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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Case No. 2019-CP-10-4503
Appellate Case No. 2023-001844

Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit
Loans Inc., Pass-Through Certificates 2007 QH2.....Respondent,

v.

Ashley Johnson Beshara as Trustee of the Revocable Trust Agreement for 2235
Shoreline Drive originally dated the 3rd day of March 2010; Shoreline Farms
Community Association, Inc.; Wells Fargo Bank, N.A.; Cadle Rock Joint Venture,
L. P. an Ohio Limited Partnership, Curtis Rogers and Julie Rogers, Defendants,

Of whom Curtis Rogers, Julie Rogers and Ashley Johnson Beshara as Trustee of the
Revocable Trust Agreement for 2235 Shoreline Drive originally dated 34d day of
March 2010 are theAppellants,

AND

Ashley Johnson Beshara as Trustee of the Revocable Trust Agreement for 2235
Shoreline Drive originally dated the 3rd day of March 2010, Third-Party Plaintiff,

v.

Nationstar Mortgage, LLC,.....Respondent.

RECORD ON APPEAL

Volume I

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL DISTRICT

Deutsche Bank Trust Company) Civil Action No. 2019-CP-10-04503
Americas, as Trustee for Residential)
Accredit Loans, Inc., Pass-Through)
Certificates 2007-QH2,)

Plaintiff,)

v.)

Ashley Johnson Beshera as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010; Shoreline Farms)
Community Association, Inc.; Wells)
Fargo Bank, N.A.; Cadle Rock Joint)
Venture, L.P. an Ohio Limited)
Partnership, Curtis Rogers and Julie)
Rogers)

Defendants,)

Ashley Johnson Beshera as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010,)

Third-Party Plaintiff,)

v.)

Nationstar Mortgage LLC,)

Third-Party Defendant.

**ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT, GRANTING
PLAINTIFF AND THIRD-PARTY
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING, IN PART, AND
DENYING, IN PART, DEFENDANTS'
MOTION TO COMPEL**

THIS MATTER came before the Court on **February 10, 2023**, for hearing on Defendants Curt and Julie Rogers' Motion for Summary Judgment and Motion to Compel and Plaintiff Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2 and Third-Party Defendant Nationstar Mortgage LLC's Motion

for Summary Judgment as to the Borrower-Defendants' counterclaims, cross-claims and third-party claims. Having reviewed the submissions and arguments of the counsel and having determined the issues raised in Plaintiff's Memorandum in Support filed February 1, 2023, the Court rules that the decision is affirmed and granted for the reasons set forth in the Motion for Summary Judgment and its Memorandum in Support.

STATEMENT OF UNDISPUTED FACTS

Loan Origination

This case represents a second attempt to foreclose a first-priority mortgage encumbering real property at 2235 Shoreline Drive, Johns Island, South Carolina 29455 ("Property"). The first-priority mortgage being foreclosed in this current action was originated when Curt Rogers executed and delivered a promissory note ("Note") in the amount of \$1,500,000.00 in favor of Homecomings Financial, LLC—f/k/a Homecomings Financial Network, Inc.—("Lender") on January 12, 2007. (Compl. ¶ 6.) To secure payment on the note, the Rogers signed a mortgage ("Mortgage" and together with the Note, the "Mortgage Loan") that encumbers the Property. (*Id.* ¶ 7.) The Mortgage was recorded with the Charleston County Register of Deeds Office ("ROD Office") in Book B613 at Page 844 on January 24, 2007. (*Id.* ¶ 8).

Procedural History for the Prior Foreclosure Action

On September 8, 2009, Mortgage Electronic Registration Systems, Inc., as nominee for Lender, assigned the Mortgage to Aurora Loan Servicing LLC ("Aurora") pursuant to an assignment of mortgage that was recorded with the ROD Office in Book 0081 at Page 058 on September 15, 2009. (Blunt Aff., ¶ 8.)

To collect amounts due under the Mortgage Loan, Aurora filed a foreclosure action ("Foreclosure Action") against the Rogers with the Court of Common Pleas for Charleston, South

Carolina under civil action no. 2009-CP-10-05840 on September 15, 2009 (“Action 1”). The Rogers filed an answer without counterclaims in response to Aurora’s complaint on October 21, 2009. Ultimately, the foreclosure action was removed from the court’s active trial roster for loss mitigation with leave for Aurora or Intervenor to restore pursuant to Rule 40(j) Order entered on March 9, 2010. The Foreclosure Action was reinstated to the court’s active trial roster under case no. 2011-CP-10-01805 pursuant to an order entered on March 10, 2011 (“Action 2”).

After a series of conveyances of the Property and pursuant to a deed recorded with the ROD Office on August 9, 2010, in Book 0137 at Page 344, the Property was conveyed to Ashley Beshera, as Trustee.

On February 2, 2012, the Rogers filed an amended answer and counterclaims to allege counterclaims against Aurora for the following:

- breach of contract and good faith and fair dealing for an alleged breach of a purported work-out agreement;
- declaratory judgment to address alleged unconscionable loan terms;
- unjust enrichment;
- negligent misrepresentation regarding loss mitigation negotiations and purported workout agreements;
- demand for accounting;
- promissory estoppel;
- violations of the South Carolina Unfair Trade Practices Act; and
- violation of the Truth in Lending Act.

Aurora served a timely reply to the counterclaims, and the Court entered an order substituting Nationstar for Aurora as the plaintiff in the Foreclosure Action on June 14, 2013. For a second time, the Foreclosure Action was removed from the court’s active trial roster pursuant to a consent Rule 40(j) order entered by the court on June 24, 2014.

Pursuant to a reinstatement order entered on April 7, 2015, this Court returned the Foreclosure Action to active trial roster under case no. 2015-CP-10-01971 (“Action 3”). By

consent of the Rogers and Nationstar, the Foreclosure Action was again stricken from the docket pursuant to a Rule 40(j) order entered on May 16, 2016.

Deutsche Bank's Foreclosure

Neither the Rogers nor Nationstar reinstated the Foreclosure Action to the Court's active trial roster. Deutsche Bank filed this current foreclosure action against Beshera as the current owner. In response to Deutsche Bank's foreclosure complaint, Beshera filed a motion to dismiss to argue that the prior entry of three 40(j) Orders in the Foreclosure Action precluded Deutsche Bank's current action under Rule 41, SCRPC and the doctrine of collateral estoppel. Beshera further argued that Deutsche Bank's action should also be dismissed because the Rogers were not joined as necessary parties to the action in Deutsche Bank's foreclosure complaint. The court considered these arguments and denied Beshera's motion to dismiss by a Form 4 Order entered on June 23, 2020.

Counterclaims, Cross-Claims, and Third-Party Complaint

On July 28, 2020, the Rogers received leave to intervene as defendants. Beshera and the Rogers filed and served answers that included counterclaims against Deutsche Bank and cross-claims and third-party claims against Nationstar. Through their counterclaims, cross-claims, and third-party complaint, Beshera and the Rogers allege the following six claims against Deutsche Bank and Nationstar:

- Demand for Accounting;
- Negligent Misrepresentation;
- Abuse of Process;
- Malicious Prosecution;
- Violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"); and
- Declaratory Judgment.

The demand for accounting claim, SCUTPA claim, negligent misrepresentation claim, and declaratory judgment claim alleged in this action mirror the counterclaims that the Rogers raised in the amended answer that they served in Action 2 on February 2, 2012.

STANDARD OF REVIEW

A motion for summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56, SCRCP. In considering a summary judgment motion, the Court must view the facts in the light most favorable to the non-moving party. *Koester v. Carolina Rental Ctr. Inc.* 313 S.C. 490, 493, 443 S.E.2d 392, 294 (1994); *Baughman v. Carolina Rental Ctr. Inc.* 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545. Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. *SSI Med. Servs., Inc. v. Cox* 301 S.C. 493, 392 S.E.2d 789 (1990).

Notably, “[s]tatutes of limitation were developed to prevent injustices, not to further them.” *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 163, 511 S.E.2d 699 (Ct. App. 1999), *aff’d*, 341 S.C. 320, 534 S.E.2d 672, 706 (2000). “Statutes of limitation evolved over time with definite purposes in mind. They protect people from being forced to defend themselves against stale claims.” *Id.* “One purpose of a statute of limitations is to relieve the courts of the burden of

trying stale claims when a [claimant] has slept on his rights.” *Logan*, 389 S.C. at 618, 698 S.E.2d at 883 (quoting *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996)). ““Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation.”” *Id.*

THE ROGERS’ MOTION FOR SUMMARY JUDGMENT

The Rogers’ Motion for Summary Judgment raises the same arguments raised in Beshera’s Motion to Dismiss. The Rogers assert that the prior entry of three 40(j) Orders in the Foreclosure Action precludes Deutsche Bank’s current action under Rule 41, SCRPC, and the doctrine of collateral estoppel. This Court disagrees.

Dismissal of an action under Rule 40(j) does not trigger the two-dismissal rule under Rule 41, SCRPC. The language of Rule 41(a)(1) simply does not address multiple dismissals of a prior action with leave to reinstate under Rule 40(j):

Subject to the provisions of Rule 23(c), of Rule 66(a), and of any statute, an action may be dismissed by the plaintiff without order of court (A) by filing and serving a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment, whichever first occurs, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

Rule 41(a)(1), SCRPC.

Moreover, the contention that multiple dismissals pursuant to Rule 40(j) operates as a decision on the merits, conflicts with the text of Rule 40(j) itself. Rule 40(j) refers to a “Case Stricken From Docket by Agreement.” Rule 40(j), SCRPC. This “Case” can then be restored on a motion by any party, which conflicts with the contention that the case is decided on the merits upon being struck a second time.

Additionally, a *notice* of dismissal under Rule 41 that follows a prior dismissal by the Plaintiff can operate as a decision on the merits. *Id.* However, numerous cases interpreting Rule 41 of the Federal Rules of Civil Procedure and similar state court iterations of Rule 41, SCRCP have recognized that subsequent dismissal of a previously dismissed action by anything other than a *notice* of dismissal does not constitute a merits determination. *Manning v. S.C. Dept. of Highway and Public Transp.*, 914 F.2d 44, 47 n.3 (4th Cir. 1990) (recognizing that two dismissals of an action involving the same claims stated in a previously dismissed action only happens when the second dismissal is by notice, but not when the defendant is dismissed by motion or by stipulation); 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2368, (4th Ed. Oct. 2020 Update) (“By its own clear terms, the ‘two dismissal’ rule applies only when the second dismissal is by notice under Rule 41(a)(1)(A)(i). It does not apply to a dismissal by stipulation, nor to an involuntary dismissal, nor to a dismissal by a court order under Rule 41(a)(2). The rule does not apply if the second dismissal is in some way irregular.”); *see also Estate of Livesay ex rel., Morley v. Livesay*, 723 S.E.2d 772, 776-77 (N.C. App. 2012) (holding that the two dismissal rule did not apply because the two prior dismissals of action were involuntary and by our order); *Crawford v. Kingston*, 728 S.E.2d 904, 906 (Ga. Ct. App. 2012) (recognizing that under Georgia law, only voluntary dismissals filed by a plaintiff are to be counted for purposes of Georgia’s version of Rule 41).

Unlike Rule 41(a)(1), which permits the unilateral filing and service of a notice of dismissal before an adversary responds in an action, Rule 40(j) requires an adversary’s consent for entry of a Rule 40(j) order striking it from the court’s docket. *See* Rule 40(j), SCRCP. This may be done once as a matter of right, but subsequent requests to strike require court approval, as occurred here.

Thus, Rule 40(j) does not contain language on preclusion, a case struck under Rule 40(j) is not terminated insofar as any party can move to restore it; it is not a unilateral act by the Plaintiff as contemplated in Rule 41's notice of dismissal provision. This Court holds successive Rule 40(j) Orders do not operate as a decision on the merits and denies the Rogers' Motion for Summary Judgment.

DEUTSCHE BANK'S AND NATIONSTAR'S MOTION FOR SUMMARY JUDGMENT

1. Beshera's and the Rogers' Claims are Time-Barred.

The claims alleged in the Beshera's Amended Answer, Counterclaims and Third-Party Complaint are time barred pursuant to applicable statutes of limitations. *See* S.C. Code Ann. §§ 15-3-530(1), (5) & (7) (setting three-year statute of limitation for actions concerning "injury to the person or rights of another not arising in contract and not enumerated by law" and "relief on ground of fraud"); S.C. Code Ann. § 15-3-535(5); S.C. Code Ann. § 39-5-150(5) ("No action may be brought under this article more than three years after discovery of the unlawful conduct which is the subject of the suit."). A counterclaim must be asserted within the limitations period at the time it is first alleged, or it is untimely. *See Whitfield Const. Co. v. Bank of Tokyo Tr. Co.*, 338 S.C. 207, 225, 525 S.E.2d 888, 898 (Ct. App. 1999).

Beshera's and Rogers' claims arise largely from events that transpired in the litigation of this matter between 2009 and 2016, including from either origination of the mortgage loan in 2007 or, loss mitigation events occurring between 2010 and 2012. Indeed, these claims were previously alleged by the Rogers in 2012.

Beshera filed her Answer and Counterclaim on July 8, 2020 and her Amended Answer, Counterclaim and Third-Party Complaint and Summons on July 15, 2020. The Rogers filed their Answer, Counterclaim and Crossclaim on August 13, 2020.

Therefore, Beshera's and Rogers' claims for declaratory judgment, negligent misrepresentation, abuse of process, malicious prosecution, and violation of the SCUPTA are all based on facts and circumstances that arose more than three years before they filed their claims and are time barred. Although this conclusion disposes of all claims, the Court will address the merits of each below.

2. Beshera Lacks Standing to Challenge the Terms of the Mortgage Loan or the Transfer of the Mortgage Loan.

Beshera lacks legal standing to challenge the terms of the mortgage loan and cannot assert any claims based on any endorsements on the note or transfers or assignments of the mortgage being foreclosed. Beshera is not a party to the mortgage loan or an intended beneficiary of any assignments or agreements to transfer the note and mortgage that the Rogers signed. *See Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 445, 494 S.E. 2d 827, 833 (Ct. App. 1997) ("Generally, a third person not in privity of contract with the contracting parties has no right to enforce a contract. However, when the contract is made for the benefit of the third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person"); *see, e.g., Doherty v. PNC Mortg., C/A* No. 0:14-cv-4013-TLW-SVH, 2015 WL 5012781, at *3 (D.S.C. July 16, 2015) *adopted in-part* by 2015 WL 5012823, at *1 (D.S.C. August 21, 2015) (holding that devisee of real property lacked standing to challenge assignment of note and mortgage because she was not party to the agreement transferring the note and mortgage or a party to either the note or mortgage); *Reese v. U.S. Bank Ass'n, C/A* No. 3:11-cv-2990-CMC-SVH, 2012 WL 1952819, at *3 (D.S.C. Apr. 30, 2012) ("Plaintiff lacks standing to contest the Assignment of Mortgage. Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity.").

3. Beshera's and the Rogers' Negligent Misrepresentation Claims Fails to Show any Element of the Cause of Action Under South Carolina law.

“[T]he plaintiff must allege and prove the following essential elements to establish liability for negligent misrepresentation: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation.” *Wells Fargo Bank, N.A. v. Pappas*, No. 2016-UP-263, 2016 WL 3200188, at *1 (Ct. App. June 8, 2016).

Neither Beshera nor the Rogers have identified an actual false representation made to them by Deutsche Bank or Nationstar. As a preliminary matter, Beshera alleged that “Plaintiff, Nationstar, and/or its alleged predecessors in interest made false and misleading statements to Defendant Curt and Julie Rogers and/or the Court.” Beshera Answer ¶ 79. Naturally, the first element of misrepresentation is a representation “to the Plaintiff.” Beshera cannot base her claim on representations made to the Rogers or the Court.

Further, neither Beshera nor Julie Rogers had any direct communication with Plaintiff, Nationstar, or their alleged predecessors. (Plaintiff's Exhibit A, J. Rogers Depo., p 13, lns 3-22; Exhibit C, Beshera Depo., p 14, ln 20 – p 15, ln 4). Mr. Rogers also acknowledged he has had no interaction with Plaintiff. (Plaintiff's Exhibit B, C. Rogers Depo., p 25, lns. 17-24). He testified, however, that he considered the loan terms themselves to be a misrepresentation. *Id.* p 23 ln 14 – p 24 ln 5. Finally, all claimants also identified what appear to be Nationstar's allegations made during the course of litigation that it was authorized to foreclose as a false representation. (Plaintiff's Exhibit B, C. Rogers Depo., p 25, lns. 2-14).

Loan terms are not “representations” and are neither true nor false. *See Beneficial Fin. I, Inc. v. Windham*, 431 S.C. 256, 271, 847 S.E.2d 793, 802 (Ct. App. 2020) (“[T]o be actionable, a statement must relate to a present or pre-existing fact...”). Neither Plaintiff, Nationstar, nor any other loan servicer is responsible for Mr. Rogers’ understanding of the loan terms. Rather, South Carolina has long recognized the “basic premise that it is a duty owed by every contracting party to the other party and to the public to learn and know the contents of a written contract before he signs and delivers it.” *J.B. Colt Co. v. Britt*, 129 S.C. 226, 123 S.E. 845, 847 (1924). Moreover, no one owed a duty to explain the loan to the Rogers. *See Regions Bank v. Schmauch*, 354 S.C. at 670, 582 S.E.2d at 444 (recognizing that bank owed no duty in tort to notify obligor of obligations or loan renewals related to guaranty agreement).

Moreover, even if false, which the Court does not decide here, allegations in pleadings and testimony cannot be asserted as a basis for misrepresentation. Litigation is an adversarial process. Litigants are compelled to engage in the process and to admit or deny allegations, as Beshera and Rogers have done. Courts have long recognized there is no civil remedy for litigation-related misconduct because “perjurious testimony constitutes a fraud or deceit on the finders of fact and on the judicial system as a whole, and not on an individual litigant.” *See Patel v. OMH Med. Ctr., Inc.*, 987 P.2d 1185, 1202, 1999 OK 33 (Okla. 1999). In limited situations, judgments obtained based on the basis of fraud can be set aside under Rule 60(b), but there is no cognizable basis for one litigant to sue another under a theory of misrepresentation.

For the same reason, Beshera and the Rogers cannot demonstrate any reliance on any purported representations. Beshera and the Rogers deny all allegations related to either Nationstar or Deutsche Bank’s standing to secure a foreclosure remedy in this action – as the litigation process compels them to do. (Beshera Answer, Countercl. & Third-Party Compl. at ¶¶ 3 & 16, Rogers

Countercl., Crosscl. and Third-Party Compl.). They simply do not claim to have been deceived or to have changed their position as a result of any representation.¹

4. Beshera and the Rogers Cannot Show a Genuine Issue of Material Fact Concerning any Element of Abuse of Process.

The essential elements of abuse of process are: (1) an ulterior purpose; and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding.” *Johnson v. Painter*, 279 S.C. 390, 391, 307 S.E.2d 860, 860 (1983). Significantly, “the tort of abuse of process, as distinguished from that of malicious prosecution, involves the malicious misuse or perversion of the process, *after its issuance*, for an end not lawfully warranted by it. *Id.* (emphasis added).

Generally, Beshera and the Rogers complain that Plaintiff and Nationstar “improperly used the process of the legal system to attempt to foreclose on the Mortgage by filing Action 1, Action 2, Action 3, and Action 4 when Plaintiff and Nationstar, and/or their alleged predecessors” filed those actions without authority to foreclose. (*See Rogers’ Countercl.* ¶ 90.) They further raise a number of purported examples of abuse of process through failing to be ready for trial, dismissing actions, failing to name the Rogers in Action 4, and failing to obtain an order allowing foreclosure, all in “aimed at the illegitimate collateral objective of obtaining an order of foreclosure of the Mortgage”

These allegations misapprehend the tort of abuse of process. The improper filing of actions may constitute malicious prosecution, but it can never constitute abuse of process, which requires “malicious misuse or perversion of the process, *after its issuance*, for an end not lawfully warranted

¹ When asked about reliance, Mr. Rogers made no mention of the purported contentions concerning authority to foreclose. Plaintiff’s Exhibit B, C. Rogers Depo., p 27 ln 24 – p 29 ln 7. Rather, he testified to not receiving a “clear representation as to where we stood at any point.” That is not reliance. He also mentioned making a payment of \$5,900 in connection with a workout agreement that is apparently unrelated to any representation or any allegation in the pleadings. *Id.*

by it.” *Johnson*, 279 S.C. at 391, 307 S.E.2d at 860 (emphasis added). What is more, litigation of an action after it is commenced, including seeking continuances, seeking relief from the Court, or otherwise availing oneself of the procedures available to a litigant, cannot be logically characterized as “a willful act in the use of the process not proper in the regular conduct of the proceeding.” *Id.* Furthermore, use of the “the process of the legal system to attempt to foreclose” is unquestionably an “end” permitted by a *lawsuit to foreclose*. Beshera’s and the Rogers’ attempt to define the stated objective of the lawsuit as “collateral” to the lawsuit is unpersuasive.

Beshera and the Rogers have conceded they have no evidence of an “ulterior purpose.” Mr. Rogers was asked:

- 1 Are you aware of any evidence that plaintiff,
- 2 Nationstar, or its predecessor was attempting to
- 3 accomplish anything other than foreclosure of the
- 4 property through the prior litigation?
- 5 MS. ARNOLD: Objection as to form.
- 6 THE WITNESS: I'm not sure what you're
- 7 talking about. But I guess no.

Plaintiff’s Exhibit B, C. Rogers Depo., p 30, lns 1-8. In response to the same question, Mrs. Rogers stated “Nothing specific.” Exhibit A, J. Rogers Depo., p 17, ln 3. Ms. Beshera testified “I don’t know.” Plaintiff’s Exhibit C, Beshera Depo., p 25, ln 26. This testimony does not create a genuine issue of fact concerning an ulterior purpose. *See, e.g., Food Lion, Inc. v. United Food Commercial Works Intern. Union*, 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002) (affirming dismissal of abuse of process claim where plaintiff failed to allege how use of court process was designed to achieve improper collateral purposes that legal process was not designed to achieve).

Additionally, Beshera was not a party to Actions 1, 2 and 3, and, therefore, could not possibly show abuse of process was used against her in those actions. Conversely, the Rogers were not named in the instant action (Action 4). Thus, even if a claim for abuse of process could lie for the commencement of these actions, which they cannot, no such action would lie against anyone by Beshera for the prior litigation or by the Rogers for the instant case.

Finally, as discussed above, contrary to Beshera's and Rogers' contentions, multiple entries of Rule 40(j) Orders in the prior foreclosure actions concerning the mortgage loan identified in Deutsche Bank's complaint do not preclude this current action. To the extent the abuse of process claims depend on this assertion, the claims lack merit.

5. Beshera's and the Rogers' Malicious Prosecution Claims are not Cognizable under South Carolina Law.

"[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in [the] plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006) (first alteration in original) (citations omitted). "An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause." *Id.*

As the court of appeals recently noted, "the element of favorable termination of proceedings to mean a termination reflective of the merits." *Gecy v. Somerset Point at Lady's Island Homeowners Ass'n, Inc.*, 426 S.C. 540, 553, 828 S.E.2d 73, 80 (Ct. App. 2019). This "means a termination consistent with a finding for the defendant on substantive grounds and not based

solely on technical or procedural considerations.” *Id.* “For example, a case's dismissal based on the statute of limitations would not be a favorable termination because a decision on the statute of limitations does not reflect the merits of the action.” *Id.*

“Malice is defined as ‘the deliberate[,] intentional doing of an act without just cause or excuse.’” *Id.* at 437, 629 S.E.2d at 649 (quoting *Eaves v. Broad River Elec. Coop., Inc.*, 277 S.C. 475, 479, 289 S.E.2d 414, 416 (1982)). “Malice does not necessarily mean a defendant acted out of spite, revenge, or with a malignant disposition, although such an attitude certainly may indicate malice.” *Id.* Where a plaintiff bases the claim on an opponent's institution of civil causes of action, probable cause exists if the facts and circumstances would lead a person of ordinary intelligence to believe that the plaintiff committed one or more of the acts alleged in the opponent's complaint. *Broyhill v. Resolution Mgmt. Consultants, Inc.*, 401 S.C. 466, 475, 736 S.E.2d 867, 871–72 (Ct. App. 2012). The issue is not what the actual facts were, but what the prosecuting party honestly believed them to be. *Eaves*, 277 S.C. at 478, 289 S.E.2d at 416 (citation omitted).

The claims for malicious prosecution are predicated on the contention that, because Actions 1 and 2 were dismissed pursuant to Rule 40(j), Nationstar lacked probable cause for instituting Action 3 and Plaintiff lacked probable cause for instituting Action 4. The Court disagrees.

First, the Court has already declined to adopt Beshera’s and the Rogers’ preclusion argument. This conclusion is sufficient for summary judgment here.

Additionally, Beshera was not a party to any of the prior foreclosure actions identified in her Counterclaims and Third-Party Complaint. Thus, there have been no prior prosecutions of her for this Court to even consider. Further, the instant action was not commenced against the Rogers who chose to intervene and has not been terminated, let alone terminated in favor of Beshera and the Rogers. Therefore, the commencement of Action 4 will never provide Rogers with a basis for

a claim and cannot provide Beshera with any claim unless it is terminated in her favor and the remaining elements are alleged and proved. *See, e.g., Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 436-37, 629 S.E. 2d 642, 649 (2006) (affirming trial court's award of summary judgment to defendant where plaintiff failed to prove termination of prior litigation in plaintiff's favor, lack of probable cause for defendants' legal proceeding, and malice).

As discussed above, Beshera and the Intervenor cannot demonstrate termination of any prior litigation in their favor, lack of probable cause for instituting any alleged prior foreclosure action, malice, or any purported damages resulting therefrom.

6. Beshera's and the Rogers' SCUTPA Claims Fail Lack a Genuine Issue of Fact as to any Element.

The SCUTPA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20(a). In order to succeed on a SCUTPA claim, a plaintiff must show

(1) that the defendant engaged in an unlawful trade practice, (2) that the plaintiff suffered actual, ascertainable damages as a result of the defendant's use of the unlawful trade practice, and (3) that the unlawful trade practice engaged in by the defendant had an adverse impact on the public interest.

Noack Enterprises, Inc. v. Country Corner Interiors, Inc., 290 S.C. 475, 478-479, 351 S.E.2d 347, 349-350 (Ct. App. 1986).

Beshera and the Rogers attempt to bring a "kitchen sink" claim under SCUPTA alleging Plaintiff and Nationstar ran afoul of the statute

by engaging in unfair and deceptive acts and practices including but not limited to: claiming as owed unconscionable interest amounts pursuant to unconscionable terms of the Note; seeking to enforce security for a note which contains unconscionable terms; making false and misleading representations to Defendant, Curt and Julie Rogers, and the court regarding the actual terms of the

loan and Plaintiff, Nationstar and/or their predecessors in interest's right to enforce the note and mortgage, who the holder of the note and mortgage was at various time between now and 2009, assignments of the mortgage, endorsements of the note, that Plaintiff Nationstar, and/or its predecessor's interest were real parties in interest, and Plaintiff's general standing to bring this action, Action 1, Action 2, and Action 3 against Curt and Julie Rogers and Defendant; causing alleged endorsements of the note to be improperly executed and/or altered after execution; causing alleged assignments of the Mortgage to be improperly executed and/or filed without authority; initiating and maintaining Actions 3 and 4 when they were barred by Rule 41, res judicata and/or collateral estoppel; by continuing for 11 years to seek to prosecute the foreclosure of the Mortgage when Plaintiff Nationstar, and/or its alleged predecessors already failed to prosecute the foreclosure of the Mortgage in a timely and judicious manner for more than a decade; by misrepresenting that Plaintiff, Nationstar and/or their alleged predecessors in interest had the authority to agree to a short sale the Subject property and would do if Curt and Julie Rogers brought them a reasonable sale contract; by mispresenting that Plaintiff, Nationstar and/or their alleged predecessors in interest had the authority to agree to enter into a Workout and/or forbearance agreement with Curt and Julie Rogers and if the Rogers complied with the terms of the Agreement then Plaintiff, Nationstar and/or their alleged predecessors in interest had the authority to agree and would agree to a modification of the Note.

(Beshera Countercl., ¶ 112 & Rogers' Countercl. ¶ 116).

Beshera cannot raise allegations of conduct directed at the Rogers. Moreover, an unfair trade practices claim may not be brought in a representative capacity such as a trustee or representative of an estate. S.C. Code Ann. § 39–5–140(a); *Wogan v. Kunze*, 366 S.C. 583, 609, 623 S.E.2d 107, 121 (Ct. App. 2005), *aff'd as modified*, 379 S.C. 581, 666 S.E.2d 901 (2008).

Additionally, the Rogers' SCUTPA claim cannot be based on the terms of the mortgage loan. Neither Deutsche Bank nor Nationstar originated the loan. As mere assignees of the mortgage loan, Deutsche Bank and Nationstar are not subject to any claims arising from origination of the loan. *See Rosemond v. Campbell*, 288 S.C. 516, 523, 343 S.E.2d 641, 645 (Ct. App. 1986) (“[A]bsent agreement to the contrary, the common law assignee takes only the benefits, not the burdens of the assigned obligation.”).

Additionally, the Rogers were unable to substantiate any allegations concerning unfair and deceptive acts regarding any attempt to reach mutual assent concerning a loan modification. At his deposition, Mr. Rogers could say only the following:

20 ... are you aware of anything that the plaintiff
 21 did that was unfair or deceptive? And that would a
 22 big, long name. Let's see. Deutsche Bank Trust
 23 Company Americas as trustee for residential Accredit Loans

...

A I mean, it states simply there what my
 1 feeling is about it. I mean, the terms of the note. I
 2 was given options that were just so far out. I believe
 3 at one point I was given a loan modification offer that
 4 if I could pay \$16,000 a month, that, you know, they
 5 would do a workout with me. I mean, I don't think any
 6 of us in here are going to be paying \$16,000 a month
 7 for a mortgage.

8 Q And were you dealing with the plaintiff with
 9 respect to that?

10 MS. ARNOLD: Objection as to the form.

11 THE WITNESS: I believe that was with
 12 Nationstar.

13 BY MR. TAYLOR:

14 Q Okay. And is it your position that a loan
 15 servicer like Nationstar engages in an unfair and
 16 deceptive trade practice if they don't offer you a loan
 17 modification that sort of is tailored to your needs?

18 MS. ARNOLD: Objection as to form.

19 THE WITNESS: I don't know how to answer that
 20 question. You know, there should be a certain
 21 understanding by Nationstar and any mortgage company
 22 that, you know, when someone's seeking relief to try
 23 and work something out, that they ought to give, you
 24 know, some attainable ways to get that done and we have
 25 never been offered that.

(Plaintiff's Exhibit B, C. Rogers Depo., p 39 ln 19 – p 40 ln 25).

Further, the SCUTPA claim cannot be based on the procedural history of the prior foreclosure action. Moreover, litigation is not an act in trade or commerce. “Trade” and “commerce” are defined to “include the advertising, offering for sale, sale or distribution of any

services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate.” S.C. Code Ann. § 39-5-10. Filing a lawsuit to enforce a default on a mortgage and litigating that lawsuit is not any of those things.

Additionally, these SCUPTA claims are clearly private, having no effect on the public interest. A Plaintiff bringing a private cause of action under SCUTPA must allege and prove that the defendant’s actions adversely affected the public interest. *Noack Enterprises, Inc. v. Country Corner Interiors, Inc.*, 290 S.C. 475, 478-479, 351 S.E.2d 347, 349-350 (Ct. App. 1986) (citing *Zeeman v. Black*, 156 Ga. App. 82, 85, 273 S.E.2d 910, 915 (Ga. Ct. App. 1980)). Conduct that only affects the parties to the transaction provides no basis for a SCUTPA claim. *Robertson v. First Union Nat’l Bank*, 350 S.C. 339, 350, 565 S.E.2d 309, 315 (2002) (citing *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994)).

The Rogers and Beshera have not shown the accused conduct affects the public interest in any way.² “An impact on the public interest may be shown if the acts or practices have the potential for repetition.” *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004). “The potential for repetition may be shown by proving that the same kind of actions occurred in the past or by showing that the procedures employed by the defendant create a potential for repetition of the deceptive practices.” *Schnellmann v. Roettger*, 368 S.C. 17, 23, 627 S.E.2d 742,

² Mr. Rogers testified as follows:

14 What similar acts or practices in the past

15 have plaintiff and Nationstar engaged in that are

16 similar?

17 A I don't know exactly. I'd have to go back

18 and look.

(Plaintiff’s Exhibit B, C. Rogers Depo., p 43 lns 14-28.)

746 (Ct. App. 2006). A claim under SCUTPA is inadequate where it “fails to allege any specific procedures or business practices that create the potential for repetition.” *Ethox Chem., LLC v. Coca-Cola Co.*, 2013 U.S. Dist. LEXIS 870, at *3 (D.S.C. Jan. 3, 2013).

Finally, Beshera’s and the Rogers’ SCUTPA claim fails because they have failed to identify any pecuniary loss supporting a SCUTPA claim. The Rogers have made no payments since prior to the First Action and have contested the foreclosure of this Property throughout.

7. Beshera’s Demand for Account Claim is not Cognizable.

An accounting between a debtor and creditor requires the creditor to establish the amount due, and then the debtor bears the burden of proving payments, discounts, and off-sets. *See Devereux v. McCrady*, 53 S.C. 387, 395 (1898). In South Carolina, however, an accounting is an equitable remedy, rather than an affirmative cause of action. *See Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 144 (1989) (citing *Cox v. Lunsford*, 272 S.C. 527 (1979)) (emphasis added). Thus, an accounting may be awarded as an equitable remedy to support a claim such as unjust enrichment or breach of a fiduciary duty. *Id.* (citing *Smith v. Union Central Life Ins. Co.*, 112 S.C. 356 (1919)). Likewise, an equitable accounting may be awarded in an action with affirmative claims “involving long and complicated accounts where it would not be practicable for a jury to comprehend the issues and correctly make adjustments” *Id.* (citing *Jefferies v. Harvey*, 206 S.C. 245 (1945)).

Here, Beshera cannot assert a claim for accounting and is not entitled to the equitable remedy of accounting under any other claim. Indeed, Beshera has not pled or established a fiduciary duty owed to her by Plaintiff of Third-Party Defendant or made a claim for unjust enrichment. Further, the accounting claim involves an individual, residential promissory note and mortgage. Accordingly, the loan involved is not so complicated that the trier of fact would not be

able to comprehend the issues involved, and Beshera does not allege otherwise. Simply put, an accounting is not an affirmative cause of action.

8. Beshera's and the Rogers' Declaratory Judgment Claims are not Cognizable Under South Carolina law.

The Declaratory Judgment Act was created to allow courts to answer actual controversies over “rights or obligations under the law” *S.C. Lottery Comm'n v. Glassmeyer*, 433 S.C. 244, 250, 857 S.E.2d 889, 892 (2021). Beshera's and the Rogers' claims for declaratory judgment fail as a matter of law for the following reasons:

First, their request for a declaration that Plaintiff is “precluded from maintaining this action by Rule 41,” collateral estoppel or any other defense to the action is improper. As already discussed, the assertion of the two-dismissal rule is contrary to South Carolina law. However, more broadly, defenses to civil actions are not “rights or obligations” and will already be decided in the Plaintiff's action. As Rule 12(b) instructs, “every defense . . . shall be asserted in the responsive pleading.” A request for declaratory relief for any issue, including standing to foreclose or challenges to Plaintiff's authority to enforce the debt, will be decided in the Plaintiff's case and a competing action for declaratory relief is unnecessary and duplicative.

Further, under South Carolina law, Deutsche Bank's constructive possession³ of the original note, with all proper endorsements, provide Deutsche Bank with standing to prosecute this current action. *See* S.C. Code Ann. § 36-3-301; *Bank of America, N.A. v. Draper*, 405 S.C. 214, 223-24, 746 S.E.2d 478, 483 (Ct. App. 2013) (recognizing the party in possession of promissory note for mortgage subject to foreclosure was the holder of the note with standing to foreclose); *see also MidFirst Bank, SSB v. C.W. Haynes & Co., Inc.*, 893 F. Supp. 1304, 1314 (D.S.C. 1994)

³ The original note and mortgage are currently in the physical possession of Deutsche Bank's foreclosure counsel, The Finkel Law Firm.

(“[T]he possession required by the [Commercial] Code to constitute a person a ‘holder’ may be constructive possession by delivery to one on his behalf. Thus a person is a ‘holder’ of commercial paper when it is in the physical possession of his agent.”). Indeed, even if the note at issue in this foreclosure action was not in Deutsche Bank’s constructive possession, it may still be authorized to foreclose. *Koola v. Ditech Financial LLC*, 611 B.R. 251, 258-60 (D.S.C. 2019) (holding that a servicer of mortgage loan could enforce instrument, even though the note was lost and holding that transferee of lost instrument also had standing to enforce mortgage loan). In any event, these issues will already be decided in the pending foreclosure action and duplication of adjudication of these issues does not assist the Court.

Finally, the Rogers also assert the fact that they were offered multiple payment options, including the option to make a low minimum payment of less than the full monthly interest due, which the Rogers characterize as negative amortization, was unconscionable. (Plaintiff’s Exhibit B, p 41 lns 9-11.) A lower payment option is merely an option and cannot be oppressive. Nothing prevented the Rogers from making a fully amortized or a 15-year amortized payment. The Rogers were also allowed to repay the entire loan with no penalty. (Blunt Aff., Note, Secs. 4-5). The fact that the Rogers may have opted to make the lowest payment does not make the loan unconscionable.

NOW, THEREFORE IT IS ORDERED, for the foregoing reasons, the Rogers’ Motion for Summary Judgment is **DENIED**. The arguments raised therein were previously addressed and denied in the court’s order of June 23, 2020. Defendants consented to the prior cases being stricken under Rule 40(j), and that the dismissal under 40(j) is a dismissal without prejudice. If restored within one year, the statute of limitations is tolled. If the statute of limitations has not tolled, the case may be restored or a new lawsuit may be commenced.

IT IS FURTHER ORDERED that Plaintiff/Third Party Defendant's Motion for Summary Judgment as to the Defendants' counterclaims, cross-claims and third-party claims for accounting, negligent misrepresentation, abuse of process, malicious prosecution, declaratory judgment, and SCUTPA is GRANTED for the reasons set forth above.

IT IS FURTHER ORDERED that Nationstar Mortgage LLC is hereby **DISMISSED** from this action.

IT IS FURTHER ORDERED that the Rogers' Motion to Compel and for Sanctions is **GRANTED IN PART AND DENIED IN PART**. The motion was granted with respect to Plaintiff's objection to standard interrogatories and order Plaintiff to fully respond within 10 days. The motion is denied with respect to giving the name of any specific witness on the part of the bank. Defendants may of course take the Rule 30(b)(6) deposition of a bank official whose responses will bind the bank for any future use in litigation.

This the ____ day of _____, 2023.

KRISTI F. CURTIS
Circuit Court Judge



Charleston Common Pleas

Case Caption: Deutsche Bank Trust Company Americas as Trustee , plaintiff, et al VS Ashley Johnson Beshara , defendant, et al

Case Number: 2019CP1004503

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2023-07-10 10:48:21 page 24 of 24

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1004503

Deutsche Bank Trust Company Americas as Trustee et al
PLAINTIFF(S)

Ashley Johnson Beshara et al
DEFENDANT(S)

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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

A hearing on the parties' motions to alter or amend was scheduled for October 3rd, 2023. Defendants withdrew their request for a motions hearing and asked that the court rule based on their submitted briefs. After reviewing these materials, the record, and relevant case law, I find no basis for reconsideration. Defendants' Motions for Reconsideration are therefore DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/01/2023 .

Revocable Trust Agreement
Ashley Johnson Beshara Trustee
Ashley Johnson Beshara
Cadle Rock Joint Venture L P
Wells Fargo Bank N A
Mr. Cooper
Shoreline Farms Community Association Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Deutsche Bank Trust Company Americas as Trustee , plaintiff, et al VS
Ashley Johnson Beshara , defendant, et al

Case Number: 2019CP1004503

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2023-11-01 16:43:39 page 3 of 3

Case No.: 09-CP-10-5840

Aurora Loan

versus

Rogers

Plaintiff

Defendant

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.

☐ **DECISION BY 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 _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by Court

Dated at Charleston, South Carolina,

2/24/2010

Date

Judge

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

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Aurora Loan Services, LLC

☒ Plaintiff

Curtis Rogers, et al v.

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2009-CP-10-5840

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

John S. Kay #7914; Alan M. Stewart #15576;
John B. Kelchner #13589; H. Guyton Murrell #64134;
Suzannah Hayes #66404; Meredith S. Lee #72593

Address:

Korn Law Firm, PA

PO Box 12369, Columbia, SC 29211-2369

Phone: 803.252.5817 x2052 Fax: 803.231.2105

e-mail: KShirer@kornlawfirm.com

☐ 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: Order Removing Case from Active Docket

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

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

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

Alan M. Stewart
Signature of Attorney for ☒ Plaintiff

February 17, 2010
Date submitted

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 Execution (Rule 69, SCRPC)

☐ Motion for Publication

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:

☐ CONTESTED - AMOUNT DUE:

RECORD0029

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Aurora Loan Services, LLC,

PLAINTIFF,

vs.

Curtis Rogers a/k/a Curits L. Rogers, III, Julie J. Rogers,
National City Bank, Shoreline Farms Community
Association, Inc., and Harbor National Bank,

DEFENDANTS.

F29-04814

IN THE COURT OF COMMON PLEAS

ORDER REMOVING CASE FROM
ACTIVE DOCKET

(NON-JURY MORTGAGE
FORECLOSURE)

C/A NO:2009-CP-103840

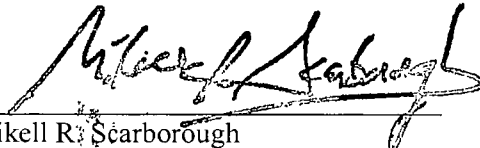
DEFICIENCY WAIVED

FILED
2009 MAR -9 PM 12:54
JULIE A. HARRIS
CLERK OF COURT

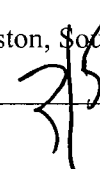
It appearing that the within case was one of foreclosure of a mortgage, and that the parties have agreed to enter into a loss mitigation agreement in an attempt to cure the Defendant(s) arrearage now, upon motion of the Korn Law Firm, P.A., Attorneys for Plaintiff,

IT IS HEREBY ORDERED that this case be struck from the roster of active cases with leave to restore.

AND IT IS SO ORDERED.

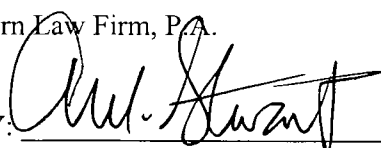

Mikell R. Scarborough
Master in Equity

Charleston, South Carolina

, 2010

I SO MOVE:

Korn Law Firm, P.A.

BY: 

PETER D. KORN / JOHN S. KAY
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH S. LEE
Attorneys for the Plaintiff
P. O. Box 11264
1300 Pickens Street
Columbia, SC 29201
(803) 252-5817

RECORD0030

10-4015

**KORN LAW FIRM, P. A.
POST OFFICE BOX 11264
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817**

February 24, 2010

The Honorable Mikell R. Scarborough
Master in Equity
100 Broad Street, Suite 266
Charleston, SC 29401

Re: United Companies Lending Corporation vs Curtis Rogers a/k/a Curits L. Rogers, III,
Julie J. Rogers, National City Bank, Shoreline Farms Community Association, Inc., and Harbor
National Bank
Docket No. 2009-CP-10-5840
Our File No. F29-04814

Dear Judge Scarborough:

Enclosed please find the original and two copies of the Order Striking Case from Active Roster with
Leave to Restore on the above referenced case. Please file for record, returning the clocked copy in the
envelope provided within. Please find a check in the amount of \$25.00 for motion fee.

Thank you in advance for your cooperation in this matter.

Very truly yours,



Kayla Shirer
Legal Assistant

/kjs
Enc.

cc:

Alice F. Paylor, Esquire
Attorney for Harbor National Bank
PO Box 893
Charleston, SC 29402

Mary Leigh Arnold, Esquire
Attorney for Curtis and Julie Rogers
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464

RECORD0031

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Nationstar Mortgage, LLC,

Plaintiff,

vs.

Curtis Rogers a/k/a Curtis L. Rogers III, Julie J. Rogers, National City Bank, Shoreline Farms Community Assoc., Inc., and Harbor National Bank,

Defendants.

IN THE COURT OF COMMON PLEAS

**CONSENT ORDER STRIKING CASE
FROM ACTIVE DOCKET PURSUANT
TO RULE 40(j)**

(NON-JURY MORTGAGE
FORECLOSURE)

C/A NO: 2011-CP-10-01805

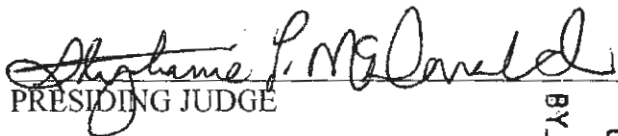
F29-04814

IT APPEARING THAT Plaintiff, Nationstar Mortgage, LLC, with the consent of counsel for Curtis Rogers & Julie J. Rogers request that the above-captioned foreclosure action be stricken from the active roster pursuant to Rule 40(j) with leave to restore.

Pursuant to Rule 40(j), the parties agree that if the case is restored upon motion made upon one year of the date stricken, the statute of limitations shall be tolled during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored.

THEREFORE, IT IS ORDERED that this case be stricken from the active roster with leave to restore.

June 19, 2014
Charleston, SC


PRESIDING JUDGE

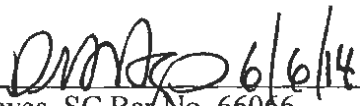
FILED
2014 JUN 24 AM 9:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

[CONSENT SIGNATURE PAGE TO FOLLOW]

RECORD0032

WE CONSENT:

KORN LAW FIRM, P.A.



Dean A. Hayes, SC Bar No. 66066
Post Office Box 12369
Columbia, SC 29202
Telephone: (803) 252-5817
ATTORNEY FOR PLAINTIFF

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold
749 Johnnie Dodds Boulevard, Suite B
Mount Pleasant, SC 29465
Telephone: (843) 971-6053
ATTORNEY FOR DEFENDANTS ROGERS

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-10-1805

Nationstar Mortgage, LLC

Curtis Rogers, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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. ☐ See Page 2 for additional information.
- ☐ **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 : _____

FILED
JULIE J. ARMSTRONG
CLERK OF COURT
2014 JUN 24 AM 9:55
RECEIVED

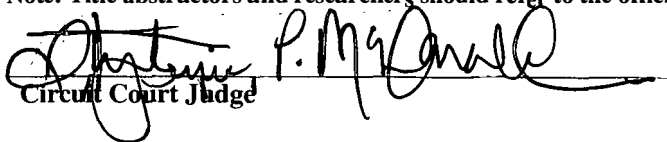
INFORMATION FOR THE JUDGMENT INDEX

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

2163
Judge Code

6/19/2014
Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Nationstar Mortgage, LLC,

PLAINTIFF,

VS.

Curtis Rogers a/k/a Curtis L. Rogers, III,
Julie J. Rogers, National City Bank,
Shoreline Farms Community Assoc., Inc.,
and Harbor National Bank,

DEFENDANT(S).

347471

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-10-01805

ORDER RESTORING CASE TO
ACTIVE DOCKET

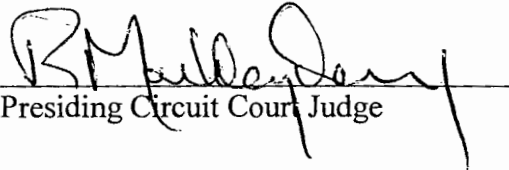
FILED
2015 APR -7 AM 9:05
JULIE J. ARMSTRONG
CLERK OF COURT

This is an action for foreclosure as to certain real property located in Charleston County. This case was stricken from the active roster on June 24, 2014 pursuant to Rule 40(j), SCRCF. Plaintiff has now moved for an order restoring this case to the active docket.

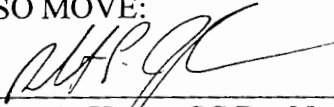
NOW, THEREFORE, IT IS ORDERED that this case be restored to the active docket pursuant to Rule 40(j), SCRCF.

IT IS SO ORDERED.

Charleston, South Carolina
March 31, 2015


Presiding Circuit Court Judge

I SO MOVE:


Dean A. Hayes, SC Bar No. 66066
Robert P. Jackman, SC Bar No. 78755
Butler & Hosch, P.A.
1231 Gadsden Street, Suite 100
Post Office Box 7128
Columbia, SC 29201
Phone: (803) 569.1765
Fax: (803) 403.9753
ATTORNEYS FOR PLAINTIFF

RECORD0035

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Nationstar Mortgage, LLC,

PLAINTIFF,

vs.

Curtis Rogers a/k/a Curtis L. Rogers, III,
Julie J. Rogers, National City Bank,
Shoreline Farms Community Assoc., Inc.,
and Harbor National Bank,

DEFENDANT(S).

347471

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-10-01805

CERTIFICATE OF MAILING

FILED
2015 APR -7 AM 9:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby certifies that on March 13, 2015, he served the **Order Restoring Case to Active Docket** upon the following by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Mary Leigh Arnold, Esq.
Mary Leigh Arnold, PA
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464
ATTORNEY FOR DEFENDANTS
CURTIS ROGERS, III & JULIE J. ROGERS

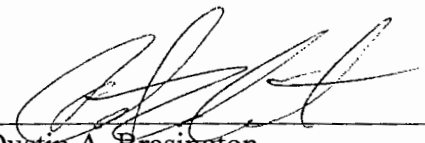
Robert A. Bernstein, Esq.
Bernstein & Bernstein
Post Office Box 20519
Charleston, SC 29413-0519
ATTORNEY FOR DEFENDANT
HARBOR NATIONAL BANK

Suzanne E. Brown, Esq.
Brock & Scott, PLLC
5431 Oleander Dr., Suite 110
Wilmington, NC 28403
ATTORNEY FOR DEFENDANT
NATIONAL CITY BANK

[CONTINUED ON FOLLOWING PAGE]

RECORD0036

Alice F. Paylor, Esq.
Post Office Box 893
Charleston, SC 29402
ATTORNEY FOR DEFENDANT
SHORELINE FARMS COMMUNITY ASSOC., INC.


Dustin A. Brasington
Litigation Paralegal

Columbia, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-1971

Aurora Loan Services

Curtis Rogers

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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, 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: By consent of the parties, (see attached), this case is Ordered stricken pursuant to Rule 40(j).

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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

2134
Judge Code

Date

5/13/16

To: Don Michel; 'John B. Kelchner'

Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

Thanks Don. Pursuant to my conversation with John I just want a simple Order that says case struck pursuant to Rule 40j. Thanks Sammie

MARY LEIGH ARNOLD, P.A.
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, S.C. 29464
(843) 971-6053
email: sammie@maryarnoldlaw.com

CONFIDENTIAL & PRIVILEGED

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

-----Original Message-----

From: Don Michel [mailto:DMichel@charlestoncounty.org]

Sent: Thursday, May 12, 2016 2:40 PM

To: 'John B. Kelchner'

Cc: 'Sammie Arnold'; 'hayes@hollergarner.com'

Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

Thank you very much. We will enter a form order striking the case and attaching these emails to the order. It should be filed at some point next week.

Don

Don Michel
Court Management Supervisor
Charleston County Clerk of Court
Direct: 843-958-5013
<http://clerkofcourt.charlestoncounty.org>

Track your cases at courtplus.org from any internet connected device.

-----Original Message-----

From: John B. Kelchner [mailto:John.Kelchner@hutchenslawfirm.com]

Sent: Thursday, May 12, 2016 2:39 PM

To: Don Michel

Cc: 'Sammie Arnold'; 'hayes@hollergarner.com'

Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

Don,

I have been in touch with Nationstar today about this and they are aware of tomorrow's roster meeting and trial roster next week. I do not know if Nationstar will be retaining our services but would request that the case be struck so that Nationstar can retain new counsel.

Thanks, John

Hutchens Law Firm

John B. Kelchner | Associate Attorney

<mailto:John.Kelchner@hutchenslawfirm.com>

240 Stoneridge Drive, Suite 400 | Columbia, SC 29210 P.O. Box 8237 | Columbia, SC 29202

T: 803-726-2700 Ext:2704 | F: 803-726-2832

<http://HutchensLawFirm.com>

-----Original Message-----

From: Don Michel [<mailto:DMichel@charlestoncounty.org>]

Sent: Thursday, May 12, 2016 12:38 PM

To: John B. Kelchner

Cc: 'Sammie Arnold'; 'hayes@hollergarner.com'

Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

So I just want to confirm that you have the authority to consent to this 40(j) when you no longer counsel? I will print this email and attach it to the order if so.

Don Michel

Court Management Supervisor

Charleston County Clerk of Court

Direct: 843-958-5013

https://mailgate.hutchenslawfirm.com/enduser/classify_url.html?url=7lnlwZWRWBbaOooyWlwOk46hM1MlkEQVMzgZDRiiubsC/OWZ/rFNWZ6wXDPxNw/2

Track your cases at courtplus.org from any internet connected device.

-----Original Message-----

From: John B. Kelchner [<mailto:John.Kelchner@hutchenslawfirm.com>]

Sent: Thursday, May 12, 2016 12:37 PM

To: Don Michel
Cc: 'Sammie Arnold'; 'hayes@hollergarner.com'
Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

Don,

I spoke with Sammie and she consented to the 40(j). Would this email be sufficient to reflect that consent and for the Judge to issue a form 40(j) order?

Thanks, John

Hutchens Law Firm

John B. Kelchner | Associate Attorney

mailto:John.Kelchner@hutchenslawfirm.com

240 Stoneridge Drive, Suite 400 | Columbia, SC 29210 P.O. Box 8237 | Columbia, SC 29202
T: 803-726-2700 Ext:2704 | F: 803-726-2832

<http://HutchensLawFirm.com>

-----Original Message-----

From: Don Michel [mailto:DMichel@charlestoncounty.org]
Sent: Thursday, May 12, 2016 12:34 PM
To: John B. Kelchner
Cc: 'Sammie Arnold'; 'Dean Hayes'
Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

John,

Thank you for the update. A 40(j) must be by consent order so we would need that from you and Sammie if you are wishing to proceed that way. Are you able to sign a consent order on their behalf? If not, Judge Young may do an order dismissing it without prejudice. Not sure where this case is on the statute of limitations though so you two talk again and let me know how you would like to proceed?

Don

Don Michel
Court Management Supervisor
Charleston County Clerk of Court
Direct: 843-958-5013
https://mailgate.hutchenslawfirm.com/enduser/classify_url.html?url=7InlwZWRWBbaOooyWlwOk46hM1MlkeQVMzgZDRiubsc/0WZ/rFNWZ6wXDPxNw/2

Track your cases at courtplus.org from any internet connected device.

-----Original Message-----

From: John B. Kelchner [mailto:John.Kelchner@hutchenslawfirm.com]

Sent: Thursday, May 12, 2016 12:31 PM

To: Don Michel

Cc: 'Sammie Arnold'; 'Dean Hayes'

Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

Importance: High

Don,

This is a matter that I handled when I was working at Korn Law Firm. I left Korn in 2014 and the firm retained the file. As you probably know, Korn Law Firm was taken over by Butler & Hosch, which closed last May. Our firm has not been transferred this file. I have reached out to Nationstar to notify them of the meeting tomorrow and roster next week.

Given the unusual circumstances regarding the delay in this case, I would respectfully request that the Court issue an Order Striking the Case from the Active Docket pursuant to Rule 40(j) so that Nationstar can determine how it wishes to proceed. I have spoken with Ms. Arnold who is counsel for the Defendant Curtis Rogers and she has graciously consented to my request to remove the case.

If you have any questions or concerns, please do not hesitate to contact me. I greatly appreciate your consideration in this matter.

John

Hutchens Law Firm

John B. Kelchner | Associate Attorney

mailto:John.Kelchner@hutchenslawfirm.com

240 Stoneridge Drive, Suite 400 | Columbia, SC 29210 P.O. Box 8237 | Columbia, SC 29202

T: 803-726-2700 Ext:2704 | F: 803-726-2832

<http://HutchensLawFirm.com>

-----Original Message-----

From: cpas@charlestoncounty.org [mailto:cpas@charlestoncounty.org]

Sent: Thursday, May 12, 2016 8:52 AM

To: John B. Kelchner

Subject: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

THE REFERENCED CASE IS ON THE JURY TRIAL ROSTER FOR THE WEEK OF MAY 16, 2016. UNLESS YOU HAVE ALREADY BEEN EXCUSED, ATTENDANCE AT TOMORROW'S ROSTER MEETING IS MANDATORY EITHER ONLINE VIA THE CLERK OF COURT CHAT ROOM OR IN PERSON IN COURTROOM 4B AT 9:30AM. THE COMPLETE LIST OF CASES FOR NEXT WEEK CAN BE FOUND ON THE UPDATE TEXT LINK LOCATED ON THE JURY TRIAL ROSTER ONLINE.

[Insert your disclaimer here]

[Insert your disclaimer here]

[Insert your disclaimer here]

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

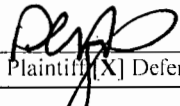
IN THE COURT OF COMMON PLEAS

Aurora Loan Services, LLC,)
[X] Plaintiff,)
vs.)

CASE NO. 2011-CP-10-01805

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

Curtis Rogers, et al.)
[] Defendant)
check box above indicating submitting party)

<u>Name, SC Bar no. and address of Plaintiff's attorney</u> Dean A. Hayes—66066 Korn Law Firm, P.A. 1300 Pickens Street Columbia, SC 29201 Telephone: 803-252-5817 Fax: 803-252-9501 E-mail: collect@kornlawfirm.com Other:		<u>Name, SC Bar no. and address of Defendant's attorney</u> Mary Leigh Arnold— Alice F. Paylor— 749 Johnnie Dodds Blvd., Ste. B 134 Meeting St., Suite 200 Mt. Pleasant, SC 29464 Charleston, SC 29401 Fax: 843-971-6055 Fax: 843-724-8036 Telephone: 843-971-6053 Telephone: 843-266-8105 E-mail: E-mail:	
☐ 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/Order Type ☐ Written motion attached ☒ Form Motion/Order: Order Restoring Case to the Active Roster 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			
SECTION III: Motion Fee ☒ PAID – AMOUNT: ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect (check reason) ☐ 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: \$150.00 restore fee			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ Date:	
CLERK'S VERIFICATION Collected by: _____ Date File: _____ (print name) ☐ MOTION FEE COLLECTED: ☐ CONTESTED – AMOUNT DUE:			

RECORD0044

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Aurora Loan Services, LLC,)
Plaintiff,)

C/A NO: 2011-CP-10-01805

vs.)

**ORDER SUBSTITUTING THE
PLAINTIFF AND AMENDING
THE CAPTION**

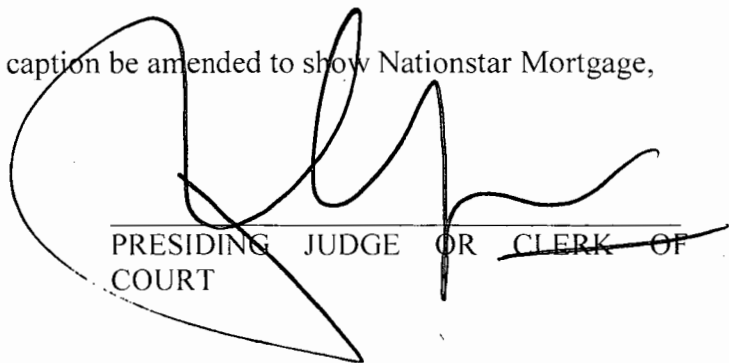
Curtis Rogers a/k/a Curtis L. Rogers,)
III, Julie J. Rogers, National City)
Bank, Shoreline Farms Community)
Association, Inc., and Harbor)
National Bank.)

Defendants.)

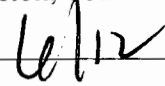
FILED
2013 JUN 14 AM 9:50
JULIE J. ARMSTRONG
CLERK OF COURT

It appearing to the Court that this action was brought in the name of Aurora Loan Services, LLC, and it appearing that the Note and Mortgage in this case have been assigned to Nationstar Mortgage, LLC, therefore, and on motion of the plaintiff's attorney that Nationstar Mortgage, LLC, should be substituted for Aurora Loan Services, LLC, as the plaintiff, and the caption be amended to show Nationstar Mortgage, LLC, as the proper plaintiff and present lienholder.

IT IS HEREBY ORDERED that the caption be amended to show Nationstar Mortgage, LLC, as plaintiff.

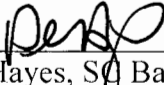


PRESIDING JUDGE OR CLERK OF
COURT

Charleston, South Carolina
, 2013

[SIGNATURE PAGE TO FOLLOW]

I SO MOVE:



Dean A. Hayes, SC Bar No: 66066
Chris S. Truluck, SC Bar No: 77829
KORN LAW FIRM, P.A.
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 231-2022
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

June 7, 2013
Columbia, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1004503

Deutsche Bank Trust Company Americas as Trustee et al
PLAINTIFF(S)

Ashley Johnson Beshara et al
DEFENDANT(S)

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), 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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 Defendant's motion to dismiss is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/23/2020 .

Wells Fargo Bank N A
Shoreline Farms Community Association Inc
Cadle Rock Joint Ventrure L P

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Deutsche Bank Trust Company Americas as Trustee , plaintiff, et al
VS Ashley Johnson Beshara , defendant, et al

Case Number: 2019CP1004503

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-06-23 11:49:00 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1004503

Deutsche Bank Trust Company Americas as Trustee et al
PLAINTIFF(S)

Ashley Johnson Beshara et al
DEFENDANT(S)

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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 Defendant's Motion to Intervene is GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/27/2020 .

Revocable Trust Agreement
Ashley Johnson Beshara Trustee
Ashley Johnson Beshara
Cadle Rock Joint Ventruire L P
Wells Fargo Bank N A
Shoreline Farms Community Association Inc
Nationstar Mortgage Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Deutsche Bank Trust Company Americas as Trustee , plaintiff, et al
VS Ashley Johnson Beshara , defendant, et al

Case Number: 2019CP1004503

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-07-27 11:59:28 page 3 of 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL DISTRICT

Deutsche Bank Trust Company) Civil Action No. 2019-CP-10-04503
Americas, as Trustee for Residential)
Accredit Loans, Inc., Pass-Through)
Certificates 2007-QH2,)

Plaintiff,)

v.)

CONSENT SCHEDULING ORDER

Ashley Johnson Beshera as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010; et al.,)

Defendants,)

Ashley Johnson Beshera as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010,)

Third-Party Plaintiff,)

v.)

Nationstar Mortgage LLC,)

Third-Party Defendant.)

This matter comes before the Court on the motion of all parties for the entry of a Consent Scheduling Order to govern the discovery and scheduling of the above captioned case. With the consent of all parties, the following deadlines are established:

1. Discovery to be completed by September 9, 2022;
2. Mediation to be completed by October 10, 2022;
3. Trial not before January 1, 2023.

IT IS SO ORDERED.

Circuit Court Judge, Ninth Judicial Circuit

WE CONSENT:

s/ Magalie A. Creech w/permission
Magalie A. Creech (S.C. Bar 78855)
FINKEL LAW FIRM LLC
Post Office Box 41489
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Telephone: (843) 577-5460
Facsimile: (866) 800-7954

Attorneys for Plaintiff

s/ T. Richmond McPherson
T. Richmond McPherson III
(SC #80432)
McGuireWoods LLP
201 North Tryon Street, Suite 3000
Charlotte, NC 28202-2146
Telephone: (704) 343-2038
Facsimile: (704) 444-8783
rmcpherson@mcguirewoods.com

*Attorney for Third-Party Defendant Nationstar
Mortgage LLC*

s/ D. Connor Keys w/permission
D. Connor Keys
The Law Offices of David Connor Keys, LLC
P.O. Box 14225
Charleston, SC 29422
conor@dconorkeyslaw.com

Attorneys for Third-Party Plaintiff

s/ Mary Leigh Arnold w/permission
Mary Leigh Arnold

Mary Leigh Arnold, PA
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464
sammie@maryarnoldlaw.com

Attorney for Curt and Julie Rogers



Charleston Common Pleas

Case Caption: Deutsche Bank Trust Company Americas as Trustee , plaintiff, et al VS
Ashley Johnson Beshara , defendant, et al
Case Number: 2019CP1004503
Type: Order/Scheduling Order

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2022-04-13 16:36:47 page 4 of 4

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1004503

Deutsche Bank Trust Company Americas as Trustee et al
PLAINTIFF(S)

Ashley Johnson Beshara et al
DEFENDANT(S)

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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

This matter came before the Court on January 4, 2021 on Plaintiff Deutsche Bank Trust Company Americas and Third-Party Defendant Nationstar Mortgage, LLC's Motion to Dismiss Defendant's Counterclaims and Third-Party Complaint, filed September 9, 2020. Representing the Plaintiff and Third-Party Defendant was Brian A. Calub, Esq. Representing Defendants Curtis Rogers and Julie Rogers was Mary L. Arnold, Esq. Representing Defendant Ashley Beshara was D. Conor Keys, Esq. This Motion is disposed of without the necessity of a hearing pursuant to the Chief Justice's April 3, 2020 Order, As Amended December 16, 2020, Section (c)(4). This Motion is listed on the January 4, 2021 Charleston County Motions Roster published December 7, 2020. The Plaintiff filed its Memorandum in Support on October 21, 2020. The Rogers Defendants filed their Memorandum in Opposition on October 21, 2020. Defendant Beshara filed her Memorandum in Opposition on October 21, 2020.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/07/2021 .

Revocable Trust Agreement
Ashley Johnson Beshara Trustee
Ashley Johnson Beshara
Cadle Rock Joint Venture L P
Wells Fargo Bank N A
Shoreline Farms Community Association Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

The Plaintiff and Third-Party Defendant's Motion to Dismiss is made pursuant to Rule 12(b)(6), SCRCP. A ruling on a motion to dismiss a claim pursuant to Rule 12(b)(6), SCRCP, must be based solely on the allegations set forth on the face of the complaint. *United Educational Distributors, LLC, v. Educational Testing Service*, 350 S.C. 7, 13, 564 S.E.2d 324, 328 (Ct. App. 2002). The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. *Washington v. Lexington County Jail*, 337 S.C. 400, 404, 523 S.E.2d 204, 206 (Ct. App. 1999) ; *McCormick v. England*, 328 S.C. 627, 632-33, 494 S.E.2d 431, 433 (Ct. App. 1997). "[A] judgment on the pleadings is considered to be a drastic procedure by our courts." *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). Therefore, pleadings in a case should be construed liberally and the trial court and this Court must presume all well pled facts to be true so that substantial justice is done between the parties. See *Justice v. Pantry*, 330 S.C. 37, 42, 496 S.E.2d 871, 874 (Ct. App. 1998). "The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action." *McCormick*, 328 S.C. at 633, 494 S.E.2d at 434. Further, "a novel issue should not be summarily decided on a 12 (b)(6) motion." *Keiger v. Citgo, Coastal Petroleum Inc.*, 326 S.C. 369, 373, 482 S.E.2d 792, 794 (Ct. App. 1997).

Viewed in the light most favorable to the non-moving party, the facts alleged and inferences deducible therefrom may entitle the Defendants to relief on a theory of the case. Accordingly, the Motion is heard and respectfully Denied.



Charleston Common Pleas

Case Caption: Deutsche Bank Trust Company Americas as Trustee , plaintiff, et al
VS Ashley Johnson Beshara , defendant, et al

Case Number: 2019CP1004503

Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2021-01-07 15:03:04 page 3 of 3

ELECTRONICALLY FILED - 2021 Jan 08 3:09 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1004503

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1004503

Deutsche Bank Trust Company Americas as Trustee et al
PLAINTIFF(S)

Ashley Johnson Beshara et al
DEFENDANT(S)

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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Plaintiff's Motion to Dismiss was filed on September 9, 2020. After careful consideration of the submissions from counsel, Plaintiff's motion is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/29/2021 .

Revocable Trust Agreement
Ashley Johnson Beshara Trustee
Ashley Johnson Beshara
Cadle Rock Joint Ventruire L P
Wells Fargo Bank N A
Shoreline Farms Community Association Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Deutsche Bank Trust Company Americas as Trustee , plaintiff, et al VS
Ashley Johnson Beshara , defendant, et al
Case Number: 2019CP1004503
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-07-29 09:49:08 page 3 of 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Deutsche Bank Trust Company) Civil Action No. 2019-CP-10-04503
Americas, as Trustee for Residential)
Accredit Loans, Inc., Pass-Through)
Certificates 2007-QH2,)

Plaintiff,)

v.)

Ashley Johnson Beshera as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010; et al.,)

Defendants,)

Ashley Johnson Beshera as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010,)

Third-Party Plaintiff,)

v.)

Nationstar Mortgage LLC,)

Third-Party Defendant.)

**CONSENT ORDER TO CONTINUE
JURY TRIAL DATE**

This cause coming to be heard before the undersigned on the Jury Trial Roster for January 09, 2023, term of Court, and it appearing to the Court that the request for a continuance should be allowed;

It is therefore ORDERED that the above-styled case be removed from the January 09, 2023 Jury Roster, and placed back on the Jury Roster after the pending motions are heard and ruled upon.

This the ____ day of _____, 2022.

THE HONORABLE JENNIFER B. MCCOY
CHIEF ADMINISTRATIVE JUDGE
9th JUDICIAL CIRCUIT CHARLESTON COUNTY COURT
OF COMMON PLEAS

DATED: _____, 202_.

I SO MOVE:

/s/ T. Richmond McPherson, III
T. Richmond McPherson, III (SC #80432)
McGuireWoods LLP
Fifth Third Center
201 North Tryon Street, Suite 3000
Charlotte, NC 28202-2146
Telephone: (704) 343-2162
Facsimile: (704) 444-8819
rmcpherson@mcguirewoods.com

*Attorney for Plaintiff Deutsche Bank Trust
Company Americas, as Trustee for Residential
Accredit Loans, Inc., Pass-Through
Certificates 2007-QH2 and Third-Party
Defendant Nationstar Mortgage LLC*

I CONSENT:

/s/ Mary Leigh Arnold w consent
Mary Leigh Arnold
Mary Leigh Arnold, PA
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464
sammie@maryarnoldlaw.com

Attorney for Curt and Julie Rogers

/s/ David Conor Keys w consent
D. Conor Keys

The Law Offices of David Conor Keys, LLC
P.O. Box 14225
Charleston, SC 29422
conor@dconorkeyslaw.com

Attorneys for Third-Party Plaintiff



Charleston Common Pleas

Case Caption: Deutsche Bank Trust Company Americas as Trustee , plaintiff, et al VS
Ashley Johnson Beshara , defendant, et al
Case Number: 2019CP1004503
Type: Order/Continuance

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2023-01-02 20:53:35 page 4 of 4

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL DISTRICT

Deutsche Bank Trust Company) Civil Action No. 2019-CP-10-04503
Americas, as Trustee for Residential)
Accredit Loans, Inc., Pass-Through)
Certificates 2007-QH2,)

Plaintiff,)

v.)

**CONSENT ORDER TO CONTINUE
JURY TRIAL DATE**

Ashley Johnson Beshera as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010; et al.,)

Defendants,)

Ashley Johnson Beshera as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010,)

Third-Party Plaintiff,)

v.)

Nationstar Mortgage LLC,)

Third-Party Defendant.)

_____)
This cause coming to be heard before the undersigned on the Jury Trial Roster for March 20, 2023, term of Court, and it appearing to the Court that the request for a continuance should be allowed;

It is therefore ORDERED that the above-styled case be removed from the March 20, 2023 Jury Roster, and placed on the Jury Roster after August 15, 2023.

This the _____ day of _____, 2023.

THE HONORABLE YOUNG, SR., ROGER M.,
CHIEF ADMINISTRATIVE JUDGE
9th JUDICIAL CIRCUIT CHARLESTON COUNTY COURT
OF COMMON PLEAS

DATED: _____, 202_.

I SO MOVE:

/s/ T. Richmond McPherson, III
T. Richmond McPherson, III (SC #80432)
McGuireWoods LLP
Fifth Third Center
201 North Tryon Street, Suite 3000
Charlotte, NC 28202-2146
Telephone: (704) 343-2162
Facsimile: (704) 444-8819
rmcpherson@mcguirewoods.com

*Attorney for Plaintiff Deutsche Bank Trust
Company Americas, as Trustee for Residential
Accredit Loans, Inc., Pass-Through
Certificates 2007-QH2 and Third-Party
Defendant Nationstar Mortgage LLC*

I CONSENT:

/s/ Mary Leigh Arnold w consent
Mary Leigh Arnold
Mary Leigh Arnold, PA
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464
sammie@maryarnoldlaw.com

Attorney for Curt and Julie Rogers

/s/ David Conor Keys w consent
D. Conor Keys
The Law Offices of David Conor Keys, LLC
P.O. Box 14225

Charleston, SC 29422
conor@dconorkeyslaw.com

Attorneys for Third-Party Plaintiff



Charleston Common Pleas

Case Caption: Deutsche Bank Trust Company Americas as Trustee , plaintiff, et al VS
Ashley Johnson Beshara , defendant, et al
Case Number: 2019CP1004503
Type: Order/Consent Order

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2023-03-13 16:18:36 page 4 of 4

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL DISTRICT

Deutsche Bank Trust Company) Civil Action No. 2019-CP-10-04503
Americas, as Trustee for Residential)
Accredit Loans, Inc., Pass-Through)
Certificates 2007-QH2,)

Plaintiff,)

v.)

**CONSENT ORDER TO CONTINUE
JURY TRIAL DATE**

Ashley Johnson Beshara as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010; Shoreline Farms)
Community Association, Inc.; Wells)
Fargo Bank, N.A.; Cadle Rock Venture,)
L.P. and Ohio Limited Partnership, Curtis)
Rogers and Julie Rogers)

Defendants,)

Ashley Johnson Beshara as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010,)

Third-Party Plaintiff,)

v.)

Nationstar Mortgage LLC,)

Third-Party Defendant.)

This cause coming to be heard before the undersigned on the Jury Trial Roster for August 28, 2023, term of Court, and it appearing to the Court that the request for a continuance should be allowed;

It is therefore ORDERED that the above-styled case be removed from the August 28, 2023 Jury Roster, and placed on the Jury Roster after October 15, 2023.

This the 15th day of August, 2023.

THE HONORABLE JENNIFER B. McCOY
CHIEF ADMINISTRATIVE JUDGE
9th JUDICIAL CIRCUIT CHARLESTON COUNTY COURT
OF COMMON PLEAS

DATED: _____, 202_.

I SO MOVE:

/s/ T. Richmond McPherson, III
T. Richmond McPherson, III (SC #80432)
McGuireWoods LLP
Fifth Third Center
201 North Tryon Street, Suite 3000
Charlotte, NC 28202-2146
Telephone: (704) 343-2162
Facsimile: (704) 444-8819
rmcpherson@mcguirewoods.com

*Attorney for Plaintiff Deutsche Bank Trust
Company Americas, as Trustee for Residential
Accredit Loans, Inc., Pass-Through
Certificates 2007-QH2 and Third-Party
Defendant Nationstar Mortgage LLC*

I CONSENT:

/s/ Mary Leigh Arnold w consent
Mary Leigh Arnold
Mary Leigh Arnold, PA
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464
sammie@maryarnoldlaw.com

Attorney for Curt and Julie Rogers

/s/ David Conor Keys w consent

D. Conor Keys
The Law Offices of David Conor Keys, LLC
P.O. Box 14225
Charleston, SC 29422
conor@dconorkeyslaw.com

Attorneys for Third-Party Plaintiff



Charleston Common Pleas

Case Caption: Deutsche Bank Trust Company Americas as Trustee , plaintiff, et al VS Ashley Johnson Beshara , defendant, et al

Case Number: 2019CP1004503

Type: Order/Consent Order

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2023-08-16 10:19:47 page 4 of 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Nationstar Mortgage, LLC,

PLAINTIFF,

VS.

Curtis Rogers a/k/a Curtis L. Rogers, III,
Julie J. Rogers, National City Bank,
Shoreline Farms Community Assoc., Inc.,
and Harbor National Bank,

DEFENDANT(S).

347471

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-10-01805

ORDER RESTORING CASE TO
ACTIVE DOCKET

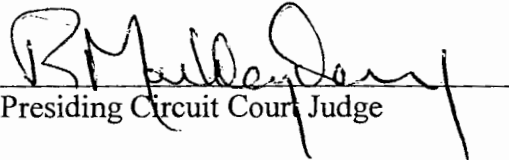
FILED
2015 APR -7 AM 9:05
JULIE J. ARMSTRONG
CLERK OF COURT

This is an action for foreclosure as to certain real property located in Charleston County. This case was stricken from the active roster on June 24, 2014 pursuant to Rule 40(j), SCRCP. Plaintiff has now moved for an order restoring this case to the active docket.

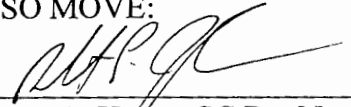
NOW, THEREFORE, IT IS ORDERED that this case be restored to the active docket pursuant to Rule 40(j), SCRCP.

IT IS SO ORDERED.

Charleston, South Carolina
March 31, 2015


Presiding Circuit Court Judge

I SO MOVE:


Dean A. Hayes, SC Bar No. 66066
Robert P. Jackman, SC Bar No. 78755
Butler & Hosch, P.A.
1231 Gadsden Street, Suite 100
Post Office Box 7128
Columbia, SC 29201
Phone: (803) 569.1765
Fax: (803) 403.9753
ATTORNEYS FOR PLAINTIFF

RECORD0075

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Nationstar Mortgage, LLC,

PLAINTIFF,

vs.

Curtis Rogers a/k/a Curtis L. Rogers, III,
Julie J. Rogers, National City Bank,
Shoreline Farms Community Assoc., Inc.,
and Harbor National Bank,

DEFENDANT(S).

347471

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-10-01805

CERTIFICATE OF MAILING

FILED
2015 APR -7 AM 9:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby certifies that on March 13, 2015, he served the **Order Restoring Case to Active Docket** upon the following by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Mary Leigh Arnold, Esq.
Mary Leigh Arnold, PA
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464
ATTORNEY FOR DEFENDANTS
CURTIS ROGERS, III & JULIE J. ROGERS

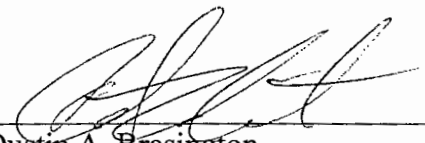
Robert A. Bernstein, Esq.
Bernstein & Bernstein
Post Office Box 20519
Charleston, SC 29413-0519
ATTORNEY FOR DEFENDANT
HARBOR NATIONAL BANK

Suzanne E. Brown, Esq.
Brock & Scott, PLLC
5431 Oleander Dr., Suite 110
Wilmington, NC 28403
ATTORNEY FOR DEFENDANT
NATIONAL CITY BANK

[CONTINUED ON FOLLOWING PAGE]

RECORD0076

Alice F. Paylor, Esq.
Post Office Box 893
Charleston, SC 29402
ATTORNEY FOR DEFENDANT
SHORELINE FARMS COMMUNITY ASSOC., INC.


Dustin A. Brasington
Litigation Paralegal

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Aurora Loan Services, LLC,

PLAINTIFF,

vs.

Curtis Rogers a/k/a Curtis L. Rogers, III, Julie J. Rogers,
National City Bank, Shoreline Farms Community
Association, Inc., and Harbor National Bank,

DEFENDANTS.

F29-04814

IN THE COURT OF COMMON PLEAS

ORDER RESTORING CASE TO
THE ACTIVE ROSTER

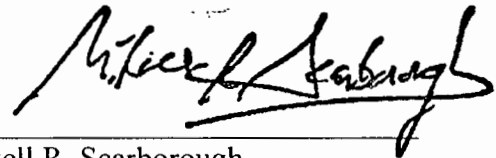
(NON-JURY MORTGAGE
FORECLOSURE)

C/A NO:2009-CP-10-5840

DEFICIENCY WAIVED

It appears to the Court that the within case was stricken from active roster pursuant to Rule 40(j) with leave to restore upon filing of the proper motion as required by the Rules of Civil Procedure. The plaintiff filed a Motion to Restore Case to Active Roster on August 26, 2010.

NOW, THEREFORE, IT IS ORDERED THAT THIS case be restored to the active roster and that a hearing be held on the merits, and that final judgment be entered, with appeal to the South Carolina Supreme Court.



Mikell R. Scarborough
Master in Equity

Charleston, South Carolina

2/28, 2011

FILED
2011 MAR 10 AM 9:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Aurora Loan Services, LLC,

PLAINTIFF,

vs.

Curtis Rogers a/k/a Curits L. Rogers, III, Julie J. Rogers, National City Bank, Shoreline Farms Community Association, Inc. and Harbor National Bank,

DEFENDANT(S).

F29-04814

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P.O. Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

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 the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-in-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to

IN THE COURT OF COMMON PLEAS

SUMMONS 09-CP-10.5840

(NON-JURY MORTGAGE FORECLOSURE)

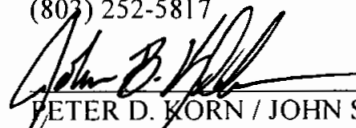
C/A NO:

DEFICIENCY WAIVED

FILED
2009 SEP 15 PM 3:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817

A handwritten signature in black ink, appearing to read "John B. Kelchner", is written over a horizontal line.

PETER D. KORN / JOHN S. KAY
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / MEREDITH S. LEE
Attorneys for Plaintiff

Columbia, South Carolina
August 25, 2009

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Aurora Loan Services, LLC,

PLAINTIFF,

vs.

Curtis Rogers a/k/a Curits L. Rogers, III, Julie J. Rogers, National City Bank, Shoreline Farms Community Association, Inc. and Harbor National Bank,

DEFENDANT(S).

F29-04814

IN THE COURT OF COMMON PLEAS

09-CP-10-5840

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

DEFICIENCY WAIVED

2009 SEP 15 PM 3:53
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Delaware; and that the Defendant(s) Curtis Rogers a/k/a Curits L. Rogers, III and Julie J. Rogers, is/are upon information and belief, is/are citizen(s) and resident(s) of the County of Charleston, State of South Carolina. That the Defendant, National City Bank, is upon information and belief a business organized and existing under the laws of Ohio. That the Defendant, Shoreline Farms Community Association, Inc., is upon information and belief a business organized and existing under the laws of South Carolina. That the Defendant, Harbor National Bank, is upon information and belief a business organized and existing under the laws of South Carolina.

2. Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Laws (1976) as amended.

3. That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Charleston, State of South Carolina.

4. That on or about January 12, 2007, for value received, Curtis Rogers a/k/a Curtis L. Rogers, III, did execute and deliver to Homecomings Financial, LLC (F/K/A Homecomings Financial Network, Inc.), a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Curtis Rogers a/k/a Curtis L. Rogers, III promised to pay to Homecomings Financial, LLC (F/K/A Homecomings Financial Network, Inc.) the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), together with interest thereon at an adjustable rate per terms as set out in said Note.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Curtis Rogers a/k/a Curtis L. Rogers, III and Julie J. Rogers, did execute and deliver on January 12, 2007 unto Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Homecomings Financial, LLC (F/K/A Homecomings Financial Network, Inc.), its successors and assigns, a mortgage covering the following described property:

Legal description and property address:

All that certain lot, piece or parcel of land, situate, lying and being on Johns Island, County of Charleston, State of South Carolina, and known and designated as Lot 8, Block F, Shore Line Farms Subdivision, on a plat of Shore Line Farms, made by Davis & Floyd, Engineers, Inc., dated June, 1978, and recorded in the RMC Office for Charleston County in Plat Book AL, at Page 73, on September 6, 1978, the said lot having such location, size, shape, dimensions, buttings and boundings as are shown and delineated on the aforesaid plat.

ALL of the Grantee's right, title and interest in and to an area immediately adjoining said lot to the east, composed of highland and marshland and butting and bounding generally as follows, to wit:

To the North on the prolongation of the boundary line between Lots 8 and 9, Block F; to the South on a prolongation of the boundary line between Lots 7 and 8, Block F; to the West on Lot 8, Block F; and to the East on the now water mark of the Stono River, all as will more fully appear by reference to the aforesaid plat by Davis and Floyd Engineers, Inc., dated June, 1978, and recorded in the RMC Office for Charleston County in Plat Book AL, Page 73.

This being the same property conveyed to Curtis L. Rogers, III and Julie J. Rogers by deed of Kathleen P. Evans, dated July 3, 2002 and recorded July 3, 2002 in the Register of Deeds Office for Charleston County, South Carolina in Book G 411 at Page 112. Thereafter re-recorded to be conveyed to Curtis L. Rogers, III only on August 20, 2002 in Book O 415 at Page 836.

Thereafter Curtis L. Rogers, III conveyed the property by deed to Julie J. Rogers, dated December 14, 2005 and recorded January 10, 2006 in Book W 568 at Page 643.

Thereafter Julie J. Rogers conveyed one-half (1/2) undivided interest by deed to Curtis L. Rogers, III, dated January 12, 2007 and recorded January 24, 2007 in Book Z 612 at Page 786.

Thereafter Curtis L. Rogers, III conveyed one-half (1/2) undivided interred by deed to Julie J. Rogers, dated July 18, 2007 and recorded August 20, 2007 in Book D 636 at Page 182.

2235 Shoreline Drive, Johns Island, SC, 29455

TMS# 315-00-00-067 (Lot 8)

TMS# 315-00-00-008 (Marshlands adn Highlands)

6. Thereafter said mortgage was recorded in Book B 613 at page 844 on January 24, 2007 in the office of the Register of Deeds of Charleston County.

7. Thereafter, by virtue of an assignment to be recorded Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Homecomings Financial, LLC (F/K/A Homecomings Financial Network, Inc.) assigned said mortgage unto Aurora Loan Services, LLC making Aurora Loan Services, LLC the present lien holder and Plaintiff herein.

8. The above referenced instrument constitutes a first lien priority mortgage.

9. That the Defendant, National City Bank, is made a party by virtue of a Mortgage given by Curtis L. Rogers, III and Julie J. Rogers, dated July 18, 2007, and recorded July 23, 2007, in Book F 633 at Page 176 in the amount of Four Hundred Ninety Thousand Sixty-Four And 00/100 (\$490,064.00).

10. That Shoreline Farms Community Association, Inc. is made a party by virtue of any homeowners liens or assessments recorded or unrecorded that are due or that may become due in the future.

11. That the Defendant, Harbor National Bank is made a party by virtue of a Judgment against Curtis L. Rogers, III, et al., dated February 9, 2009, and recorded March 17, 2009, in the amount of One Hundred Thousand And 00/100 (\$100,000.00) and identified as Case # 2009-JG-10-438, JR # 09-4343.

12. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

13. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

14. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

15. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

16. The monthly payments due on said note and mortgage are in default since May 1, 2009, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of May 1, 2009 the sum of One Million Five Hundred Ninety-Two Five Hundred And 77/100 Dollars (\$1,592,500.77), together with interest at an adjustable rate per terms as set out in said Note from April 1, 2009 and also for the costs and disbursements of this action, including attorney's fees.

17. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

18. That the servicer is participating in the Home Affordable Modification Program (HMP). The loan is not subject to modification under the HMP because the principal balance exceeds \$729,750.00.

19. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

20. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

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

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

(2) That the said Plaintiff's mortgage be declared a first mortgage lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon,

together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied 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, the surplus, if any, be distributed according to law.

(4) For an Order directing and empowering the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

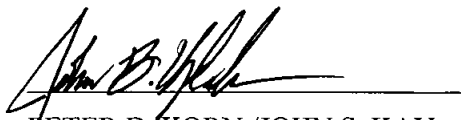
(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

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

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

(8) For an order satisfying any prior liens that may be of record, but have been paid in full.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817



PETER D. KORN / JOHN S. KAY
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL
Attorneys for Plaintiff

Columbia, South Carolina
August 25, 2009

NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1601 As Amended

1. The amount of the debt is stated in paragraph 16 of the Complaint attached hereto.
 2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
 3. The debt as described in the Complaint attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor(s), within thirty (30) days after the receipt of this notice, disputed, in writing, the validity of the debt or some portion thereof.
 4. If the debtor(s) notify the creditor's law firm in writing within thirty 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(s) by the creditor's law firm.
 5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor(s) make a written request to the creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor(s) by the creditor's law firm.
- Written requests should be addressed to Korn Law Firm, P.A., Post Office Box 11264, Columbia, South Carolina 29211-1264.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Aurora Loan Services, LLC,)
Plaintiff(s),)

vs.)

Curtis Rogers a/k/a Curtis L. Rogers)
III, Julie J. Rogers, National City)
Bank, Shoreline Farms Community)
Assoc., Inc., and Harbor National)
Bank,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2009-CP-10-5840

**ANSWER OF DEFENDANT'S
CURTIS ROGERS and JULIE J. ROGERS**

2009 OCT 23 PM 2:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

TO: JOHN B. KELCHNER, ATTORNEY FOR PLAINTIFF:

The Defendants Curtis Rogers and Julie J. Rogers (hereinafter referred to as Defendants) answering the Complaint of the Plaintiff herein, and states as follows that:

1. Defendants denies each and every allegation of the Complaint not hereinafter specifically admitted, explained or modified.
2. Defendants lacks knowledge and information sufficient to form and opinion or belief as to the allegations of Paragraph 1, and therefore denies all allegations except that the Defendants Rogers are residents of Charleston County and demands strict proof thereof.
3. The allegations of Paragraph 2 constitute legal conclusions which these Defendants are required neither to admit nor deny.
4. Defendants admit the allegations of Paragraph 3.
5. Answering the allegations of Paragraph 4 and Paragraph 5, Defendants crave reference to the documents identified therein and denies any allegation inconsistent with the specific terms of said documents.

6. Defendants lacks knowledge and information sufficient to form and opinion or belief as to the allegations of Paragraph 6 and Paragraph 7, and therefore denies the same and demands strict proof thereof.

7. The allegations of Paragraphs 8, 9, 10 and paragraph 11 constitute legal conclusions which these Defendants are required neither to admit nor deny.

8. Answering the allegations of Paragraphs 12, 13, 14 and Paragraph 15, Defendants crave reference to the documents identified therein and denies any allegation inconsistent with the specific terms of said documents.

9. Defendants deny the allegations in Paragraph 16 and demands strict proof thereof.

10. The allegations of Paragraph 17 and Paragraph 18 constitute legal conclusions which these Defendants are required neither to admit nor deny.

11. Defendants deny the allegations in Paragraph 19 and demands strict proof thereof.

12. The allegations of Paragraph 20 constitute legal conclusions which these Defendants are required neither to admit nor deny.

FOR AND AS A FIRST DEFENSE
(Failure to State Claim)

13. Further answering said Complaint and for a further defense thereto Defendant alleges that Plaintiff's Complaint fails to set forth a sufficient cause of action.

FOR AND AS A THIRD DEFENSE

14. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that the Complaint fails to name a necessary and real party in interest and therefore should be dismissed.

FOR AND AS A FOURTH DEFENSE
(Forbearance)

15. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that the Plaintiff's cause of actions are barred due to the Forbearance Agreement reached between the parties.

FOR AND AS A FIFTH DEFENSE
(Novation)

16. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that the Plaintiff's cause of actions are barred under the theory of novation.

FOR AND AS A SIXTH DEFENSE

17. Further answering said Complaint and for a further defense thereto Defendant specifically pleads as an affirmative defense to the allegations of the Complaint, accord and satisfaction, comparative negligence, duress, fraud, illegality, laches, estoppel, no contract, statute of limitations, misrepresentation, mistake, payment, release, waiver, lack of consideration or any other matter constituting avoidance or affirmative defense which may arise and develop as discovery in this progresses.

FOR AND AS A SEVENTH DEFENSE
(Reservation and Non-Waiver)

18. Defendant reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery

WHEREFORE, having fully answered the Complaint of the Plaintiffs

herein, Defendant, prays the same be dismissed with cost, and for such other and further relief as the court may deem just and proper.


MARY LEIGH ARNOLD, P.A.

Mary Leigh Arnold, Esquire
749 Johnnie Dodds Blvd., Ste. B
Mt. Pleasant, South Carolina 29464
Telephone (843) 971-6053
Fax (843) 971-6055

ATTORNEY FOR DEFENDANTS
CURTIS ROGERS AND JULIE ROGERS

Mt. Pleasant, SC

Dated: 10-21-09

CERTIFICATE OF SERVICE

I certify that on this 21st day of October October, 2009, a copy of the
within Answer of Defendants Curtis Rogers and Julie Rogers was placed in the United States

Mail postage pre-paid, addressed to

Plaintiffs counsel as follows:

John B. Kelchner, Esquire
Korn Law Firm, P.A
1300 Pickens Street
P. O. Box 11264
Columbia, SC 29211-1264


Belinda Carlin, Paralegal

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Aurora Loan Services, LLC,)
Plaintiff(s),)

vs.)

Curtis Rogers a/k/a Curtis L. Rogers)
III, Julie J. Rogers, National City)
Bank, Shoreline Farms Community)
Assoc., Inc., and Harbor National)
Bank,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO. ~~2009-CP-10-5840~~ 2011-CP-10-1205

**AMENDED ANSWER and COUNTERCLAIM
OF DEFENDANTS
CURTIS ROGERS and JULIE J. ROGERS**

(Jury Trial Demanded)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 FEB 13 PM 3:35

FILED

TO: DEAN HAYES, ATTORNEY FOR PLAINTIFF:

The Defendants Curtis Rogers and Julie J. Rogers (hereinafter referred to as Defendants) answering the Complaint of the Plaintiff herein, and states as follows that:

1. Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted, explained or modified.
2. Defendants lacks knowledge and information sufficient to form and opinion or belief as to the allegations of Paragraph 1, and therefore deny all allegations except that the Defendants Rogers are residents of Charleston County and demands strict proof thereof.
3. The allegations of Paragraph 2 constitute legal conclusions which these Defendants are required neither to admit nor deny.
4. Defendants admit the allegations of Paragraph 3.
5. Answering the allegations of Paragraph 4 and Paragraph 5, Defendants crave reference to the documents identified therein and denies any allegation inconsistent with the

specific terms of said documents.

6. Defendants lacks knowledge and information sufficient to form an opinion or belief as to the allegations of Paragraph 6 and Paragraph 7, and therefore deny the same and demands strict proof thereof.

7. The allegations of Paragraphs 8, 9, 10 and paragraph 11 constitute legal conclusions which these Defendants are required neither to admit nor deny.

8. Answering the allegations of Paragraphs 12, 13, 14 and Paragraph 15, Defendants crave reference to the documents identified therein and denies any allegation inconsistent with the specific terms of said documents.

9. Defendants deny the allegations in Paragraph 16 and demands strict proof thereof.

10. The allegations of Paragraph 17 and Paragraph 18 constitute legal conclusions which these Defendants are required neither to admit nor deny.

11. Defendants deny the allegations in Paragraph 19 and demands strict proof thereof.

12. The allegations of Paragraph 20 constitute legal conclusions which these Defendants are required neither to admit nor deny.

FOR AND AS A FIRST DEFENSE
(Failure to State Claim)

13. Further answering said Complaint and for a further defense thereto Defendants allege that Plaintiff's Complaint fails to set forth a sufficient cause of action.

FOR AND AS A THIRD DEFENSE
(Real Party In Interest and Standing)

14. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that the Complaint fails to name a necessary and real party in

interest and Plaintiff is not the real party or owner of the subject note and mortgage and/or lacks standing and therefore the Complaint should be dismissed.

FOR AND AS A FOURTH DEFENSE
(Work Out Agreement)

15. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that the Plaintiff's cause of actions are barred due to the Workout Agreement reached between the parties.

FOR AND AS A FIFTH DEFENSE
(Novation)

16. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that the Plaintiff's cause of actions are barred under the theory of novation.

FOR AND AS A SIXTH DEFENSE

17. Further answering said Complaint and for a further defense thereto Defendants specifically plead as an affirmative defense to the allegations of the Complaint, accord and satisfaction, comparative negligence, duress, fraud, illegality, laches, estoppel, no contract, statute of limitations, misrepresentation, unclean hands, mistake, payment, release, waiver, lack of consideration, failure to mitigate or any other matter constituting avoidance or affirmative defense which may arise and develop as discovery in this progresses.

FOR AND AS A SEVENTH DEFENSE
(Reservation and Non-Waiver)

18. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery

FOR AND AS A EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract and Good Faith and Fair Dealing)

19. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

20. Defendants are residents of the Charleston County State of South Carolina.

21. Plaintiff is an limited liability company organized and existing under the laws of Delaware and doing business in the State of South Carolina.

22. Defendants entered into a note and mortgage with Homecomings Financial as referenced in the subject Complaint.

23. In a letter dated October 27, 2011, Aurora Bank FSB states:

The above referenced loan is a "Payment Option Arm" loan, which allows you to choose among several payment options each month. One of those options is a "minimum payment," which is an amount that is less than the amount needed to pay the interest that has accrued on the loan for the prior month. Because the minium payment does not pay all the interest then due on the loan, the unpaid interest amount accrues and is added to the principal balance of the loan..."

24. At some point and time Plaintiff purportedly acquired at least the servicing rights the note and mortgage. No assignment as been recorded with the Charleston RMC Office transferring the interest created in Homecomings to Plaintiff or any other entity.

25. On or about October 13, 2009 after the commencement of the within action, Plaintiff transmitted to Defendant, Curt Rogers, a proposed workout agreement, a copy of which is attached hereto as Exhibit "A".

26. As requested Defendant Curt Rogers signed the agreement and delivered

simultaneously therewith the required payment.

27. Defendants made the required payments.

28. On or about mid April 2010, Plaintiff telephone Defendants to advise they were being denied a permanent modification.

29. Plaintiff claimed Defendants' were denied a modification because their monthly housing to income ratio is too high. Plaintiff did not provide Defendants with any NPV values or the means by which it determined Defendants housing income ratio is too high.

30. Upon information and belief Plaintiffs further advised Defendants they were denied a modification because they had submitted a short sale proposal to the Plaintiff for consideration.

31. Defendants have suffered emotional distress because of the confusion surrounding Plaintiff's willing to enter into a workout agreement then failing to enter into a permanent modification based on pretextual reasons, failure to enter into a permanent modification, failure to approve a short sale, making inaccurate statements about their account and to improperly reinstate foreclosure proceedings.

32. On or about November 9, 2009 , Defendants by and through their counsel sent to Aurora, a Qualified Written Request (QWR) pursuant to the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. ' 2605(e). The QWR contained Defendant's name and address.

33. Plaintiff entered into the workout agreement referenced above with Defendant, which was supported by valuable consideration and contained sufficiently definite terms to be binding and fully-enforceable agreements. Among the consideration furnished in support of the modifications was Defendant's provision of detailed, additional financial information to Plaintiff and Plaintiff to allow them to assess his eligibility for a loan modification, Defendant's agreement to pay interest on

capitalized amounts (such as arrears, and taxes and insurance and recording fees) that otherwise would not have accrued interest in accordance with the original loan terms, and a restructuring of Defendant's mortgage terms that would enabled him to make timely mortgage payments each month.

34. Every contract has an implied duty of good faith and fair dealing. Plaintiff by failing to properly administer the workout agreement or the Home Modification Program it offers and promotes, disavowing the agreements entered into with Defendant, losing documents submitted by Defendant, failing to timely respond to borrowers requests, filing foreclosure actions against Defendant while Defendants were in an active and ongoing loss mitigation program and negotiations with Plaintiff; and failing to adhere to the terms of the its lost mitigation program and modifications; and failing to offer, or timely offer affordable loss mitigation options to borrowers, for failing to appropriately post payments, rejecting payments, falsely stating past due amounts, reporting to credit agencies default rather than the modified agreements, for failure to give proper credit for payments received and for improper fees charged.

35. Plaintiff breached its agreement and duty of good faith and fair dealing with Defendants by failing to properly administer the Home Modification Program it offers and promotes, losing documents submitted by Defendants, failing to timely respond to borrowers requests, filing foreclosure actions against Defendants while Defendants were in an active and ongoing loss mitigation program and negotiations with Plaintiff; and failing to adhere to the terms of the its lost mitigation program; and failing to offer, or timely offer affordable loss mitigation options to borrowers, for failing to appropriately post payments, for failure to give proper credit for payments received and for improper fees charged

36. As a result of the breach of Plaintiff, Defendants have suffered damages including, but not limited to, lost properties, devaluation and lack of marketability of Defendants'

home, continued accrued interest, damage to credit history, excess charges, improper charges and emotional distress. .

37. Defendants are informed and believe they are entitled to actual, consequential, incidental, expectation, and special damages against Plaintiff in the appropriate amount, costs, and such other and further relief as the court deems just and proper.

FOR AND AS A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Declaratory and Injunctive Relief)

38. Defendants adopt the allegations of paragraphs 1 through 37 and incorporate the same herein by reference as if stated verbatim.

39. Defendants are persons interested under agreements and bring this action pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10, et. seq. (Law Co-op. 1976), to determine the validity of and their legal rights and obligations, if any, under the terms of the loan transactions.

40. The Note should be unenforceable due to its unconscionable terms specifically including but not limited to negative amortization. Additionally, and alternatively if the terms of the Note are enforceable and not null and void, then entered the workout agreement between Defendants and Plaintiff should be enforceable. As such, Defendants seek an order declaring the note null, void and unenforceable or in the alternative the terms of the workout agreement enforceable, allowing the Defendants to rescind the loan transactions requiring the return of all payments made to Plaintiff, prohibiting and or enjoining Plaintiffs from declaring the terms of the loan transactions in default, prohibiting and enjoining Plaintiffs from initiating or prosecuting a foreclosure action and/or reforming the loan transactions.

41. Additionally, Defendants seek the disgorgement of Plaintiff's illicit profits, restitution in the amount of excess interest levied by Plaintiff, and modification of the transactions and other relief as set forth in the prayer below.

42. As a result of Plaintiff's unfair improper, and unconscionable lending and servicing practices as described above, Defendants have suffered, and will continue to suffer, severe and irreparable harm and injury.

43. Accordingly, Defendants respectfully ask the Court to enter a preliminary and/ or permanent injunction ordering Plaintiff to cease and desist their unfair and unconscionable lending or servicing practices of attempting to enforce and enforcing loan terms that are unconscionable and / or unreasonable and/or should be modified and subjecting their homes to foreclosure.

FOR AND AS TENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Unjust Enrichment)

44. Defendants adopt the allegations of paragraphs 1 through 43 and incorporate the same herein by reference as if stated verbatim.

45. Plaintiff has been unjustly enriched at the expense of and to the detriment of Defendants by failing to act in good faith and properly create, implement and administer a modification program.

46. Defendants are informed and believe they are entitled to recover from the Plaintiff all assets and monies improperly withheld and received, any benefits received from the Plaintiff for its breach and inappropriate application of a modification program.

FOR AND AS AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligent Misrepresentation)

47. Defendants adopt the allegations of paragraphs 1 through 46 and incorporate the same herein by reference as if stated verbatim.

48. Plaintiff, as originator and successor and assign or servicer, upon information and belief, made false representations and misleading representations to the Defendants regarding the actual terms of the loan transactions, the application of a modification program, the workout agreement, the short sale program, their compliance with a federally required modification program and internal modification programs, and the availability of a modification.

49. In the course and conduct of offering and servicing the loan, Plaintiff and it is successors misrepresented, expressly or by implication, the terms of the loan (negative amortization) and the availability of a modification and its terms and workout agreement.

50. Plaintiff had a pecuniary interest in making the statements and soliciting the consumers' business by making this agreement.

51. Plaintiff owed a duty of care to see that it communicated truthful information to the consumers.

52. Plaintiff breached that duty by failing to exercise due care.

53. Defendants and all other consumers justifiably relied upon these representations.

54. By virtue of the negligent misrepresentations, the Defendants have been actually damaged and because these representations were willful, intentional, with malice towards the Defendants and with a reckless disregard for the rights of the Defendants, they seek an award of actual and punitive damages in accordance with their prayer for relief.

**FOR AND AS A TWELFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Accounting)**

55. Defendants adopt the allegations of paragraphs 1 through 54 and incorporate the

same herein by reference as if stated verbatim.

56. Defendants are entitled to an accounting from Plaintiff detailing all payments made, when received, when applied, how applied, interest charged, fees assessed and all other matters relating to the amount claimed owed.

FOR AND AS A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Promissory Estoppel)

57. Defendants adopt the allegations of paragraphs 1 through 56 and incorporates the same herein by reference as if stated verbatim.

58. Plaintiff made a number of promises to Defendants in connection with its modification of his mortgage and workout agreement.

59. Defendants reasonably relied on Plaintiff's promises by making modified monthly payments on his mortgage.

60. Defendants suffered injury because of his reliance on Plaintiff's promises that their mortgage was modified including, but not limited to, foregoing other loss mitigation options that would have been viable, losing the opportunity to sell his home or file for bankruptcy, and accruing interest on his mortgage. Defendants also suffered injury because Plaintiff improperly reported, upon information and belief, his mortgage account as delinquent to credit reporting agencies, which has damaged his credit rating.

61. As a result of Plaintiff's failure to uphold its promises, Defendants are entitled to
a. actual damages in an amount to be established at trial and costs and disbursements.

FOR AND AS A FOURTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Unfair and Deceptive Trade Practices)

62. Defendant adopts the allegations of paragraphs 1 through 61 and incorporates the same herein by reference as if stated verbatim.

63. Plaintiff through its agents, is engaged in the business of making and servicing mortgage loans in South Carolina for compensation or pecuniary gain.

64. Plaintiff is engaged in commerce as defined in the Unfair Trade Practice Act of South Carolina.

65. Plaintiff engaged in unfair or deceptive acts or practices in the conduct of commerce which is unlawful and in violation of the Unfair Trade Practices Act of South Carolina by, among other things, reneging on a loan modification amounting to a bait and switch and or misleading the consumer to believe they will be able to stay in their home. .

66. Such unfair and deceptive acts or practices proximately cause Defendants actual damages in an amount to be determined by the trier of fact.

67. Plaintiff's unfair and deceptive acts or practices impact on the public interest of consumers in this State and have the potential for repetition.

68. On information and belief, Plaintiff or one or more of Plaintiff's predecessors or agents have engaged in similar acts and practices in the past and are likely to engage in such illegal activities in the future.

69. Defendants believe that they is entitled to have the damages awarded by the trier of fact trebled because of the conduct described herein was willful.

70. Defendants believe that they are entitled to an award of reasonable attorney's fees and expenses of this litigation.

FOR AND AS A FIFTHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Violation of Truth and Lending)

71. Defendants incorporate all preceding paragraphs as though fully set forth herein.

72. 15 U.S.C.A. § 1601, et seq., is the Federal Truth in Lending Act ("TILA"). The

Federal Reserve Board of Governors implements the Federal Truth in Lending Act through Regulation Z (12 C.F.R. § 226) and its Official Staff Commentary. Compliance by lenders with Regulation Z became mandatory on October 1, 1982. Likewise, Official Staff Commentary issued by the Federal Reserve Board is also binding on all lenders.

73. The purpose of TILA is to protect consumers. This is stated in 12 C.F.R. §226.1, which reads:

§226.17. General disclosure requirements.

(a) Form of Disclosures. (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosure required under §226.18.

74. Plaintiff's Pick a Payment loan violates TILA because Plaintiff or its predecessors failed to comply with the disclosure requirements mandated by Regulation Z and the Official Staff Commentary issued by the Federal Reserve Board. Plaintiff and its predecessor failed in a number of ways to clearly, conspicuously and/or accurately disclose the terms of the Pick a Payment loan to Defendants as Plaintiff was required to do under TILA.

75. As such, Defendants seek redress under the Truth in Lending Act. Defendants are entitled to injunctive relief, redress, restitution, disgorgement, money damages, attorneys' fees, costs and expenses and other equitable relief against Plaintiff for engaging in unfair or deceptive acts or practices and as a result of their violation of TILA.

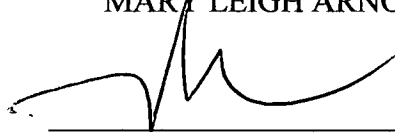
JURY TRIAL DEMANDED

PRAYER FOR RELIEF

Wherefore, in light of the foregoing, Defendants respectfully request
that this Court:

1. Rescind the underlying mortgage transactions and terminate any security interests created under the transactions;
 2. Enjoin the enforcement of the subject note and mortgage;
 3. Enjoin the pending foreclosure actions;
 4. Award actual, compensatory, punitive and treble damages in an amount to be determined at trial;
 5. Award reasonable costs of this action including attorneys' fees;
- and
6. Award all such other and further relief as this Court deems just and proper.

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold, Esquire
749 Johnnie Dodds Blvd., Ste. B
Mt. Pleasant, South Carolina 29464
Telephone (843) 971-6053
Fax (843) 971-6055
ATTORNEY FOR DEFENDANTS
CURTIS ROGERS AND JULIE ROGERS

Mt. Pleasant, SC
Dated: February 2, 2012

CERTIFICATE OF SERVICE

I certify that on this 2nd day of February, 2012, a copy of the within Amended Answer and Counterclaim of Defendants Curtis Rogers and Julie Rogers was placed in the United States Mail postage pre-paid, addressed to Plaintiffs counsel as follows:

Dean Hayes, Esquire
Korn Law Firm, P.A
1300 Pickens Street
P. O. Box 11264
Columbia, SC 29211-1264



Mary Leigh Arnold

58020.F50475

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Deutsche Bank Trust Company Americas,
as Trustee for Residential Accredit Loans,
Inc., Pass-Through Certificates 2007-QH2,

PLAINTIFF,

vs.

Ashley Johnson Beshara as Trustee of
Revocable Trust Agreement for 2235
Shoreline Drive originally dated the 3rd day
of March, 2010; Shoreline Farms
Community Association, Inc.; Wells Fargo
Bank, N.A.; and Cadle Rock Joint Ventrure,
L.P., an Ohio limited partnership,

DEFENDANT(S).

1:18pm
8/27
IN THE COURT OF COMMON PLEAS
C/A NO: 2019CP10 4503

LIS PENDENS

(NON-JURY MORTGAGE FORECLOSURE)

FILED
2019 AUG 27 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this court upon Complaint of the above-named Plaintiff against the above-named Defendant(s) for foreclosure of a certain mortgage of real estate given by Curtis L. Rogers, III and Julie J. Rogers to Mortgage Electronic Registration Systems, Inc., as nominee for Homecomings Financial, LLC (F/K/A Homecomings Financial Network, Inc.) in the amount of \$1,500,000.00, dated January 12, 2007, and recorded in the Office of the Register of Deeds for Charleston County in Book B613 at Page 844 on January 24, 2007 at 10:45 AM.

The premises covered and affected by the said mortgage as 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 lot, piece or parcel of land, situate, lying and being on Johns Island, County of Charleston, State of South Carolina, and known and designated as Lot 8, Block F, Shore Line Farms Subdivision, on a plat of Shore Line Farms, made by Davis & Floyd, Engineers, Inc., dated June, 1978, and recorded in the RMC Office for Charleston County in Plat Book AL, as Page 73, on September 6, 1978, the said lot having such location, size, shape, dimensions, buttings and boundings as are shown and delineated on the aforesaid plat.

*1
-13

RECORD0104

All of the Grantee's right, title and interest in and to an immediately adjoining said lot to the east, composed of highland and marshland and butting and bounding generally as follows, to wit:

To the North on the prolongation of the boundary line between Lots 8 and 9, Block F; to the South on a prolongation of the boundary line between Lots 7 and 8, Block F; to the West on Lot 8 Block F; and to the East on the now water mark of the Stono river, all as will more fully appear by reference to the aforesaid plat by Davis and Floyd Engineers, Inc., dated June, 1978, and recorded in the RMC Office for Charleston County in Plat Book AL, Page 73.

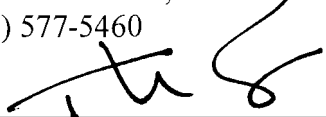
TMS#: 315-00-00-067

Property Address: 2235 Shoreline Drive, Johns Island, SC 29455

FINKEL LAW FIRM LLC
Post Office Box 71727
North Charleston, South Carolina 29415
(843) 577-5460

#2 / 13

By:


☒ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar # 69236
Attorneys for Plaintiff

August 26, 2019

58020.F50475

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Deutsche Bank Trust Company Americas,
as Trustee for Residential Accredit Loans,
Inc., Pass-Through Certificates 2007-QH2,

PLAINTIFF,

VS.

Ashley Johnson Beshara as Trustee of
Revocable Trust Agreement for 2235
Shoreline Drive originally dated the 3rd day
of March, 2010; *et al.*,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2019CP10 **4503**

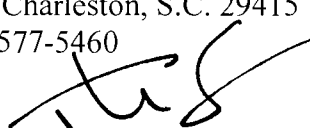
**NOTICE OF FORECLOSURE
INTERVENTION**

FILED
CLERK OF COURT
JULIE L. ARMSTRONG
2019 AUG 27 PM 1:19

PLEASE TAKE NOTICE THAT pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01, you may be eligible for foreclosure intervention programs for the purpose of resolving the above-referenced foreclosure action. If you wish to be considered for a foreclosure intervention program, you may contact Finkel Law Firm LLC, 4000 Faber Place Drive, Suite 450 (29405), P.O. Box 71727 (29415), North Charleston, SC 29405, or call (843) 577-5460 within **thirty (30) days** from the date of this notice. Finkel Law Firm LLC represents the Plaintiff in this action. Our law firm does not represent you and is not authorized to provide you any legal advice.

IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN THIS FORECLOSURE INTERVENTION PROCESS, THE FORECLOSURE MAY PROCEED.

FINKEL LAW FIRM LLC
P.O. Box 71727
North Charleston, S.C. 29415
(843) 577-5460



☐ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar # 69236
Attorneys for Plaintiff

August 26, 2019

NOTICE PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT (15 U.S.C. § 1692 *et seq.*): This is an attempt to collect a debt and any information you provide will be used for that purpose. However, if you have previously received a discharge from bankruptcy, this message is not and should be construed as an attempt to collect a debt, but only as a requirement pursuant to the administrative order.

RECORD0106

58020.F50475

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Deutsche Bank Trust Company Americas,
as Trustee for Residential Accredit Loans,
Inc., Pass-Through Certificates 2007-
QH2,

PLAINTIFF,

vs.

Ashley Johnson Beshara as Trustee of
Revocable Trust Agreement for 2235
Shoreline Drive originally dated the 3rd
day of March, 2010; Shoreline Farms
Community Association, Inc.; Wells
Fargo Bank, N.A.; and Cadle Rock Joint
Venture, L.P., an Ohio limited
partnership,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2019CP10 **4503**

SUMMONS AND NOTICES

(NON-JURY MORTGAGE FORECLOSURE)

FILED
2019 AUG 27 PM 1:18
JULE J. ARNSTADT
CLERK OF COURT

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the plaintiff's attorneys at their office, 4000 Faber Place, Suite 450 (29405), P.O. Box 71727, North Charleston, South Carolina, 29415, or to otherwise appear and defend the action pursuant to applicable court rules, within thirty (30) days after 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 such service; and if you fail to answer the Complaint or otherwise appear and defend within the time aforesaid, the Plaintiff in this action will apply to the Court for relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

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) RESIDE(S), AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

#1/B

RECORD0107

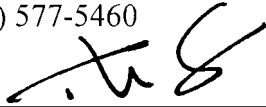
YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff.

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to a Master in Equity or Special Referee for Charleston County, which Order shall, pursuant to Rule 53(b) of the SCRCPP, specifically provide that the said Master or Special Referee is authorized and empowered to enter a final judgment in this action.

FINKEL LAW FIRM LLC
Post Office Box 71727
North Charleston, South Carolina 29415
(843) 577-5460

#2/13

By:


☒ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar # 69236
Attorneys for Plaintiff

August 26, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Deutsche Bank Trust Company Americas,
as Trustee for Residential Accredit Loans,
Inc., Pass-Through Certificates 2007-QH2,

PLAINTIFF,

vs.

Ashley Johnson Beshara as Trustee of
Revocable Trust Agreement for 2235
Shoreline Drive originally dated the 3rd day
of March, 2010; Shoreline Farms
Community Association, Inc.; Wells Fargo
Bank, N.A.; and Cadle Rock Joint Ventrure,
L.P., an Ohio limited partnership,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2019CP10 **4503**

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

2019 AUG 27 PM 1:18
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff alleges as follows:

1. The Plaintiff, a corporation or other legal entity, brings this foreclosure action to collect a debt and/or enforce a mortgage, security interest, or other rights in property securing the debt.
2. The Plaintiff is the servicer and/or mortgagee of the note and mortgage covering real property located in Charleston County, which is the subject of the within captioned action, and is entitled to enforce same.
3. The defendant(s) named herein may have an interest in the property that is the subject of this action.
4. Any defendant(s) described herein as Judgment Creditor(s) have by filing judgment(s) designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of §15-35-840 of the South Carolina Code of Laws (1976 as amended).
5. Upon information and belief, the defendant(s) is not in the military service of the United States of America pursuant to the provisions of the Servicemembers Civil Relief Act (2003).

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6. On or about January 12, 2007, for value received, Curt Rogers executed and delivered to Homecomings Financial, LLC (F/K/A Homecomings Financial Network, Inc.) a certain promissory note in the sum of \$1,500,000.00, together with interest thereon pursuant to the terms of the note.

7. To secure the payment of the said note and debt, secured thereby, and in accordance with the terms and conditions thereof, on January 12, 2007, Curtis L. Rogers, III and Julie J. Rogers executed and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for Homecomings Financial, LLC (F/K/A Homecomings Financial Network, Inc.), its successors and assigns, a mortgage covering the following described property:

All that certain lot, piece or parcel of land, situate, lying and being on Johns Island, County of Charleston, State of South Carolina, and known and designated as Lot 8, Block F, Shore Line Farms Subdivision, on a plat of Shore Line Farms, made by Davis & Floyd, Engineers, Inc., dated June, 1978, and recorded in the RMC Office for Charleston County in Plat Book AL, as Page 73, on September 6,, 1978, the said lot having such location, size, shape, dimensions, buttings and boundings as are shown and delineated on the aforesaid plat.

All of the Grantee's right, title and interest in and to an immediately adjoining said lot to the east, composed of highland and marshland and butting and bounding generally as follows, to wit:

To the North on the prolongation of the boundary line between Lots 8 and 9, Block F; to the South on a prolongation of the boundary line between Lots 7 and 8, Block F; to the West on Lot 8 Block F; and to the East on the now water mark of the Stono river, all as will more fully appear by reference to the aforesaid plat by Davis and Floyd Engineers, Inc., dated June, 1978, and recorded in the RMC Office for Charleston County in Plat Book AL, Page 73.

TMS#: 315-00-00-067

Property Address: 2235 Shoreline Drive, Johns Island, SC 29455

8. This mortgage was recorded in the Office of the Register of Deeds for Charleston County in book B613 at page 844 on January 24, 2007.

9. This mortgage constitutes a first mortgage lien on the subject property.

#2/13

10. This mortgage was assigned to the Plaintiff by instruments recorded:
 - (a) September 15, 2009, in Book 0081 at Page 058; and
 - (b) April 14, 2014 in Book 0398 at Page 768.
11. The property was conveyed to the titleholder Defendant by deeds recorded in:
 - (a) Book G411 at Page 112, re-recorded in Book 0415 at Page 836;
 - (b) Book W568 at Page 643;
 - (c) Book Z612 at Page 786;
 - (d) Book D636 at Page 182;
 - (e) Book 0131 at Page 833; and
 - (f) Book 0137 at Page 344.

12. Pursuant to the Administrative Order of the Chief Justice, 2009-05-022-01, the loan that is the subject of this action is not subject to modification under the Home Affordable Modification Program because the program terminated on December 31, 2016 pursuant to Section 709(b) of the Consolidated Appropriations Act, 2016, P.L. 114-113.

13. Pursuant to the terms of the mortgage, any sums paid by the plaintiff for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including reasonable attorney's fees, are secured by the mortgage.

14. The monthly payments on the note secured by the subject mortgage are due as of September 1, 2009, although demand therefore has been made, and the plaintiff, as the holder thereof, and after providing all required notices, elects to, and does declare the entire balance due and payable; and the principal due totals \$1,608,085.44, together with interest pursuant to the term of the note from August 1, 2009, escrow advances and/or deferred principal in the amount of \$183,681.95, applicable late fees, the costs and disbursements of this action, and attorney's fees.

15. Pursuant to Section 37-3-105, South Carolina Code of Laws (1976 as amended), the mortgage lien, which is the subject of this action, is a first lien on real estate and is not a '*consumer loan*' for the purposes of the South Carolina Consumer Protection Code. Any notice of right to cure has been given as required.

*3/13

16. Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto Plaintiff, including costs and Attorney's fees.

17. These defendants may claim an interest in the subject property:

- (a) Wells Fargo Bank, N.A., by virtue of its judgment against Curt L. Rogers in the original amount of \$1,314,347.70 filed May 13, 2014, judgment no. 2014CP1003027.
- (b) Cadle Rock Joint Venture, L.P., by virtue of a judgment against Curtis Lee Rogers III in the amount of \$560,000 originally in favor of RBC Bank (USA) assigned to this defendant on February 12, 2018 (see judgment no. 2011CP1001261).

The interests of these defendants are junior and subordinate to the Plaintiff's first mortgage lien.

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

1. The amount due upon the said note and mortgage held by Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

2. The said Plaintiff's Mortgage be declared a first mortgage lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

3. The mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied 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 the attorney's fees as aforesaid, and

Third, the surplus, if any be distributed according to law.

4. An Order be entered directing and empowering the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

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5. An Order be entered for the ejectment of the defendants in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the plaintiff's mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the plaintiff or its agents from the subject property by placing said property on the public street or highway or by any other means.

6. An Order be entered granting the appointment of a Receiver to secure and supervise the rental of the property sought to be foreclosed with authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt.

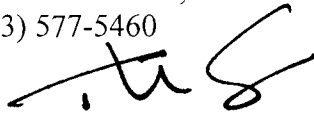
7. An Order be entered for reimbursement of all costs for inspecting and securing the property incurred by the plaintiff as a result of the delinquency.

8. An Order be entered for such other and further relief as may be just and proper.

FINKEL LAW FIRM LLC
Post Office Box 71727
North Charleston, South Carolina 29415
(843) 577-5460

#5
13

By:



☒ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar # 69236
Attorneys for Plaintiff

August 26, 2019

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT, (THE 'ACT')
15 U.S.C. SECTION 1601, AS AMENDED**

1. As of September 26, 2019, you owe \$2,459,434.,73. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write or call as directed in Paragraph 6 of this Notice.
2. Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2 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 receipt of this notice, dispute 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 from receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will cease all collection activities until it obtains and provides to you a verification of the debt, and a copy of the verification will be mailed to you, the debtor, by the Creditor's law firm.
5. If the Creditor named in the attached letter is not the original Creditor, and if you make a written request to the Creditor's law firm within thirty (30) days, 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 Finkel Law Firm LLC, Post Office Box 71727, N. Charleston, SC 29415, or call (843) 577-5460.
7. Please be advised that the time period in which you have to dispute the amount of your debt and request additional information does not alter or affect the time period set forth in the South Carolina Rules of Civil Procedure for the filing of an answer or other responsive pleading to the Complaint.
8. If the Debtor has received a discharge of the debt described in paragraph one pursuant to the United States Bankruptcy Code, then neither Creditor nor its law firm is seeking to collect any portion of the debt and all information contained herein is supplied for informational purposes only. Any pending or ensuing legal action by Creditor's law firm will undertake to foreclose a valid security interest only and neither is intended nor will operate as any effort to collect upon any debt that has been so discharged.

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

Affidavit of Service

DOCKET NUMBER: 2019CP1004503

FILE NUMBER: F50475

COURT OF COMMON PLEAS FOR CHARLESTON COUNTY, SC

CASE STYLE:

PLAINTIFF

DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TRUSTEE FOR RESIDENTIAL ACCREDIT LOANS, INC.,
PASS-THROUGH CERTIFICATES 2007-QH2

vs.

DEFENDANT

ASHLEY JOHNSON BESHARA AS TRUSTEE OF REVOCABLE TRUST AGREEMENT FOR 2235 SHORELINE
DRIVE ORIGINALLY DATED THE 3RD DAY OF MARCH, 2010

SERVICE OF PROCESS ON:

ASHLEY JOHNSON BESHARA AS TRUSTEE OF REVOCABLE TRUST AGREEMENT FOR 2235 SHORELINE
DRIVE ORIGINALLY DATED THE 3RD DAY OF MARCH, 2010

METHOD OF SERVICE:

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

- ☒ (PERSONAL) By personally delivering a copy into the hands of the person to be served.
- ☐ (SUBSTITUTE) By leaving a copy at dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.
- ☐ (CORPORATION/PARTNERSHIP) By leaving a copy with an officer, a managing or general agent, or with any other agent authorized by appointment or by law to receive service of process.
- ☐ (OTHER - i.e., State of South Carolina, State Officer or Agency, Governmental Subdivision, etc.) By leaving a copy with the below-named person.
- ☐ (NON-SERVICE - PROOF OF DUE DILIGENCE) After due and diligent efforts, undersigned was unable to effect service.

PLACE OF SERVICE:

429 PROSPER CIR T35

MARIETTA, GA 30060

DATE OF SERVICE:

9/21/19

TIME OF SERVICE:

10:16 ☒ AM ☐ PM

TYPE OF DOCUMENTS:

OTHER: LIS PENDENS, SUMMONS AND NOTICES, COMPLAINT, REQUIRED FDCPA NOTICE, AND
NOTICE OF FORECLOSURE INTERVENTION

DESCRIPTION OF PARTY
RECEIVING DOCUMENTS:

The person receiving the documents is described as follows:

Name F : Relationship/Title Wife
Sex F : Race White : Facial Hair N/A
Age(prox.) 58 : Height(prox.) 5'8" : Weight(prox.) 175

MARITAL STATUS:

☐ Single ☐ Married ☐ Separated ☒ Unknown

MILITARY STATUS:

PER MY INVESTIGATION, SAID PERSON

☐ WAS ☒ WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE ☐ UNKNOWN
MILITARY BRANCH, IF APPLICABLE: _____

IS THE SUBJECT PROPERTY A ☐ YES ☒ NO ☐ N/A

MOBILE HOME?

VIN #: _____

COMMENTS: Did the server verbally confirm the defendant resides at this address? (X) Yes () No

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: Kevin J. Mitchell

Signature of Process Server

Date

Notary Public: Sworn and subscribed before me this 23rd day of Sept, in the year of 2019.

☒ Personally known to me or _____ identified by the following document:

Type:

Number/Reference:

Douglas E. Freeman

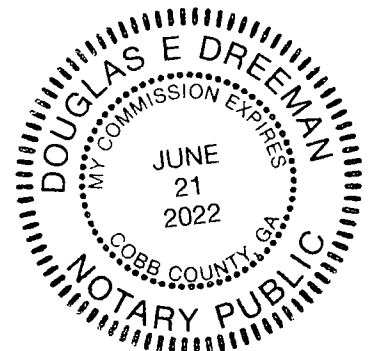
Notary Public for

Co. 5560

Commission Expiration

6-21-22

Notary Public (Legal Signature)



RECORD0115

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Deutsche Bank Trust Company Americas, as
Trustee for Residential Accredit Loans, Inc.,
Pass-Through Certificates 2007-QH2,

PLAINTIFF,

vs.

Ashley Johnson Beshara as Trustee of
Revocable Trust Agreement for 2235
Shoreline Drive originally dated the 3rd day
of March, 2010; Shoreline Farms Community
Association, Inc.; Wells Fargo Bank, N.A.;
and Cadle Rock Joint Venture, L.P., an Ohio
limited partnership,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO: 2019-CP-10-04503

**CERTIFICATION OF NON-COMPLIANCE
WITH ADMINISTRATIVE ORDER
2011-05-02-01**

The Plaintiff by and through its undersigned attorney does hereby certify as follows:

1. That this is an action for the foreclosure of owner occupied real property.
2. That pursuant to Supreme Court Administrative Order 2011-05-02-01:
 - a. Ashley Johnson Beshara, the Trustee for the Revocable Trust Agreement for 2235 Shoreline Drive originally dated the 3rd day of March, 2010, was personally served with the Summons, Complaint, and Notice of Foreclosure Intervention on September 21, 2019.
 - b. More than 30 days have elapsed since the service of the required notice, and no request for foreclosure intervention has been received.

FINKEL LAW FIRM LLC

/S/Magalie A. Creech (S.C. Bar 78855)
Post Office Box 41489
Charleston, South Carolina 29423
Telephone: (843) 577-5460
Facsimile: (866) 800-7954
Attorneys for Plaintiff

This is an attempt to collect a debt and any information provided will be used for that purpose. However, if the debtor is in active bankruptcy or has received a discharge of the debt in bankruptcy, this communication is not an attempt to collect a debt but is intended for informational purposes only.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Nationstar Mortgage, LLC,)
Plaintiff,)
v.)
Curtis Rogers a/k/a Curtis L. Rogers, III,)
Julie J. Rogers, National City Bank,)
Shoreline Farms Community Association,)
Inc., and Harbor National Bank.)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-10-1805

NOTICE OF MOTION AND MOTION
VACATE THE ORDER SUBSTITUTING
PLAINTIFF AND AMENDING THE
CAPTION

2013 JUN 28 PM 4:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

PLEASE TAKE NOTICE that the Defendants, Curtis Rogers and Julie J. Rogers (hereinafter "Defendants"), by and through their undersigned attorney will move before the presiding Judge, at chambers, Charleston County Courthouse, Charleston, South Carolina, at such place and time as the court may appoint, for an Order Vacating the Order Substituting Plaintiff and Amending the Caption filed on June 14, 2013, pursuant to all applicable Rules of Civil Procedure including but not limited to Rules 5, 17, 25, and 60. The grounds for said motion are as follows:

1. Plaintiff did not file a motion as required by Rule 25, SCRPC, for an order substituting a party and Amending the Caption, rather Plaintiff simply submitted a proposed order to the Court.
2. Rule 25, SCRPC requires: "The motion for substitution may be made by any party. . . together with the notice of hearing shall be on the parties as provide in Rule 5 . . ."
3. Rule 5, SCRPC requires: "written motions, other than ones which may be heard ex parte. . . shall be served upon each of the parties of record."

4. Defendants alleged as to Aurora Loan Services, LLC, in their Amended Answer and Counterclaim “that the Complaint fails to name a necessary and real party in interest and Plaintiff is not the real party or owner of the subject note and mortgage and/or lacks standing and therefore the Complaint should be dismissed.” Because Defendants have called into question whether Aurora Loan Services, LLC, is a real party in interest or has standing to pursue this action, then it naturally follows that Defendant disputes Aurora Loan Services, LLC’s ability to transfer any interest in the subject note and mortgage to Nationstar Mortgage, LLC.

5. After examination of the of the public records of the Charleston RMC Office, Defendant would allege, upon information and belief, that no assignment of the subject mortgage from Aurora Loan Services, LLC, to Nationstar Mortgage, LLC has been recorded in this matter.

6. The order as submitted by Plaintiff, and subsequently filed, contains statements prejudicial to Defendants, and Defendants would allege were improperly asserted into the Order.

Based upon the foregoing Defendants are entitled to an Order Vacating the Order Substituting Plaintiff and Amending the Caption.

This motion will be supported by the pleadings, public records, and any exhibits or memoranda which Defendants may submit to this Court at the time of the hearing in this matter.

The undersigned hereby certifies and affirms in accordance with Rule 11(a) of the South Carolina Rules of Civil Procedure that consultation with counsel prior to filing would serve no useful purpose.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

Respectfully Submitted,

[SIGNATURE BLOCK TO FOLLOW]

MARY LEIGH ARNOLD, PA



Mary Leigh Arnold
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464
Phone: 843-971-6053
Facsimile: 843-971-6055
sammie@maryarnoldlaw.com

June 27, 2013
Mt. Pleasant, SC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27 day of June, 2013 a copy of the Defendants Motion to Vacate, in the within action, was placed in the United States Mail, postage prepaid addressed to opposing counsel as follows:

Dean A. Hayes
KORN LAW FIRM, P.A.
1300 Pickens St.
P.O. Box 12369
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Nationstar Mortgage, LLC,)
)
Plaintiff,)
v.)
Curtis Rogers a/k/a Curtis L. Rogers, III,)
Julie J. Rogers, National City Bank,)
Shoreline Farms Community Association,)
Inc., and Harbor National Bank.)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-10-1805

DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT

FILED
2014 MAR -4 AM 9:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: DEAN A. HAYES, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that the Defendants, Curtis Rogers and Julie J. Rogers (hereinafter "Defendants"), by and through their undersigned attorney will move before the presiding Judge, at chambers, Charleston County Courthouse, Charleston, South Carolina, at such place and time as the court may appoint, for an Order granting summary judgment as to Plaintiff's cause of action for foreclosure on the grounds that Plaintiff, lacks standing. This motion is made pursuant to all applicable Rules of Civil Procedure including but not limited to rule 56.

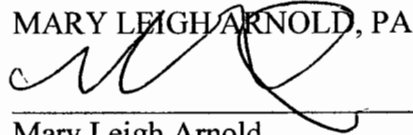
This Motion will be supported by the pleadings, public records, Plaintiff's Responses to Requests for Admissions a copy of which are attached hereto as Exhibit "A" and incorporated herein by reference, and any other exhibits or memoranda which Defendants may submit to this Court at the time of the hearing in this matter.

The undersigned hereby certifies and affirms in accordance with Rule 11(a) of the South Carolina Rules of Civil Procedure that consultation with counsel prior to filing would serve no useful purpose.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

Respectfully Submitted,

MARY LEIGH ARNOLD, PA



Mary Leigh Arnold
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464
Phone: 843-971-6053
Facsimile: 843-971-6055

March 4 2014
Mt. Pleasant, SC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4 day of March, 2014 a copy of the Defendants' Motion for Summary Judgment, in the within action, was placed in the United States Mail, postage prepaid addressed to opposing counsel as follows:

Dean A. Hayes
KORN LAW FIRM, P.A.
1300 Pickens St.
P.O. Box 12369
Columbia, SC 29211



EXHIBIT A

33095908

www.adamsandreesse.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Nationstar Mortgage, LLC

Plaintiff,

v.

Curtis Rogers a/k/a Curtis L. Rogers III,
Julie J. Rogers, National City Bank,
Shoreline Farms Community Assoc., Inc.,
and Harbor National Bank,

Defendants.

IN THE COURT OF COMMON PLE

Case No.: 2011-CP-10-1805

**PLAINTIFF'S RESPONSE TO
DEFENDANT CURTIS ROGERS'
REQUESTS FOR ADMISSION**

TO: MARY LEIGH ARNOLD, ATTORNEY FOR DEFENDANT

In accordance with Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff Nationstar Mortgage, LLC ("Nationstar") responds to Defendant Curtis Rogers' Request for Admission as follows:

REQUESTS FOR ADMISSION

1. Admit that Aurora Loan Services, LLC did not originate the subject no mortgage in this action.

Response: Admit.

2. Admit that from September 15, 2009 through June 30, 2012 Aurora

RECORD0123

Services, LLC was not the owner of the subject Note.

Response: To the extent Defendant means by use of the term "owner" to refer owner of the beneficial interest in the indebtedness evidenced by the promissory note mortgage of the Defendant, Plaintiff admits.

3. Admit that the copy of Note attached hereto as Exhibit "A" does not bear endorsement to Residential Funding Company, LLC.

Response: Objection. This request is premised upon a written instrument or document which speaks for itself. Subject to and without waiving said objection, Plaintiff admits

4. Admit that the copy of Note attached hereto as Exhibit "A" bears an endorsement in blank executed by Bakhtlar S. Akhunji, Assistant Secretary, Homecomings Financial, LLC, A Delaware Corporation.

Response: Objection. This request is premised upon a written instrument or document which speaks for itself. Subject to and without waiving said objection, Plaintiff admits

5. Admit that the copy of Note attached hereto as Exhibit "B" bears an endorsement to Residential Funding Company, LLC, executed by Bakhtlar S. Akhunji, Assistant Secretary, Homecomings Financial, LLC, A Delaware Corporation.

Response: Objection. This request is premised upon a written instrument or document

which speaks for itself. Subject to and without waiving said objection, Plaintiff admit

6. Admit that the copy of the Note attached hereto as Exhibit "B" bear endorsement to Deutsche Bank Trust Company Americas as Trustee executed by Judy Vice President, Residential Funding Company, LLC.

Response: Objection. This request is premised upon a written instrument or document which speaks for itself. Subject to and without waiving said objection, Plaintiff admit

7. Admit that the copy of the Note attached hereto as Exhibit "B" do specifically bear an endorsement to Deutsche Bank Trust Company Americas as Trustee of the RALI Series 2007-QH2 Trust.

Response: Objection. This request is premised upon a written instrument or document which speaks for itself. Subject to and without waiving said objection, Plaintiff admit

8. Admit the copies of the Notes attached hereto as Exhibit "A" & "B" do not bear an endorsement to Aurora Loan Services, LLC.

Response: Objection. This request is premised upon a written instrument or document which speaks for itself. Subject to and without waiving said objection, Plaintiff admit

9. Admit the copies of the Notes attached hereto as Exhibit "A" & "B" do not constitute an endorsement to Nationstar Mortgage, LLC.

Response: Objection. This request is premised upon a written instrument or document which speaks for itself. Subject to and without waiving said objection, Plaintiff admits

10. Admit that Plaintiff did not produce a copy of the Note attached hereto as Exhibit "C" as part of Plaintiff's responses to requests for production dated July 10, 2013.

Response: Objection. Plaintiff cannot confirm with certainty any or all documents may or may not have been previously produced by its attorneys, and thus cannot admit nor deny this request as presented. However, subject to and without waiving said objection, Plaintiff admits a copy of the Note bearing an endorsement in blank from Deutsche Bank Trust Company Americas, as Trustee, may not have been part of Plaintiff's

original production, as the original fully-endorsed Note is maintained by a document custodian for safekeeping and is not typically in possession of the loan servicer until such time as the original collateral file may be needed for trial.

11. Admit that as of the date of service of these Requests for Admissions the assignment of the subject Mortgage recorded in the Charleston County, SC, RMC Office assignment which states that it assigns the subject Mortgage to Aurora Loan Services

Response: Admit.

Response: Objection. Plaintiff cannot confirm with certainty any or all document may or may not have been previously produced by its attorneys, and thus can n admit nor deny this request as presented. Subject to and without waiving the fore objection, Plaintiff admits that an assignment to Nationstar has not, to date, been reco

RECORD0127

assigning the subject mortgage to 1) Residential Funding, LLC; 2) Deutsche Bank Company Americas; 3) Deutsche Bank Trust Company Americas as Trustee for RALI 2007-QH2 Trust; or 4) Nationstar Mortgage, LLC.

Response: Objection. Plaintiff objects to the compound nature of this request, impedes the Plaintiff's ability to provide a full and meaningful response. However, s to and without waiving the foregoing objection, Plaintiff admits that there is a assignment of the subject Rogers mortgage from Mortgage Electronic Regist Systems, Inc. to Residential Funding, LLC, Deutsche Bank Trust Company Americ Deutsche Bank Trust Company Americas as Trustee for RALI Series 2007-QH2 Plaintiff denies the remainder of this request.

14. Admit that as of the date of service of these Requests for Admissions Plaintiff not produced to Defendant in this action is an assignment of the subject Mortgage assigni subject Mortgage to 1) Residential Funding, LLC; 2) Deutsche Bank Trust Company Am 3) Deutsche Bank Trust Company Americas as Trustee for RALI Series 2007-QH2 Trust Nationstar Mortgage, LLC.

Response: Objection. Plaintiff objects to the compound nature of this request, impedes the Plaintiff's ability to provide a full and meaningful response. However, s to and without waiving the foregoing objection, Plaintiff admits that there is n assignment of the subject Rogers mortgage from Mortgage Electronic Regist

Systems, Inc. to Residential Funding, LLC, Deutsche Bank Trust Company America
Deutsche Bank Trust Company Americas as Trustee for RALI Series 2007-QH2 Trust
thus one was not produced to Defendant. Plaintiff denies the remainder of this request.

15. Admit that the document attached hereto as Exhibit "D" is a correspondence from Aurora Bank, FSB, dated September 8, 2011 and addressed to the Defendant Curt Rogers, which states: "Aurora Bank provides the servicing for the owner of your loan. Contact information for the owner is as follows: Deutsche Bank National Trust Company Americas, as Trustee for RALI Series 2007-QH2 Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QH2[.]"

Response: Objection. This request is premised upon a written instrument or document which speaks for itself. Subject to and without waiving said objection, Plaintiff admits the document states as represented, followed by an address for the owner of the loan.

16. Admit that the document attached hereto as Exhibit "E" is a correspondence from Nationstar Mortgage, LLC, dated July 15, 2012 and addressed to the Defendant Curt Rogers, which states: "Welcome to Nationstar Mortgage! We look forward to servicing you on behalf of Deutsche Bank, Trustee, RALI SERIES 2007-QH2."

Response: Objection. This request is premised upon a written instrument or document which speaks for itself. Subject to and without waiving said objection, Plaintiff admits the document states as represented.

Dated this the 28th day of February 2014.

**ATTORNEYS FOR PLAINTIFF
NATIONSTAR MORTGAGE, LLC**



MINDI C. ROBINSON
SC Bar No. 68599
ADAMS AND REESE LLP
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1901 6th Avenue North,
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(205) 250-5034 (fax)
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DEAN A. HAYES
SC Bar No. 66066
CHRIS S. TRULUCK
SC Bar No. 77829
KORN LAW FIRM, P.A.
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
(803) 231-2022
(803) 231-2060 (fax)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Deutsche Bank Trust Company Americas,)
as Trustee for Residential Accredit Loans,)
Inc., Pass-Through Certificates 2007-QH2,)
Plaintiff,)
Vs.)
Ashley Johnson Beshara as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated the 3rd day)
of March, 2010; Shoreline Farms)
Community Association, Inc.; Wells Fargo)
Bank, N.A.; and Cadle Rock Joint Ventreure,)
L.P., and Ohio limited partnership,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
IN CASE NO.: 2019-CP-10-4503

MOTION TO DISMISS

FILED
2019 OCT 18 PM 4:24
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE ABOVE NAMED PARTIES:

PLEASE TAKE NOTICE that the Defendant, Ashley Johnson Beshara as Trustee of the Revocable Trust Agreement for 2235 Shoreline Drive originally dated the 3rd day of March, 2010 (hereinafter “Defendant”), by and through her undersigned counsel, will move before this Court on the 10th day after service, or at such other time and place as is convenient to the Court, for an order dismissing Plaintiffs’ Summons and Complaint in this matter, pursuant to Rules 12b(7), 19 and 41 SCRCPC and the doctrine of collateral estoppel.

This motion will be based on the pleadings of record, the recorded records of Charleston County, applicable statutory and common law. The grounds for the motion are as follows:

1) The real property located at 2235 Shoreline Drive, Johns Island, SC 29455, which is the subject of this action (hereinafter “Property”) is the primary residence of Curt Rogers and Julie Rogers (hereinafter “The Rogers”).

2) Plaintiff in Paragraph 6 and 7 of its Complaint in this action alleges that on or about January 12, 2007, Curt Rogers executed and delivered to Homecomings Financial, LLC (F/K/A Homecomings Financial Network, Inc.) a promissory note, and further that on or about the same date The Rogers executed and delivered to MERS as nominee for Homecomings Financial, LLC, (F/K/A Homecomings Financial Network, Inc.) a Mortgage upon the Property, which is the subject of this action (hereinafter "Mortgage").

3) Plaintiff has not named The Rogers as Defendants in this action.

4) The South Carolina Supreme Court Administrative Order 2011-05-02-01 (hereinafter "Admin Order") states: "In all mortgage foreclosure actions filed after May 9, 2011, the Mortgagee's attorney shall serve on the Mortgagor, along with the summons and complaint, a notice of the Mortgagor's right to foreclosure intervention. No foreclosure hearing may be held in the foreclosure action until the Mortgagee's attorney certifies that the Mortgagee has complied with the requirements of paragraphs B (1) (a) through (e) above. If within thirty days after having been served with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify that fact to the Court, and the foreclosure action may proceed."

5) The Rogers are Mortgagor(s) as defined by Admin Order and have not been serviced with the Summons, Complaint, and Notice of Foreclosure Intervention in this matter.

6) On September 15, 2009, Aurora Loan Services, LLC (hereinafter "Aurora") filed a summons and complaint in a civil action in bearing case number 2009-CP-10-5840 naming The Rogers as defendants and seeking to foreclose upon the Mortgage which is the subject of *this action*.

7) On September 15, 2009, Aurora cause an alleged assignment of mortgage from MERS to Aurora for the Mortgage to be filed in the RMC Office of Charleston County in book 0081 at Page 058.

8) On March 3, 2010 the Property was deeded to Defendant by deed recorded in the RMC Office for Charleston County in Book 0137 at Page 344.

9) By an order filed March 9, 2010 in civil action number 2009-CP-10-5840 that matter was dismissed pursuant to Rule 40(j), SCRCP (hereinafter "First 40J").

10) By an order filed March 10, 2011, in civil action number 2011-CP-10-1805, the matter was restored to the active roster.

11) By an order filed June 12, 2013, in civil action number 2011-CP-10-1805, Nationstar Mortgage, LLC (hereinafter "Nationstar") was substituted as Plaintiff in place of Aurora in that matter, at this time the plaintiff could have elected to amend the complaint to add Defendant as a party but elected not to do so.

12) On April 14, 2014 Nationstar as Attorney in Fact for Aurora recorded an alleged assignment of the Mortgage dated April 1, 2014, the Charleston County RMC Office in Book 0398 at Page 768. The assignment alleged to the assign the Mortgage to Plaintiff, seven years after Plaintiff which is a 2007 securitized stock instrument came into existence. The Nationstar could have amended its complaint to substitute the Plaintiff as plaintiff in that action at that time but elected not to.

13) By an order filed June 24, 2014 in civil action number 2011-CP-10-1805 that matter was dismissed pursuant to Rule 40(j), SCRCP (hereinafter "Second 40J").

14) By an order filed April 7, 2015, in civil action number 2015-CP-10-1971, the matter was restored to the active roster.

15) By an order filed May 16, 2016, in civil action number 2015-CP-10-1971 that matter was dismissed pursuant to Rule 40(j), SCRCP (hereinafter “Third 40J”).

16) Now, more than three years after the Third 40J Plaintiff has initiated this action again seeking to foreclose upon the same Mortgage but this time electing not to name The Rogers as defendants, despite the fact the Defendant took title to the property prior to the First 40J back in civil action 2009-CP-10-5840.

17) In Paragraph 17 of Plaintiff’s Complaint Plaintiff believed it *necessary* to name Wells Fargo Bank, N.A. and Cadle Rock Joint Venture, L.P. as Defendant creditors of Curt Rogers based upon judgments entered in civil actions 2014-CP-10-3027 and 2011-CP-10-1261 (hereinafter “Judgements”) respectively.

18) The Judgments have not attached to the Property because they were not awarded against Defendant and were awarded after Defendant took title to the Property. Nonetheless, Plaintiff thought it *necessary* to name these judgement creditors of Curt Rogers as Defendants in this action while for some reason Plaintiff did not believe it *necessary* to name Curt Rogers and Julie Rogers as Defendants.

19) Rule 3.3(a)(2), SCPRC, states: “A lawyer shall not knowingly fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.” “This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client’s case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal.” Rule 3.3, SCPRC Comment 2.

20. Upon information and belief Plaintiff elected not name The Rogers as Defendants in this action because they did not want to bring to this Court's attention the First 40J, the Second 40J, and the Third 40J.

DOCTRINE COLLATERAL ESTOPPEL

"Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim. . . Only a party to a prior action or one in privity with a party to a prior action can be precluded from relitigating an issue on the basis of offensive collateral estoppel. . . *The term "privity," when applied to a judgment or decree, means one so identified in interest with another that he represents the same legal right.* . . Privity deals with a person's relationship to the subject matter of the previous litigation, not to the relationships between entities. To be in privity, a party's legal interests must have been litigated in the prior proceeding. . . Due process concerns prohibit estopping litigants who never had a chance to present their evidence and arguments on a claim, despite one or more existing adjudications of the identical issue which stand squarely against their position." *Carrigg v. Cannon*, 347 S.C. 75, 79-81, 552 S.E.2d 767 (Ct. App. 2001) (citations omitted).

"The offensive use of collateral estoppel was first adopted in this State by our Court of Appeals in *Beall v. Doe*, 281 S.C. 363, 315 S.E. (2d) 186 (Ct. App. 1984). Collateral estoppel occurs when a party in a second action seeks to preclude a party from relitigating an issue which was decided in a previous action. *South Carolina Property and Casualty Insurance Guaranty Association v. Wal-Mart Stores, Inc.* 304 S.C. 210, 213, 403 S.E.2d 625 (1991). In *Beall* the court stated: "a lack of privity would not prevent the application of the defense of collateral estoppel

where "the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action. . . Sound reasons . . . support[s] the offensive use of collateral estoppel. In the abstract, there is no legitimate reason to permit a defendant who has already thoroughly and vigorously litigated an issue and lost the opportunity to relitigate the identical question, already once decided, simply because he now faces a different plaintiff who for due process reasons could not be adversely bound by the prior judgment. The public interest demands an end to the litigation of the same issue. Principles of finality, certainty, and the proper administration of justice suggest that a decision once rendered should stand unless some compelling countervailing consideration necessitates relitigation. In our view, a fair rule regarding the application of issue preclusion in subsequent litigation with different parties is the rule recently formulated by the American Law Institute. See RESTATEMENT (SECOND) of JUDGMENTS § 29 at 291-92 (1982). . . [W]e adopt it as the rule by which to determine whether a party in South Carolina is precluded from relitigating an issue with a nonparty. The rule provides: . . . A party precluded from relitigating an issue with an opposing party, in accordance with §§ 27 and 28, is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue." *Beal v. Doe*, 281 S.C. 363, 367-372, 315 S.E.2d 186 (Ct. App. 1984) (citations omitted).

Rule 41(a)(1)(B), SCRPC states: "an action may be dismissed by the plaintiff without order of court. . . (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless, otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, *except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action*

based on or including the same claim. “There is also an historical basis for considering a case stricken pursuant to Rule 40(j) as the equivalent of dismissed.” *Goodwin v. Landquest Development, LLC* 414 S.C. 623, 631, 779 S.E.2d 826 (Ct. App. 2015)

“An assignee stands in the shoes of its assignor. . . Mortgage servicing is “[t]he administration of a mortgage loan, including the collection of payments, release of liens, and payment of property insurance and taxes. . . Several bankruptcy courts and federal district courts, including those in South Carolina, have recognized the servicer of a loan to be a real party in interest and able to initiate a foreclosure. We agree with this view.” *Bank of America, NA v. Draper*, 405 S.C. 214, 220-223, 746 S.E.2d 478 (Ct. App. 2013)

In this case the Plaintiff stands in the shoes of its previous assignors and/or servicers. Aurora initiated an action civil action 2009-CP-10-5840 to foreclose upon the Mortgage which is the subject of this action. That action was dismissed by the First 40J. The action was restored bearing civil action number 2011-CP-10-1805. Thereafter while that action was pending upon information and belief most Aurora’s servicing rights where sold to Nationstar. Nationstar was substituted as Plaintiff in place of Aurora in civil action 2011-CP-10-1805. Thereafter Nationstar as servicer caused an alleged assignment of the Mortgage to Plaintiff to be filed on April 1, 2014, in the Charleston County RMC Office in Book 0398 at Page 768. At that point in time it is undisputed that Nationstar as servicer for Plaintiff was acting on behalf of Plaintiff in foreclosure action. That action was dismissed by the Second 40J. Thereafter Nationstar restored the matter in civil action number 2015-CP-10-1971. That action was subsequently dismissed for a *third time* by the Third 40J.

Moreover, the Plaintiff and/or its servicer and/or assignor had constructive notice that Defendant took title to the Property in 2010 and could have amended its previous complaint to add

the Defendant as a party in civil action 2009-CP-10-5840, 2011-CP-10-1805, or 2015-CP-10-1971, but elected not to. *See Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006).

Here, Plaintiff acting through its servicers and/or assignors already has had three bites at the apple. Three attempts to foreclose upon the *same Mortgage* were previously attempted in the above referenced actions and three time they were dismissed. Now more than three years after dismissal of 2015-CP-10-1971, Plaintiff is attempting to slyly take a fourth bite at the apple by naming a new Defendant for the first time. However, it is still the exact same attempt to foreclose upon the exact same Mortgage. Plaintiff has already had a full and fair opportunity to litigate the relevant issue effectively in three prior actions and should be collaterally estopped from being allowed to take a fourth bite at the apple. Defendant would request that this court issue an order dismissing this case with prejudice based upon the doctrine of collateral estoppel.

AS ALTERNATIVE GROUNDS FOR DISMISSAL RULE 12(B)(7) AND RULE 19, SCRCF

Rule 12(b)(7), SCRCF states: “Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (7) failure to join a party under Rule 19. . .” Rule 19, SCRCF states: “A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double,

multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. . . (b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.”

In this case Plaintiff named Wells Fargo Bank, N.A. and Cadle Rock Joint Venture, L.P as Defendants based upon judgments they possess against Curt Rogers. However, the Judgments have not attached to the Property and in the absence of Curt Rogers being named as a Defendant they cannot receive complete relief, which satisfies the requirements of Rule 19(a)(1).

The Rogers claim an interest in the subject of the action including but not limited to the Property as a Mortgagor(s) as defined Admin Order and potentially the note and/or the Mortgage with Plaintiff has alleged they executed. Further The Rogers, if not named as Defendants would not be able to protect their interest regarding potential tax implications they may suffer as a result of this action. This satisfies the requirements of Rule 19(a)(2).

It is clear on the face of Plaintiff’s own pleadings that The Rogers are necessary parties to this action. If a judgment is rendered in the Rogers absence it will be prejudicial to them as well as Wells Fargo Bank, N.A. and Cadle Rock Joint Venture, L.P; second, protective provisions in a

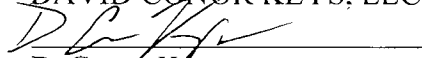
potential judgment, by the shaping of relief, or other measures, cannot lessen or avoid that prejudice; third, as such a judgment rendered in the Rogers absence will not be adequate; fourth, the Plaintiff has adequate adequate remedies at law if the action is dismissed for nonjoinder because “a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action.” *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 647 S.E. 2d 214 (2007). Therefore, Defendant would request that this Court dismiss the action pursuant to Rules 12(b)(7) and 19 of the South Carolina Rules of Civil Procedure.

CONCLUSION

For the forgoing reasons set forth above Defendant would respectfully request that this Court issue an order dismiss this action which prejudice based upon the doctrine of collateral estoppel and if the Court denies such remedy then in the alternative that this Court dismiss this action pursuant to Rules 12(b)(7) and Rule 19 of the South Carolina Rules of Civil Procedure.

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC



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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Deutsche Bank Trust Company Americas,)
as Trustee for Residential Accredit Loans,)
Inc., Pass-Through Certificates 2007-QH2,)
Plaintiff,)
Vs.)
Ashley Johnson Beshara as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated the 3rd day)
of March, 2010; Shoreline Farms)
Community Association, Inc.; Wells Fargo)
Bank, N.A.; and Cadle Rock Joint Venture,)
L.P., and Ohio limited partnership,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
IN CASE NO.: 2019-CP-10-4503

**DEFENDANT’S ANSWER AND
COUNTERCLAIM
JURY TRIAL DEMANDED**

TO: THE ABOVE NAMED PARTIES:

The Defendant, Ashley Johnson Beshara as Trustee of the Revocable Trust Agreement for 2235 Shoreline Drive originally dated the 3rd day of March, 2010 (hereinafter “Defendant”), answers the Plaintiff, Deutsche Bank Trust Company Americas as Trustee for the Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2’s (hereinafter “Plaintiff”) Complaint as follows:

- 1) Defendant denies each and every allegation set forth in Plaintiff’s Complaint not specifically herein admitted, qualified or explained and demands strict proof thereof.
- 2) The allegations of Paragraph 1 constitute legal conclusions which Defendant is required neither to admit nor deny. To the extent the allegations of Paragraph 1 do not constitute legal conclusions Defendant denies the same and demands strict proof thereof.
- 3) Defendant denies the allegations of Paragraph 2 and demands strict proof thereof.

4) Defendant admits so much of the allegations of Paragraph 3 as allege that Defendant claims an interest in the property that is the subject of this action, but denies the remainder of the allegations of Paragraph 3 and demands strict proof thereof.

5) The allegations of Paragraph 4 constitute legal conclusions which Defendant is required neither to admit nor deny. To the extent the allegations of Paragraph 4 do not constitute legal conclusions Defendant denies the same and demands strict proof thereof.

6) Defendant admits so much of the allegations of Paragraph 5 as allege that Defendant is not in the military service of the United States, but denies the remainder of the allegations of Paragraph 5 and demands strict proof thereof.

7) Defendant lacks sufficient information to form an opinion and belief as to the allegations of Paragraphs 6 and 7 and therefore denies the same and demands strict proof thereof.

8) In response to the allegations of Paragraph 8 Defendant craves reference to the records of the RMC Office of Charleston County and denies any allegations inconsistent with the records thereof.

9) The allegations of Paragraph 9 constitute legal conclusions which Defendant is required neither to admit nor deny. To the extent the allegations of Paragraph 9 do not constitute legal conclusions Defendant denies the same and demands strict proof thereof.

10) Defendant denies the allegations of Paragraph 10 and demands strict proof thereof. Moreover, Defendant asserts upon information and belief that Plaintiff is not the holder of the Note and has not been properly assigned the right to enforce the mortgage and upon information and belief lacks the authority to enforce the Note and Mortgage. Further Defendant affirmatively asserts that Plaintiff is not a holder in due course.

11) In response to the allegations of Paragraph 11 Defendant craves reference to the records of the RMC Office of Charleston County and denies any allegations inconsistent with the records thereof.

12) The allegations of Paragraphs 12 and 13 constitute legal conclusions which Defendant is required neither to admit nor deny. To the extent the allegations of Paragraph 12 and 13 do not constitute legal conclusions Defendant denies the same and demands strict proof thereof.

13) Defendant denies the allegations of Paragraph 14 and demands strict proof thereof. Moreover, Defendant asserts upon information and belief that Plaintiff is not the holder of the Note and has not been properly assigned the right to enforce the mortgage and upon information and belief lacks the authority to enforce the Note and Mortgage. Further Defendant affirmatively asserts that Plaintiff is not a holder in due course.

14) Defendant denies the allegations of Paragraph 15 and demands strict proof thereof.

15) The allegations of Paragraph 16 do not require Defendant to admit nor deny and defendant therefore does not assert a response.

16) Defendant denies the allegations of Paragraph 17 and demands strict proof thereof.

**FOR AND AS A FIRST DEFENSE
(Failure to State a Claim)**

17) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff's Complaint fails to set forth a sufficient cause of action. Moreover, Plaintiff has failed to plead facts sufficient to show that Plaintiff is entitled to relief.

**FOR AND AS A SECOND DEFENSE
(Collateral Estoppel)**

18) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff is barred from maintaining this action as to Defendant based upon the doctrine of collateral estoppel.

**FOR AND AS A THIRD DEFENSE
(Waiver)**

19) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff is barred from maintaining this action by the doctrine of waiver.

**FOR AND AS A FOURTH DEFENSE
(Real Party in Interest and Standing)**

20) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff has not plead sufficient facts to establish that Plaintiff received a valid assignment and/or endorsement of the alleged indebtedness to have the legal right to enforce the note and mortgage and as such that Plaintiff is not real party in interest and/or does not have standing to maintain this action.

**FOR AND AS A FIFTH DEFENSE
(Estoppel)**

21) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff is barred from maintaining this action by the doctrine of estoppel.

**FOR AND AS A SIXTH DEFENSE
(Failure to Mitigate)**

22) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff has failed to mitigate its alleged damages and is barred from maintaining this action.

**FOR AND AS A SEVENTH DEFENSE
(Unclean Hands)**

23) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff comes to this action with unclean hands and is therefore precluded from maintaining this action.

**FOR AND AS A EIGHTH DEFENSE
(Unconscionability)**

24) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff has acted unconscionably and therefore precluded from maintaining this action.

**FOR AND AS A NINTH DEFENSE
(Failure to Comply with Consumer Protection Code)**

25) Further answering said Complaint and for a further defense thereto Defendant alleges Plaintiff has failed to comply with the South Carolina Consumer Protection Code and is therefore precluded from maintaining this action.

**FOR AND AS AN TENTH DEFENSE
(Laches)**

26) Further answering the Complaint and for a further defense thereto Defendant alleges that Plaintiff is barred from maintain this action by the doctrine of laches.

**FOR AND AS A ELEVENTH DEFENSE
(Affirmative Defenses)**

27) Further answer said Complaint and for a further defense thereto Defendant specifically pleads as an affirmative defense to the allegations of the Complaint, accord and satisfaction, comparative negligence, negligence, duress, statute of frauds, fraud, illegality, laches, statute of limitations, laches, misrepresentation, mistake, payment, release, waiver, standing, lack of consideration, failure to mitigate, unclean hands, or any other matter constituting avoidance or affirmative defense which may arise and develop as discovery in this action progresses.

**FOR AND AS A TWELFETH DEFENSE
(Reservation and Non-Waiver)**

28) Defendant reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery.

**FOR AND AS A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Accounting)**

29) Defendant incorporates all preceding paragraphs as though fully set forth herein.

30) Defendant is entitled to an accounting from Plaintiff detailing all amounts claimed owed; all payments made, when received, when applied, how applied, interest charged and when, fees assessed and incurred including late fees, property preservation fees, property inspection fees, other charges, costs and attorney's fees and all other matters relating to the amount claimed owed.

**FOR AND AS A FOURTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligent Misrepresentations)**

31) Defendant incorporates all preceding paragraphs as though fully set forth herein.

32) Plaintiff and/or its alleged predecessors in interest made false and misleading representations to Defendant, Curt and Julie Rogers, and the court regarding the actual terms of the loan and Plaintiff and/or their predecessor in interest right to enforce the note and mortgage, who the holder of the note and mortgage was at various time between now and 2009, assignment of the mortgage, endorsement of the note, that Plaintiff and/or its predecessor's interest were real parties in interest, and Plaintiff's general standing to bring this action against Defendant.

33) Plaintiff and/or its alleged predecessors in interest had a pecuniary interest in making the statements.

34) Plaintiff and/or its alleged predecessors in interest owed a duty of care to see that it communicated truthful information Defendant, Curt and Julie Rogers and the Court.

35) Plaintiff breached that duty by failing to exercise due care.

36) Defendant, Curt and Julie Rogers justifiably relied upon the representations of Plaintiff and/or its alleged predecessors in interest.

37) By virtue of the negligent misrepresentations, Defendant has been actually damaged and because these representations were willful, intentional, with malice toward Defendant and with a reckless disregard for the rights of Defendant, Defendant seeks and award of actual and punitive damages in accordance with her prayer for relief.

JURY TRIAL DEMANDED

WHEREFORE, Defendant prays for a dismissal of the Complaint in this matter and for such other and further relief as this Honorable Court may deem just and proper.

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
IN CASE NO.: 2019-CP-10-4503

Deutsche Bank Trust Company Americas,)
as Trustee for Residential Accredit Loans,)
Inc., Pass-Through Certificates 2007-QH2,)
Plaintiff,)

DEFENDANT’S AMENDED
ANSWER, COUNTERCLAIM AND
THIRD-PARTY COMPLAINT

Vs.)

JURY TRIAL DEMANDED

Ashley Johnson Beshara as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated the 3rd day)
of March, 2010; Shoreline Farms)
Community Association, Inc.; Wells Fargo)
Bank, N.A.; and Cadle Rock Joint Ventruure,)
L.P., and Ohio limited partnership,)
Defendants.)

Ashley Johnson Beshara as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated the 3rd day)
of March, 2010;)

Third-Party Plaintiff,)

Vs.)

Nationstar Mortgage, LLC)

Third-Party Defendant.)

TO: THE ABOVE NAMED PARTIES:

The Defendant, Ashley Johnson Beshara as Trustee of the Revocable Trust Agreement for 2235 Shoreline Drive originally dated the 3rd day of March, 2010 (hereinafter “Trust”) (hereinafter “Defendant”), answers the Plaintiff, Deutsche Bank Trust Company Americas as Trustee for the Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2’s (hereinafter “Plaintiff”) Complaint as follows:

1) Defendant denies each and every allegation set forth in Plaintiff's Complaint not specifically herein admitted, qualified or explained and demands strict proof thereof.

2) The allegations of Paragraph 1 constitute legal conclusions which Defendant is required neither to admit nor deny. To the extent the allegations of Paragraph 1 do not constitute legal conclusions Defendant denies the same and demands strict proof thereof.

3) Defendant denies the allegations of Paragraph 2 and demands strict proof thereof.

4) Defendant admits so much of the allegations of Paragraph 3 as allege that Defendant claims an interest in the property that is the subject of this action, but denies the remainder of the allegations of Paragraph 3 and demands strict proof thereof.

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6) Defendant admits so much of the allegations of Paragraph 5 as allege that Defendant is not in the military service of the United States, but denies the remainder of the allegations of Paragraph 5 and demands strict proof thereof.

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14) Defendant denies the allegations of Paragraph 15 and demands strict proof thereof.

15) The allegations of Paragraph 16 do not require Defendant to admit nor deny and defendant therefore does not assert a response.

16) Defendant denies the allegations of Paragraph 17 and demands strict proof thereof.

**FOR AND AS A FIRST DEFENSE
(Failure to State a Claim)**

17) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff's Complaint fails to set forth a sufficient cause of action. Moreover, Plaintiff has failed to plead facts sufficient to show that Plaintiff is entitled to relief.

**FOR AND AS A SECOND DEFENSE
(Collateral Estoppel)**

18) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff is barred from maintaining this action as to Defendant based upon the doctrine of collateral estoppel.

**FOR AND AS A THIRD DEFENSE
(Waiver)**

19) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff is barred from maintaining this action by the doctrine of waiver.

**FOR AND AS A FOURTH DEFENSE
(Real Party in Interest and Standing)**

20) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff has not plead sufficient facts to establish that Plaintiff received a valid assignment and/or endorsement of the alleged indebtedness to have the legal right to enforce the note and mortgage and as such that Plaintiff is not real party in interest and/or does not have standing to maintain this action.

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(Estoppel)**

21) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff is barred from maintaining this action by the doctrine of estoppel.

**FOR AND AS A SIXTH DEFENSE
(Failure to Mitigate)**

22) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff has failed to mitigate its alleged damages and is barred from maintaining this action.

**FOR AND AS A SEVENTH DEFENSE
(Unclean Hands)**

23) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff comes to this action with unclean hands and is therefore precluded from maintaining this action.

**FOR AND AS A EIGHTH DEFENSE
(Unconscionability)**

24) Further answer said Complaint and for a further defense thereto Defendant alleges that Plaintiff has acted unconscionably and therefore precluded from maintaining this action.

**FOR AND AS A NINTH DEFENSE
(Failure to Comply with Consumer Protection Code)**

25) Further answering said Complaint and for a further defense thereto Defendant alleges Plaintiff has failed to comply with the South Carolina Consumer Protection Code and is therefore precluded from maintaining this action.

**FOR AND AS AN TENTH DEFENSE
(Laches)**

26) Further answering the Complaint and for a further defense thereto Defendant alleges that Plaintiff is barred from maintain this action by the doctrine of laches.

**FOR AND AS A ELEVENTH DEFENSE
(Affirmative Defenses)**

27) Further answer said Complaint and for a further defense thereto Defendant specifically pleads as an affirmative defense to the allegations of the Complaint, accord and satisfaction, comparative negligence, negligence, duress, statute of frauds, fraud, illegality, laches,

statute of limitations, laches, misrepresentation, mistake, payment, release, waiver, standing, lack of consideration, failure to mitigate, unclean hands, or any other matter constituting avoidance or affirmative defense which may arise and develop as discovery in this action progresses.

**FOR AND AS A TWELFETH DEFENSE
(Reservation and Non-Waiver)**

28) Defendant reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery.

FACTUAL ALLEGATIONS AS TO COUNTERCLAIMS AND THIRD PARTY CLAIMS

29) Plaintiff alleges in Plaintiff's Return to Curt and Julie Rogers's Motion to Intervene, file July 9, 2020, that Curt and Julie Rogers no longer possess a legal interest in the subject property and that Defendant adequately represents their interests in the subject action.

30) Curt and Julie Rogers reside in the Subject Property and are beneficiaries of the Trust.

31) Plaintiff has alleged that Defendant has a fiduciary duty to plead all allegations which may arise from or form the basis of causes of actions which Curt and Julie Rogers have against Plaintiff standing in the shoes of its alleged predecessors in interest and/or alleged servicers.

32) Plaintiff alleges in its complaint that Curt Rogers executed a Note and Mortgage to Homecomings Financial, LLC (hereinafter "Homecomings") on January 12, 2007 (hereinafter "Note" and "Mortgage").

33) The Note contains unconscionable negative amortization terms.

34) Curt Rogers and Julie Rogers, in good faith underwent extensive loss mitigation efforts with Plaintiff and/or its alleged predecessors in interest and/or alleged predecessor servicers from 2008 through 2011 providing numerous documents upon request, requesting loan

modifications and/or short sales; making all required payments pursuant to a Work Out Agreement entered into with Plaintiff and/or Its' alleged Predecessor; submitting a short sale contract to Plaintiff and/or Its' Predecessors, but Plaintiff and/or Its' alleged Predecessors failed to act in good faith and modify the Note and/or agree to short sale the Subject Property, despite Curt and Julie Rogers good faith efforts and the market conditions of the of the great recession and foreclosure crisis of the time.

35) on September 15, 2009, Aurora Loan Services, LLC (hereinafter "ALS") filed a summons and complaint against Curt and Julie Rogers seeking to foreclose upon the Subject Mortgage in civil action number 2009-CP-10-5480 (hereinafter "Action 1), alleging that is was the present lien holder of the subject Note and Mortgage and that MERS acting on behalf of Homecomings assigned the mortgage to ALS by an alleged assignment dated September 8, 2009, and recorded September 15, 2009 (Assignment 1).

36) The Note does not bear an endorsement to ALS.

37) If the Note was never endorsed to ALS then by law MERS lacked the authority acting on behalf of Homecomings assign the Mortgage to ALS on September 8, 2009 via Assignment 1.

38) If Assignment 1 was void and invalid then ALS lacked standing and had no legal right and authority to seek to foreclose upon the Mortgage in Action 1.

39) ALS made misrepresentations to Curt and Julie Rogers and the Court regarding said alleged authority it possessed in Action 1.

40) By order filed March 9, 2010 (hereinafter "Dismissal 1"), Action 1 was dismissed pursuant to Rule 40(j), SCRCRCP.

41) The action was restored by Order filed March 10, 2011, in civil action number 2011-CP-10-1805 (hereinafter "Action 2").

42) On June 12, 2013, in Action 2, ALS filed a motion and proposed order alleging that the Note and Mortgage had been assigned to Nationstar Mortgage, LLC (hereinafter "Nationstar") and that Nationstar was the present lien holder of the Note and Mortgage and therefore Nationstar should be substituted as Plaintiff for ALS.

43) The Note does not bear and endorsement to Nationstar and there is no assignment of record which was ever produced in Action 1 or Action 2, or filed in the RMC office for Charleston County assigning the Mortgage to Nationstar.

44) If the Note was never endorsed to Nationstar and the Mortgage was never assigned to Nationstar, then Nationstar lacked standing and the legal right and authority to seek to foreclose upon the Mortgage in Action 2.

45) ALS and Nationstar made misrepresentations to Curt and Julie Rogers and the Court regarding their alleged authority to foreclose upon the Mortgage in Action 2.

46) However, Nationstar as an alleged predecessor in interest to Plaintiff stated in discovery responses dated February 28, 2014, in Action 2, that on February 27, 2007, that through an assignment and assumption agreement Residential Funding, Company, LLC (hereinafter "Residential Funding"), assigned the note and mortgage which are the subject of this action to Residential Accredited Loans, Inc. Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QH2 Trust.

47) By law the chain of title of a mortgage must follow and correspond to the chain of title of the note it secures.

48) If Residential Funding owned and was the holder of the Note on February 27, 2007, then then MERS acting on behalf of Homecomings had no authority to assign the Mortgage ALS by Assignment 1.

49) Prior to the execution of Assignment 1, on or about July 16, 2009, ALS, sent Curt Rogers a correspondence with an alleged certified copy of the Note and Mortgage which are the subject of this action (hereinafter "Note Copy 1"). The note contained an undated endorsement in blank executed by Bakhtiar S. Akhunji as Assistant Secretary of Homecoming Financial, LLC (hereinafter "Endorsement 1"). The Note contained no other endorsements.

50) If Homecomings had transferred title to and endorsed the Note to anyone other than ALS on or before July 16, 2009, then MERS acting on behalf of Homecomings had no authority to assign the Mortgage ALS by Assignment 1 on September 8, 2009.

51) On October 23, 2009, Curt and Julie Rogers filed an answer in Action 1 asserting defenses including but not limited to standing/real party in interest.

52) On or about November 19, 2009, Counsel for ALS in response to a qualified written request sent by counsel for Curt and Julie Rogers, a copy of the Note which bears two endorsements (hereinafter "Note Copy 2").

53) Note Copy 2 bears an altered version of Endorsement 1 whereby Endorsement 1 which had originally been an endorsement in blank by Homecomings had been altered to be endorsed specifically to Residential Funding (hereinafter "Altered Endorsement 1").

54) The Note Copy 2 bears a second specific endorsement to Deutsche Bank Trust Company as Trustee executed by Judy Faber as Vice President, Residential Funding Company, LLC (hereinafter "Endorsement 2"). Note Copy 2 does not bear any endorsements other than Altered Endorsement 1 and Endorsement 2.

55) On February 13, 2012 Curt and Julie Rogers filed an amended answer and counterclaim in Action 2 asserting as a defense of Standing/Real Party in interest and asserting that ALS did not own, possess title to, or hold the Note and Mortgage.

56) On June 12, 2013 in Action 2 ALS filed a motion and proposed order alleging that the Note and Mortgage were assigned to Nationstar Mortgage, LLC (hereinafter "Nationstar") that Nationstar was the present lien holder of the Note and Mortgage and therefore Nationstar should be substituted as Plaintiff for ALS.

57) The Note does not bear an endorsement to Nationstar and there is no assignment of record which was ever produced in Action 1 or Action 2, or filed in the RMC office for Charleston County assigning the Mortgage to Nationstar.

58) On June 28, 2013, Curt and Julie Rogers filed a Motion to Vacate the Order filed June 14, 2012, substituting Nationstar as Plaintiff for ALS in Action 2, citing as a basis for the motion standing.

59) On July 10, 2013, Nationstar in response to Curt and Julie Rogers discovery requests provided responses to request for production to Curt and Julie Rogers and produced a copy of the Note, but the copy of the Note produced did not contain any endorsements other than Altered Endorsement 1 and Endorsement 2. Therefore, the copy of the Note produced on July 10, 2013 did not contain a specific endorsement or an endorsement in blank giving Nationstar the right to enforce the Note and therefore the right to enforce the Mortgage in Action 2.

60) The Motion to Vacate was scheduled to be heard November 18, 2013.

61) On or about November 16, 2013, Nationstar's counsel, provided for the first time, to Curt and Julie Roger's counsel a third copy of the Note (hereinafter "Note Copy 3")

62) Note Copy 3 bears Altered Endorsement 1, Endorsement 2 and third endorsement in blank made by Nationstar as attorney in fact for Deutsche Bank Trust Company Americas as Trustee.

63) On February 28, 2014, Nationstar served on Curt and Julie Rogers Responses Requests for Admissions (hereinafter “2/28/14 Admissions”), which were filed in Action 2 on March 3, 2014 attached as Exhibit “A” to Curt and Julie Rogers’ Motion for Summary Judgment.

64) In the 2/28/14 Admissions Nationstar Admits the following:

- a) Note Copy 3 was not produced in Nationstar’s responses to requests for production dated July 10, 2013;
- b) the Note does not contain an endorsement to Nationstar or ALS; and
- c) as of 2/28/14 no assignment of the Mortgage had been executed assigning the Mortgage to Residential Funding, Deutsche Bank Trust Company Americas as Trustee, Deutsche Bank Trust Company Americas as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2, or Nationstar.

65) On March 3, 2014, in Action 2, Curt and Julie Rogers filed a Motion for Summary Judgment based on standing and supported by Nationstar’s 2/28/14 Admissions.

66) On April 1, 2014, Plaintiff’s alleged predecessor in Interest Nationstar aware it had standing issues in Action 2, which had been raised by Curt and Julie Roger’s, tried to correct the problem prior to the Roger’s Motion for Summary Judgment being heard by executing an alleged assignment of the Mortgage whereby Nationstar as Attorney and Fact for ALS alleged to assign the Mortgage to Deutsche Bank Trust Company Americas as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2. Nationstar’s counsel recorded the alleged assignment on April 14, 2014, in Book 0398 at Page 768 in the RMC Office for Charleston County.

67) On June 9, 2014, after receiving notice that Curt and Julie Rogers Motion for Summary Judgment had been scheduled to be heard by the Court but prior to the hearing, Nationstar moved before the court to have Action 2 dismissed pursuant to Rule 40(J), SCRCPP, which was granted by Order filed June 24, 2014 (hereinafter “Dismissal 2”).

68) On March 13, 2015, Nationstar as alleged Plaintiff in the action moved to restore the action which was restored by order filed April 7, 2015, in civil action 2015-CP-10-1971 (hereinafter “Action 3”).

69) Thereafter Nationstar as alleged Plaintiff made no further filings in the prosecution of the foreclosure of Mortgage in Action 3.

70) Over a year later, Action 3 was called for trial on or about May 12, 2016, and on May 12, 2016, Nationstar as alleged Plaintiff moved to have Action 3 dismissed pursuant to Rule 40(J), SCRCPP, and was granted the motion by Order filed May 16, 2016 (Dismissal 3).

71) A couple of years later Nationstar as alleged Plaintiff contacted Curt and Julie Roger’s counsel stating that Nationstar wanted to restore the action to active. The Roger’s counsel informed Nationstar’s counsel that she would contest the motion to restore and believed the Action had been adjudicated on the merits pursuant to Rule 41, SCRCPP. The Roger’s counsel’s last communication with Nationstar as the alleged Plaintiff’s counsel was December 18, 2018.

72) Thereafter nearly a year later on August 27, 2019, this action (hereinafter “Action 4”) was commenced for foreclosure on the Mortgage again, however this time instead of naming Nationstar as the plaintiff, Deutsche Bank Trust Company Americas as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2 is the named Plaintiff.

73) Additionally, in order to attempt to avoid issues of standing and res judicata addressed herein above, Plaintiff elected not to name Curt and Julie Rogers as defendants in Action 4.

74) Upon information and belief Nationstar remains the principle contact for Plaintiff's counsel in this matter and Nationstar retained Plaintiff's counsel to attempt to prosecute Action 4 for foreclosure of the Mortgage, based upon same allegations of fact.

75) Upon information and belief Nationstar Mortgage, LLC is incorporated in Delaware, with its principle place of business in Dallas, Texas, and is doing business in South Carolina, originating, owning, holding, and servicing mortgage loans.

**FOR AND AS A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
AGAINST PLAINTIFF AND AS A THIRD PARTY CLAIM AGAINST NATIONSTAR
(Accounting)**

76) Defendant incorporates all preceding paragraphs as though fully set forth herein.

77) Defendant is entitled to an accounting from Plaintiff and Nationstar detailing all amounts claimed owed; all payments made, when received, when applied, how applied, interest charged and when, fees assessed and incurred including late fees, property preservation fees, property inspection fees, other charges, costs and attorney's fees and all other matters relating to the amount claimed owed.

**FOR AND AS A FOURTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
AGAINST PLAINTIFF AND AS A THIRD PARTY CLAIM AGAINST NATIONSTAR
(Negligent Misrepresentations)**

78) Defendant incorporates all preceding paragraphs as though fully set forth herein.

79) Plaintiff, Nationstar, and/or its alleged predecessors in interest made false and misleading representations to Defendant, Curt and Julie Rogers, and/or the court regarding the actual terms of the loan and Plaintiff, Nationstar and/or their predecessors in interest's right to

enforce the note and mortgage, who the holder of the note and mortgage were at various times between now and 2009, who executed and endorsed assignments of the Mortgage, who executed endorsements of the Note, that Plaintiff and/or its predecessor's in interest were real parties in interest, and Plaintiff, Nationstar and/or their alleged predecessors in interest's general standing to bring Action 1, Action2, Action 3 and Action 4 against Curt and Julie Rogers and Defendant; that Plaintiff, Nationstar and/or their alleged predecessors in interest had the authority to agree to short sale the Subject property and would do so if Curt and Julie Rogers brought them a reasonable sale contract; that Plaintiff, Nationstar and/or their alleged predecessors in interest had the authority to agree to enter into a Workout and/or forbearance agreement with Curt and Julie Rogers and if the Rogers complied with the terms of the Agreement then Plaintiff, Nationstar and/or their alleged predecessors in interest had the authority to agree and would agree to a modification of the Note.

80) Plaintiff, Nationstar, and/or its alleged predecessors in interest had a pecuniary interest in making the statements.

81) Plaintiff, Nationstar and/or its alleged predecessors in interest owed a duty of care to see that it communicated truthful information to Defendant, Curt and Julie Rogers and the Court.

82) Plaintiff and Nationstar breached that duty by failing to exercise due care.

83) Defendant, Curt and Julie Rogers justifiably relied upon the representations of Plaintiff and/or its alleged predecessors in interest.

84) By virtue of the negligent misrepresentations, Defendant, individually and as a fiduciary of Curt and Julie Rogers has been actually damaged and because these representations were willful, intentional, with malice toward Defendant and with a reckless disregard for the rights of Defendant, Defendant seeks and award of actual and punitive damages in accordance with her prayer for relief.

**FOR AND AS A FIFTHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
AGAINST PLAINTIFF AND AS A THIRD PARTY CLAIM AGAINST NATIONSTAR
(Abuse of Process)**

85) Defendant incorporates all preceding paragraphs as though fully set forth herein.

86) Plaintiff and Nationstar improperly used the process of the legal system to attempt to foreclose on the Mortgage by filing suits in Action 1, Action 2, Action 3, and Action 4 when Plaintiff, Nationstar, and/or their alleged predecessors in interest knew or should have known, that the Note lacked requisite endorsements; that endorsements on the note and had been improperly altered and/or executed by an alleged agent of Plaintiff, Nationstar, and/or their alleged predecessors in interest without the requisite authority to do so; that the Mortgage lacked requisite assignments; by executing and filing alleged assignments of the Mortgage in the RMC office for Charleston County after Curt and Julie Rogers had raised a standing issue in discovery and a motion for summary judgment resulting in Nationstar then moving to dismiss Action 2 to avoid Curt and Julie Rogers Motion for Summary Judgment being heard; that assignments of the Mortgage had been improperly altered and/or executed by an alleged agent of Plaintiff, Nationstar, and/or their alleged predecessors in interest without the requisite authority to do and so they could file Action 1, Action 2, Action3, and Action 4 when Plaintiff, Nationstar, and/or their alleged predecessors in interest were precluded from filing and prosecuting the the suits by law, including but not limited to issues of standing, res judicata and collateral estoppel.

87) Plaintiff and/or Nationstar improperly used the process of the legal system to attempt to foreclose on the Mortgage by failing to take the steps necessary to be willing and ready to prosecute Action 3 when it was called for trial in May of 2016, and then seeking to alleviate Plaintiff and/or Nationstar's failure to prosecute said action by moving for Dismissal 3 instead of

proceeding to trial 7 years after Plaintiff, Nationstar, and/or their alleged predecessors in interest initiated Action 1.

88) Plaintiff and/or Nationstar improperly used the process of the legal system to attempt to foreclose on the Mortgage by attempting bringing Action 4 as a separate and distinct action more than three years after Action 3 had been dismissed, instead of moving to restore Action 3.

89) Plaintiff and/or Nationstar improperly used the process of the legal system to attempt to foreclose on the Mortgage by failing to name Curt and Julie Rogers as defendants in Action 4 with they are necessary parties, and did so upon information and belief avoid to the duty of candor to the court of having to bring to the courts attention Action 1, Action 2, Action 3 and the issues with those actions regarding standing and resulting issues of res judicata and collateral estoppel.

90) Plaintiff and/or Nationstar improperly used the process of the legal system to attempt to foreclose on the Mortgage by failing to take those steps necessary to obtain an order of foreclosure after 11 years of Plaintiff, Nationstar, and/or their alleged predecessors in interest seeking to foreclose upon the same Mortgage based upon the same allegations of fact.

91) Plaintiff Nationstar, and/or their alleged predecessors in interest acts in filing said suits were a willful overt acts improperly using the legal process because Plaintiff, Nationstar, and/or their alleged predecessors in interest lacked the legal authority to file said suits, and undertook improper execution and alteration of endorsements and/or assignments in attempt justify their legal authority, and further undertook procedural delays to avoid the Court addressing their legal authority, which was aimed at the illegitimate collateral objective of obtaining an ordre of foreclosure of the Mortgage now 11 years after Action 1 was initiated.

92) As a direct and proximate result of Plaintiff and/or Nationstar's improper actions as specified herein, Defendant individually and/or as a Fiduciary to Curt and Julie Rogers has sustained actual, statutory, consequential, incidental, compensatory and special damages in an amount to be determined by the tryer of fact at a trial of this case.

93) In addition to the actual, statutory consequential, compensatory and incidental damages suffered, Defendant is informed and believes that Plaintiff and Nationstar's willful, reckless, and wanton, conduct as specified in certain causes of action in this Complaint entitle Defendant to an award of punitive damages.

**FOR AND AS A SIXTHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
AGAINST PLAINTIFF AND AS A THIRD PARTY CLAIM AGAINST NATIONSTAR
(MALICIOUS PROSECUTION)**

94) Defendant incorporates all preceding paragraphs as though fully set forth herein.

95) Plaintiff Nationstar, and/or their alleged predecessors in interest initiated Action 1 which was subsequently dismissed by Dismissal 1.

96) Plaintiff Nationstar, and/or their alleged predecessors in interest initiated Action 2 which was subsequently dismissed by Dismissal 2.

97) An action being stricken from the active roster pursuant to Rule 40(j), SCRCP, is equivalent to a dismissal.

98) Rule 41, SCRCP, states in relevant part "an action may be dismissed by the plaintiff without order of court. . . (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless, otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, *except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.*" Rule 41(a)(1)(B), SCRCP.

99) Action 1 and Action 2 were based on the same claim for foreclosure of the Mortgage.

100) Dismissal 2 constituted and adjudication upon the merits pursuant to Rule 41, SCRCF.

101) Plaintiff and/or Nationstar by and/or at their instance initiated Action 3, when they were precluded from doing so pursuant to Rule 41, SCRCF.

102) Plaintiff and/or Nationstar failed to prosecute Action 3 and moved for and were granted Dismissal 3 when Action 3 was called for trial.

103) Plaintiff and/or Nationstar lacked probable cause to institute action 3 and further acted with malice in instituting Action 3 and failing to prosecute Action 3.

104) Plaintiff and/or Nationstar by and/or at their instance initiated Action 4 more than three years after Dismissal 3, when they were precluded from doing so pursuant to Rule 41, SCRCF and the doctrine of collateral estoppel.

105) Plaintiff and/or Nationstar lacked probable cause to institute action 4 and further acted with malice in instituting Action 4, and doing so in a manner that failed to name the necessary parties Curt and Julie Rogers and failed to apprise the court of Action 1, Action 2, and Action 3.

106) A person of ordinary intelligence standing in the shoes of Plaintiff and/or Nationstar and apprised of the facts and circumstances as set forth herein would not honestly believe that their was probable cause to initiate Action 3 and then three years after the Dismissal 3 believe their was probable cause to by or at their instance initiate Action 4.

107) As a direct and proximate result of Plaintiff and/or Nationstar's improper actions as specified herein, Defendant individually and/or as Fiduciary to Curt and Julie Rogers has sustained actual, statutory, consequential, incidental, compensatory and special damages in an amount to be determined by the tryer of fact at a trial of this case.

108) In addition to the actual, statutory consequential, compensatory and incidental damages suffered, Defendant is informed and believes that Plaintiff and Nationstar's willful, reckless, and wanton, conduct as specified in certain causes of action in this Complaint entitle Defendant to an award of punitive damages.

**FOR AND AS A SEVENTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
AGAINST PLAINTIFF AND AS A THIRD PARTY CLAIM AGAINST NATIONSTAR
(Unfair Trade Practices)**

109) Defendant incorporates all preceding paragraphs as though fully set forth herein.

110). Plaintiff and Nationstar are engaged in commerce and the business originating, owning, holding, and/or servicing mortgage loans.

111) Neither Plaintiff nor Nationstar are a holder in due course.

112) Plaintiff, Nationstar, and/or their alleged predecessors in interest have engaged in unfair or deceptive acts or practices in the conduct of commerce which is unlawful and in violation of the Unfair Trade Practices Act of South Carolina, by engaging in unfair and deceptive acts and practices including but not limited to: claiming as owed unconscionable interest amounts pursuant to unconscionable terms of the Note; seeking to enforce security for a note which contains unconscionable terms; making false and misleading representations to Defendant, Curt and Julie Rogers, and the court regarding the actual terms of the loan and Plaintiff, Nationstar and/or their predecessors in interest's right to enforce the note and mortgage, who the holder of the note and mortgage was at various time between now and 2009, assignments of the mortgage, endorsements of the note, that Plaintiff Nationstar, and/or its predecessor's interest were real parties in interest, and Plaintiff's general standing to bring this action, Action 1, Action2, and Action 3 against Curt and Julie Rogers and Defendant; causing alleged endorsements of the note to be improperly executed and/or altered after execution; causing alleged assignments of the Mortgage to be

improperly executed and/or filed without authority; initiating and maintaining Actions 3 and 4 when they were barred by Rule 41, res judicata and/or collateral estoppel; by continuing for 11 years to seek to prosecute the foreclosure of the Mortgage when Plaintiff Nationstar, and/or its alleged predecessors already failed to prosecute the foreclosure of the Mortgage in a timely and judicious manner for more than a decade; by misrepresenting that Plaintiff, Nationstar and/or their alleged predecessors in interest had the authority to agree to a short sale the Subject property and would do if Curt and Julie Rogers brought them a reasonable sale contract; by mispresenting that Plaintiff, Nationstar and/or their alleged predecessors in interest had the authority to agree to enter into a Workout and/or forbearance agreement with Curt and Julie Rogers and if the Rogers complied with the terms of the Agreement then Plaintiff, Nationstar and/or their alleged predecessors in interest had the authority to agree and would agree to a modification of the Note.

113) Plaintiff and/or Nationstar's unfair and deceptive acts or practices have an impact on the public interest of consumers of this State and have the potential for repetition.

114) Upon information and belief Plaintiff and Nationstar have engaged in similar acts and practices in the past, including but not limited to as set for in the order filed on December 16, 2016, in civil action 2012-CP-15-00166, and are likely to engage in such illegal activities in the future.

115) As a direct result of Plaintiff and Nationstar's actions Defendant, individually and as a fiduciary for Curt and Julie Rogers has been damaged as set forth herein and as may be proven at trial.

116) Defendant believes she is entitled to have the damages awarded by the trier of fact trebled because the conduct described herein was willful and with reckless disregard for the truth.

117) Defendant believes she is entitled to an award of attorney's fees and expenses of this litigation, along with actual damages, compensatory damages, statutory damages, incidental damages and all other appropriate damages to be considered by the trier of fact.

**FOR AND AS A EIGHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
AGAINST PLAINTIFF
(Declaratory Injunctive Relief)**

118) Defendant incorporates all preceding paragraphs as though fully set forth herein.

119) Defendant seeks declaratory relief pursuant to S.C. Code Ann. § 15-53-10, et seq., on the grounds that Defendant is an interested party and seeks a declaration as to Plaintiff and Defendants rights with regard to the following:

a) Whether Plaintiff is precluded from maintaining this action by Rule 41, SCRPC, and the doctrine of collateral estoppel;

b) Whether the interest terms of the Note are legally unconscionable and unenforceable;

c) Whether the chain of title of the endorsements of the Note and alterations of the endorsements of the Note provide Plaintiff the legal authority to enforce the Note;

d) Whether the chain of title of the assignments of the Mortgage provide Plaintiff the legal authority to enforce the Mortgage; and

e) Whether the chain of title of the Mortgage diverged from the chain of title of the Note making the Mortgage legally unenforceable.

120) Defendant is entitled to a declaratory judgment and a determination as to the issue set forth herein above and an order enjoining Plaintiff from prosecuting this action.

JURY TRIAL DEMANDED

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for a dismissal of the Complaint in this matter and for judgement against Plaintiff and Nationstar as to all of Defendant's Counterclaims and Third Party Claims, for all actual damages, statutory damages, consequential damages, special damages, and incidental damages, all declaratory relief requested and all in an amount to be more specifically proven at trial, and for an award of attorney's fees and costs of this action, and for such other and further relief as this Honorable Court may deem just and proper.

RESPECTUFLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC
s/ D. Conor Keys (#100148)
D. Conor Keys
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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COURT OF COMMON PLEAS
CASE No. 2019 CP 10 4503

DEUTSCHE BANK TRUST COMPANY OF
AMERICAS, AS TRUSTEE FOR
RESIDENTIAL ACCREDIT LOANS, INC.,
PASS-THROUGH CERTIFICATES 2007-
QH2,

PLAINTIFF,

V.

ASHLEY JOHNSON BESHARA AS TRUSTEE
OF REVOCABLE TRUST AGREEMENT FOR
2235 SHORELINE DRIVE ORIGINALLY
DATED THE 3RD DAY OF MARCH, 2010,
SHORELINE FARMS COMMUNITY
ASSOCIATION, INC.; WELLS FARGO
BANK, N.A.; AND CADLE ROCK JOINT
VENTURE, LP AN OHIO LIMITED
PARTNERSHIP, CURTIS ROGERS AND JULIE
J. ROGERS,

DEFENDANTS

ASHLEY JOHNSON BESHARA AS TRUSTEE
OF THE REVOCABLE TRUST AGREEMENT
FOR 2235 SHORELINE DRIVE ORIGINALLY
DATED THE 3RD DAY OF MARCH, 2010,

THIRD PARTY PLAINTIFF,

V.

NATIONSTAR MORTGAGE, LLC,

THIRD PARTY DEFENDANT.

**ANSWER, COUNTERCLAIM AND
CROSS-CLAIM OF CURTIS
ROGERS AND JULIE J. ROGERS**

(JURY TRIAL DEMANDED)

TO: THE ABOVE NAMED PLAINTIFF AND THIRD PARTY DEFENDANT:

Defendants, Curtis Rogers and Julie J. Rogers (hereinafter "Defendants") by and through their undersigned counsel hereby answer the Complaint filed by Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2, (hereinafter "Plaintiff") and cross-claim as to Third-party Defendant, Nationstar and state as follows:

1. As to the Complaint, each and every allegation not specifically admitted or explained herein is denied.

2. As to Paragraph 1 of the Complaint, Defendants assert the allegations constitute conclusions of law which they are required to neither admit nor deny. To the extent they are not conclusions of law they are denied.

3. As to Paragraph 2 of the Complaint, Defendants deny that Plaintiff has the right to bring this action.

4. As to Paragraphs 3, 4 and 5 of the Complaint, Defendants assert the allegations constitute conclusions of law which they are required to neither admit nor deny. To the extent they are not conclusions of law they are denied.

5. As to Paragraph 6 of the Complaint, Defendants admit so much as alleges that Curt Rogers executed a Note in favor of Homecomings Financial on or about January 12, 2007. Defendants further state that Plaintiff bears the burden of proof of establishing a valid and enforceable obligation.

6. As to Paragraph 7 of the Complaint, Defendants admit so much as alleges that they executed a mortgage in favor of Homecomings Financial LLC in on about January 12, 2007. Defendants further state that Plaintiff bears the burden of proof of establishing a valid and enforceable security interest.

7. As to Paragraph 8 of the Complaint, Defendants and crave reference to the public records of Charleston County and deny any allegations inconsistent with records therein.

8. As to Paragraph 9 of the Complaint, Defendants assert the allegations constitute conclusions of law which they are required to neither admit nor deny.

9. As to Paragraphs 10 and 11 of the Complaint, Defendants and crave reference to the public records of Charleston County and deny any allegations inconsistent with records therein.

10. As to Paragraph 12 of the Complaint, Defendants assert the allegations constitute conclusions of law which they are required to neither admit nor deny.

11. As to Paragraph 13 of the Complaint, Defendants crave reference to the document referenced therein and deny any allegations inconsistent with said document.

12. As to Paragraph 14 of the Complaint, Defendants deny said allegations.

13. As to Paragraphs 15, 16 and 17 of the Complaint, Defendants assert the allegations constitute conclusions of law which they are required to neither admit nor deny. If said allegations are not deemed conclusions of law they are denied.

**FOR AND AS A SECOND DEFENSE
(Failure to State Claim)**

14. Further answering said Complaint and for a further defense thereto Defendants allege that Plaintiff's Complaint fails to set forth a sufficient cause of action as set forth in the filed motion to dismiss.

**FOR AND AS A THIRD DEFENSE
(Waiver/Release/Estoppel)**

15. Further answering said Complaint and for a further defense thereto Defendants allege that Plaintiff's Complaint is barred by the doctrines of waiver, release and estoppel.

**FOR AND AS A FOURTH DEFENSE
(Standing/Real Party)**

16. Further answering the Complaint and as and for a further defense thereto, the Defendants allege certain Plaintiff is not the real party in interest and lacks standing and therefore Plaintiff is precluded from maintaining this action.

**FOR AND AS A FIFTH DEFENSE
(Failure to Mitigate)**

17. Further answering the Complaint and as and for a further defense thereto, the Defendants allege the Plaintiff has failed to mitigate damages, therefore, Plaintiff's Complaint should be dismissed.

**FOR AND AS A SIXTH DEFENSE
(Res Judicata/Collateral Estoppel/Judicial Estoppel)**

18. Further answering the Complaint and as and for a further defense thereto, the Defendants allege the Plaintiff's, claims if any, are barred by the doctrine of res judicata, collateral estoppel and judicial estoppel.

**FOR AND AS A SEVENTH DEFENSE
(Unclean Hands)**

19. Further answering the Complaint and as and for a further defense thereto, the Defendants allege Plaintiff comes to this action with unclean hands and is therefore precluded from maintaining this action.

**FOR AND AS A EIGHTH DEFENSE
(Unconscionability)**

20. Further answering the Complaint and as and for a further defense thereto, the Defendants allege Plaintiff seeks relief under unconscionable terms which are against public policy and is therefore precluded from maintaining this action.

**FOR AND AS A NINTH DEFENSE
(Laches)**

21. Further answering the Complaint and for a further defense thereto, Defendants assert Plaintiff's action is barred by the principle of laches.

**FOR AND AS A TENTH DEFENSE
(Rule 40 and 41, SCRCP)**

22. Further answering the Complaint and for a further defense thereto, Defendants assert Plaintiff and brought the same action under the same subject note and mortgage in three prior civil court actions and voluntarily dismissed all actions and is therefore precluded under Rules 40 and 41, SCRCF from bringing the within action.

**FOR AND AS AN ELEVENTH DEFENSE
(Affirmative Defenses)**

23. Further answer said Complaint and for a further defense thereto Defendants specifically plead as an affirmative defense to the allegations of the Complaint, accord and satisfaction, comparative negligence, negligence, duress, statute of frauds, fraud, illegality, laches, misrepresentation, mistake, payment, release, waiver, standing, lack of consideration, failure to mitigate, or any other matter constituting avoidance or affirmative defense which may arise and develop as discovery in this action progresses.

**FOR AND AS A TWELTH DEFENSE
(Reservation and Non-Waiver)**

24. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery.

FOR AND AS A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM

25. Defendants, Curt and Julie Rogers, are residents of the County of Charleston and the former title holders but current occupants and possessors of the real property located at 2255 Shoreline Drive, Johns Island, South Carolina. (hereinafter the "Property")

26. Defendants are beneficiaries of the Revocable Trust Agreement for 2235 Shore Line Drive, which holds legal title to the Property.

27. Plaintiff is a Delaware corporation that asserts an interest in the Property by alleging in Paragraphs 2, 6 and 7 of its Complaint it is either a servicer or mortgagee of a Note and Mortgage executed by the Defendants.

28. Plaintiff alleges in Paragraph 6 of its Complaint that Defendant Curt Rogers executed and delivered to Homecomings Financial LLC a promissory note in the sum of \$1,500,000.00 (hereinafter "Note")

29. Plaintiff alleges in Paragraphs 7 and 8 of its Complaint that Defendants Curt Rogers and Julie Rogers executed and delivered to Mortgage Electronic Services Registration Systems, Inc., a mortgage covering the Property that was recorded in Office of Register of Deeds for Charleston County in book B613 at page 844. (hereinafter "Mortgage")

30. The Mortgage referenced by Plaintiff in Paragraphs 7 and 8 is the same Mortgage identified by reference to filing in the Charleston Register of Deeds at Book B613 page 844 in three other civil action proceedings pursued by Plaintiff or Plaintiff's claimed predecessor(s) and/or agents under three different Civil Action Numbers which civil action numbers are as follows: (1) 2009-CP-10-5840 ("Action 1"); (2) 2011-CP-10-1805 ("Action 2"); and (3) 2015-CP-10-1971("Action 3").

31. The within action is the fourth civil action to involve the same Note and Mortgage executed by Defendants.

32. Action 1, Action 2 and Action involved the same Note and Mortgage referenced in Plaintiff's Complaint and were dismissed with consent pursuant to Rule 40(j), SCRCF. (See Exhibit A, B and C attached hereto and incorporated herein by reference.)

33. In a civil action where a Rule 40(j) Order has been filed the case is deemed dismissed. *See Personal Care Inc., v. Theos*, 825 S.E. 2d 281 (Ct. App. 2019), and *Goodwin v. Landquest Dev., LLC*, 414 S.C. 623, 632, 779 S.E. 2d 826, 831 (Ct. App. 2015)

34. The consent 40(j) Orders filed in Action 1, Action 2 and Action 3 rendered the cases dismissed.

35. Defendants' counsel made Plaintiff's prior counsel aware that the three voluntary dismissals precluded Plaintiff from bringing any other action involving the subject Note and Mortgage. Plaintiff is charged with the knowledge of knowing Defendants advised Plaintiff's counsel that any filing relating to the subject Note and Mortgage following the last several dismissals would be frivolous.

36. Plaintiff brought this action and styled so as to omit the Defendants as named parties although specifically identifying them in the allegations of the Complaint and identifying the Note and Mortgage which Plaintiff claims they executed, in an effort to deceive the Courts and avoid the consequences of the three prior dismissals.

37. The Note referenced by Plaintiff in its Complaint is commonly referred to as a "pick a pay" note which contains unconscionable negative amortization terms.

38. Prior to and after the commencement of Action 1, Defendants, in good faith underwent extensive loss mitigation efforts with Plaintiff and/or its alleged predecessors in interest and/or alleged predecessor servicers from 2008 through 2011 providing numerous documents upon request, requesting loan modifications and/or short sales; making all required payments pursuant to a Work Out Agreement entered into with Plaintiff and/or its' alleged predecessor; submitting a short sale contract to Plaintiff and/or its' predecessors, but Plaintiff

and/or its' alleged predecessors failed to act in good faith and modify the Note and/or agree to short sale the Property, despite Defendants good faith efforts.

39. Action 1 was brought in the name of Aurora Loan Services, LLC ("ALS") on September 15, 2009, wherein ALS alleged that is was the present lien holder of the subject Note and Mortgage and that MERS acting on behalf of Homecomings assigned the mortgage to ALS by an alleged assignment dated September 8, 2009, and recorded September 15, 2009 (Assignment 1).

40. The Note does not bear an endorsement to ALS.

41. If the Note was never endorsed to ALS then by law MERS lacked the authority acting on behalf of Homecomings to assign the Mortgage to ALS on September 8, 2009 via Assignment 1.

42. If Assignment 1 was void and invalid then ALS lacked standing and had no legal right and authority to seek to foreclose upon the Mortgage in Action 1.

43. ALS made misrepresentations to the Defendants and the Court regarding said alleged authority it possessed in Action 1.

44. By the Order filed March 9, 2010 (hereinafter "Dismissal 1"), Action 1 was dismissed pursuant to Rule 40(j), SCRCP.

45. Action 1 was restored by Order filed March 10, 2011, and given a new civil action number establishing Action 2.

46. On June 12, 2013, in Action 2, ALS filed a motion and proposed order alleging that the Note and Mortgage had been assigned to Nationstar Mortgage, LLC (hereinafter "Nationstar") and that Nationstar was the present lien holder of the Note and Mortgage and therefore Nationstar should be substituted as Plaintiff for ALS.

47. The Note does not bear and endorsement to Nationstar and there is no assignment of record which was ever produced in Action 1 or Action 2, or filed in the RMC office for Charleston County assigning the Mortgage to Nationstar.

48. If the Note was never endorsed to Nationstar and the Mortgage was never assigned to Nationstar, then Nationstar lacked standing and the legal right and authority to seek to foreclose upon the Mortgage in Action 2.

49. ALS and Nationstar made misrepresentations to the Defendants and the Court regarding their alleged authority to foreclose upon the Mortgage in Action 2.

50. However, Nationstar as an alleged predecessor in interest to Plaintiff stated in discovery responses dated February 28, 2014, in Action 2, that on February 27, 2007, that through an assignment and assumption agreement Residential Funding, Company, LLC (hereinafter "Residential Funding"), assigned the note and mortgage which are the subject of this action to Residential Accredit Loans, Inc. Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QH2 Trust.

51. The chain of title of a mortgage should follow and correspond to the chain of title of the note it secures and not take a divergent path.

52. If Residential Funding owned and was the holder of the Note on February 27, 2007, then then MERS acting on behalf of Homecomings had no authority to assign the Mortgage ALS by Assignment 1.

53. Prior to the execution of Assignment 1, on or about July 16, 2009, ALS, sent Curt Rogers a correspondence with an alleged certified copy of the Note and Mortgage which are the subject of this action (hereinafter "Note Copy 1"). The note contained an undated endorsement

in blank executed by Bakhtiar S. Akhunji as Assistant Secretary of Homecoming Financial, LLC (hereinafter “Endorsement 1”). The Note contained no other endorsements.

54. If Homecomings had transferred title to and endorsed the Note to anyone other than ALS on or before July 16, 2009, then MERS acting on behalf of Homecomings had no authority to assign the Mortgage ALS by Assignment 1 on September 8, 2009.

55. On October 23, 2009, the Defendants filed an answer in Action 1 asserting defenses including but not limited to standing/real party in interest.

56. On or about November 19, 2009, Counsel for ALS in response to a qualified written request sent by counsel for the Defendants, a copy of the Note which bears two endorsements (hereinafter “Note Copy 2”).

57. Note Copy 2 bears an altered version of Endorsement 1 whereby Endorsement 1 which had originally been an endorsement in blank by Homecomings had been altered to be endorsed specifically to Residential Funding (hereinafter “Altered Endorsement 1”).

58. The Note Copy 2 bears a second specific endorsement to Deutsche Bank Trust Company as Trustee executed by Judy Faber as Vice President, Residential Funding Company, LLC (hereinafter “Endorsement 2”). Note Copy 2 does not bear any endorsements other than Altered Endorsement 1 and Endorsement 2.

59. On February 13, 2012 the Defendants filed an amended answer and counterclaim in Action 2 asserting as a defense of Standing/Real Party in interest and asserting that ALS did not own, possess title to, or hold the Note and Mortgage.

60. On June 12, 2013 in Action 2 ALS filed a motion and proposed order alleging that the Note and Mortgage were assigned to Nationstar Mortgage, LLC (hereinafter “Nationstar”)

that Nationstar was the present lien holder of the Note and Mortgage and therefore Nationstar should be substituted as Plaintiff for ALS.

61. The Note does not bear an endorsement to Nationstar and there is no assignment of record which was ever produced in Action 1 or Action 2, or filed in the RMC office for Charleston County assigning the Mortgage to Nationstar.

62. On June 28, 2013, the Defendants filed a Motion to Vacate the Order filed June 14, 2012, substituting Nationstar as Plaintiff for ALS in Action 2, citing standing as a basis for the motion.

63. On July 10, 2013, Nationstar in response to the Defendants discovery requests provided responses to request for production and produced a copy of the Note, but the copy of the Note produced did not contain any endorsements other than Altered Endorsement 1 and Endorsement 2. Therefore, the copy of the Note produced on July 10, 2013 did not contain a specific endorsement or an endorsement in blank giving Nationstar the right to enforce the Note and therefore the right to enforce the Mortgage in Action 2.

64. The Motion to Vacate was scheduled to be heard November 18, 2013.

65. On or about November 16, 2013, Nationstar's counsel, provided for the first time, to the Defendant's counsel a third copy of the Note (hereinafter "Note Copy 3")

66. Note Copy 3 bears Altered Endorsement 1, Endorsement 2 and third endorsement in blank made by Nationstar as attorney in fact for Deutsche Bank Trust Company Americas as Trustee.

67. On February 28, 2014, Nationstar served on the Defendants Responses to Defendants' Requests for Admissions (hereinafter "2/28/14 Admissions"), which were filed in

Action 2 on March 3, 2014 attached as Exhibit "A" to Curt and Julie Rogers' Motion for Summary Judgment.

68. In the 2/28/14 Admissions Nationstar Admits the following:

- a) Note Copy 3 was not produced in Nationstar's responses to requests for production dated July 10, 2013;
- b) the Note does not contain an endorsement to Nationstar or ALS; and
- c) as of 2/28/14 no assignment of the Mortgage had been executed assigning the Mortgage to Residential Funding, Deutsche Bank Trust Company Americas as Trustee, Deutsche Bank Trust Company Americas as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2, or Nationstar.

69. On March 3, 2014, in Action 2, the Defendants filed a Motion for Summary Judgment based on standing and supported by Nationstar's 2/28/14 Admissions.

70. On April 1, 2014, Plaintiff's alleged predecessor in Interest Nationstar aware it had standing issues in Action 2, which had been raised by the Defendants, tried to correct the problem prior to the Defendants' Motion for Summary Judgment being heard by executing an alleged assignment of the Mortgage whereby Nationstar as Attorney and Fact for ALS alleged to assign the Mortgage to Deutsche Bank Trust Company Americas as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2. Nationstar's counsel recorded the alleged assignment on April 14, 2014, in Book 0398 at Page 768 in the RMC Office for Charleston County.

71. On June 9, 2014, after receiving notice that Defendants' Motion for Summary Judgment had been scheduled to be heard by the Court but prior to the hearing, Nationstar

moved before the court to have Action 2 dismissed pursuant to Rule 40(J), SCRCP, which was granted by Order filed June 24, 2014 (hereinafter “Dismissal 2”).

72. On March 13, 2015, Nationstar as alleged Plaintiff in the action moved to restore Action 2 which was restored by order filed April 7, 2015 thereby creating Action 3.

73. Thereafter Nationstar as alleged Plaintiff made no further filings in the prosecution of the foreclosure of Mortgage in Action 3.

74. Over a year later, Action 3 was called for trial on or about May 12, 2016, and on May 12, 2016, Nationstar as alleged Plaintiff moved to have Action 3 dismissed pursuant to Rule 40(j), SCRCP, which motion was granted by Order filed May 16, 2016 (Dismissal 3).

75. A couple of years later Nationstar as alleged Plaintiff contacted Defendants’ counsel stating that Nationstar wanted to restore the action to active. The Roger’s counsel informed Nationstar’s counsel that she would contest the motion to restore and believed the Action had been adjudicated on the merits pursuant to Rules 40 and 41, SCRCP. The Defendants’ counsel’s last communication with Nationstar as the alleged Plaintiff’s counsel was around December 18, 2018.

76. Thereafter nearly a year later on August 27, 2019, this action (hereinafter “Action 4”) was commenced for foreclosure on the same Mortgage again, however this time instead of naming Nationstar as the plaintiff, Deutsche Bank Trust Company Americas as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2 is the named Plaintiff.

77. Upon information and belief Nationstar remains the principle contact for Plaintiff’s counsel in this matter and Nationstar retained Plaintiff’s counsel to attempt to prosecute Action 4 for foreclosure of the Mortgage, based upon same allegations of fact.

78. Upon information and belief Nationstar Mortgage, LLC is incorporated in Delaware, with its principle place of business in Dallas, Texas, and is doing business in South Carolina, originating, owning, holding, and servicing mortgage loans.

(Declaratory Judgment)

79. Defendants are persons interested under agreements referenced in Plaintiff's Complaint and bring this action pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. 15-53-10, et. seq. (Law Co-op. 1976), to determine the validity and enforceability of the Note and Mortgage and their legal rights and obligations, if any, under the terms of the Note and Mortgage.

80. Defendants seek a declaration of the following;

- a. The Note is unenforceable due to its unconscionable terms specifically including but not limited to negative amortization;
- b. The dismissal of three prior actions involving the same Note and Mortgage preclude and/or bar the within action;
- c. Plaintiff lacks standing, authority or ownership to bring the within action; and
- d. The divergent direction of the Mortgage renders the Mortgage unenforceable.

81. Defendants are entitled to a declaratory judgment and a determination as to the issues set forth herein above and an order enjoining Plaintiff from prosecuting this action.

**FOR AND AS A FOURTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
AGAINST PLAINTIFF AND AS A CROSS CLAIM AGAINST NATIONSTAR
(Negligent Misrepresentations)**

82. Defendants incorporate all preceding Paragraphs as though fully set forth herein.

83. Plaintiff and Nationstar, and/or their alleged predecessors in interest made false and misleading representations to Defendants and/or the Court regarding the actual terms of the

loan and Plaintiff and Nationstar and/or their predecessors in interest's right to enforce the note and mortgage; who the holder of the note and mortgage were at various times between now and 2009; who executed and endorsed assignments of the Mortgage; who executed endorsements of the Note; that Plaintiff and Nationstar and/or their predecessor's in interest were real parties in interest; and that Plaintiff and Nationstar and/or their alleged predecessors in interest's general standing to bring Action 1, Action 2, Action 3 and Action 4 against Defendants; that Plaintiff and Nationstar and/or their alleged predecessors in interest had the authority to agree to short sale the Property and would do so if Defendants brought them a reasonable sale contract; that Plaintiff and Nationstar and/or their alleged predecessors in interest had the authority to agree to enter into a Workout and/or forbearance agreement with Defendants and if the Defendants complied with the terms of the Agreement then Plaintiff and Nationstar and/or its alleged predecessors in interest had the authority to agree and would agree to a modification of the Note.

84. Plaintiff and Nationstar, and/or their alleged predecessors in interest had a pecuniary interest in making the statements.

85. Plaintiff and Nationstar and/or their alleged predecessors in interest owed a duty of care to see that they communicate truthful information to Defendants and the Court.

86. Plaintiff and Nationstar breached that duty by failing to exercise due care.

87. Defendants justifiably relied upon the representations of Plaintiff and Nationstar and/or their alleged predecessors in interest.

88. By virtue of the negligent misrepresentations, Defendants have been actually damaged and because these representations were willful, intentional, with malice toward Defendants and with a reckless disregard for the rights of Defendants, Defendants seek and award of actual and punitive damages in accordance with their prayer for relief.

**FOR AND AS A FIFTHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
AGAINST PLAINTIFF AND AS A CROSS CLAIM AGAINST NATIONSTAR
(Abuse of Process)**

89. Defendants incorporate all preceding Paragraphs as though fully set forth herein.

90. Plaintiff and Nationstar improperly used the process of the legal system to attempt to foreclose on the Mortgage by filing Action 1, Action 2, Action 3, and Action 4 when Plaintiff and Nationstar, and/or their alleged predecessors in interest knew or should have known, that the Note lacked requisite endorsements; that endorsements on the Note had been improperly altered and/or executed by an alleged agent of Plaintiff and or Nationstar, and/or their alleged predecessors in interest without the requisite authority to do so; that the Mortgage lacked requisite assignments; by executing and filing alleged assignments of the Mortgage in the RMC office for Charleston County after Defendants had raised a standing issue in discovery and a motion for summary judgment resulting in Nationstar then moving to dismiss Action 2 to avoid Defendants Motion for Summary Judgment being heard; that assignments of the Mortgage had been improperly altered and/or executed by an alleged agent of Plaintiff and or Nationstar, and/or their alleged predecessors in interest without the requisite authority to do and so they could file Action 1, Action 2, Action 3, and Action 4 when Plaintiff and Nationstar, and/or their alleged predecessors in interest were precluded from filing and prosecuting the Actions by law, including but not limited to issues of standing, res judicata and collateral estoppel.

91. Plaintiff and/or Nationstar improperly are using and have used the process of the legal system to attempt to foreclose on the Mortgage by failing to take the steps necessary to be willing and ready to prosecute Action 2 and 3 when called for trial, and then seeking to alleviate Plaintiff and/or Nationstar's failure to prosecute said action by moving for Dismissal 3 instead of

proceeding to trial 7 years after Plaintiff and Nationstar, and/or their alleged predecessors in interest initiated Action 1.

92. Plaintiff and/or Nationstar improperly used the process of the legal system to attempt to foreclose on the Mortgage by attempting bringing Action 4 as a separate and distinct action after the dismissal of three prior actions involving the same Note and Mortgage.

93. Plaintiff and/or Nationstar improperly used the process of the legal system to attempt to foreclose on the Mortgage by failing to name Defendants as defendants in Action 4 when they are identified in the body of the Complaint, and did so upon information and belief to avoid to the duty of candor to the court of having to bring to the courts attention Action 1, Action 2, Action 3 and the issues with those actions regarding standing and resulting issues of res judicata and collateral estoppel.

94. Plaintiff and/or Nationstar improperly used the process of the legal system to attempt to foreclose on the Mortgage by failing to take those steps necessary to obtain an order of foreclosure after 11 years of Plaintiff and Nationstar, and/or their alleged predecessors in interest seeking to foreclose upon the same Mortgage based upon the same allegations of fact.

95. Plaintiff and Nationstar, and/or their alleged predecessors in interest acts in filing said suits were a willful overt acts improperly using the legal process because Plaintiff and Nationstar, and/or their alleged predecessors in interest lacked the legal authority to file said suits, and undertook improper execution and altercation of endorsements and/or assignments in attempt justify their legal authority, and further undertook procedural delays to avoid the Court addressing their legal authority, which was aimed at the illegitimate collateral objective of obtaining an order of foreclosure of the Mortgage now 11 years after Action 1 was initiated.

96. As a direct and proximate result of Plaintiff and/or Nationstar's improper actions as specified herein, Defendants have sustained actual, statutory, consequential, incidental, compensatory and special damages in an amount to be determined by the trier of fact at a trial of this case.

97. In addition to the actual, statutory consequential, compensatory and incidental damages suffered, Defendants are informed and believe that Plaintiff and Nationstar's willful, reckless, and wanton, conduct as specified in certain causes of action in this Complaint entitle Defendants to an award of punitive damages.

**FOR AND AS A SIXTHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
AGAINST PLAINTIFF AND AS A CROSS CLAIM AGAINST NATIONSTAR
(MALICIOUS PROSECUTION)**

98. Defendants incorporate all preceding Paragraphs as though fully set forth herein.

99. Plaintiff and Nationstar, and/or their alleged predecessors in interest initiated Action 1 which was subsequently dismissed by Dismissal 1.

100. Plaintiff and Nationstar, and/or their alleged predecessors in interest initiated Action 2 which was subsequently dismissed by Dismissal 2.

101. An action being stricken from the active roster pursuant to Rule 40(j), SCRCP is equivalent to a dismissal.

102. Rule 41, SCRCP, states in relevant part "an action may be dismissed by the plaintiff without order of court . . . (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless, otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, *except that a notice of dismissal operates as adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the*

United States or of any state an action based on or including the same claim.” Rule 41(a) (1) (B), SCRCP.

103. Action 1 and Action 2 were based on the same claim for foreclosure of the same Mortgage.

104. Dismissal 2 constituted and adjudication upon the merits pursuant to Rule 41, SCRCP.

105. Plaintiff and/or Nationstar by and/or at their instance initiated Action 3, when they were precluded from doing so pursuant to Rule 41, SCRCP.

106. Plaintiff and/or Nationstar failed to prosecute Action 3 and moved for and were granted Dismissal 3 when Action 3 was called for trial.

107. Plaintiff and/or Nationstar lacked probable cause to institute action 3 and further acted with malice in instituting Action 3 and failing to prosecute Action 3.

108. Plaintiff and/or Nationstar by and/or at their instance initiated Action 4 when they were precluded from doing so pursuant to Rule 41, SCRCP and the doctrine of collateral estoppel.

109. Plaintiff and/or Nationstar lacked probable cause to institute action 4 and further acted with malice in instituting Action 4 by failing to apprise the Court of Action 1, Action 2, and Action 3.

110. A person of ordinary intelligence standing in the shoes of Plaintiff and/or Nationstar and apprised of the facts and circumstances as set forth herein would not honestly believe that there was probable cause to initiate Action 3 or at their instance initiate Action 4.

111. As a direct and proximate result of Plaintiff and/or Nationstar’s improper actions as specified herein, Defendants have sustained actual, statutory, consequential, incidental,

compensatory and special damages in an amount to be determined by the trier of fact at a trial of this case.

112. In addition to the actual, statutory consequential, compensatory and incidental damages suffered, Defendants are informed and believe that Plaintiff and Nationstar's willful, reckless, and wanton, conduct as specified in certain causes of action in this Complaint entitle Defendants to an award of punitive damages.

**FOR AND AS A SEVENTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
AGAINST PLAINTIFF AND AS A CROSS CLAIM AGAINST NATIONSTAR
(Unfair Trade Practices)**

113. Defendants incorporate all preceding Paragraphs as though fully set forth herein.

114. Plaintiff and Nationstar are engaged in commerce and the business originating, owning, holding, and/or servicing mortgage loans.

115. Neither Plaintiff nor Nationstar are a holder in due course.

116. Plaintiff and Nationstar, and/or their alleged predecessors in interest have engaged in unfair or deceptive acts or practices in the conduct of commerce which is unlawful and in violation of the Unfair Trade Practices Act of South Carolina, by engaging in unfair and deceptive acts and practices including but not limited to: claiming as owed unconscionable interest amounts pursuant to unconscionable terms of the Note; seeking to enforce security for a note which contains unconscionable terms; making false and misleading representations to Defendants and the Court regarding the actual terms of the loan and Plaintiff and Nationstar and/or their predecessors in interest's right to enforce the Note and Mortgage, who the holder of the Note and Mortgage was at various time between now and 2009, assignments of the mortgage, endorsements of the note, that Plaintiff and Nationstar, and/or their predecessor's interest were real parties in interest, and Plaintiff's general standing to bring this action, Action 1, Action 2,

and Action 3 against Defendants; causing alleged endorsements of the Note to be improperly executed and/or altered after execution; causing alleged assignments of the Mortgage to be improperly executed and/or filed without authority; initiating and maintaining Actions 3 and 4 when they were barred by Rules 40 and 41, res judicata and/or collateral estoppel; by continuing for 11 years to seek to prosecute the foreclosure of the Mortgage when Plaintiff and Nationstar, and/or their alleged predecessors already failed to prosecute the foreclosure of the Mortgage in a timely and judicious manner for more than a decade; by misrepresenting that Plaintiff and Nationstar and/or their alleged predecessors in interest had the authority to agree to a short sale the Property and would do if Defendants brought them a reasonable sale contract; by mispresenting that Plaintiff and Nationstar and/or their alleged predecessors in interest had the authority to agree to enter into a Workout and/or forbearance agreement with Defendants and if the Defendants complied with the terms of the Agreement then Plaintiff and Nationstar and/or their alleged predecessors in interest had the authority to agree and would agree to a modification of the Note.

117. Plaintiff and/or Nationstar's unfair and deceptive acts or practices have an impact on the public interest of consumers of this State and have the potential for repetition.

118. Upon information and belief Plaintiff and Nationstar have engaged in similar acts and practices in the past, including but not limited to as set for in the Order filed on December 16, 2016, in Civil Action 2012-CP-15-00166, and are likely to engage in such illegal activities in the future.

119. As a direct result of Plaintiff and Nationstar's actions Defendants have been damaged as set forth herein and as may be proven at trial.

120. Defendants believe they are entitled to have the damages awarded by the trier of fact trebled because the conduct described herein was willful and with reckless disregard for the truth.

121. Defendants believe they are entitled to an award of attorney's fees and expenses of this litigation, along with actual damages, compensatory damages, statutory damages, incidental damages and all other appropriate damages to be considered by the trier of fact.

MARY LEIGH ARNOLD, PA
S/MARY LEIGH ARNOLD [#419]
749 JOHNNIE DODDS BLVD., SUITE B
MT. PLEASANT, SC 29464
PHONE: 843-971-6053
SAMMIE@MARYARNOLDLAW.COM
ATTORNEY FOR CURT AND JULIE ROGERS

August 13, 2020

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

JUDGMENT IN A CIVIL CASE

Case No.: 09-CP-10-540

Aurora Loan

Plaintiff

versus

Rogers

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☐ **DECISION BY 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 _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by Court

Dated at Charleston, South Carolina,

2/24/2010

Date

Judge

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

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

FILED

2010 MAR -9 PM 12:52

JULIE J. ARMSTRONG
CLERK OF COURT

BY

503.1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Aurora Loan Services, LLC,

PLAINTIFF,

vs.

Curtis Rogers a/k/a Curits L. Rogers, III, Julie J. Rogers,
National City Bank, Shoreline Farms Community
Association, Inc., and Harbor National Bank,

DEFENDANTS.

F29-04814

IN THE COURT OF COMMON PLEAS

ORDER REMOVING CASE FROM
ACTIVE DOCKET

(NON-JURY MORTGAGE
FORECLOSURE)

C/A NO:2009-CP-1023840

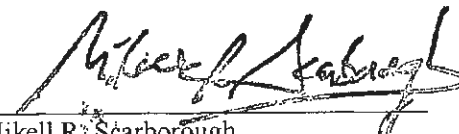
DEFICIENCY WAIVED

FILED
2009 MAR -9 PM 12:54
CLERK OF COURT
ARMSTRONG

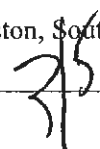
It appearing that the within case was one of foreclosure of a mortgage, and that the parties have agreed to enter into a loss mitigation agreement in an attempt to cure the Defendant(s) arrearage now, upon motion of the Korn Law Firm, P.A., Attorneys for Plaintiff,

IT IS HEREBY ORDERED that this case be struck from the roster of active cases with leave to restore.

AND IT IS SO ORDERED.


Mikell R. Scarborough
Master in Equity

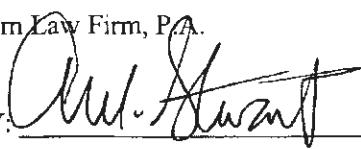
Charleston, South Carolina

 2010

I SO MOVE:

Korn Law Firm, P.A.

BY:


PETER D. KORN / JOHN S. KAY
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH S. LEE
Attorneys for the Plaintiff
P. O. Box 11264
1300 Pickens Street
Columbia, SC 29201
(803) 252-5817

51015-01

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-10-1805

Nationstar Mortgage, LLC

Curtis Rogers, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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. ☐ See Page 2 for additional information.
- ☐ **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, 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 :

FILED
2014 JUN 24 AM 9:55
JILLIE J. ARMSTRONG
CLERK OF COURT

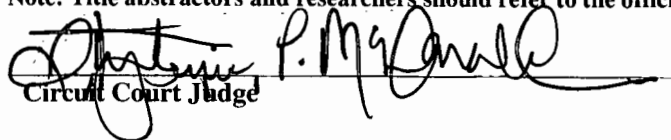
INFORMATION FOR THE JUDGMENT INDEX

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

2163
Judge Code

6/19/2014
Date

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Nationstar Mortgage, LLC,
[X] Plaintiff,
vs.

CASE NO. 2011-CP-10-01805

Curtis Rogers, et al.
[] Defendant

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

check box above indicating submitting party)

Name, SC Bar no. and address of Plaintiff's attorney

Dean A. Hayes—66066

Korn Law Firm, P.A.

1300 Pickens Street

Columbia, SC 29201

Telephone: 803-252-5817

Fax: 803-252-9501

E-mail: collect@kornlawfirm.com

Other:

Name, SC Bar no. and address of Defendant's attorney

Mary Leigh Arnold—

Alice F. Paylor—

749 Johnnie Dodds Blvd., Ste. B

134 Meeting St., Suite 200

Mt. Pleasant, SC 29464

Charleston, SC 29401

Fax: 843-971-6055

Fax: 843-724-8036

Telephone: 843-971-6053

Telephone: 843-266-8105

E-mail:

E-mail:

[] MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

[X] FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

[X] PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: YES [] NO [X]

SECTION II: Motion/Order Type

[] Written motion attached

[X] Form Motion/Order: **40(j) CONSENT MOTION STRIKING CASE FROM ACTIVE DOCKET**

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

Signature of Attorney for Plaintiff [X] Defendant []

Date Submitted

SECTION III: Motion Fee

[X] PAID – AMOUNT: \$25.00

[] EXEMPT:

[] Rule to Show Cause in Child or Spousal Support

[] Domestic Abuse or Abuse and Neglect

(check reason)

[] 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: \$150.00 restore fee

JUDGE'S SECTION

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

[] Other:

JUDGE

JUN 19 2014

CODE: 2163

Date:

CLERK'S VERIFICATION

Collected by: _____
(print name)

Date Filed: _____

[] MOTION FEE COLLECTED: _____

[] CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Nationstar Mortgage, LLC,

Plaintiff,

vs.

Curtis Rogers a/k/a Curtis L. Rogers III, Julie J. Rogers, National City Bank, Shoreline Farms Community Assoc., Inc., and Harbor National Bank,

Defendants.

IN THE COURT OF COMMON PLEAS

**CONSENT ORDER STRIKING CASE
FROM ACTIVE DOCKET PURSUANT
TO RULE 40(j)**(NON-JURY MORTGAGE
FORECLOSURE)

C/A NO: 2011-CP-10-01805

F29-04814

IT APPEARING THAT Plaintiff, Nationstar Mortgage, LLC, with the consent of counsel for Curtis Rogers & Julie J. Rogers request that the above-captioned foreclosure action be stricken from the active roster pursuant to Rule 40(j) with leave to restore.

Pursuant to Rule 40(j), the parties agree that if the case is restored upon motion made upon one year of the date stricken, the statute of limitations shall be tolled during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored.

THEREFORE, IT IS ORDERED that this case be stricken from the active roster with leave to restore.

June 19, 2014
Charleston, SC


PRESIDING JUDGE

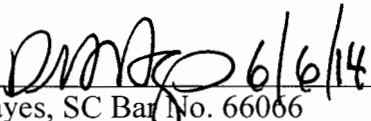
2014 JUN 24 AM 9:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

[CONSENT SIGNATURE PAGE TO FOLLOW]

WE CONSENT:

KORN LAW FIRM, P.A.



Dean A. Hayes, SC Bar No. 66066
Post Office Box 12369
Columbia, SC 29202
Telephone: (803) 252-5817
ATTORNEY FOR PLAINTIFF

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold
749 Johnnie Dodds Boulevard, Suite B
Mount Pleasant, SC 29465
Telephone: (843) 971-6053
ATTORNEY FOR DEFENDANTS ROGERS

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-1971

Aurora Loan Services

Curtis Rogers

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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, 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: By consent of the parties, (see attached), this case is Ordered stricken pursuant to Rule 40(j).

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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

2134

Judge Code

Date

5/13/16

To: Don Michel; 'John B. Kelchner'

Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

Thanks Don. Pursuant to my conversation with John I just want a simple Order that says case struck pursuant to Rule 40j. Thanks Sammie

MARY LEIGH ARNOLD, P.A.

749 Johnnie Dodds Blvd, Suite B

Mt. Pleasant, S.C. 29464

(843) 971-6053

email: sammie@maryarnoldlaw.com

CONFIDENTIAL & PRIVILEGED

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

-----Original Message-----

From: Don Michel [mailto:DMichel@charlestoncounty.org]

Sent: Thursday, May 12, 2016 2:40 PM

To: 'John B. Kelchner'

Cc: 'Sammie Arnold'; 'hayes@hollergarner.com'

Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

Thank you very much. We will enter a form order striking the case and attaching these emails to the order. It should be filed at some point next week.

Don

Don Michel

Court Management Supervisor

Charleston County Clerk of Court

Direct: 843-958-5013

<http://clerkofcourt.charlestoncounty.org>

Track your cases at courtplus.org from any internet connected device.

-----Original Message-----

From: John B. Kelchner [mailto:John.Kelchner@hutchenslawfirm.com]

Sent: Thursday, May 12, 2016 2:39 PM

To: Don Michel

Cc: 'Sammie Arnold'; 'hayes@hollergarner.com'

Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

Don,

I have been in touch with Nationstar today about this and they are aware of tomorrow's roster meeting and trial roster next week. I do not know if Nationstar will be retaining our services but would request that the case be struck so that Nationstar can retain new counsel.

Thanks, John

Hutchens Law Firm

John B. Kelchner | Associate Attorney

mailto:John.Kelchner@hutchenslawfirm.com

240 Stoneridge Drive, Suite 400 | Columbia, SC 29210 P.O. Box 8237 | Columbia, SC 29202

T: 803-726-2700 Ext:2704 | F: 803-726-2832

<http://HutchensLawFirm.com>

-----Original Message-----

From: Don Michel [mailto:DMichel@charlestoncounty.org]

Sent: Thursday, May 12, 2016 12:38 PM

To: John B. Kelchner

Cc: 'Sammie Arnold'; 'hayes@hollergarner.com'

Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

So I just want to confirm that you have the authority to consent to this 40(j) when you no longer counsel? I will print this email and attach it to the order if so.

Don Michel

Court Management Supervisor

Charleston County Clerk of Court

Direct: 843-958-5013

https://mailgate.hutchenslawfirm.com/enduser/classify_url.html?url=7lnlwZWRWBbaOooyWlwOk46hM1MlkEQVMzgZDRiiubsC/OWZ/rFNWZ6wXDPxNw/2

Track your cases at courtplus.org from any internet connected device.

-----Original Message-----

From: John B. Kelchner [mailto:John.Kelchner@hutchenslawfirm.com]

Sent: Thursday, May 12, 2016 12:37 PM

To: Don Michel
 Cc: 'Sammie Arnold'; 'hayes@hollergarner.com'
 Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

Don,

I spoke with Sammie and she consented to the 40(j). Would this email be sufficient to reflect that consent and for the Judge to issue a form 40(j) order?

Thanks, John

Hutchens Law Firm

John B. Kelchner | Associate Attorney

mailto:John.Kelchner@hutchenslawfirm.com

240 Stoneridge Drive, Suite 400 | Columbia, SC 29210 P.O. Box 8237 | Columbia, SC 29202
 T: 803-726-2700 Ext:2704 | F: 803-726-2832

<http://HutchensLawFirm.com>

-----Original Message-----

From: Don Michel [mailto:DMichel@charlestoncounty.org]
 Sent: Thursday, May 12, 2016 12:34 PM
 To: John B. Kelchner
 Cc: 'Sammie Arnold'; 'Dean Hayes'
 Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

John,

Thank you for the update. A 40(j) must be by consent order so we would need that from you and Sammie if you are wishing to proceed that way. Are you able to sign a consent order on their behalf? If not, Judge Young may do an order dismissing it without prejudice. Not sure where this case is on the statute of limitations though so you two talk again and let me know how you would like to proceed?

Don

Don Michel
 Court Management Supervisor
 Charleston County Clerk of Court
 Direct: 843-958-5013
https://mailgate.hutchenslawfirm.com/enduser/classify_url.html?url=7InlwZWRWBbaOooyWlwOk46hM1MikEQVMzgZDRiiubsC/OWZ/rFNWZ6wXDPxNw/2

Track your cases at courtplus.org from any internet connected device.

-----Original Message-----

From: John B. Kelchner [mailto:John.Kelchner@hutchenslawfirm.com]

Sent: Thursday, May 12, 2016 12:31 PM

To: Don Michel

Cc: 'Sammie Arnold'; 'Dean Hayes'

Subject: RE: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

Importance: High

Don,

This is a matter that I handled when I was working at Korn Law Firm. I left Korn in 2014 and the firm retained the file. As you probably know, Korn Law Firm was taken over by Butler & Hosch, which closed last May. Our firm has not been transferred this file. I have reached out to Nationstar to notify them of the meeting tomorrow and roster next week.

Given the unusual circumstances regarding the delay in this case, I would respectfully request that the Court issue an Order Striking the Case from the Active Docket pursuant to Rule 40(j) so that Nationstar can determine how it wishes to proceed. I have spoken with Ms. Arnold who is counsel for the Defendant Curtis Rogers and she has graciously consented to my request to remove the case.

If you have any questions or concerns, please do not hesitate to contact me. I greatly appreciate your consideration in this matter.

John

Hutchens Law Firm

John B. Kelchner | Associate Attorney

mailto:John.Kelchner@hutchenslawfirm.com

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<http://HutchensLawFirm.com>

-----Original Message-----

From: cpas@charlestoncounty.org [mailto:cpas@charlestoncounty.org]

Sent: Thursday, May 12, 2016 8:52 AM

To: John B. Kelchner

Subject: Case 2015CP1001971- Aurora Loan Services Llc VS Curtis Rogers , defendant, et al added to Court Roster for period 2016-05-16 through 2016-05-20.

THE REFERENCED CASE IS ON THE JURY TRIAL ROSTER FOR THE WEEK OF MAY 16, 2016. UNLESS YOU HAVE ALREADY BEEN EXCUSED, ATTENDANCE AT TOMORROW'S ROSTER MEETING IS MANDATORY EITHER ONLINE VIA THE CLERK OF COURT CHAT ROOM OR IN PERSON IN COURTROOM 4B AT 9:30AM. THE COMPLETE LIST OF CASES FOR NEXT WEEK CAN BE FOUND ON THE UPDATE TEXT LINK LOCATED ON THE JURY TRIAL ROSTER ONLINE.

QUESTIONS SHOULD BE DIRECTED TO DON MICHEL AT: DMICHEL@CHARLESTONCOUNTY.ORG. OR (843) 958-5013

[Insert your disclaimer here]

[Insert your disclaimer here]

[Insert your disclaimer here]

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL DISTRICT

Deutsche Bank Trust Company) Civil Action No. 2019-CP-10-04503
Americas, as Trustee for Residential)
Accredit Loans, Inc., Pass-Through)
Certificates 2007-QH2,)

Plaintiff,)

v.)

Ashley Johnson Beshera as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010; Shoreline Farms)
Community Association, Inc.; Wells)
Fargo Bank, N.A.; and Cadle Rock)
Venture, L.P. an Ohio Limited)
partnership,)

Defendants,)

Ashley Johnson Beshera as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010,)

Third-Party Plaintiff,)

v.)

Nationstar Mortgage LLC,)

Third-Party Defendant.)

**PLAINTIFF AND THIRD-PARTY DEFENDANT’S MOTION
TO DISMISS DEFENDANT’S COUNTERCLAIMS AND THIRD-PARTY COMPLAINT**

Pursuant to Rule 12(b)(6) Plaintiff Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2 (“Deutsche Bank”) and Third-Party Defendant Nationstar Mortgage LLC (“Nationstar”) respectfully seek dismissal of the

Counterclaims and Third-Party Complaint filed by Defendant Ashley Johnson Beshara as Trustee (“Beshara”). In the Counterclaims and Third-Party Complaint, Beshara alleges the following claims against Deutsche Bank and Nationstar: (1) Demand for Accounting; (2) Negligent Misrepresentation; (3) Abuse of Process; (4) Malicious Prosecution; (5) Violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”); and (6) Declaratory Judgment.

For the following reasons, the Counterclaims and Third-Party Complaint alleged should be dismissed with prejudice for failure to state a claim:

ARGUMENT

1. Beshara’s Counterclaims and Third-Party Complaint are time barred.

The claims alleged in the Beshara’s Counterclaims and Third-Party Complaint are time barred in-whole or in-party pursuant to applicable statute of limitations. *See* S.C. Code Ann. §§ 15-3-530(1), (5) & (7) (setting three-year statute of limitation for actions concerning “injury to the person or rights of another not arising in contract and not enumerated by law” and “relief on ground of fraud”); S.C. Code Ann. § 15-3-535; S.C. Code Ann. § 39-5-150 (“No action may be brought under this article more than three years after discovery of the unlawful conduct which is the subject of the suit.”). Here, Beshara’s claims for declaratory judgment, negligent misrepresentation, abuse of process, malicious prosecution, and violation of the SCUPTA, which concern origination of the mortgage loan being foreclosed; loss mitigation events; litigation of previously filed foreclosure actions; and standing to foreclose are all based on facts and circumstances that arose more than three years before Beshara filed her Counterclaims and Third-Party Complaint. Accordingly, all of the Beshara’s Counterclaims and claims alleged in the Third-Party Complaint are time barred.

2. Beshara lacks standing to challenge the terms of the mortgage loan and lacks standing to challenge any endorsements on the note or transfer of the mortgage loan being foreclosed.

Beshara lacks standing to challenge the terms of the mortgage loan and cannot assert any claims based on any endorsements on the note or transfers or assignments of the mortgage being foreclosed. Critically, Beshara is not a party to the mortgage loan or intended beneficiary of any assignments or agreements to transfer the note and mortgage that the Intervenor signed. *See Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 445, 494 S.E. 2d 827, 833 (Ct. App. 1997) (“Generally, a third person not in privity of contract with the contracting parties has no right to enforce a contract. However, when the contract is made for the benefit of the third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person”); *see, e.g., Doherty v. PNC Mortg.*, C/A No. 0:14-cv-4013-TLW-SVH, 2015 WL 5012781, at *3 (D.S.C. July 16, 2015) *adopted in-part by* 2015 WL 5012823, at *1 (D.S.C. August 21, 2015) (holding that devisee of real property lacked standing to challenge assignment of note and mortgage because she was not party to the agreement transferring the note and mortgage or a party to either the note or mortgage); *Reese v. U.S. Bank Ass’n*, C/A No. 3:11-cv-2990-CMC-SVH, 2012 WL 1952819, at *3 (D.S.C. Apr. 30, 2012) (“Plaintiff lacks standing to contest the Assignment of Mortgage. Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity.”).

3. In addition to being time barred, Beshara’s negligent misrepresentation claim fails to state any cause of action under South Carolina law.

The negligent misrepresentation claim alleged by Beshara is fatally flawed and subject to dismissal with prejudice for the following reasons:

First, as a matter of law, neither Deutsche Bank nor Nationstar owed any duty to tort to the Beshara. *See Regions Bank v. Schmauch*, 354 S.C. at 670, 582 S.E.2d at 444 (recognizing that bank owed not duty in tort to notify obligor of obligations or loan renewals related to guaranty agreement). Indeed, she is not party to the mortgage loan that is being foreclosed by Deutsche Bank.

Next, the Beshara cannot demonstrate that either Deutsche Bank or Nationstar made any representations directly to Beshara or any reliance on any purported representations because she affirmatively denies all allegations related to either Nationstar or Deutsche Bank's standing to secure a foreclosure remedy in this action. (Countercl. & Third-Party Compl. at ¶¶ 3 & 16.)

Finally, Beshara's negligent misrepresentation claim cannot be based on any transfer or assignment of the mortgage loan being foreclosed. In the prior foreclosure action cited in Beshara's pleadings, the Intervenor's conceded that the mortgage loan being foreclosed was properly transferred to Nationstar because the Intervenor's never prosecuted their motion to vacate the court's order substituting Nationstar as the foreclosing plaintiff in civil action no. 2011-CP-10-01805.

4. In addition to being time barred in-part, Beshara cannot maintain either an abuse of process or malicious prosecution claim against Nationstar.

Beshara's claims for abuse of process and malicious prosecution are subject to dismissal with prejudice as to Nationstar because Nationstar did not file the current foreclosure action and because multiple entries of Rule 40(j) Orders in the prior foreclosure actions concerning the mortgage loan identified in Deutsche Bank's complaint do not preclude this current action. *See* S.C. R. Civ. P. 40(j) & 41(a)(1).

5. The abuse of process claim is subject to dismissal because it is defectively pleaded.

The abuse of process claim is subject to dismissal with prejudice because Beshara fails to allege how the prosecution of this foreclosure action is aimed at some improper collateral purpose that this foreclosure proceeding is not designed to achieve. *See, e.g., Food Lion, Inc. v. United Food Commercial Works Intern. Union*, 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002) (affirming dismissal of abuse of process claim where plaintiff failed to allege how use of court process was designed to achieve improper collateral purposes that legal process was not designed to achieve).

6. The fatally flawed malicious prosecution claim must be summarily dismissed under South Carolina law.

The malicious prosecution claim is subject to dismissal with prejudice because Beshara cannot demonstrate termination of any prior litigation in their favor, lack of probable cause for instituting any alleged prior foreclosure action, malice, or any purported damages resulting therefrom. *See, e.g., Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 436-37, 629 S.E. 2d 642, 649 (Sup. Ct. 2006) (affirming trial court's award of summary judgment to defendant where plaintiff failed to prove termination of prior litigation in plaintiff's favor, lack of probable cause for defendants' legal proceeding, and malice). Critically, Beshara was not a party in any of the prior foreclosure actions identified in her Counterclaims and Third-Party Complaint.

7. In addition to being time barred, Beshara's SCUTPA claim fails as matter of law.

The SCUTPA claim must be dismissed for the following reasons:

First, the SCUTPA claim cannot be based on the terms of the mortgage loan that Intervenor signed because neither Deutsche Bank nor Nationstar originated the loan. As mere assignees of the mortgage loan, Deutsche Bank and Nationstar are subject to any claims arising from origination of the loan. *See Rosemond v. Campbell*, 288 S.C. 516, 523, 343 S.E.2d 641, 645

(Ct. App. 1986) (“[A]bsent agreement to the contrary, the common law assignee takes only the benefits, not the burdens of the assigned obligation. Thus, as against the assignee, the obligor can only assert a claim defensively when the assignee seeks to enforce the obligation; he has no common law right to sue the assignee affirmatively on a claim against the assignor arising from the underlying obligation.”)

Next, because Beshara lacks standing to challenge any endorsements or assignments or transfers of the mortgage loan being foreclosed, she cannot maintain her SCUPTA claim based on any challenge to the transfers of the Intervenor’s mortgage since the mortgage loan was originated.

Further, the SCUTPA claim cannot be based on the procedural history of the prior foreclosure action because they were filed, dismissed and the reinstated with the Intervenor’s consent and as permitted by the South Carolina Rules of Civil Procedure. Moreover, Beshara was not a party to any of the prior foreclosure proceedings. Accordingly, the SCUTPA claim cannot be based on the events that transpired in the prior foreclosure action identified in the Counterclaims and Third-Party Complaint. *See* S.C. Code Ann. § 39-5-40(a); S.C. R. Civ. P. 40(j); S.C. R. Civ. 41(a)(1).

Finally, the Beshara’s SCUTPA claim fails because she has failed to identify any pecuniary loss supporting her SCUTPA claim.

8. In addition to being time barred, the declaratory judgment action fails because none of the allegations for the claim states any viable claim for relief under South Carolina law.

Beshara’s claim for declaratory judgment fails as a matter of law for the following reasons:

First, the application of Rule 40(j) during the prior foreclosure action does not preclude this current action under South Carolina law. *See* S.C. R. Civ. P. 40(j) & 41(a).

Next, as stated previously, Beshara's lack of standing to challenge any endorsements or assignments of the mortgage loan preclude her from basing her declaratory judgment action on any transfer of the mortgage loan. Indeed, under South Carolina law, Deutsche Bank's constructive possession¹ of the original note, with all proper endorsements, provide Deutsche Bank with standing to prosecute this current action. *See* S.C. Code Ann. § 36-3-301; *Bank of America, N.A. v. Draper*, 405 S.C. 214, 223-24, 746 S.E.2d 478, 483 (Ct. App. 2013) (recognizing the party in possession of promissory note for mortgage subject to foreclosure was the holder of the note with standing to foreclose); *see also* *MidFirst Bank, SSB v. C.W. Haynes & Co., Inc.*, 893 F.Supp 1304, 1314 (D.S.C. 1994) (“[T]he possession required by the [Commercial] Code to constitute a person a ‘holder’ may be constructive possession by delivery to one on his behalf. Thus a person is a ‘holder’ of commercial paper when it is in the physical possession of his agent.”). Indeed, even if the note at issue in this foreclosure action was not in Deutsche Bank's constructive possession or if the note contained any defective endorsements as alleged in the Intervenor's pleadings, the declaratory judgment claim fails because under South Carolina, “[a] person may be entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.” S.C. Code Ann. § 36-3-301; *see also*, *Koola v. Ditech Financial LLC*, 611 B.R. 251, 258-60 (D.S.C. 2019) (holding that a servicer of mortgage loan could enforce instrument, even though the note was lost and holding that transferee of lost instrument also had standing to enforce mortgage loan).

Finally, the declaratory judgment fails because under South Carolina law, Article 3 of the Commercial Code—not assignments of a mortgage—dictates whether a party is entitled to foreclose a mortgage that secures a note in the possession of the foreclosing plaintiff. *See Bank of*

¹ The original note and mortgage are currently in the physical possession of Deutsche Bank's foreclosure counsel, The Finkel Law Firm.

America, N.A. v. Draper, 405 S.C. at 223-24, 746 S.E.2d at 483 (applying provision of S.C. Code Ann. § 36-3-301 to determine rights of servicer to foreclose mortgage loan).

CONCLUSION

For all the reasons stated herein, the Court should grant Deutsche Bank's and Nationstar's motion to dismiss the Beshara's Counterclaims and Third-Party Complaint with prejudice; award Deutsche Bank and Nationstar the fees and costs incurred for defense of the Beshara's Counterclaims and Third-Party Complaint; award such further relief to Deutsche Bank and Nationstar that Court finds just and warranted.

Deutsche Bank and Nationstar reserve the right to supplement this motion with further statutory and common law authorities, arguments, briefing, evidence, and other materials before any merits hearing for this motion.

Respectfully submitted on this 9th day of September 2020.

/s/Brian A. Calub
 Brian A. Calub (S.C. Bar No. 72009)
 McGuire Woods LLP
 201 North Tryon Street, Suite 3000
 Charlotte, NC 28202
 Phone: 704-343-2009
 E-Mail: bcalub@mcguirewoods.com

*Counsel for Plaintiff Deutsche Bank Trust
 Company Americas, as Trustee for
 Residential Accredited Loans, Inc., Pass-
 Through Certificates 2007-QH2 and
 Third-Party Defendant Nationstar Mortgage
 LLC*

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL DISTRICT

Deutsche Bank Trust Company) Civil Action No. 2019-CP-10-04503
Americas, as Trustee for Residential)
Accredit Loans, Inc., Pass-Through)
Certificates 2007-QH2,)

Plaintiff,)

v.)

Ashley Johnson Beshara as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010; Shoreline Farms)
Community Association, Inc.; Wells)
Fargo Bank, N.A.; and Cadle Rock)
Venture, L.P. an Ohio Limited)
partnership,)

Defendants,)

Ashley Johnson Beshara as Trustee of the)
Revocable Trust Agreement for 2235)
Shoreline Drive originally dated 3rd day)
of March 2010,)

Third-Party Plaintiff,)

v.)

Nationstar Mortgage LLC,)

Third-Party Defendant.)

**PLAINTIFF AND THIRD-PARTY DEFENDANT'S
MOTION TO DISMISS INTERVENORS' COUNTERCLAIMS AND CROSS-CLAIMS**

Pursuant to Rule 12(b)(6), Plaintiff Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2 ("Deutsche Bank") and Third-Party Defendant Nationstar Mortgage LLC ("Nationstar") and respectfully seek dismissal

of the Counterclaims and Cross-Claims alleged by Intervenors Craig and Julie Rogers (“Intervenors”). In the Counterclaims and Cross-Claims, the Intervenors allege the following claims against Deutsche Bank and Nationstar: (1) Declaratory Judgment; (2) Negligent Misrepresentation; (3) Abuse of Process; (4) Malicious Prosecution; and (5) Violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”).

For the following reasons, the Counterclaims and Cross-Claims alleged should be dismissed with prejudice for failure to state a claim:

ARGUMENT

1. The Intervenors’ Counterclaims and Cross-Claims are time barred.

The claims alleged in the Intervenors’ counterclaims and cross-claims are time barred in whole or in-party pursuant to applicable statute of limitations. *See* S.C. Code Ann. §§ 15-3-530(1), (5) & (7) (setting three-year statute of limitation for actions concerning “injury to the person or rights of another not arising in contract and not enumerated by law” and “relief on ground of fraud”); S.C. Code Ann. § 15-3-535; S.C. Code Ann. § 39-5-150 (“No action may be brought under this article more than three years after discovery of the unlawful conduct which is the subject of the suit.”). The Intervenors’ claims for declaratory judgment, negligent misrepresentation, abuse of process, malicious prosecution, and violation of the SCUPTA, which concern origination of the mortgage loan being foreclosed; loss mitigation events; litigation of previously filed foreclosure actions; and standing to foreclose are all based on facts and circumstances that the Intervenors were aware of more than three years before the filed their Counterclaims and Cross-Claims. Accordingly, all of the Intervenors’ Counterclaims and Cross-Claims are time barred.

2. The Intervenor lack standing to challenge any endorsements on the note or transfer of the mortgage loan being foreclosed.

The Intervenor lack standing to assert any claims based on any endorsements on the note or transfers or assignments of the mortgage being foreclosed. The Intervenor are not parties or intended beneficiaries of any assignments or agreements to transfer the note and mortgage that the Intervenor signed. *See Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 445, 494 S.E. 2d 827, 833 (Ct. App. 1997) (“Generally, a third person not in privity of contract with the contracting parties has no right to enforce a contract. However, when the contract is made for the benefit of the third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person”); *see, e.g., Doherty v. PNC Mortg.*, C/A No. 0:14-cv-4013-TLW-SVH, 2015 WL 5012781, at *3 (D.S.C. July 16, 2015) *adopted in-part by* 2015 WL 5012823, at *1 (D.S.C. August 21, 2015) (holding that devisee of real property lacked standing to challenge assignment of note and mortgage because she was not party to the agreement transferring the note and mortgage or a party to either the note or mortgage); *Reese v. U.S. Bank Ass’n*, C/A No. 3:11-cv-2990-CMC-SVH, 2012 WL 1952819, at *3 (D.S.C. Apr. 30, 2012) (“Plaintiff lacks standing to contest the Assignment of Mortgage. Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity.”).

3. In addition to being time barred, the Intervenor’s negligent misrepresentation claim fails to state any cause of action under South Carolina law.

The negligent misrepresentation claim alleged by Intervenor is fatally flawed and subject to dismissal with prejudice for the following reasons:

First, as a matter of law, neither Deutsche Bank nor Nationstar owed any duty to tort to the Intervenor. *See Regions Bank v. Schmauch*, 354 S.C. at 670, 582 S.E.2d at 444 (recognizing that

bank owed not duty in tort to notify obligor of obligations or loan renewals related to guaranty agreement).

Next, the Intervenor cannot demonstrate any reliance on any purported representations because they affirmatively deny all allegations related to either Nationstar or Deutsche Bank's standing to secure a foreclosure remedy in this action and the other prior actions identified in the Intervenor's Counterclaims and Cross-Claims. (Countercl. & Cross-Claims at ¶¶ 3 & 16.)

Finally, Intervenor's negligent misrepresentation claim cannot be based on any transfer or assignment of the mortgage loan being foreclosed. In their pleadings, the Intervenor conceded that the mortgage loan being foreclosed was properly transferred to Nationstar because they never prosecuted their motion to vacate the court's order substituting Nationstar as the foreclosing plaintiff in civil action no. 2011-CP-10-01805.

4. In addition to being time barred in-part, Intervenor cannot maintain either an abuse of process or malicious prosecution claim against Nationstar.

Intervenor's claims for abuse of process and malicious prosecution are subject to dismissal with prejudice as to Nationstar because Nationstar did not file the current foreclosure action and because multiple entries of Rule 40(j) Orders in the prior foreclosure actions concerning the mortgage loan identified in Deutsche Bank's complaint do not preclude this current action. *See* S.C. R. Civ. P. 40(j) & 41(a)(1).

5. The abuse of process claim is subject to dismissal because it is defectively pleaded.

The abuse of process claim is subject to dismissal with prejudice because the Intervenor fail to allege how the prosecution of this foreclosure action is aimed at some improper collateral purpose that this foreclosure proceeding is not designed to achieve. *See, e.g., Food Lion, Inc. v. United Food Commercial Works Intern. Union*, 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002)

(affirming dismissal of abuse of process claim where plaintiff failed to allege how use of court process was designed to achieve improper collateral purposes that legal process was not designed to achieve).

6. The fatally flawed malicious prosecution claim must be summarily dismissed under South Carolina law.

The malicious prosecution claim is subject to dismissal with prejudice because the Intervenor cannot demonstrate termination of any prior litigation in their favor, lack of probable cause for instituting any alleged prior foreclosure action, malice, or any purported damages resulting therefrom. *See, e.g., Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 436-37, 629 S.E. 2d 642, 649 (Sup. Ct. 2006) (affirming trial court's award of summary judgment to defendant where plaintiff failed to prove termination of prior litigation in plaintiff's favor, lack of probable cause for defendants' legal proceeding, and malice).

7. In addition to being time barred, Intervenor's SCUTPA claim fails as matter of law.

The SCUTPA claim must be dismissed for the following reasons:

First, the SCUTPA claim cannot be based on the terms of the mortgage loan that Intervenor signed because neither Deutsche Bank nor Nationstar originated the loan. As mere assignees of the mortgage loan, Deutsche Bank and Nationstar are subject to any claims arising from origination of the loan. *See Rosemond v. Campbell*, 288 S.C. 516, 523, 343 S.E.2d 641, 645 (Ct. App. 1986) (“[A]bsent agreement to the contrary, the common law assignee takes only the benefits, not the burdens of the assigned obligation. Thus, as against the assignee, the obligor can only assert a claim defensively when the assignee seeks to enforce the obligation; he has no common law right to sue the assignee affirmatively on a claim against the assignor arising from the underlying obligation.”)

Next, because Intervenorors lack standing to challenge any endorsements or assignments or transfers of the mortgage loan being foreclosed, they cannot maintain their SCUPTA claim based on any challenge to the transfers of the their mortgage since the mortgage loan was originated.

Further, the SCUTPA claim cannot be based on the procedural history of the prior foreclosure action because they were filed, dismissed and the reinstated with the Intervenorors consent and as permitted by the South Carolina Rules of Civil Procedure. Accordingly, the SCUTPA claim cannot be based on the events that transpired in the prior foreclosure action identified in the Counterclaims and Cross-Claims. *See* S.C. Code Ann. § 39-5-40(a); S.C R. Civ. P. 40(j); S.C. R. Civ. 41(a)(1).

Finally, the Intervenorors' SCUTPA claim fails because they have failed to identify any timely pecuniary loss supporting their SCUTPA claim.

8. In addition to being time barred, the declaratory judgment action fails because none of the allegations for the claim states any viable claim for relief under South Carolina law.

Intervenorors' claim for declaratory judgment fails as a matter of law for the following reasons:

First, the application of Rule 40(j) during the prior foreclosure action does not preclude this current action under South Carolina law. *See* S.C. R. Civ. P. 40(j) & 41(a).

Next, as stated previously, the Intervenorors' lack of standing to challenge any endorsements or assignments of the mortgage loan preclude them from basing their declaratory judgment action on any transfer of the mortgage loan. Indeed, under South Carolina law, Deutsche Bank's constructive possession¹ of the original note, with all proper endorsements, provide Deutsche Bank

¹ The original note and mortgage are currently in the physical possession of Deutsche Bank's foreclosure counsel, The Finkel Law Firm.

with standing to prosecute this current action. *See* S.C. Code Ann. § 36-3-301; *Bank of America, N.A. v. Draper*, 405 S.C. 214, 223-24, 746 S.E.2d 478, 483 (Ct. App. 2013) (recognizing the party in possession of promissory note for mortgage subject to foreclosure was the holder of the note with standing to foreclose); *see also* *MidFirst Bank, SSB v. C.W. Haynes & Co., Inc.*, 893 F.Supp 1304, 1314 (D.S.C. 1994) (“[T]he possession required by the [Commercial] Code to constitute a person a ‘holder’ may be constructive possession by delivery to one on his behalf. Thus a person is a ‘holder’ of commercial paper when it is in the physical possession of his agent.”). Indeed, even if the note at issue in this foreclosure action was not in Deutsche Bank’s constructive possession or if the note contained any defective endorsements as alleged in the Intervenor’s pleadings, the declaratory judgment claim fails because under South Carolina, “[a] person may be entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.” S.C. Code Ann. § 36-3-301; *see also*, *Koola v. Ditech Financial LLC*, 611 B.R. 251, 258-60 (D.S.C. 2019) (holding that a servicer of mortgage loan could enforce instrument, even though the note was lost and holding that transferee of lost instrument also had standing to enforce mortgage loan).

Finally, the declaratory judgment fails because under South Carolina law, Article 3 of the Commercial Code—not assignments of a mortgage—dictates whether a party is entitled to foreclose a mortgage that secures a note in the possession of the foreclosing plaintiff. *See Bank of America, N.A. v. Draper*, 405 S.C. at 223-24, 746 S.E.2d at 483 (applying provision of S.C. Code Ann. § 36-3-301 to determine rights of servicer to foreclose mortgage loan).

CONCLUSION

For all the reasons stated herein, the Court should grant Deutsche Bank’s and Nationstar’s motion to dismiss the Intervenor’s Counterclaims and Cross-Claims with prejudice; award

Deutsche Bank and Nationstar the fees and costs incurred for defense of the Intervenor's Counterclaims and Cross-Claims; award such further relief to Deutsche Bank and Nationstar that Court finds just and warranted.

Deutsche Bank and Nationstar reserve the right to supplement this motion with further statutory and common law authorities, arguments, briefing, evidence, and other materials before any merits hearing for this motion.

Respectfully submitted on this 9th day of September 2020.

/s/Brian A. Calub
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*Counsel for Plaintiff Deutsche Bank Trust
Company Americas, as Trustee for
Residential Accredited Loans, Inc., Pass-
Through Certificates 2007-QH2 and
Third-Party Defendant Nationstar Mortgage
LLC*

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

}

COURT OF COMMON PLEAS
CASE No. 2019 CP 10 4503

**DEUTSCHE BANK TRUST COMPANY
AMERICA, AS TRUSTEE FOR
RESIDENTIAL ACCREDIT LOANS, INC.,
PASS-THROUGH CERTIFICATES 2007-
QH2,**

PLAINTIFF,

V.

**ASHLEY JOHNSON BESHARA AS
TRUSTEE OF THE REVOCABLE TRUST
AGREEMENT FOR 2235 SHORELINE
DRIVE ORIGINALLY DATED 3RD DAY OF
MARCH 2010; SHORELINE FARMS
COMMUNITY ASSOCIATION, INC.,;
WELLS FARGO BANK N.A.; CADLE
ROCK VENTURE, L.P. AND OHIO
LIMITED PARTNERSHIP, CURTIS
ROGERS AND JULIE ROGERS,**

DEFENDANTS,

**ASHLEY JOHNSON BESHARA AS
TRUSTEE OF THE REVOCABLE TRUST
AGREEMENT FOR 2235 SHORELINE
DRIVE ORIGINALLY DATED 3RD DAY OF
MARCH 2010,**

THIRD-PARTY PLAINTIFF,

V.

NATIONSTAR MORTGAGE LLC,

THIRD-PARTY DEFENDANT

**DEFENDANTS CURTIS AND JULIE
ROGERS'
MOTION TO COMPEL AND FOR
SANCTIONS**

TO ATTORNEY FOR PLAINTIFF AND THIRD-PARTY DEFENDANT:

PLEASE TAKE NOTICE that at such time and place as may be set by the Court, no sooner than 10 days from today, Curtis Rogers and Julie Rogers (hereinafter “Rogers), by and through their undersigned counsel, will move to compel discovery responses to the discovery served in this case and seek such other and proper relief as is just and proper pursuant to Rules 33, 37 and 41, SCRPC. The basis for this motion is supported herein.

BACKGROUND

This is a foreclosure action that was originally brought in 2009 and subsequently dismissed and refiled three times thereafter. Throughout its lengthy protracted history, the borrower and mortgagees, the Rogers have propounded discovery on Plaintiff, Deutsche Bank Trust Company America (hereinafter “Deutsche”) and Third-Party Defendant, Nationstar Mortgage LLC (hereinafter “Nationstar”). The Rogers most recently propounded upon Deutsche and Nationstar standard interrogatories pursuant to Rule 33(b), SCRPC and additional supplemental requests on April 11, 2022.

On May 13, 2022 Deutsche and Nationstar submitted joint responses to the discovery requests, a copy of which is attached hereto as Exhibit A. The Rogers through their counsel sent to counsel for Deutsche and Nationstar a letter on May 18, 2022, outlining the numerous deficiencies with the discovery responses, a copy of which is attached hereto as Exhibit B. Deutsche and Nationstar never responded to the letter or supplemented their responses.

DISCOVERY

A primary goal of discovery is the disclosure of relevant information. Attempts to thwart that purpose are not viewed favorably by the courts. As the Supreme Court stated in *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001), “[t]he primary objective of

discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed.” The entire thrust of our discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party. *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997). In this respect, the discovery process is designed to “make a trial less a game of blind man’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” See *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958).

Deutsche and Nationstar have elected to engage in abusive and vexatious discovery practices. Several incredulous examples of such are as follows.

DEUTSCHE AND NATIONSTAR WILL NOT PROVIDE THE NAMES OF THEIR WITNESSES THEREFORE THEIR CLAIMS AND DEFENSES SHOULD BE DISMISSED.

The Rogers propounded standard interrogatories as set forth in Rule 33(b), SCRPC. The first question set forth in the Rule is to give the name and address of witnesses. Although Deutsche is the Plaintiff in this matter and has the burden of proof as to its causes, rather than identify any named witness that will testify on its behalf it merely said “a representative” who can be reached through the undersigned counsel. No name was provided. No witness who will appear for Deutsche at trial was given. After demand for a proper response, no response has been given. The same was done by or for Nationstar.

This matter has a Scheduling Order in place that was agreed to by the parties. The period for discovery is several days from ending. Despite the fact that this is the fourth action initiated over the same note and mortgage, discovery is coming to an end and the matter is closely approaching trial, Deutsche and Nationstar continue to refuse to provide the names of the persons who will appear at trial to either prove their claims or defenses. Deutsche and Nationstar’s

intentional behavior defies their ongoing obligation to properly respond to discovery and the thrust of the discovery rules.

Being provided the names of the witnesses that parties plan to call as witnesses at trial is a basic fundamental right. Parties are entitled to know who will testify at trial. Parties are entitled to know what witnesses will say at the time of trial. Parties are entitled to the names of the witnesses so they can depose the witnesses in order to prepare for trial. Here, Deutsche and Nationstar are intentionally obstructing the Rogers from being able to prepare for trial which is highly prejudicial to the Rogers. *See Downey v. Dixon*, 294 S.C. 42, 362 S.E. 2d 317 (Ct App. 1987) (“The rights of discovery provided by the rules give the trial lawyer the means to be prepared for trial. Where these rights are not accorded, prejudice must be presumed...”).

Banking and financial institutions are subject to the South Carolina Rules of Civil Procedure as any other party. They are not an exception to the Rules. Thus, as provided under Rule 41(b), SCRCPP, their failure to follow the Rules and their continued refusal and failure to properly respond after notice and demand, merits the dismissal of their claims and defenses. Rule 41(b), SCRCPP (“For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him.”)

DEUTSCHE AND NATIONSTAR’S OBJECTION TO RULE 33(B) INTERROGATORIES WARRANTS SANCTIONS.

The second incredible example of Deutsche and Nationstar’s abusive discovery practices is their objection to standard interrogatories provided by Rule 33(b), SCRCPP. The Rogers propounded and received the following response to Rule 33(b)(2), SCRCPP:

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party or counsel that relate to any claim or the defense of the case.

ANSWER: Nationstar and DBTCA object to this Interrogatory as the phrase “relate to any claim or defense” is vague, ambiguous, unduly burdensome and/or overly broad. Defendant further objects to the extent this Interrogatory seeks materials protected by the attorney-client privilege and work product doctrine. Subject to and without waiving any objection, Nationstar and DBTCA any document pertaining to the subject loan and mortgage would relate to DBTCA’s Complaint. Additionally, any document produced herewith, produced by any other party, and/or filed in any proceeding involving these parties could relate to Nationstar’s and DBTCA’s defenses.

Exhibit A.

Instead of fully responding to discovery specifically developed and authorized by the South Carolina Supreme Court, Deutsche and Nationstar objected to standard interrogatories using improper boilerplate objections. Deutsche and Nationstar’s behavior is beyond outrageous. Litigates should not be allowed to obstruct the discovery process and require the wasting of time and judicial resources to address their improper and vexatious conduct.

BOILERPLATE OBJECTIONS ARE IMPROPER.

Rather than produce discoverable documents, Deutsche and Nationstar objected to Requests to Produce Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 propounded by the Rogers. They objected with two basic boiler plate objections:

ANSWER: Nationstar and DBTCA object to this Request as vague, ambiguous, neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad.

"An affirmative duty does exist to answer interrogatories and respond to requests to produce.” *CFRE, LLC v. Greenville County Assessor LLC v. Greenville County Assessor*, 395 S.C.

67, 395 S.C. 67, 83, 716 S.E.2d 877, 885 (2011)83, 716 S.E.2d 877, 885 (2011). As stated by the Honorable Roger Young:

Each discovery response, whether to an interrogatory or discovery response, whether to an interrogatory or discovery production is to be answered or objected to separately. The rule is clear that each interrogatory "shall be answered separately and fully in writing..." SCRCF, Rule 33(a). If there are objections to interrogatories or requests for interrogatories or requests for production, "the reasons for objection shall be stated..." SCRCF, Rules 33(a) and 34(b). Whether the reasons are satisfactory is to be decided on a case-by-case basis. However, keeping in mind the general purposes and concepts stated in the rules can help combat frivolous and obfuscatory objections.

Memorandum, Attorneys and Parties with Discovery Motions, August 29, 2019.

The objections are meritless and the relief sought by the Rogers should be granted.

WHEREFORE, the Rogers seek a Court order striking Deutsche and Nationstar's' claims and defenses or in the alternative to immediately require full and prompt answers to the discovery served and grant such other and further relief as is deemed just and proper including the payment of reasonable attorneys' fees and costs.

RESPECTFULLY SUBMITTED,

MARY LEIGH ARNOLD, PA

s/Mary Leigh Arnold (#419)
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL DISTRICT
	)	
Deutsche Bank Trust Company	)	Civil Action No. 2019-CP-10-04503
Americas, as Trustee for Residential	)	
Accredit Loans, Inc., Pass-Through	)	
Certificates 2007-QH2,	)	
	)	
Plaintiff,	)	
	)	NATIONSTAR MORTGAGE LLC
v.	)	AND DEUTSCHE BANK TRUST
	)	COMPANY AMERICAS' ANSWER
Ashley Johnson Beshera as Trustee of the	)	TO DEFENDANT CURTIS AND
Revocable Trust Agreement for 2235	)	JULIE ROGERS' DISCOVERY
Shoreline Drive originally dated 3 rd day	)	REQUESTS
of March 2010; et al.,	)	
	)	
Defendants,	)	
	)	
Ashley Johnson Beshera as Trustee of the	)	
Revocable Trust Agreement for 2235	)	
Shoreline Drive originally dated 3 rd day	)	
of March 2010,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Nationstar Mortgage LLC,	)	
	)	
Third-Party Defendant.	)	
	)	
	)	

NATIONSTAR MORTGAGE LLC AND DEUTSCHE BANK TRUST COMPANY
AMERICAS' ANSWER TO DEFENDANT CURTIS AND JULIE ROGERS'
DISCOVERY REQUESTS

Third-Party Defendant Nationstar Mortgage LLC ("Nationstar") and Plaintiff Deutsche Bank Trust Company Americas, As Trustee For Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2 ("DBTCA") hereby responds to Defendants, Curtis Rogers and Julie Roger

(hereinafter “Rogers”) Interrogatories and Request for Production of Documents pursuant to Rules 26, 33, 34 and 36 of the South Carolina Rules of Civil Procedure as follows:

GENERAL OBJECTIONS AND DEFINITIONS

1. These general objections are incorporated into each of the specific responses that follow. Notwithstanding those responses, Nationstar and DBTCA does not waive any of these general objections.

2. With respect to each response set forth herein, Nationstar and DBTCA’s investigation continues, and Nationstar and DBTCA reserves the right to supplement or amend any responses as necessary and as additional information is obtained through discovery or otherwise.

3. To the extent that Plaintiff’s interrogatories and requests, definitions, or instructions purport to require Nationstar and DBTCA to provide information or documents known only to, or possessed only by, third parties, Nationstar and DBTCA objects to each such interrogatory, request, definition, or instruction.

4. Nationstar and DBTCA objects to Plaintiff’s interrogatories and requests to the extent they seek information protected from discovery by the attorney-client privilege, work product immunity, or any other privilege or immunity. Nationstar and DBTCA will provide only information and documents not subject to any applicable privilege or immunity.

5. Nationstar and DBTCA objects to Plaintiff’s interrogatories and requests to the extent they seek documents or information which is privileged, confidential, proprietary, protected as trade secrets regarding its business practices, or are otherwise non-discoverable.

6. Nationstar and DBTCA objects to Plaintiff’s interrogatories and requests to the extent they seek documents or information which are privileged or made confidential or otherwise

non-discoverable by applicable law, including without limitation any laws requiring the confidential treatment of non-public personal or financial information regarding consumers.

7. Nationstar and DBTCA objects to Plaintiff's interrogatories and requests to the extent they use terms without definition and capable of numerous interpretations and to the extent Plaintiff's interrogatories and requests require Nationstar and DBTCA to speculate at its peril regarding the definition of such terms.

8. These responses are based upon such information as is reasonably available to Nationstar and DBTCA and susceptible to retrieval through reasonable efforts.

9. Nationstar and DBTCA objects to the interrogatories and requests and definitions to the extent they are overly broad or unduly burdensome, to the extent they seek information not reasonably calculated to lead to the discovery of admissible evidence, and to the extent they seek information beyond the scope of the litigation.

10. Unless otherwise noted, Nationstar and DBTCA will provide information only for the time period relevant to the allegations in the litigation.

11. To the extent Nationstar and DBTCA's interrogatories and requests, definitions, or instructions purport to impose any obligation on Nationstar and DBTCA greater than or different from those under the South Carolina Rules of Civil Procedure or beyond any discovery limitations imposed at law or by the Court, Nationstar and DBTCA objects to each such interrogatory, definition, or instruction.

12. Nationstar and DBTCA expressly reserves any and all objections concerning relevance, authenticity, and admissibility of any documents that it may produce in response to Plaintiff's interrogatories and requests.

13. These responses and objections have been prepared in accordance with South Carolina law pursuant to a reasonable and diligent investigation and search, and they represent a good faith effort to ascertain responsive information to the extent such information is available at this stage of discovery. To the extent that these interrogatories and requests purport to require more, Nationstar and DBTCA objects on the grounds that the interrogatories and requests exceed the scope of reasonable permissible discovery contemplated by South Carolina law and would impose an undue burden and expense upon Nationstar and DBTCA.

14. For each answer and specific objection provided in response to any interrogatory, Nationstar and DBTCA reserves the right to supplement its objections and answers in the event that non-privileged, discoverable information or other grounds for objection are identified before the end of the discovery period for this action.

Subject to the foregoing objections, Nationstar and DBTCA responds to Plaintiff's interrogatories and requests as follows:

OBJECTIONS AND ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of any such statements.

ANSWER:

- 1. A representative of Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Pass-Through Certificates 2007-QH2, who can be reached through the undersigned counsel.**
- 2. A representative of Nationstar Mortgage LLC, who can be reached through the undersigned counsel.**
- 3. Curt and Julie Rogers.**
- 4. Ashley Johnson Beshera**

Nationstar is not aware of any recorded or written statements for these witnesses.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party or counsel that relate to any claim or the defense of the case.

ANSWER: Nationstar and DBTCA object to this Interrogatory as the phrase “relate to any claim or defense” is vague, ambiguous, unduly burdensome and/or overly broad. Defendant further objects to the extent this Interrogatory seeks materials protected by the attorney-client privilege and work product doctrine. Subject to and without waiving any objection, Nationstar and DBTCA any document pertaining to the subject loan and mortgage would relate to DBTCA’s Complaint. Additionally, any document produced herewith, produced by any other party, and/or filed in any proceeding involving these parties could relate to Nationstar’s and DBTCA’s defenses.

3. Set forth the names and addresses of all insurance companies, which have liability insurance coverage relating to the claim and set forth the number or numbers of policies involved, and the amount of liability coverage provided in each policy.

ANSWER: Nationstar and DBTCA have conducted a reasonable investigation and has not located any applicable insurance policies.

4. If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleadings reflecting the correct identification.

ANSWER: Third-party Defendant Nationstar Mortgage, LLC is properly identified.

5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: Nationstar and DBTCA have not engaged any expert witnesses to testify in this matter. Nationstar and DBTCA will supplement this response in the event a testifying expert witness is engaged.

6. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by the witness and provide a copy of any written or recorded statements taken from the witness.

ANSWER: Nationstar and DBTCA object to this Request as vague or ambiguous and overly broad. Subject to and without waiving any objection, a Representative of DBTCA has knowledge of its basis for foreclosure. A Representative of Nationstar has knowledge of the loan servicing history and payment history. Curt Rogers has knowledge of the loan and his default. Ashley Johnson Beshera has knowledge that she is or was the transferee of the Rogers' interest in the property.

7. If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

ANSWER: See Response to Interrogatory 4.

8. Set forth the specific terms of the Note and Mortgage that you allege bar Defendants' claims as asserted in Paragraph 124 of your Answer to the Third-Party Complaint..

ANSWER: Nationstar objects to this Interrogatory as vague or ambiguous. Subject to and without waiving any objection, Nationstar states no term in the Note or Mortgage is unconscionable and any claim to unconscionability is defeated by the terms of the Note and Mortgage. Nationstar further states any term of the Note or Mortgage Third-Party Plaintiffs assert was misrepresented to them, by executing the Note and/or Mortgage, Third-Party Plaintiffs acknowledged they read and accepted the written terms of the Note and/or Mortgage.

9. Set forth with specificity the basis for your Eighth Defense in your Answer to the Third-Party Complaint.

ANSWER: Nationstar states discovery is ongoing and they will supplement this Response with any additional, relevant factual information.

10. Set forth names and addresses of the third-parties you reference in Paragraph 130 of your Answer to the Third-Party Complaint.

ANSWER: Nationstar states that, to the extent Third-Party Plaintiffs allege Nationstar is liable for any conduct committed by any alleged predecessor in interest, Nationstar did not control or direct said predecessor in interest.

11. Set forth the statutory caps you reference in Paragraph 131 of your Answer to the Third-Party Complaint.

ANSWER: Nationstar objects to this request as requesting a legal opinion and invasive of the attorney work product doctrine.

12. Set forth the all facts that support your allegation that you are owed a sum of money by Curt Rogers as alleged in Paragraph 127 of your Answer to Cross-claims.

ANSWER: Nationstar states that Curt Rogers owes the unpaid sum under the Note dated January 12, 2007 to Homecomings Financial, LLC.

13. Set forth any support for your allegation that the Cross-claims are barred by the statute of frauds.

ANSWER: Nationstar states discovery is ongoing and they will supplement this Response with any additional, relevant factual information.

OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION

1. PRODUCE any and all records of billings and invoices submitted by any law firm in connection with the subject loan.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad.

2. PRODUCE any and all accounts receivable ledger entries made in connection with services rendered by any and all vendors in connection with the subject loan.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad.

3. PRODUCE any and all records of billings and invoices created by you in connection with services rendered with regard to the subject loan.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Subject to and without waiving any objection, the Payment History produced herewith may be relevant to this Request.

4. PRODUCE any and all records of payments made by you to vendors in connection with services rendered in connection with the subject loan.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Subject to and without waiving any objection, the Payment History produced herewith may be relevant to this Request.

5. PRODUCE any and all records of payments received by you from any entity in connection with the subject loan.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Subject to and without waiving any objection, the Payment History produced herewith may be relevant to this Request.

6. PRODUCE all retainer agreements, compensation agreements and contracts for providing legal services in connection with the subject loan.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Nationstar and DBTCA further object to this Request as invasive of the attorney-client privilege.

7. PRODUCE any and all records of communications, including, but not limited to, letters, emails, electronic communications, faxes, and telephone calls, relating to the subject loan.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Nationstar and DBTCA further object to this Request to the extent it seeks attorney-client communications of any kind. Subject to these objections, Nationstar and DBTCA are producing herewith the telephone logs and correspondence for the subject loan located after a reasonably diligent search.

8. PRODUCE any and all records of communications, including, but not limited to, letters, emails, electronic communications, faxes, and telephone calls, between you and Plaintiff relating to the subject loan.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Nationstar and DBTCA further object to this Request under the joint defense privilege.

9. PRODUCE any and all records of communications, including, but not limited to, letters, emails, electronic communications, faxes, and telephone calls, between you and Aurora Loan Servicing LLC relating to the subject loan.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Nationstar and DBTCA further object to this Request under the joint defense privilege.

10. PRODUCE from January 1, 2007 to present, any and all records of communications including, but not limited to, letters, emails, electronic communications, faxes, and telephone calls, concerning the preparation, execution or acknowledgment of any mortgage assignment relating to the subject loan.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Subject to and without waiving any objection, copies of any recorded assignments of the mortgage are available in the public domain and are produced herewith.

11. PRODUCE any and all documents including, but not limited to, memoranda, instruction manuals, directives, correspondence, and training materials concerning the preparation, execution or acknowledgment of documents in foreclosure cases such as mortgage assignments, complaints and affidavits.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Nationstar and DBTCA further object to this Request to the extent it seeks attorney-client communications, attorney work product or materials generated in anticipation of litigation.

12. RODUCE any and all Referral Account Detail Report(s) provided to anyone relating to the subject loan.

ANSWER: Nationstar and DBTCA object to this Request as vague, ambiguous, neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad.

13. PRODUCE originals or true copies of all assignments of the subject mortgage into the trust represented by Plaintiff Deutsche Bank Trust Company as Trustee for the Residential Accredited Loans, Inc., Pass-Through Certificates 2007-QH2.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Subject to and without waiving any objection, copies of any recorded assignments of the mortgage are available in the public domain and are produced herewith.

14. PRODUCE all servicing agreements (master, sub-servicing, contingency, specialty and back-up) pertaining to the subject loan account.

ANSWER: Nationstar and DBTCA object to this Request as vague, ambiguous, neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Nationstar and DBTCA further object this Request seeks confidential, sensitive and/or trade secret information.

15. PRODUCE all written loss-mitigation rules and loan work-out procedures pertaining to the subject loan account.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad.

16. PRODUCE all manuals pertaining to the servicing of the subject loan account.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Nationstar and DBTCA further object this Request seeks confidential, sensitive and/or trade secret information.

17. PRODUCE all records of MIN transfer audits, audits or summaries related to the subject loan account.

ANSWER: Nationstar and DBTCA object to this Request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad. Nationstar and DBTCA further object this Request seeks confidential, sensitive and/or trade secret information.

18. PRODUCE all documents relating to any claims made relating to the subject loan documents.

ANSWER: Nationstar and DBTCA object to this Request as vague, ambiguous and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and overly broad.

19. PRODUCE any and all documents that support the defenses you have asserted in pleadings filed in the within matter.

ANSWER: Nationstar and DBTCA object to this Request to the extent it seeks materials protected by the attorney-client privilege, attorney work product doctrine, materials generated in anticipation of litigation or materials protected by the joint defense privilege. Subject to and without waiving any objection, in addition to any materials previously filed in any proceeding between any of these parties or their predecessors, Nationstar and DBTCA are producing documents relevant to their defenses herewith.

20. PRODUCE all documents you intent to introduce at the time of trial.

ANSWER: Nationstar and DBTCA object to this Request as premature and invasive of the work product doctrine. Nationstar and DBTCA will produce exhibits as ordered by the Court or applicable rules.

DATED this 13th day of May, 2022.

Respectfully submitted,

McGUIREWOODS LLP

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*Attorney for Third-Party Defendant Nationstar
 Mortgage LLC and Plaintiff Deutsche Bank Trust
 Company Americas, As Trustee For Residential
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 2007-QH2*



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May 18, 2022

Via Email:

Nathan J. Taylor
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Charlotte, NC 28202

RE: Deutsche Bank Trust Company v. Ashley Johnson Beshera et. al.
Case No 2019-CP-10-4503

Dear Nathan:

I'm in receipt of what is entitled *Nationstar Mortgage LLC and Deutsche Bank Trust Company Americas' Answer to Defendant Curtis and Julie Rogers' Discovery Request* dated May 13, 2022 (hereinafter "Discovery Response") The purpose of this letter is to comply with Rule 11, SCRCF, prior to filing a Motion to Compel.

The responses as a whole are well beyond substandard and do not comply with the Rules of Civil Procedure. First, the requests propounded to Nationstar were different than the requests propounded upon Deutsche. The responses only address the requests made to Nationstar. Please respond to the discovery served on Deutsche.

The first interrogatory is verbatim from Rule 33 (b), SCRCF. It requires a party to give the name and address of witnesses. It is insufficient to respond with the generic unidentified "representative." I am entitled to know who your witnesses are and take their depositions. As required by the Rules identify your witnesses by name and address.

Again, Interrogatory No. 2 is verbatim from Rule 33(b). You are required to provide an answer and your objection it is vague likely should be submitted to the South Carolina Supreme Court and South Carolina Legislature since they created and approved the specific wording of the request. Additionally, to this general objection and to each other general objection you assert in responses to Interrogatory Nos. 6 and 8 and Request to Produce Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, I highly suggest that you consult the memorandum of

Judge R. Young addressing discovery responses and practices. The objections asserted clearly violate the Rules.

The response to Interrogatory No. 8 is not responsive to the request. If you re-read the Interrogatory, you will see it seeks the specific terms of the Note and Mortgage you claim in your pleading filed with the Court that allegedly bar the Rogers' claims. Please respond to the question asked.

The response to Interrogatories 9 and 13 is a bad faith response. Both seek information regarding defenses asserted in your pleadings. To suggest that ongoing discovery may reveal a basis for the asserted defense clearly suggests there was no support of the defense when asserted. Thus, either properly answer the question and provide the information or concede you have no basis to support the defense and strike them from pleading.

Again, as to Interrogatory No. 10 you did not respond to the question asked. The question clearly states to set forth the name and address of third parties you reference in paragraph 130 of your Answer. No name or address was provided. Instead, without identifying the third parties you reference you claim not to have control over them. Answer the questioned asked and provide the names and addresses of the third parties you claim not to have control over but from which "purported acts or omissions" Third-Party Plaintiff's claims arise.

Contrary to your objection to Interrogatory No. 11, it does not ask for a legal opinion. It specifically asks that you identify the statutory caps you specifically reference in paragraph 131 of your Answer. Either respond to the question asked or strike the allegation from your pleading.

As to your remark in your letter that you will not produce documents without a protective order, there is no basis for a protective order as to the Rogers request. Please produce the documents to the Rogers.

Lastly, I am attaching herewith for service upon you Requests for Admissions pursuant to Rule 36, SCRCF.

Should you have any questions or need any further information, please do not hesitate to contact my office.

With kind regards, I am

Sincerely,

Sammie

Mary Leigh Arnold, P.A.

Cc: Conor Keys, Esq.