas the Respondent had both ample time and the opportunity to review

Appellant's modification application and supporting documentation, she herself was not allowed her legal right to the time and ability to challenge the denial of the application for modification. Moreover, no hearing was held in connection with the Respondent's Supplemental Order submissions, so the Supporting Affidavits which referred to the May 17, 2010 Affidavit were allowed to stand unchallenged. On this record, it cannot be said that Bradley had a full and fair opportunity to be heard on an issue that was determinative of her legal rights as required by HAMP and the 2009 AO.

V.

It was an abuse of discretion amounting to an error of law to deny the Appellant's Motion under Rule 60(b)(3)

Rule 60(b)(3) SCRCF provides that a party may be relieved of a final order or judgment based upon "fraud, misrepresentation, or other misconduct of an adverse party". The Rule establishes three grounds for relief from a final judgment or order: fraud, misrepresentation, or misconduct of an adverse party. Thus, it is clear from the language of the rule that the movant under Rule 60(b)(3) need not rely solely on a showing that an adverse party's conduct was fraudulent, nor is it necessary for the movant to prove all the elements of common law fraud. While doing so may provide a basis for relief, Rule 60(b)(3) contemplates relief for lesser misconduct as well. Proof of misrepresentation or other misconduct is also sufficient.

The Court should consider: (1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party. *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct.App.2001). "The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief." *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct.App.1991).

In the case at bar, the Court's ruling on the Motion pursuant to SCRC 60(b)(3) was based on Appellant's statement that she was never told the September 7, 2010 sale of her home was definitely postponed. This conclusion failed to account for the remaining plethora of evidence that Respondent committed fraud, misrepresentation and misconduct toward Appellant and the Court throughout the process of the litigation which led to the sale, all in violation of the 2009 AO.

In particular, the written representation in Respondent's letter of August 19, 2010 stating the Appellant's home would not be sold for 30 days constituted fraud. When it sent this letter, the Respondent knew it would be selling Bradley's home at the September 7, 2010 foreclosure sale. It had filed the Supplemental Order and Supporting Affidavit setting the sale and mailed notice and published notice. The statements by Respondent's employees that her house would not be sold, and offering the reasons why her house would not be sold, further demonstrated a pattern of trickery and deception amounting to fraud. This trickery and deception led the Appellant not to assert herself in the litigation to present a case. R. p.153 line 12- p. 160 line 7.

After obtaining legal representation when she received the notice that the sale actually did take place, the Appellant immediately served and filed the Motion to Set Aside the Sale and for other relief. In her filings with the court, she urged the Special Referee to acknowledge the requirements of due process, HAMP and the Administrative Orders when assessing the issue of fraud in ruling on her motions. As discussed herein, the reasons for failure to act before the Motion to Set Aside the Sale were the misleading actions of the Respondent and the lengthy period of the stay after the default and 2009 AO. The Special Referee focused only on the issue of whether there was a specific verbal statement to her that the sale of her home had been

cancelled, ignoring all of the other evidence that proved Chase's misrepresentation, misconduct and outright fraud.

Rather than examining the totality of the circumstances not only of the activity in the days and weeks leading up to the sale, and the deceptive affidavits contained therein, but the entire history of the litigation, the Special Referee isolated each written and verbal representation and found none of them rose to the level of fraud or misrepresentation. **Order on Motion to Set Aside.** R.p. 23 In doing so, he completely overlooked the written fraudulent statements and all of the other verbal misrepresentations testified to by the Appellant. He further seemed oblivious to the procedural violations that he himself allowed in the litigation.¹¹

Clear and convincing evidence is generally required to prove fraud and this standard has been applied to motions under Rule 60(b)(3) based on fraud. *Hagy v. Pruitt(In re Pruitt)*, 339 S.C. 425; 529 S.E.2d 714 (2000) (Citing *First State Savings & Loan v. Phelps*, 299 S.C. 441, 385 S.E.2d 821 (1989)). However, nothing in the rule indicates that this stricter standard of proof is required to establish misrepresentation or other misconduct.

It was error to hold there was no fraud by crediting Chase with not specifically telling the Appellant that the September 7, 210 foreclosure sale was cancelled, while ignoring all of the misrepresentations and fraudulent statements proven by Appellant and contained in the record in Chase's own filings. This warrants setting aside the sale, vacating the judgment, setting aside the default and allowing Appellant to file responsive pleadings and pursue discovery to determine the details of Respondent's HAMP activity in this case.

- a. Because the record contains clear and convincing evidence of fraud, the Sale should have been set aside

¹¹ The Special Referee ignored the fact that no affidavit regarding eligibility was filed as required until one year after it was required to be filed and that one was defective. He further disregarded the fact that Affidavits in support of Proposed Supplemental Orders Post Judgment referred back to the expired May 17, 2010 Affidavit yet suggested that HAMP review had continued.

Whether the conduct of a party amounts to fraud sufficient for relief under Rule 60(b)(3) depends, in part, on the effect of that conduct on the judicial process. In essence, relief under Rule 60(b) for fraud is reserved for those situations where the conduct of an adverse party has induced the party seeking relief not to present their case. *Chewning v. Ford Motor Co.*, 354 S.C. 72 (2003). The *Chewning* Court explained the extrinsic fraud required under SCRCF 60(b)(3) is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard" and that "relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." 354 S.C. at 81 (Citing *Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n*, 294 S.C. 9, 11 (1987)).

At the outset, the August 19, 2010 letter clearly constituted fraud. It stated Appellant's house would not be sold during the next 30 days when Chase had already submitted the Affidavit in Support and Proposed Supplemental Orders, and published and served Notice of Sale.

The Respondent pursued the closure of the case as one of default despite the fact that activity in the case had subsided for 15 months and Appellant had only dealt with the mortgagee, not their attorney of record. As Appellant began to receive mailings from the Chase attorney after its lengthy hiatus, the ongoing telephone conversations with Chase representatives suggested to Appellant that the modification efforts were bearing fruit. R. pp. 149-160. Consequently, the incongruous progression of affidavits introduced by the Respondent went unchallenged.

The Special Referee's ruling was controlled by error of law because it assumed that fraud alone is the basis for relief under 60b3. *Rouvet v. Rouvet*, 388 S.C. 301 (finding that family court erred in finding that only fraud would entitle party to relief under 60b).

The subornation of perjury or concealment of documents by an attorney has been held to be extrinsic fraud on the theory that the attorney, being an officer of the court, prevents the opposing party from presenting his case. *See* 354 S.C. at 82 (citing *In the Matter of Goodwin*, 279 S.C. 274, 305 S.E.2d 578 (1983); *Bankers Trust Co. v. Braten*, 317 S.C. 547, 455 S.E.2d 199 (Ct. App. 1995)). Even an attorney's *bona fide* error in filing an affidavit indicating that an opposing party was in default for failure to answer has been found to be extrinsic, albeit constructive, fraud sufficient to support an order vacating a judgment. *See* *Davis v. Davis*, 236 S.C. 277 (1960).

These cases are apropos here regarding the affidavits filed by Respondent that brought about the foreclosure sale. Simply by their being filed, the affidavits that were, on the one hand irreconcilable and, on the other hand downright false compelled the Special Referee to sell Bradley's home. In addition, the contemporaneous telephone conversations between Bradley and various non-attorney representatives of Chase prevented her from fully exhibiting and trying her case.

This failure to comply in good faith with the statutory and regulatory imperative to fully and fairly pursue loss mitigation, as required by the 2009 AO, demonstrates a sufficient negative effect on the judicial process to establish the fraud necessary to vacate the judgment under SCRCP 60(b)(3).

b. The record contains clear and convincing evidence of misrepresentation

Even in the absence of clear and convincing evidence of fraud, a party may still obtain relief under Rule 60(b)(3) for misrepresentation by an adverse party. The incongruous series of submissions to the court in this case, as well as the assurances of forbearance and claims of

postponement of the foreclosure sale up to and beyond the sale date, fully supports the misrepresentation element found in Rule 60(b)(3).

In *McClurg v. Deaton*, 380 S.C. 563, 580, 671 S.E.2d 87, 96 (Ct.App.2008) the Plaintiff was injured in a car accident with Deaton who was an employee of New Prime at the time of the accident. New Prime was insured by Zurich. Plaintiff's counsel initially contacted Zurich and began settlement negotiations. During the course of negotiations, Plaintiff's counsel sent Zurich a letter with a copy of a complaint naming Deaton and New Prime and indicating that the complaint would be filed and a courtesy copy sent to Zurich if settlement was not reached within a specified time. Unbeknownst to Zurich or New Prime, Plaintiff's counsel subsequently filed a complaint naming only Deaton and failed to send a copy to Zurich. Plaintiff obtained a default judgment against Deaton and notice of this judgment was subsequently sent to Zurich. New Prime then intervened and moved for relief from the judgment under Rules 60(b)(1) and 60(b)(3). 380 S.C. 563 (aff'd by 395 S.C. 85).

The trial court denied New Prime's Rule 60(b)(3) motion on the ground that New Prime had failed to make a showing of a meritorious defense. 380 SC at 569. The Court of Appeals affirmed on this ground. 380 SC at 573. However, the Court noted that the conduct of Plaintiff's counsel "raises serious concerns for this court and quite possibly satisfies the misrepresentation and misconduct envisioned by Rule 60(b)(3)." 380 SC at 573. Thus, the Court of Appeals has clearly recognized that a promise to do something in the future, as Chase did here, may form the basis for relief under Rule 60(b)(3) under circumstances where the failure to perform that promise results in a party being deprived of his or her day in court.

There is abundant evidence in the record that Chase representatives repeatedly advised Appellant to ignore notices in the litigation both because she was being evaluated for

modification and because her loan was subject to a forbearance agreement. Most importantly, they sent a letter that said her house would not be sold. The ruling of the Special Referee on this point was controlled by error of law. The law he cited in support of his denial of the Motion to Set Aside only dealt with fraud and suggested that these were future promises and cannot form the basis for relief. This was error under the McClurg v. Deaton analysis.

c. The record contains clear and convincing evidence of misconduct

In *McClurg v. Deaton*, 380 S.C. 563, 580, 671 S.E.2d 87, 96 (Ct.App.2008) discussed above, the court opined that the Lawyer's actions would most likely satisfy the misrepresentation and misconduct element of Rule 60(b)(3), SCRPC. as well. *Id.* at 573, 671 S.E.2d at 92-93. Much like the lawyer there who was trying to achieve his litigation goal through smoke and mirrors, the Respondent herein used a vague Affidavit of Non-Eligibility that was never updated with truthful and specific HAMP results along with a misleading pattern of conduct to achieve its litigation goal. Respondent directed its attorneys to pursue the sale in violation of HAMP, the 2009 AO, the S.C. Rules of Civil Procedure and due process of law under the state and federal constitutions. It was an abuse of discretion amounting to an error of law not to set aside the sale when faced with this undeniable fact scenario.

d. The relevant factors of (1) the promptness with which relief is sought; (2) the existence of a meritorious defense; and (4) the degree of prejudice to the other party .

The *Wham* factors (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted, endorse the Appellant's position. *Wham v. Shearson Lehman Bros.* , 298 S.C. at 465, 381 S.E.2d at 501-02). A trial court is not required to make specific findings of fact for each factor if there is sufficient evidence in the record to support the trial court's decision. *Sundown*, 383 S.C. at 608,

681 S.E.2d at 888. The decision whether to set aside an entry of default is within the sound discretion of the trial court. *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994).

The showing of a meritorious defense need not be perfect, nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence. *Thompson v. F.C. Hammond*, 99 S.C. 116 (citing *Graham v. Town of Loris*, 272 S.C. 442). "In my view, the key inquiry is merely whether the materials submitted to the trial court reflect, in any way, that a contest on the merits might render different results than the result reached by the default judgment." *McChurg v. Deaton*, 395 S.C. 85 (Toal, C.J. Dissenting).

Here the Court's ruling was based on Appellant's statement on cross examination that she never was told the September 7, 2010 sale of her home was definitely being postponed. The Special Referee focusing on this statement concluded that there was no fraud, misrepresentation or misconduct on the part of the Respondent because that particular statement was not specifically made to the Appellant. This narrow focus failed to account for the remaining plethora of evidence cited herein that Respondent committed fraud, misrepresentation and misconduct toward Appellant as well as the Court throughout the process of the litigation which led to the sale, all in violation of the 2009 A.O.

The Appellant's meritorious defense is the heart of the case. The procedural failings in the litigation, coupled with the pattern of conduct in the HAMP review render this matter one worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion. *Thompson*. The submissions to the Court and the verbal statements

by Chase representatives to the Appellant yielded real controversy as to real facts arising from conflicting or doubtful evidence. It was error as a matter of law to deny the Motions.

e. The Appellant should be relieved of her default and to be allowed to answer.

The lack of due process and adherence to HAMP and the Administrative Orders as set forth hereinabove resulted in unwarranted default judgment and supplemental orders against the Appellant. For the reasons outlined hereinabove, it was error for the Respondent to proceed with the litigation and sale in contravention of the law and it was error for the Special Referee to refuse to correct the mistakes when that relief was sought by the Appellant.

In *Howard v. Holiday Inns*, 271 S.C. 238, 246 S.E.2d 880 (1978), the Court attempted to soften the harsh impact of default judgments by holding that when there has been an appearance but no answer or demurrer filed, the defendant is entitled to participate in the ascertainment of damages by cross-examining plaintiff's witnesses and objecting to evidence. The Court held that one in default concedes liability but does not concede the amount of liability in a tort action.

Within the spirit, if not the letter, of the ruling in *Howard*, defendants should be notified of the default hearing in every instance. That way the Court would have the benefit of an adversary proceeding as relates to the assessment of damages, as in *Howard* and as relates to increasing the amount of the judgment and compliance with HAMP, Administrative Orders and due process in the present case. Even if the Appellant is not permitted to answer, she should have been allowed to defend and/or mitigate the damages as permitted by *Howard*. The Special Referee's refusal to vacate the default was therefore reversible error.

Although our statutes clearly contemplate the use of formal pleadings, the harsh result of judgment by default is not the proper tool to reprove the failure of a party to use formal

pleadings. *DM Co., Inc. v. Nycoil Co.*, 273 S.C. 496, 257 S.E.2d 499 (S.C. 1979); *Eastern Savings Bank, FSB v. Sanders*, 373 S.C. 349, 644 S.E.2d 802 (S.C.App. 2007)

Our Supreme Court has held that a judgment should be vacated on general principles of equity where the award is patently and greatly out of proportion to the wrongs alleged in the complaint. *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 274 S.E.2d 290 (1981); *Williams v. Vereen*, 284 S.C. 219, 325 S.E.2d 337 (Ct.App.1985). In *Renney*, the appellant based his motion to vacate on S.C.Code Ann. Section 15-27-130 (1976).^[4] The Supreme Court, on its own motion, vacated the judgment on equitable grounds stating:

"Whether a defendant is or is not in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount recoverable based on the proof." 275 S.C. at 567, 274 S.E.2d at 293.

This same principle of equity should be applied in the case at bar. "In determining whether there has been an abuse of discretion all of the facts and circumstances must be evaluated. If the requirements to vacate a judgment are met the judgment should be opened and the defendant permitted to answer." *Edwards v. Ferguson*, 254 S.C. 278, 175 S.E.2d 224, 226 (1970). The record abundantly shows that the Appellant met her burden of proof on the "meritorious defense" issue. The order of the lower court should be reversed, the Appellant permitted to answer, and the case should be tried on its merits in the conventional fashion.

Conclusion

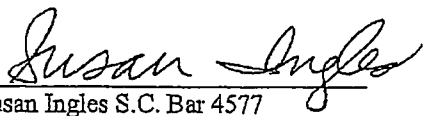
Based on all of the facts that were presented to the Court at the Motion hearing, Defendant has established a meritorious defense and met the standards of timeliness to justify this Court in vacating the Judgment of Foreclosure and Sale, setting aside the sale, and for the other relief requested in the Defendant's Motion and allowing Defendant the opportunity to

investigate the modification evaluation, present her position and defend her home from foreclosure.

Respondent exhibited a pattern of not being candid with the Court and taking unilateral action that was acted on by its chosen Special Referee. Appellant established Respondent's lack of consideration for due process, violation of the Administrative Orders of the S.C. Supreme Court regarding foreclosure, unclean hands, fraud, misrepresentation and misconduct, and disregard of the HAMP guidelines. Each constitutes sufficient basis to cause this Court to vacate the default judgment, set aside the sale and grant the other relief requested in the Defendant's motion.

The Appellant requests, at a minimum, that this Court allow the issue of compliance with HAMP, the TRO and the 2009 AO to become contested. The Appellant's rights as established in these state and federal laws can be properly observed only through the evidentiary hearing process, after full discovery as Appellant requested in her Motion to Set Aside the Sale and related relief.

10-1, 2012


Susan Ingles S.C. Bar 4577
SOUTH CAROLINA LEGAL SERVICES
701 South Main Street
Greenville, SC 29601
Attorney for Appellant