

Exhibit C

Notice of Motion and Motion for Charles S. McCue to
File Second Amended Answer and Counterclaim with
proposed Second Amended Answer and Counterclaim

Carolina First Bank,)
)
 Plaintiff,)
)
 v.)
)
 Charles S. McCue, et al.)
 [X])
 Defendants.)

**MOTION INFORMATION FORM
 AND COVER SHEET**

check box above indicating submitting party

name. S.C. Bar no. and address of plaintiff's attorney T. William McGee, III/Erik T. Norton Nelson Mullins Riley & Scarborough, LLP P.O. Box 11070 Columbia, SC 29211 telephone: (803) 255-9552 fax: (803) 255-5904 E-mail: billy.mcgee@nelsonmullins.com erik.norton@nelsonmullins.com	name. S.C. Bar no. and address of defendant's attorney Drew A. Laughlin, S.C. Bar No.: 3141 Laughlin & Bowen, P.C. P.O. Drawer 21119 Hilton Head Island, SC 29925 telephone: (843) 689-5700 fax: (843) 689-9300 E-mail: drew.laughlin@laughlinandbowen.com
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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: Motion for Charles S. McCue to File Second Amended Answer and Counterclaim

Estimated Time Needed: 15 minutes

Court Reporter Needed: 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 Defendant

Date submitted: 3/19/2012

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, 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: _____

(print name)

MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

Carolina First Bank,)
)
Plaintiff,)
)
v.)
)
Charles S. McCue, et al,)
)
Defendants,)
)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2007-CP-07-03027

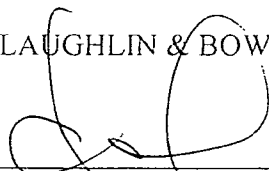
NOTICE OF MOTION AND MOTION
FOR CHARLES S. McCUE TO FILE
SECOND AMENDED ANSWER
AND COUNTERCLAIM

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Charles S. McCue will, within ten (10) days from the service of this Notice of Motion and Motion, or as soon thereafter as counsel may be heard, move before the Presiding Judge of the Beaufort County Court of Common Pleas at 10:00 a.m. in the Beaufort County Courthouse, or at such other time and place as is convenient to Court and counsel, for an Order permitting Charles S. McCue to file Second Amended Answer and Counterclaim.

This Motion is made on the grounds of furtherance of justice and will not prejudice the other parties. Said Second Amended Answer and Counterclaim is attached hereto.

LAUGHLIN & BOWEN, P.C.

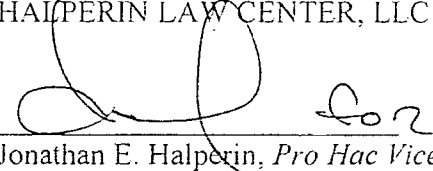
By:



Drew A. Laughlin
P.O. Drawer 21119
Hilton Head Island, SC 29925

HALPERIN LAW CENTER, LLC

By:



Jonathan E. Halperin, *Pro Hac Vice*
P.O. Box 356
Oilville, VA 23129

Attorneys for Defendant/Counter Plaintiff/
Third-Party Plaintiff
Charles S. McCue

March 19, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

Carolina First Bank,)
)
Plaintiff,)
)
v.)
)
Charles S. McCue, et al,)
)
Defendants,)
)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2007-CP-07-03027

CERTIFICATE OF SERVICE

This is to certify that I, Nicole L. Lucignoli, an employee of the law firm of Laughlin & Bowen, P.C., have this day served a true and correct copy of the within and foregoing Notice of Motion and Motion to File Second Amended Answer and Counterclaim upon counsel of record and *pro se* defendants by depositing same in the United States mail with sufficient postage thereon to assure delivery:

T. William McGee, III, Esq.
Erik T. Norton, Esq.
Nelson Mullins Riley & Scarborough LLP
P.O. Box 11070
Columbia, SC 29211

Mitchell Thoreson, Esq.
John W. Wilkins, Esq.
Alford & Wilkins, PC
P.O. Drawer 8008
Hilton Head Island, SC 29938

Blair Witkowski, *pro se*
Reg. No.: 21966-171
U.S.P. Atlanta
Satellite Camp
P.O. Box 150160
Atlanta, GA 30315

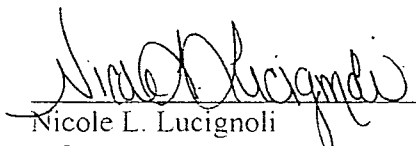
Mark S. Simpson, Esq.
Jones Simpson & Newton, PA
P.O. Box 1938
Bluffton, SC 29910

Brian Atkinson, *pro se*
2316 Fairview Ave.
Parkersburg, WV 26104

This 19 day of March, 2012.

LAUGHLIN & BOWEN, P.C.

By:


Nicole L. Lucignoli
P.O. Drawer 21119
Hilton Head Island, SC 29925

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Carolina First Bank,)
)
 Plaintiff,)
)
 v.)
)
 Charles S. McCue, et al,)
)
 Defendants,)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIALCIRCUIT
 CIVIL ACTION NO.: 2007-CP-07-03027

SECOND AMENDED ANSWER
 AND COUNTERCLAIM OF
 CHARLES S. McCUE
 (Jury Trial Demanded)

Defendant, Charles S. McCue (hereinafter "McCue"), answering the foreclosure Complaint of the Plaintiff, hereby admits, denies and avers as follows:

1. McCue denies all material allegations of the Complaint except as otherwise expressly admitted, qualified, or explained herein.
2. McCue admits the allegations of paragraphs 1 & 2 of the Complaint.
3. McCue denies the allegations of paragraphs 3 thru 7 of the Complaint for lack of information and belief.
4. McCue admits the allegations of paragraph 8 of the Complaint.

AS TO THE FIRST CAUSE OF ACTION

5. Answering paragraph 9 of the Complaint, McCue repeats his answers to paragraphs 1 thru 8 of the Complaint.
6. McCue admits the allegations of paragraphs 10 & 11 of the Complaint.
7. Answering paragraph 9 (sic) on page 3 of the Complaint, McCue denies that he has defaulted on the Note & Mortgage. McCue admits that Plaintiff has declared the entire balance of principal and interest to be due and payable.

8. Answering paragraph 10 (sic) on pages 3 & 4 of the Complaint, McCue admits that Plaintiff has made demand upon him. McCue denies all other allegations contained in said paragraph. Answering further, McCue alleges that Plaintiff breached essential terms and conditions of the loan documents, by, among other things, making unauthorized draw payments, and failing to withhold required retainage.

9. McCue admits so much of paragraph 11 (sic) on page 4 of the Complaint as alleges that mechanics liens have been filed and that claims have been asserted. McCue denies all other allegations contained in said paragraph.

10. McCue admits so much of paragraph 12 of the Complaint as alleges that Plaintiff alleges that it has a right to a deficiency judgment.

AS TO THE SECOND CAUSE OF ACTION

11. McCue repeats the preceding paragraphs of this Answer as fully as if set forth here verbatim..

12. McCue denies the allegations of paragraphs 14 & 15 of the Complaint.

13. McCue admits so much of paragraph 16 of the Complaint as alleges that a document was sent McCue. McCue denies any allegations of the Complaint that misstate or mischaracterize the terms, meaning, or legal effect of such document.

14. McCue denies the allegations of paragraphs 17 & 18 of the Complaint.

15. McCue admits so much of paragraph 19 of the Complaint as alleges that mechanics liens have been filed and that claims have been asserted. McCue denies all other allegations contained in said paragraph.

16. McCue admits so much of paragraph 20 of the Complaint as alleges that Plaintiff alleges that it has a right to a deficiency judgment.

AS ADDITIONAL DEFENSES AND COUNTERCLAIMS

GENERAL AVERMENTS

17. On or about December 15, 2003 Carolina First Bank (hereinafter "CFB") employed Blair Witkowski ("Witkowski") as a loan originator in its Hilton Head Island, South Carolina branch.

18. On or about May 18, 2004, despite concerns about the quality of his work files and documentation, CFB promoted Witkowski to Assistant Vice President, Hilton Head Island Mortgage Loan Manager.

19. On or about March 30, 2005, Charles S. McCue acquired title to the property at 6 Rose Hill Drive, Lot 52.

20. In the spring of 2005, McCue obtained construction to permanent financing from Lowcountry National Bank for the construction of a home at the 6 Rose Hill Drive property. Thereafter, Empire Construction Company began construction of a home on the property.

21. On or about December 15, 2005, Pike Appraisal Company issued an appraisal for the property, as improved, in the amount of \$1,050,000.00.

22. On or about January 3, 2006, Charles S. McCue gave a specific power of attorney to Catherine Olivetti for the purpose of closing on loan from Carolina First Bank ("CFB") for construction refinancing of the 6 Rose Hill Drive property.

23. On or about January 31, 2006, Charles S. McCue refinanced his construction loan with CFB in the amount of \$840,000.

24. On or about February 1, 2006, CFB issued a check in the amount of \$579,600 to Lowcountry National Bank to pay off McCue's loan from Lowcountry and obtain satisfaction of Lowcountry's mortgage on the 6 Rose Hill Drive property.

25. On or about March 16, 2006, CFB promoted Witkowski to Vice President of Mortgage Lending, Regional Mortgage Manager, despite CFB's knowledge of irregularities in his

loan documentation and several substandard performance reviews documenting his failures to comply with bank policies and procedures.

26. From January 31, 2006 through November 30, 2006, CFB failed to properly administer proceeds of the McCue construction loan and repeatedly made improper disbursements in violation of the terms of the loan documents.

27. On or about July 20, 2006, CFB's construction loan administrator wrote, concerning 6 Rose Hill drive, "Property is 80% complete and we need to hold 12% of the uncompleted work. He has received a total in advances of \$790,052.75. The loan amount is \$840,000.00. Minus the draws, the balance in the amount is \$49,947.21."

28. Upon information and belief, said property was not 80% complete at that time.

29. On or about September 14, 2006, CFB's construction loan administrator reported "98% completion" of the home under construction at the 6 Rose Hill Drive property.

30. Upon information and belief, construction of the home was not 98% complete at that time.

31. On or about November 16, 2006 the 6 Rose Hill Drive property was appraised by Island Appraisal Company at \$1,600,000.

32. On or about November 20, 2006, Scott Krivda of CFB sent a title search request order form to McDonnell, Hall & Associates, LLC in connection with a \$300,000 CFB Home Equity Line of Credit ("HELOC") loan allegedly originated by Mr. Krivda to be secured by a mortgage on the 6 Rose Hill Drive property.

33. On or about November 21, 2006, loan officer SMK approved a \$300,000 "second mortgage" HELOC loan allegedly for Charles S. McCue.

34. On or about November 27, 2006, Chad Easler, a notary in the employ of CFB, notarized a limited power of attorney purportedly signed by Charles S. McCue.

35. The power of attorney was a forgery created by officers, employees, and agents of CFB and others without McCue's knowledge. It was not signed or authorized by Charles S. McCue.

36. On or about November 27, 2006 CFB wrote to McDonnell, Hall & Associates, LLC stating that "the borrower," Charles S. McCue, wants to close the loan for 6 Rose Hill.

37. On November 27, 2006 CFB Vice President Witkowski fraudulently opened a "Cashline Home Equity Line of Credit" at CFB, purportedly for McCue, in the amount of \$300,000".

38. On or about December 1, 2006, CFB Vice President Witkowski caused \$300,000 to be deposited into Charles S. McCue's CFB account, Account Number 7098.

39. On or about December 1, 2006, CFB Vice President Witkowski debited Charles S. McCue's CFB account in the amount of \$200,000.

40. On or about December 1, 2006, CFB Vice President Witkowski credited Empire Construction Company's account at CFB, Account 2494, in the amount of \$200,000.00 from the account of Charles S. McCue, with the notation "McCue HELOC."

41. On or about December 1, 2006, CFB Vice President Witkowski debited the Empire Construction's CFB account, Account 2924, in the amount of \$40,000.00.

42. On or about December 1, 2006, CFB Vice President Witkowski credited his own personal account at CFB, Account 8102870523, in the amount of \$40,000.00.

43. As of December 15, 2006, documentation in CFB's loan underwriting files indicated that Charles S. McCue had a TRW credit score of 752 and an Equifax credit score of 726.

44. On or about December 27, 2006, CFB Vice President Witkowski debited the account of Charles S. McCue and made a payment on a loan made to Stephen Sattler, Account number 512-094-6244, in the amount of \$2,666.94.

45. On or about December 27, 2006, CFB Vice President Witkowski debited the account of Charles S. McCue and made a payment on a loan made to David Bachrach, Account 512-094-5540, in the amount of \$2,756.25.

46. On or about December 27, 2006, CFB Vice President Witkowski debited the account of Charles S. McCue and made a payment on a loan to Stephen Sattler, Account number 512-094-6244 in the amount of \$1,361.52.

47. On or about February 23, 2007, CFB terminated Witkowski, for violation of CFB's code of conduct.

48. At the time of CFB Vice President Witkowski's termination by CFB, CFB knew that Witkowski had been engaged in a complex mortgage fraud scheme, which included, but was not limited to, fraud upon Charles S. McCue as pled with specifically above.

49. On or about March 6, 2007, a notice and certificate of lien was filed on the 6 Rose Hill property by Builders Services Group, Inc. in the amount of \$24,200.

50. As a result of the filing of the lien, Charles S. McCue learned in the spring of 2007 that a HELOC loan in the amount of \$300,000 had been fraudulently been taken out in his name.

51. From May 11, 2007 through May 30, 2007 CFB executives, including but not limited to Blair Witkowski's supervising Vice President, Joe Lindsey, reviewed the contents of Charles S. McCue's loan files in detail, but deliberately withheld and failed to inform Charles S. McCue of the results of that review.

52. On June 4, 2007 CFB issued a notice of default to Charles S. McCue on loan number 4180277213.

53. On or about July 13, 2007, a notice and certificate of mechanics lien was filed by Pebble Torn Landscape in the amount of \$7,536.52.

54. On or about September 14, 2007, CFB Vice President Joe Lindsey sought an update of the \$1,600,000 appraisal on the Rose Hill property.

55. On or about September 17, 2007, CFB attorney John T. Moore spoke with Charles S. McCue and recommend that he obtain counsel concerning forbearance on the CFB loan based upon a prospective sale of the home. This conversation was memorialized in a letter from Mr. Moore to Mr. McCue.

56. On or about September 20, 2007, a notice and certificate of mechanics lien was filed by Falco, Inc. in the amount of \$12,030.

57. On or about September 21, 2007 Charles S. McCue retained counsel to represent him in connection with the fraud associated with the CFB loans.

58. On September 23, 2007, and again on October 9, 2007, complete copies of Charles S. McCue's files were requested from CFB. CFB did not produce the files.

59. On or about October 8, 2007, a notice and certificate of mechanics lien was filed by Distinctive Granite in the amount of \$4,539.

60. On or about October 11, 2007, a notice and certificate of Mechanic's Lien was filed by Gustavo Angles in the amount of \$4,050.

61. On or about October 17, 2007, William Stover, counsel for Charles S. McCue, wrote to CFB's counsel, John Moore, expressly notifying Moore and CFB that there had been fraudulent conduct by CFB employees in connection with Mr. McCue's loans with CFB.

62. On or about October 25, 2007, despite CFB's express knowledge of fraud by its own executives and employees in connection with CFB loans to or purportedly to McCue and other CFB customers, CFB filed this lawsuit against Charles S. McCue in the Court of Common Pleas of Beaufort County, South Carolina.

63. On or about October 30, 2007, William Stover informed John Moore, in writing, that CFB had not produced the contents of McCue's loan files.

64. On or about November 4, 2007, John Moore sent a letter to William Stover acknowledging that CFB was informed of the forgery of McCue's signature on loan documents before CFB filed this foreclosure action against McCue.

65. On or about November 14, 2007, William Stover again made written request that CFB provide copies of McCue's loan files and other information from CFB. Again, CFB failed to timely respond.

66. On or about December 1, 2007, while shopping at Roberts' Antiques, a retail store in Lewisburg, West Virginia, in the presence of approximately 30 individuals, Mr. McCue attempted to pay for purchases using his Wells Fargo Visa credit card. The merchant informed Mr. McCue that the card had been canceled and was to be confiscated by the merchant, cut up, and returned to Wells Fargo. The credit card had been canceled as a result of the bank's deliberate reports of false information to the Equifax, Experian and TransUnion Credit Reporting Agencies ("CRSs") concerning Mr. McCue's credit history. As a result of this incident, Mr. McCue suffered embarrassment, anxiety, and emotional distress.

67. On or about December 4, 2007, William Stover, wrote to John Moore, and reported that Mr. McCue's credit card of 20 years had been canceled as a result of mortgage fraud involving CFB officers and CFB's reporting of false information to Credit Reporting Agencies ("CRAs").

68. On or about December 13, 2007, McCue notified CRAs Equifax, TransUnion and Experian, in writing, that he had been the victim of mortgage fraud and requested an investigation.

69. On or about December 23, 2007, TransUnion, Experian and Equifax acknowledged receipt of his report of fraud and request for investigation.

70. On or about January 14, 2008 McCue's counsel, William Stover, wrote to CFB counsel John Moore informing Moore that the false information and foreclosure reported by CFB were severely damaging McCue's credit, causing severe financial problems for Mr. McCue.

71. By January 14, 2008, Mr. McCue's credit score had precipitously declined to 577 based upon the intentional malicious, false and improper collection activity of CFB in connection with of a known fraudulent debt.

72. By January 14, 2008, CFB falsely claimed, in writing, that it would correct and/or remove the improper and false credit reports made by CFB to the CRAs.

73. On or about January 23, 2008, Wells Fargo reduced McCue's credit line from \$70,000 to \$11,200 based on CFB's reporting of a known false delinquency to Experian and others.

74. As a direct and proximate result of the malicious, intentional and wrongful conduct of CFB in knowingly reporting false credit information concerning Charles s. McCue to the CRAs and CFB's failure to properly investigate McCue's claims to the CRAs of fraud and identify theft, McCue suffered and continues to suffer extreme emotional distress and anxiety, has suffered injuries and physical manifestations of injury, and sought medical care form his primary treating physician, Dr. Louis Gross, and other physicians for the same.

75. As a further direct and proximate result of CFB's deliberate, malicious, intentional and wrongful reporting of credit information it knew to be false and misleading, in the winter and spring of 2007, McCue was contacted by several bank creditors, including First National Bank in Ronceverte, West Virginia and Huntington National Bank in West Virginia because of the false and derogatory credit information fraudulently placed on Mr. McCue's credit history by CFB. These creditors requested meetings with McCue to discuss his creditworthiness. This caused Mr. McCue further health problems, loss of sleep, nervousness, undue embarrassment and other emotional distress regarding his ability to conduct normal business activities.

76. McCue sought commercial credit from Huntington National Bank in the spring of 2007 for the purchase of a farm and faced substantial hurdles and delays in obtaining the same due to the malicious, false and derogatory information on his credit report as a result of the actions of

CFB. As a result, it took some three (3) months for McCue to secure financing for the purchase of a farm in Greenbrier County, West Virginia. With any prior such purchases, McCue was able to secure financing in approximately 2 weeks or less. In the case of this farm purchase, Mr. McCue's improperly damaged credit score was the issue that significantly enlarged the time it took for him to secure financing, and resulted in a loan with significantly less favorable terms.

77. As a further result of CFB's deliberate, malicious, intentional and wrongful reporting of credit information it knew to be false and misleading, Mr. McCue suffered a loss of his \$70,000 credit card and credit line through Wells Fargo and an increase in his interest rate to 15.25% through Wells Fargo.

79. As a further result of CFB's deliberate, malicious, intentional and wrongful reporting of credit information it knew to be false and misleading, Mr. McCue also suffered a massive increase in his interest rate for his Bank of America credit card from 6.99% to 18.4%, again due to false, derogatory information on Defendant/Counter Plaintiff's credit report.

80. On or about September 7, 2008, CFB, through its counsel, William McGee, scheduled Mr. McCue's deposition for September 28, 2008.

81. On September 18, 2008, despite its express knowledge of fraudulent and illegal activity by one or more of CFB's executives and employees in connection with CFB's lending to Charles S. McCue and others, and despite the fact that CFB was expressly aware that Mr. McCue was represented by counsel, CFB's collections department wrote directly to Mr. McCue stating that Mr. McCue "must pay his balance in full" in excess of \$300,000 by September 28, 2008, and a failure by Mr. McCue to comply "will result in your account being charged off... and reported to the credit reporting agencies," causing further injury and emotional distress to Mr. McCue.

**FOR A FIRST COUNTERCLAIM
(Breach of Contract)**

82. The allegations of the preceding paragraphs are repeated as if set forth here verbatim.

83. On or about January 31, 2006, a "Carolina First/Mercantile Bank Construction Loan Agreement", was entered into by and between Plaintiff and McCue. A copy of said document is attached hereto and incorporated by reference.

84. Said Agreement provided in pertinent part in paragraph 2 that:

The proceeds of the Loan... are to be disbursed by the Lender... upon an on-the-job inspection of the construction of the Building(s) by a representative of the Lender and upon the basis of the work remaining to be completed as determines by the Lender's inspector... Ten percent of the Loan proceeds shall be retained by the Lender pending completion certifying completion and acceptance by the Owner(s) and the Lender of the construction of the Building(s)... At no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete the construction of Building(s) on the property and to pay all non construction costs.

85. Plaintiff, on information and belief, failed to conduct on-the-job inspections as called for in the Construction Loan Agreement.

86. Plaintiff, on information and belief, failed to retain ten percent of the Loan proceeds pending completion certifying completion and acceptance by the Owner(s) and the Lender.

87. Plaintiff, on information and belief, disbursed the Loan proceeds to the extent that the undisbursed Loan proceeds were less than the amount necessary to complete the construction of the Building(s).

88. Plaintiff's acts and omissions as set for the above constitute a material breach of the Construction Loan Agreement.

89. As a direct and proximate result of Plaintiff's breach of the Construction Loan Agreement, McCue has suffered actual damages.

**FOR A SECOND COUNTERCLAIM
(Breach of Contract Accompanied By Fraudulent Act)**

90. The allegations of the preceding paragraphs are repeated here as fully as if set forth verbatim.

91. On or about January 31, 2006, contemporaneously with the execution of the first mortgage, a document entitled "Carolina First/Mercantile Bank Construction Loan Agreement," was entered into by and between Plaintiff and McCue. A copy of said document is attached hereto and incorporated by reference.

92. Said documents provided in pertinent part in paragraph 2 that:

The proceeds of the Loan... Are to be disbursed by the Lender... upon an on-the-job inspection of the construction of the Building(s) by a representative of the Lender and upon the basis of the work remaining to be completed as determines by the Lenders' inspector... Ten percent of the Loan proceeds shall be retained by the Lender pending completion certifying completion and acceptance by the Owner(s) and the Lender of the construction of the Building(s)... At no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete the construction of Building(s) on the property and to pay all non construction costs.

93. McCue justifiably relied upon the representations of the Lender as they pertained to inspections, specifically, "...At no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete the construction of Building(s) on the property and to pay all non construction costs."

94. Plaintiff failed to conduct on-the-job inspections as called for in the Construction Loan Agreement.

95. Plaintiff failed to retain ten percent of the Loan proceeds pending completion certifying completion and acceptance by the Owner(s) and the Lender.

96. Plaintiff failed to ascertain that at no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete the construction of the Building(s).

97. Plaintiff's breach of contract was accompanied by fraudulent acts, including, but not necessarily limited to, the creation and use of a forged power of attorney to create a loan to McCue without his knowledge or authorization, the disbursement of proceeds from that loan to, among others, an officer of the Plaintiff, all as part of a scheme to defraud McCue.

98. The fraudulent acts of Plaintiff's officer and employee willful, intentional, and deliberate, and were intended, in part, to conceal Plaintiff's material breach of the Construction Loan Agreement and related loan documents.

99. As a direct and proximate result of Plaintiff's actions, as set forth above, McCue has suffered actual damages, including loss of creditworthiness, slander of his more than 35 year history of previously unblemished credit, embarrassment, emotional distress, pain and suffering, physical injury, attorneys' fees, and the filing of mechanic's liens against his property and claims against himself from unpaid subcontractors and suppliers.

100. Defendant/Counter Plaintiff McCue has incurred and continues to incur attorney's fees in connection with attempting to repair his slandered credit and in defending the improper and ill founded lawsuit brought by CFB after CFB was expressly placed on notice of the fraud associated with the McCue loans and CFB's express knowledge of a vast net of mortgage fraud perpetrated by CFB's own executives and employees. These special and general damages are continuing in nature and will increase to the extent additional personal funds are spent by McCue on the Rose Hill property and obstacles/increased costs are encountered in his normal business affairs.

101. Upon information and belief, McCue is entitled to recover punitive damages from CFB due to the willful, wanton, and reckless conduct of CFB, and CFB's utter disregard for McCue and his rights.

**FOR A THIRD COUNTERCLAIM
(Fraud and Misrepresentation)**

102. The allegations of the preceding paragraphs are repeated and incorporated here as fully if set forth here verbatim.

103. CFB, through its officers, employees and agents, individually and in concert with others, perpetrated a fraud upon McCue.

104. Among other things, CFB officers and employees, individually and in concert with others, forged a power of attorney which they falsely represented to third parties, including but not limited to, McDonnell Hall & Associates, LLC, as authentic in order to close a HELOC loan which purported to obligate McCue and which encumbered title to McCue's 6 Rose Hill Drive property.

105. Among other things, CFB officers and employees falsely represented to third parties, including but not limited to McDonnell Hall & Associates, LLC that McCue knew about and wanted to close the HELOC loan.

106. Among other things, CFB officers and employees participated in and/or had knowledge of false reports of inspections of the progress of construction on the 6 Rose Hill Drive property that were made in order to obtain improper funding of draw requests made by Empire Construction.

107. CFB officers and employees deliberately concealed their actions and representations from McCue.

108. The false representations of CFB officers, employees, and agents were material. Among other things, they were a direct cause of the closing of the HELOC loan.

109. CFB's officers and employees knew that their representations were false.

110. Upon information and belief, CFB, through the exercise of reasonable care, should have known of the actions of its officers and employees.

111. CFB and its officers and employees had a direct financial interest in the closing of the HELOC loan.

112. The misrepresentations and false statements were made by CFB officers and employees with the intention that they would be relied upon by third parties and result in the closing of the HELOC loan.

113. At all times material, McCue was ignorant of the false conduct and representations of the CFB officers and employees as set forth above.

114. Upon information and belief, the attorneys purportedly representing McCue in the closing of the HELOC loan relied upon the false representations of CFB officers and employees by, among other things, closing the HELOC loan.

115. Upon information and belief, McCue and others had a right to rely upon the representations and statements of CFB's officers and employees.

116. Upon information and belief, CFB disbursed the full amount of the HELOC loan.

117. Upon information and belief, all of the proceeds of the HELOC loan were wrongfully diverted to third parties and CFB officers and employees.

118. As a direct and proximate result of the fraudulent conduct of CFB, its officers and employees, McCue has suffered actual damages.

119. Upon information and belief, CFB should be ordered to pay punitive damages to McCue because of the intentional fraudulent conduct of CFB, its officers and employees, and CFB's reckless and conscious disregard of McCue's rights.

FOR A FOURTH COUNTERCLAIM
(Negligence)

120. The allegations of the preceding paragraphs are repeated here as fully as if set forth verbatim.

121. Carolina First was negligent, reckless, willful, and grossly negligent:

- a. In failing to properly monitor and administer the construction loan and making disbursements of loan proceeds that it knew or should have known were improper;
- b. In failing to properly supervise its officers and employees;
- c. In failing to comply with federal banking regulations and regulatory guidance, standards of the banking industry, and its own policies and procedures;
- d. In failing to have a written policy governing draw requests;
- e. In failing to comply with the requirements of its own loan documents pertaining to inspections prior to approval of draw requests;
- f. In allowing CFB officers and employees to create a HELOC loan, purportedly for McCue, without McCue's knowledge or authorization, using a based power of attorney forged by CFB officers and employees;
- g. By not having written policies for making HELOC loans;
- h. By allowing its officer and employee to convert funds for his personal use and by not having internal controls in place to prevent such conduct;
- i. By having an employee compensation program that rewarded loan fee income at the expense of quality loans and proper conduct;
- j. By allowing loan officers to order property appraisals;
- k. By failing to reasonably investigate McCue's dispute of CFB's inaccurate and damaging credit reporting;
- l. By attempting to collect purported debts that CFB knew or should have known were the product of fraud against McCue involving CFB officers and employees;
- m. By making derogatory credit reports concerning McCue that CFB knew or should have known were false;

122. Carolina First knew, or should have known, of the negligence, gross negligence, and/or criminal activities of its officers and employee(s).

123. That as a result of the Bank's willful and reckless actions, gross negligence and malice, McCue has suffered actual damages, including but not limited to, reduced credit ratings, cancellation of a credit card that McCue had owned for almost twenty (20) years, increase interest

and loan costs now and in the future, attorneys' fees, and emotional distress and anxiety and resulting physical injuries into.

124. Upon information and belief, McCue is entitled to recover punitive damages from CFB due to the willful, wanton, and reckless conduct of CFB, and CFB's utter disregard for McCue and his rights.

**FOR A FIFTH CAUSE OF ACTION
(Negligent Supervision)**

125. The allegations of the preceding paragraphs are incorporated as fully as if repeated here verbatim.

126. Upon information and belief, Plaintiff had the duty to use reasonable care to police its premises and employees in order to prevent its employees from doing harm to others.

127. Upon information and belief, Plaintiff had the means to control its employees' conduct.

128. Upon information and belief, Plaintiff knew or should have known of the need to control the conduct of its employees, particularly Witkowski.

129. Upon information and belief, Plaintiff failed to take reasonable care to supervise its employees, particularly Witkowski.

130. As a direct and proximate result of Plaintiff's failure to reasonably supervise its employees, including Witkowski, Defendant as suffered actual damages and injury.

**FOR A SIXTH COUNTERCLAIM
(Defamation)**

131. Defendant/Counter Plaintiff, Charles S. McCue, complaining of the Plaintiff, hereby incorporates, by reference, the prior paragraphs, and further alleges as follows:

132. Plaintiff CFB published false information about Defendant/Counter Plaintiff McCue by reporting false account information to CRAs TransUnion, Equifax and Experian on accounts CFB knew or should have known was created or opened by fraudulent means and/or used

for fraudulent purposes by one of CFB's own bank employees and was used to defraud Charles S. McCue, so as to continue having such credit reporting agencies publish defamatory information.

133. The credit reporting agencies published the account to others, such as existing and potential creditors, who read the false information regarding the account and attributed it to Charles McCue, which injured his credit reputation with respect to such subscribers.

134. Said reporting by CFB was done maliciously, without privilege, and with a willful intent to injure McCue, in that CFB was aware that the information it was reporting was false.

**FOR A SEVENTH COUNTERCLAIM
(Slander of Title)**

135. The allegations of the preceding paragraphs are incorporated as fully as if repeated here verbatim.

136. Upon information and belief, Plaintiff published a false statement when it recorded a mortgage on Defendant's real property when it knew or should have known that the mortgage and related note was the product of forgery and fraud and invalid.

137. Upon information and belief, the mortgage recorded by Plaintiff was slanderous and derogatory to Defendant's title to his property.

138. Upon information and belief, the mortgage recorded of record is invalid and should be released.

139. As a direct and proximate result of Plaintiff's publication of a false statement derogatory to Defendant's title, Defendant has suffered special damages as a result of diminished value of the property in the eyes of third parties, including, but not limited to, the cost of reasonably necessary legal action to remove the spurious cloud placed on Defendant's title by the Plaintiff and remedy the effects of Plaintiff's slanderous statement.

FOR AN EIGHTH CAUSE OF ACTION
(Intentional infliction of emotional distress)

140. The allegations of the preceding paragraphs are incorporated as fully as if repeated here verbatim.

141. Upon information and belief, Plaintiff intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from its conduct.

142. Upon information and belief, there was a special relationship between Plaintiff and Defendant, and Plaintiff's conduct involved wrongful attempts to collect monies that Plaintiff knew, or should have known, were not owed by Defendant and wrongful attempts to force Defendant to relinquish legal rights.

143. Upon information and belief, Plaintiff's conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

144. Upon information and belief, the actions of the Plaintiff caused the Defendant's emotional distress.

145. Upon information and belief, the emotional distress suffered by the Defendant was severe such that no reasonable man could be expected to endure it.

FOR A NINTH COUNTERCLAIM
(Violation of Fair Credit Reporting Act)

146. The allegations of the preceding paragraphs are repeated here as fully as if set forth verbatim.

147. Defendant/Counter Plaintiff is an adult resident citizen of Greenbrier County, West Virginia.

148. Jurisdiction is properly laid in this Court as 15 U.S.C. § 1681 confers concurrent jurisdiction of Fair Credit Reporting Act (hereinafter "FCRA") claims in the State and Federal Courts.

149. The claim arises from Plaintiff Carolina First Bank's (hereinafter "CFB") violation of the requirements of the Fair Credit Reporting Act (15 U.S.C. §1681 et seq). The Plaintiff has willfully and negligently failed to follow reasonable procedures to assure maximum possible accuracy of the information concerning the Defendant/Counter Plaintiff's credit report, as required by 15 U.S.C. §1681e(b).

150. CFB is a "Furnisher" within the meaning of the FCRA.

151. TransUnion, Equifax, Experian are all "Consumer Reporting Agencies" (hereinafter "CRAs") within the meaning of the FCRA.

152. CFB has deliberately, and with malice, furnished and then failed to delete and suppress erroneous and knowingly false negative information on McCue's credit report, as is more fully described above.

153. CFB had a duty to conduct a reasonable investigation under the FCRA of the disputed information and deliberately failed to do so.

154. On or about October 25, 2007, CFB sued Charles S. McCue in the Court of Common Pleas for Beaufort County, South Carolina, Civil Action Number 07-CP-07-03027, seeking foreclosure on debts known to CFB to be fraudulent.

155. In the Counterclaim to that Complaint (Count I herein), McCue detailed the fraudulent CFB HELOC account, thereby giving further notice to CFB of the inaccuracy of information furnished to CRAs by CFB regarding the fraudulent account.

156. At the time of that Counterclaim, the CFB HELOC loan and construction loan were shown on the McCue credit report as delinquent.

157. When the parties discussed this matter, CFB agreed to suppress the alleged loan delinquency data and to contact the CRAs with instructions to take whatever steps necessary to assure that the offending delinquencies did not reappear on McCue's credit file. CFB breached this agreement, deliberately, willfully, and/or out of gross negligence.

158. CFB's conduct in filing a verified foreclosure complaint in the Court of Common Pleas after Mr. McCue reported to the bank in writing that he had been a victim of fraud was, in itself, fraudulent, and demonstrates malice.

159. At the time the bank filed its foreclosure action, it was expressly aware that its own executives and agents, acting within the scope of their employment with the bank, had been involved in defrauding not only Mr. McCue, but many other CFB customers and/or borrowers in similar circumstances.

160. CFB wrote directly to Charles S. McCue, despite the fact that CFB knew he was represented by counsel, by letter dated September 18, 2008 threatening to report a known fraudulent account as a "Write-off" and contained the same false, erroneous information and adverse data regarding McCue.

161. The information which CFB transmitted to CRAs contained adverse, false, fraudulent and erroneous CFB account information concerning McCue's accounts. CFB's publication of this false and adverse was in willful and negligent non-compliance with the FCRA.

162. Plaintiff applied for credit with Wells Fargo in March of 2008.

163. Wells Fargo bank denied McCue's credit application based in whole or in part on the false information reported to Carolina First Bank.

164. Defendant/Counter Plaintiff McCue suffered other difficulties with credit as more fully described in the facts section above.

165. As a result of CFB's negligent and willful non-compliance with the Fair Credit Reporting Act, it again reported to CRAs the false, fraudulent and adverse mortgage and HELOC accounts.

166. CFB maintains and distributes credit data files on Charles S. McCue's credit. CFB has willfully violated the provisions of the Fair Credit Reporting Act by refusing to take steps to correct this known false data and its failure to follow reasonable procedures to assure maximum possible accuracy of McCue's credit information. Due to its willful failure to comply with the requirements of the Fair Credit Reporting Act, McCue is entitled to actual and punitive damages for Carolina First Bank's willful non-compliance with the Fair Credit Reporting Act.

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WHEREFORE, Charles S. McCue prays that this Court order Plaintiff to remove or cause the removal of all mortgages and liens against the subject property and for judgment against the Plaintiff for actual damages, including attorneys' fees and costs incurred by McCue in this action, compensation for damage done to McCue's credit and reputation, and compensation for emotional distress and personal injuries suffered by McCue, for exemplary or punitive damages, and for such other and further relief as the Court may deem just and proper.

LAUGHLIN & BOWEN, P.C.

By: _____

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HALPERIN LAW CENTER, LLC

By: _____

Jonathan E. Halperin, *Pro Hac Vice*
P.O. Box 356
Oilville, VA 23129

Attorneys for Defendant/Counter Plaintiff/
Third-Party Plaintiff
Charles S. McCue

March ____, 2012

Exhibit D

McCue's Answers to CFB's Second Interrogatories



STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF BEAUFORT)

Carolina First Bank,) Civil Action No. 2008-CP-07-03027
)
 Plaintiff,)
)
 v.)
)
 Charles S. McCue, Builder Services)
 Group, Inc. d/b/a Gale Contractor)
 Services, Pebblethorn Landscape &)
 Design, LLC, Falco, Inc., Distinctive)
 Granite & Marble, Inc. and Gustavo)
 Angeles, individually and d/b/a Empire)
 Construction,)
)
 Defendants.)

CHARLES S. McCUE'S ANSWERS TO CAROLINA FIRST BANK'S SECOND INTERROGATORIES

In response to Carolina First Bank's Second Interrogatories, Defendant Charles S. McCue hereby responds as follows:

1. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party. Do not provide general allegations of damages as against (sic) this Interrogatory seeks a specific amount of any and all damages sought against (sic) in the case at bar.

ANSWER: OBJECTION. The Interrogatory as phrased is ambiguous, vague and, in part, unintelligible. Moreover, it misstates the nature of available damages in this action. Without waiving said objection or intending this response to be all inclusive, Defendant McCue seeks actual damages for loss of creditworthiness, actual damages for slander of his more than 35 year history of previously unblemished credit, common law fraud damages, exemplary damages for the willful and deliberate damage done to

Defendant's credit by Carolina First Bank (hereinafter "CFB") and for available statutory damages, including attorneys' fees and costs as provided for in applicable statutes governing credit reporting, and damages as available under all applicable consumer protection statutes. These damages are to be set by the trier of fact.

Defendant is further seeking rescission of the CFB mortgage loan and equity line agreements on the grounds of fraud and is seeking that Plaintiff take title to the subject realty. Defendant McCue also seeks repayment of all interest and late fees paid by him on each of the subject loans. To date that interest is in the amount of \$76,357.98. Moreover, Defendant McCue seeks reimbursement for closing costs, property taxes, homeowner's insurance and homeowner's assessments paid by Defendant and indemnification from CFB for all outstanding liens on the subject property.

Moreover, Defendant McCue seeks pain and suffering, embarrassment, fright, shame, mortification, humiliation and emotional distress damages as a result of the willful and deliberate conduct of CFB as alleged in the counterclaim. More specifically, with respect to those damages, on February 28, 2008, Defendant McCue attempted to use his Wells Fargo credit card at a store in Lewisburg, Robert's Antiques, for purchases. The card was declined and the merchant was asked to take Mr. McCue's card from him and cut it up, causing Defendant McCue humiliation and embarrassment. Mr. McCue also received calls from several of his bankers, including from Doug Frist of First National Bank in Ronceverte, West Virginia and Randall Underwood of Huntington National Bank in West Virginia. Both requested meetings with Mr. McCue to discuss his credit score, his credit worthiness, how his credit score would impact his collateral, and the availability or lack of availability of credit to him. This caused Mr. McCue loss of sleep, nervousness, undue embarrassment and other emotional distress regarding his ability to conduct normal business activities.

Mr. McCue also sought commercial credit from Huntington National Bank and faced substantial hurdles and delays in obtaining the same. It took some three (3) months or more to secure financing for the purchase of a farm in Greenbrier County, West Virginia. With any prior such purchases, Mr. McCue was able to secure financing

in approximately 2 weeks. In the case of this farm purchase, Mr. McCue's improperly damaged credit score was the issue that significantly enlarged the time it took for him to secure financing.

Mr. McCue also suffered a loss of his \$70,000 credit card and credit line through Wells Fargo and an increase in his interest rate to 15.25% through Wells Fargo. Mr. McCue also suffered a massive increase in his interest rate for his Bank of America issued credit card from 6.99% to 18.24%; and rejection by Wells Fargo of his 3/3/08 business credit line request of Defendant McCue due to false derogatory information on Defendant's credit report.

Thereafter, CFB's conduct in filing a verified complaint in the Court of Common Pleas after Mr. McCue reported to the bank in writing that he had been a victim of fraud, further exacerbated Mr. McCue's emotional distress. At the time the bank filed its foreclosure action, it was expressly aware that its own executives and agents, acting within the scope of their employment with the bank, had been involved in defrauding not only Mr. McCue, but many other CFB customers and/or borrowers in similar circumstances. The existence of this very action has caused and continues to cause emotional distress and significant health difficulties to Mr. McCue.

Mr. McCue has incurred and continues to incur attorney's fees in connection with attempting to repair his slandered credit and in defending the improper and ill founded lawsuit brought by CFB after CFB was expressly placed on notice of the fraud associated with the McCue loans and CFB's express knowledge of a vast net of mortgage fraud perpetrated by CFB's own executives and employees.

These special and general damages are continuing in nature and will increase to the extent additional personal funds are spent by Defendant McCue on the Rose Hill property and obstacles/increased costs are encountered in his normal business affairs.

2. In response to your claims and allegations regarding damage to credit, identify by name, address, telephone number, employer/company name each and every third party you have provided a financial statement, tax return or tax information and/or any other financial information from January 31, 2006 through the present.

ANSWER:

- a. Huntington National Bank
Elkins Commercial Lending
P.O. Box 633
Charleston, WV 25322-0633
(2 notes: 10/19/07 and 5/15/08)
- b. First National Bank
P.O. Box 457
One Cedar Street
Ronceverte, WV 24970
(6/10/08 note)
- c. Suntrust Mortgage, Inc.
5 Office Park Road
Hilton Head Island, SC
(4/30/07 application – construction to perm loan)
- d. Wells Fargo (3/3/08)

3. In response to your claims and allegations regarding damage to credit, identify by name, address, telephone number, employer/company name each and every third party to whom you have submitted a credit application, loan application and/or any other request for an extension of credit, financing and/or loan proceeds. This interrogatory includes, but is not limited to, lenders, companies, individuals, financial consultants, banks, financial institutions and/or any other entity or person that serves as a basis for Defendant's claim that CFB has caused him any damage.

ANSWER: OBJECTION. This interrogatory is overly broad, unduly burdensome and duplicative of Interrogatory No. 2. Without waiving said objection or intending the response to be all inclusive, please see Answers to Interrogatories Nos. 1 and 2, above.

4. Identify all real property in which you own any interest. In responding to this Interrogatory, you must provide the address of each piece of property; the price for which it was purchased and when it was purchased; the current value of each property (or last appraised value); your percentage of ownership; the amount owed on each piece of

property; and the name of any person, lender or company that owns any interest in each property with a description of such ownership.

ANSWER: OBJECTION. This interrogatory is improper as it is overly broad, unduly burdensome, vexatious and harassing as it seeks to obtain judgment debtor information before any judgment has been entered. Moreover, this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence in this action.

Without waiving said objection, Defendant McCue states that he owns the subject real property involved in this action, located at 6 Rose Hill Drive, and another property located at 63 Tanglewood Drive in Beaufort, South Carolina. As to the subject property, the plaintiff/counter defendant, CFB, is well aware of all interests and liens. As to the second property at Tanglewood Drive, there are no liens. This home is scheduled for completion in the first week of October, 2008.

5. Identify all bank accounts, retirement accounts, 401(k) accounts, investment or securities accounts and/or all other accounts or funds owned in whole or in part by Charles S. McCue. Your Answer must include the name of the company holding each account; the respective current balance; the percentage of ownership of each account; and the name of any person or entity owning an interest in each account, along with the name, address, telephone number and percentage of ownership.

ANSWER: OBJECTION. This interrogatory is improper as it is overly broad, unduly burdensome and seeks to obtain judgment debtor information before any judgment has been entered. Moreover, given that CFB has deliberately, with malice, knowingly and wrongfully sued Mr. McCue based on a fraudulent note and fraudulent loan draws, CFB is well aware it does not have the right to discover Mr. McCue's assets and net worth information, and that such a request is intended to vex, oppress and further harass Mr. McCue. Further, this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence in this action. Moreover, this interrogatory is overly broad and unduly burdensome as it seeks an accounting of every single cash asset of the Defendant – information to which Plaintiff CFB plainly is not entitled and is repetitive to

the extent this information has been previously provided by Mr. McCue in the loan application for the alleged CFB debt sued upon in this case.

Without waiving said objections, see CFB 00 ___-00 ___, detailing Mr. McCue's borrowings in 2005 and 2006 in possession of CFB.

6. Identify any and all businesses, companies or other entities in which you own any interest. Your Answer must include the name of each company and what its primary business interest or purpose (sic); the name, address and telephone number of each company; whether you are an officer or director of each company; your percentage of ownership of each company along with the identity of all other owners (by name, address and telephone number) and each co-owner's percentage of ownership.

ANSWER: OBJECTION. This interrogatory is improper as it is overly broad, unduly burdensome and seeks to obtain judgment debtor information before any judgment has been entered. Moreover, given that CFB has knowingly sued Mr. McCue based on a fraudulent note, CFB is well aware it does not have the right to discover Mr. McCue's assets and net worth information, and that such a request is intended to vex, oppress and further harass Mr. McCue. Further, this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence in this action. Moreover, this interrogatory is overly broad and unduly burdensome as it seeks an accounting of every single asset of the Defendant – information to which Plaintiff CFB plainly is not entitled, and is repetitive to the extent it was previously provided by Defendant McCue in the loan application for the alleged CFB debt sued upon in this case.

Without waiving said objections or intending the response to be all inclusive, Mr. McCue is the Managing Member of One Gateway Associates, LLC, Summersville, West Virginia; the President of Nicholas Loan and Mortgage; President of Meghan Estates, Inc., located in Nicholas County, West Virginia and President of Ottmer, Inc.

7. Identify all relatives of Charles S. McCue, whether by blood or marriage, who have bought a house or real property, or have participated in any way in the construction or development of a house or other residential/commercial building, in Beaufort, South Carolina, since January 1, 2003. Your Answer must include the name,

address and telephone number of each relative, how you are related to each person identified, and sufficiently identify and describe each purchase or project so that CFB can locate same.

ANSWER: Chad McCue (nephew) & Tammy McCue (nephew's wife); 5 Cross Tide, Bluffington, SC 29910. In addition, Defendant McCue has been informed that Mark McCue (the brother of Chad McCue and Defendant McCue's nephew) has real estate in Beaufort County, South Carolina, however that is the extent of his knowledge on this issue.

8. Identify any and all agreements, contracts and/or understandings between Charles S. McCue and Chad McCue, Brian Atkinson and/or Empire Construction regarding the purchase, construction and ultimate sale of the real property subject to the case at bar. Your Answer must include the identification of any written agreements as well as oral agreements that pertain to how the project would be financed, what role each party would play, whether the completed house would be ultimately sold and how any profits would be divided. Also, as to any oral agreements or discussions, provide the parties to such talks, the dates on which they occurred and the substance of each discussion.

ANSWER: As to written agreements, see construction agreements produced in response to Plaintiff's Requests for Production of Documents dated 1/31/08. Additionally, Defendant Charles S. McCue and his nephew, Chad McCue, had orally agreed that Empire Construction would serve as the general contractor on the job at 6 Rose Hill Drive, procure and pay necessary sub contractors, and that upon completion the home would be sold, with Charles McCue and Chad McCue splitting the profits after Charles McCue had recouped all costs associated with the project, including capital, interest, additional improvement funds and other costs. Charles McCue would provide liquid funds for the home and financing.

9. Identify any and all documents, emails, notes and/or other communications of any kind between Charles S. McCue and Chad McCue, Mark McCue, Brian Atkinson

and/or any business owned in whole or part by the aforementioned individuals from January 1, 2005 through the present.

ANSWER: OBJECTION. This interrogatory is overly broad and unduly burdensome and seeks irrelevant information as it seeks any "communications of any kind," even, presumably, "each and every" social or familial communication between family members. Without waiving said objection or intending the response to be all inclusive, numerous conversations occurred between Charles McCue, his nephew Chad McCue, and Mr. Charles McCue's executive assistant, Joy DeMoss, from 2005 through 2007 concerning the progress of construction at 6 Rose Hill, including those relating to payment of subcontractors, potential buyers, matters pertaining to loan draws, and other banking matters, to include providing personal funding over and above the loan draws from CFB. To the extent that any such communications were made in writing or memorialized, they have been previously produced. Should additional such information become available, Defendant McCue will supplement this Answer accordingly.

Brian Atkinson, on at least one occasion, and Chad McCue, on several occasions in 2008, have stated that Blair Witkowski, Vice President of CFB and other agents/employees of CFB of wrongfully and fraudulently embezzling money, including Mr. McCue's money and the money of others, from CFB accounts and from Empire Construction accounts. According to the statements made by Mr. Witkowski to them, other executives in the employ of CFB, at both the local branch and home office, were involved in fraudulent loan activity, including fraudulent activity involving Charles McCue's loans. The FBI is investigating a massive mortgage fraud scam including Blair Witkowski and other CFB executives and employees. According to the FBI, over \$100 million in loans are involved. These proceeds were fraudulently taken, stolen and embezzled from associated accounts, including the McCue loans and the loans of others, without any proper authorization. These individuals also allege that Mr. Witkowski threatened them with bodily harm and/or death should they expose any role Mr. Witkowski had in the fraud done to Charles McCue. Chad McCue also communicated to

Charles McCue their suspicion that Mr. Witkowski and his cohorts were behind the arson that destroyed the home of Mr. Atkinson.

Charles S. McCue has had a single conversation on or about June of 2008 with Mark McCue, his nephew, in which Mark McCue revealed that he had a newly commenced construction of residential property with similar fraudulent circumstances to the 6 Rose Hill Drive property, where more loan proceeds from CFB were advanced than allowable under the draw schedule for percentage of completion which necessitated substantial personal expenditures to complete construction.

CLABAUGH LAW OFFICE

By: 

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Hilton Head Island, SC. 29938

Hilton Head Island, South Carolina
October 13, 2008