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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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JUL 25 2012

SC Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes, Special Referee

Case No. 2010-CP-39-0352

US Bank National Association as Successor Trustee to the Bank of
America National Assoc., Successor by Merger to LaSalle Bank National
Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2007-
3XS; and Americash Mortgage Corporation Respondents,

v.

Barbara E. Bebout; Robert A. Swaynham a/k/a Robert Alec Swaynham;
Mortgage Electronic Registration Systems, Inc. (Min#1001419-
0060908012-1); National Bank, of whom Barbara E. Bebout and Robert
A. Swaynham are Appellants Appellants.

**MOTION TO DISMISS APPEAL and
SUSPEND BRIEFING SCHEDULE**

The Respondent in the above matter, Americash Mortgage Corporation (Americash), by and
through its undersigned counsel and pursuant to SCACR, Rule 203(b), respectfully moves to dismiss
the within appeal.

This motion is based upon the following:

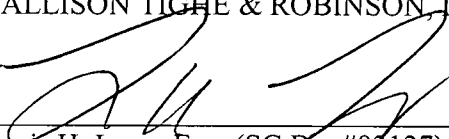
1. Attached to this motion and incorporated herein by reference is the affidavit of the undersigned, counsel for Americash, with attachments, in which he asserts, under oath, that he has never been served with a copy of the Notice of Appeal in accordance Rule 203(b)(1).

2. The Special Referee to whom this matter was referred entered two orders on March 2, 2012, both of which are attached to the affidavit of the undersigned. One order is entitled Special Referee's Report and Judgement of Foreclosure and Sale and deals with the foreclosure aspects of this matter. The second order is entitled Findings of Fact in Regard to Affirmative Claims, etc. and deals with the affirmative claims asserted by the Appellants against Americash and the foreclosing lender.
3. According to the records of the undersigned, Appellants, at the earliest, received written notice of the entry of the orders from which they seek to appeal on March 6, 2012, by way of an electronic mail from the Special Referee to all counsel of that date. Thereafter, on March 8, 2012, counsel for Americash served on counsel for the Appellants by mail a copy of the second order referred to above, i.e., the one dismissing the affirmative claims asserted by Appellants against Americash and the foreclosing lender.
4. At no time thereafter, up to and including, the date of this motion, has Americash or its counsel received by way of proper service in accordance with SCACR, Rule 262 a copy of the Notice of Appeal.
5. SCACR, Rule 203(b)(1) requires a Notice of Appeal be served on all Respondents within thirty (30) days after receipt by the Appellant of written notice of the entry of the order or judgment from which an appeal is sought. The requirement for service of the Notice of Appeal within thirty (30) days after receipt of written notice of the entry of the order appealed from is jurisdictional. If a party misses that deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to rescue the delinquent party by extending or ignoring the deadline for service of the notice. *USAA Property and Casualty Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 491 (2008). Accordingly, Americash

would respectfully submit that this Court lacks jurisdiction to hear the within appeal and it should, therefore, be dismissed.

6. Counsel for Americash did receive, by electronic mail dated April 16, 2012, from former counsel for the Appellants, a copy of the Appellants' Notice of Appeal. Americash would respectfully submit that electronic mail is not proper service in accordance with SCRAC, Rule 262(b). Further, even if it were proper service, such service would have been accomplished more than 30 days after Appellants received written notice of the entry of the orders from which they seek to appeal.
7. Finally, counsel is aware that included in the copy of the notice of appeal he received by electronic mail on April 16, 2012, is a "certification" that Appellants "served the Notice of Appeal" on counsel for Americash at "1812 Lincoln Street, Columbia SC 20202...." While the street address for counsel's office is correct, the postal code is incorrect. In any event, neither counsel nor Americash ever received a copy of the Notice of Appeal.
8. Given the foregoing, Americash respectfully submits that this Court lacks jurisdiction to hear the within appeal, and, therefore, it should be dismissed. Americash would also respectfully request the Court suspend any briefing in this matter until the within motion is ruled upon.

CALLISON TIGHE & ROBINSON, LLC



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Columbia, South Carolina
July 25, 2012

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes, Special Referee

Appellate Case No. 2012-211187
Case No. 2010-CP-39-0352

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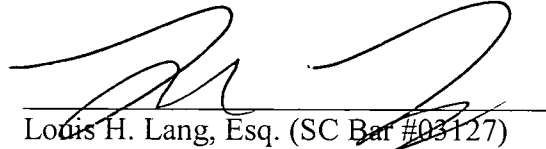
PROOF OF SERVICE

I certify that I have served the **Motion to Dismiss Appeal and Suspend Briefing Schedule** on the following parties by depositing a copy of it in the United States Mail, postage prepaid, on July 25, 2012, addressed as follows:

J. Falkner Wilkes, Esq.
114 Whitsett St.
Greenville SC 29601

Thomas E. Lydon, Esq.
McAngus Goudelock & Courie, LLC
PO Box 12519
Columbia SC 29211

CALLISON TIGHE & ROBINSON, LLC

A handwritten signature in black ink, appearing to read 'L. Lang', is written over a horizontal line.

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*Attorneys for Respondent,
Americash Mortgage Corporation*

Columbia, South Carolina
July 25, 2012