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Jun 18 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2024-000122

U.S. Bank Trust NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G, Appellant,

v.

Jamie Singleton and Indigo Pointe Homeowners' Association, Defendants,
of which Jamie Singleton is the Respondent.

RECORD ON APPEAL

Volume 2 of 6

Dean A. Hayes
McCabe, Trotter & Beverly, P.C.
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Columbia, SC 29209
Phone: (803) 724-5000
Attorney for Appellant

January Taylor
McMichael Tylor Gray, LLC
3550 Engineering Dr., Ste. 260
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Attorney for Appellant

Jeff Barnes
Appellate Practice Law Gorup, PLLC
1515 North Federal Hwy., Ste. 300
Boca Raton, FL 33432
Phone: (561) 864-1067
PHV Attorney for Respondent

William H. Sloan, Jr.
Sloan Law Firm, P.A.
P.O. Box 85
Summerville, SC 29484
Phone: (843) 873-7531
Attorney for Respondent

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA AS TRUSTEE FOR FRT 2011-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

MOTION BY SINGLETON FOR CASE MANAGEMENT CONFERENCE

JAMIE SINGLETON,

Counter-Plaintiff and Cross-Defendant.

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; SHELLPOINT MORTGAGE SERVICING; NNPL TRUST SERIES 2012-1; NEW PENN FINANCIAL, LLC; FCI LENDER SERVICES, INC., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

CHERK OF COURT
CLERK OF COURT
DORCHESTER COUNTY
2015 SEP 30 PM 1:21
RECORD

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys, moves this Court to schedule and hold a Case Management Conference, and as grounds states:

1. Mr. Singleton originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007.

2. On January 15, 2009, Mr. Singleton received a letter from an entity styled Madison Home Loan Consulting Company ("MHLCC") which stated that the mortgage

on the Property was owned by an entity styled DB50 2007-1 Trust. No notice was provided to Mr. Singleton that there had been any transfer of his loan out of the People's Choice bankruptcy to any other entity, or that there had been any sale or transfer of the loan from People's Choice to any entity prior to the filing of the Bankruptcy by People's Choice.

3. Mr. Singleton sought discovery as to, *inter alia*, the history of custody and transfer of his mortgage loan. After having to file a Motion to Compel discovery, Mr. Singleton was finally provided with documents from Plaintiff which claimed that his mortgage loan had been the subject of several conflicting transfers. These alleged transfers are the subject of Mr. Singleton's previously filed Motion for Leave to Amend, and are incorporated herein by reference.

4. On September 30, 2014, this Court entertained argument on Mr. Singleton's Motion for Summary Judgment. During the course of that hearing, the Court determined that the documents sought by Mr. Singleton as to the alleged transfers were relevant over the objection of counsel for the Plaintiff. When this determination was made, counsel for Plaintiff changed her position by stating that the documents sought were not in the possession or control of her client.

5. The Court then inquired of counsel for Mr. Singleton whether he thus desired to propound non-party discovery or amend his Answer to add the other parties allegedly involved in the claimed transfers as parties to this action. Counsel for Mr. Singleton opted for the latter.

6. Between the time of the hearing and the filing of the prior Motion to Amend, Mr. Singleton was advised by the then current servicer (BSI Financial Services) that the

servicing of the loan will be transferred to a new entity, that being Shellpoint Mortgage Servicing of Greenville, South Carolina, and thus Shellpoint must also be added as a party as it has an interest in the outcome of this action. Shellpoint confirmed this change of servicing by letter to Mr. Singleton dated November 26, 2014.

7. By letter dated October 23, 2014, Shellpoint advised Mr. Singleton that the mortgage loan is being sold to an entity styled NNPL Trust Series 2012-1 (identified as the "New Owner") located in Wilmington, Delaware, but that Shellpoint has been hired by this New Owner to service the loan. As such, Shellpoint retained an interest in the loan and had to remain a party to this action.

8. However, by letter dated December 1, 2014 from Shellpoint, Shellpoint advised that the "new creditor to whom the debt is owed" is an entity styled New Penn Financial, LLC. No address for this new entity is provided in the letter. This directly conflicts with the letter from Shellpoint of October 23, 2014, and there is no document which states that the loan was sold from NNPL Trust Series 2012-1 to New Penn Financial, LLC.

9. By letter from Shellpoint dated January 16, 2015, Shellpoint advised Mr. Singleton that the servicing of the loan was being transferred from Shellpoint to FCI Financial Services, Inc. in Anaheim, California as of February 5, 2015. It is unknown whether, in connection with the transfer of servicing, whether the loan itself was sold again.

10. Mr. Singleton thus formally moved to amend his Answer to add additional party Defendants and a counter-claim and cross-claim for Declaratory Relief. Said

Motion was heard by this Court on December 15, 2014. This Court entered an Order dated April 13, 2015 which granted the subject Motion.

11. On June 30, 2015, Cross-Defendants MERS and FCI Lender Services, Inc. served their Answers to the Mr. Singleton's amended pleading through the same law Firm which represents the Plaintiff.

12. On July 2, 2015, a second law Firm representing "New Penn Financial LLC dba Shellpoint Mortgage Servicing" filed a Motion to Strike Affidavit of Service or in the alternative a Motion to Dismiss. There was no consent by Mr. Singleton's counsel for any Defendant to file any responsive papers after June 30, 2015, and New Penn's counsel did not seek any permission to file papers late. Neither Motion has been set for hearing before the Court by the moving party.

13. On July 15, 2015, counsel for Mr. Singleton filed Affidavits of Default as to Cross-Defendants Nomura Holdings, LLC, 50 by 50 REO LLC, DO 50 2007-1 Trust, and NNPA Trust Series 2012-1 for the failure of said Defendants to file any papers in response to Mr. Singleton's amended pleading.

14. On July 15, 2015, Mr. Singleton served a Request to Produce and First Request for Admissions upon Plaintiff and MERS (same law Firm represents both).

15. On August 6, 2015, counsel for MERS served MERS's "response" to Mr. Singleton's Request for Admissions, which "response" consists almost entirely of objections.

16. On August 19, 2015, Mr. Singleton's counsel sent a good-faith letter to counsel for MERS addressing the objections in an attempt to resolve same without a hearing. A copy of the subject letter is attached hereto. No substantive response to the

subject letter has been received to date (the only "response" being an e-mail from counsel that they were "were revising" their responses).

17. On September 1, 2015, counsel for MERS and Plaintiff sent an e-mail to Mr. Singleton's counsel (copy attached) which affirmatively represented that "we are revising our responses and will serve them next week".

18. No such responses were received by September 16, 2015, on which date Mr. Singleton's counsel advised counsel for Plaintiff and MERS of the past due response date (copy of e-mail attached hereto).

19. On September 16, 2015, counsel for MERS and Plaintiff advised Mr. Singleton's counsel that the loan had been sold (again) and service transferred to a new owner/servicer and that said counsel did not have the authority to answer discovery for this new owner/servicer (copy of e-mail attached). Counsel for Mr. Singleton requested counsel for MERS and Plaintiff to include all explanations.

20. On September 21, 2015, counsel for Plaintiff and MERS served a "response" to Mr. Singleton's Request for Admissions to Plaintiff. The "response" stated that "no documents were provided to West Vue (the alleged new owner of the loan: Westvue NPL Trust Series 2014-1) for responding" to the requests, with the "response" also including numerous objections.

21. However, and inconsistently, although Plaintiff states early on in the "response" to the Request for Admissions that it does not have authority to respond on behalf of Plaintiff and no documents were provided in order to respond, the responses to later request contain denials which indicates that (a) someone provided authority for

"West Vue" to issue such denials, and (b) "West Vue" had sufficient information and/or documentation in order to make a determination to issue the denials.

22. No response to Mr. Singleton's Request for Production has been received to date despite being served over seventy (70) days prior to the date of this Motion.

23. In short:

(a) the majority of the recently added Cross-Defendants are in default;

(b) the loan has apparently been sold AGAIN, warranting further amendment of Mr. Singleton's pleadings as he must add all parties which may have an interest in the outcome of this proceeding or may be affected thereby;

(c) documentary discovery from Plaintiff remains outstanding;

(d) The "Motion to Strike or Dismiss" filed by New Penn remains undisposed of;

(e) Mr. Singleton's efforts to proceed with discovery are being hampered by the inconsistent "objections" filed by Plaintiff.

24. Mr. Singleton thus requests that this Court hold a Case Management Conference for the purpose of, *inter alia*:

(a) formally entering defaults as are proper;

(b) entering an Order permitting Mr. Singleton to add the alleged new "owner/servicer";

(c) determining "who's on first", as counsel for Plaintiff advised Mr. Singleton's counsel via e-mail on September 17, 2015 that she "no longer represents the named plaintiff but do represent the new owner/servicer" notwithstanding the representations made in said counsel's response to Mr. Singleton's Request for Admissions to Plaintiff which "response" was on behalf of "US Bank Trust, National Association";

(d) compelling all outstanding documentary discovery to be produced forthwith and without objection;

(e) disposing of the "Motion to Strike" filed by New Penn;

(f) setting a discovery schedule; and

(g) any other parameters determined to be necessary by the Court.

25. Mr. Singleton has made every effort to advance this case, only to be continually frustrated by (a) the continual sale and resale and resale and resale and resale of the loan and change of servicers, and (b) the delays and roadblocks interposed as to his discovery.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court grant this Motion and enter Orders as necessary as to the matters set forth above for the reasons set forth, and for any other and further relief which is just and proper.

William H. Sloan, Jr., Esq.
1055 N. Main Street, Suite F
Summerville, South Carolina 29483
Telephone: (843) 873-7531
Attorney for Singleton
September ~~25~~ 24, 2015

FW: US Bank v. Jamie Singleton (2011-CP-28-871)

Jeff Barnes <jeff@wjbarneslaw.com>

Fri 9/25/2015 2:13 PM

To: Bill Sloan <whs@sloanlawfirm.net>;

Cc: Jamie Singleton (jsingle39@gmail.com) <jsingle39@gmail.com>;

2015 SEP 30 PM 1:22
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
RECORD

This e-mail, and others, will be attached to the CMC Motion I am working on at this time.

W.J. Barnes, P.A.

Florida office:	California office:
1515 North Federal Highway	9350 Wilshire Boulevard
Suite 300	Suite 308
Boca Raton, Florida 33432	Beverly Hills, California 90212
Tel: (561) 864-1067	Tel: (310) 275-5150
Fax: (310) 275-5157	Fax: (310) 275-5157

From: Karissa Richardson [mailto:Karissa.Richardson@rtt-law.com]
Sent: Tuesday, September 01, 2015 6:34 AM
To: Bill Sloan; Jeff Barnes
Cc: Erica Lybrand
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Mr. Sloan,

We are revising our responses and will serve them this week.

Thank you

Karissa Richardson

rtt-law.com

Karissa Richardson
Paralegal to Erica G. Lybrand

Rogers Townsend & Thomas, PC
220 Executive Center Drive
Columbia, SC 29210

Direct 803 [illegible]
Fax 803 [illegible]
Main 803 [illegible]
Visit rtt-law.com

From: Bill Sloan [mailto:whs@sloanlawfirm.net]
Sent: Wednesday, August 05, 2015 12:31 PM
To: Erica Lybrand; 'Jeff Barnes'
Cc: Karissa Richardson; 'Jamie Singleton (jsingle39@gmail.com)'
Subject: Re: US Bank v. Jamie Singleton (2011-CP-28-871)

That's fine.

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
843 873 7524

FW: US Bank v. Jamie Singleton (2011-CP-28-871)

Jeff Barnes <jeff@wjbarneslaw.com>

Fri 9/25/2015 2:13 PM

To: Bill Sloan <whs@sloanlawfirm.net>;

Cc: Jamie Singleton (jsingle39@gmail.com) <jsingle39@gmail.com>;

This e-mail, and others, will be attached to the CMC Motion I am working on at this time.

W.J. Barnes, P.A.

Florida office:	California office:
1515 North Federal Highway	9350 Wilshire Boulevard
Suite 300	Suite 308
Boca Raton, Florida 33432	Beverly Hills, California 90212
Tel: (561) 864-1067	Tel: (310) 275-5150
Fax: (310) 275-5157	Fax: (310) 275-5157

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Sent: Tuesday, September 01, 2015 6:34 AM
To: Bill Sloan; Jeff Barnes
Cc: Erica Lybrand
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Mr. Sloan,

We are revising our responses and will serve them this week.

Thank you

Karissa Richardson

rtt-law.com

Karissa Richardson Direct [illegible]
Paralegal to Erica C. Lybrand Fax [illegible]
[illegible] Main [illegible]
[illegible] Visit rtt-law.com
Columbia [illegible]

From: Bill Sloan [mailto:whs@sloanlawfirm.net]
Sent: Wednesday, August 05, 2015 12:31 PM
To: Erica Lybrand; 'Jeff Barnes'
Cc: Karissa Richardson; 'Jamie Singleton (jsingle39@gmail.com)'
Subject: Re: US Bank v. Jamie Singleton (2011-CP-28-871)

That's fine.

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
This e-mail is subject to attorney-client privilege. Destroy this e-mail if received in error.

From: Erica Lybrand <Erica.Lybrand@rtt-law.com>
Sent: Wednesday, August 5, 2015 12:29 PM
To: Bill Sloan; 'Jeff Barnes'
Cc: Karissa Richardson; 'Jamie Singleton (jsingle39@gmail.com)'
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Bill,

I don't believe I've heard back from you regarding my extension request as to the Requests for Admission and Requests for Production to the Plaintiff. Please advise.

Thank you,

Erica Lybrand

From: Erica Lybrand
Sent: Friday, July 24, 2015 2:11 PM
To: Bill Sloan; Jeff Barnes
Cc: Karissa Richardson; Jamie Singleton (jsingle39@gmail.com)
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Bill,

I plan to still manage the case from home but to the extent someone in the office needs to be involved, those inquiries can be directed to Charlie Gwynne.

Thanks,

Erica Lybrand

rtt-law.com

Erica G. Lybrand
Attorney
Rogers, Townsend & Thomas, PC
220 Executive Center Drive
Columbia, SC 29210

Direct 803.744.5.89
Fax 803.343.7017
Main 803.771.7900
Visit rtt-law.com

From: Bill Sloan [mailto:whs@sloanlawfirm.net]
Sent: Friday, July 24, 2015 2:00 PM
To: Erica Lybrand; Jeff Barnes
Cc: Karissa Richardson; Jamie Singleton (jsingle39@gmail.com)
Subject: Re: US Bank v. Jamie Singleton (2011-CP-28-871)

Erica: Good wishes on the baby.

I will discuss with Jeff and Jamie and get back to you. Who is going to handle this file while you are away?

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
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From: Erica Lybrand <Erica.Lybrand@rtt-law.com>
Sent: Friday, July 24, 2015 1:51 PM
To: Jeff Barnes; Bill Sloan

Cc: Karissa Richardson
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Bill,

Today is going to be my last day in the office before maternity leave. I am in the process of responding to your discovery requests sent on the 15th, but I was hoping you might be willing to provide a 30 day extension on the discovery responses to Plaintiff. I will be able to get the MERS responses to you within the timeframe, but seeing as how we haven't substituted the proper Plaintiff yet and I will be out on leave, I would like to have some extra time to get those responses to you.

As such, please advise as to whether you are willing to grant a 30 day extension on the Requests for Production to the Plaintiff, making those responses due September 18.

Thank you,

Erica Lybrand

rtt-law.com

Erica G. Lybrand
Attorney

Rogers Townsend & Thomas, PC
220 Executive Center Drive
Columbia, SC 29210

Direct 803 744 5285
Fax 803 343 7017

Main 803 771 7900
Visit rtt-law.com

From: Jeff Barnes [mailto:jeff@wjbarneslaw.com]
Sent: Tuesday, May 26, 2015 2:34 PM
To: Bill Sloan; Erica Lybrand
Cc: Jamie Singleton
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Erica, we can probably agree to the substitution if the Order granting your motion recites that all defenses are preserved and that no defenses, including but not limited to standing and real party in interest are not waived.

Please advise.

W.J. Barnes, P.A.
Florida office: California office:

1515 North Federal Highway
Suite 300
Boca Raton, Florida 33432
Tel: (561) 864-1067
Fax: (310) 275-5157

9350 Wilshire Boulevard
Suite 308
Beverly Hills, California 90212
Tel: (310) 275-5150
Fax: (310) 275-5157

From: Bill Sloan [mailto:whs@sloanlawfirm.net]
Sent: Thursday, May 21, 2015 6:46 AM
To: Erica Lybrand
Cc: Jeff Barnes; Jamie Singleton
Subject: Re: US Bank v. Jamie Singleton (2011-CP-28-871)

For easy math, let's just say June 30 for both of them.

We will be back to you next week on the sub.

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
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From: Erica Lybrand <Erica.Lybrand@rtt-law.com>
Sent: Thursday, May 21, 2015 9:22 AM
To: Bill Sloan
Cc: Jeff Barnes; Jamie Singleton
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Looks like they were served April 27 (FCI) and April 28 (MERS).

Thanks for the extension. Let me know what your thoughts are on the substitution.

Erica G. Lybrand
Attorney

Direct 80[illegible]
Fax 80[illegible]
Main 80[illegible]
Visit rtt-law.com

rtt-law.com

Rogers Townsend & Thomas, PC
220 Executive Center Drive
Columbia, SC 29210

From: Bill Sloan [mailto:whs@sloanlawfirm.net]
Sent: Thursday, May 21, 2015 9:18 AM
To: Erica Lybrand
Cc: Jeff Barnes; Jamie Singleton
Subject: Re: US Bank v. Jamie Singleton (2011-CP-28-871)

Good morning Erica. Jeff and I were able to talk last night.

30 day extension - Yes. Please remind me what date your new clients got served.
Consent to Amend the PLaintiff- We will get back to you on that next week.

Thanks, Bill

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
This e-mail is subject to attorney-client privilege. Destroy this e-mail if received in error.

From: Erica Lybrand <Erica.Lybrand@rtt-law.com>
Sent: Wednesday, May 20, 2015 1:24 PM
To: Bill Sloan
Cc: Jeff Barnes
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Bill,

I will be representing FCI Lender Services and likely MERS as to the Cross-Complaint. Can you provide an additional 30 days extension for me to answer on behalf of these entities?

Also, the new owner of the note will need to be subbed in as Plaintiff. This entity will be US BANK TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE OF WESTVUE NPL TRUST, SERIES 2014-1. We are working on getting the assignment recorded now. Will you consent to substitute this entity as Plaintiff?

Please advise.

Thank you,

Erica Lybrand

rtt-law.com

Erica G. Lybrand
Attorney

Rogers Townsend & Thomas, PC
220 Executive Center Drive
Columbia, SC 29210

Direct 803.744.9289
Fax 803.343.7017

Main 803.771.7900
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From: Bill Sloan [mailto:whs@sloanlawfirm.net]
Sent: Tuesday, May 12, 2015 10:35 AM
To: Wierman, Mark
Cc: Griffin, Michael; Jamie Singleton; Jeff Barnes; Erica Lybrand
Subject: Re: US Bank v. Jamie Singleton (2011-CP-28-871)

Hi Mark: I confirm. Are you going to be taking over representation of the Plaintiff for Rtt? Or co-counsel? Let me know. Thanks, Bill

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
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From: Wierman, Mark <mwierman@babc.com>
Sent: Tuesday, May 12, 2015 10:15 AM
To: Bill Sloan
Cc: Griffin, Michael
Subject: US Bank v. Jamie Singleton (2011-CP-28-871)

Bill,
This email is to confirm that you have granted an extension to June 28, 2015 for plaintiff US Bank as Trustee for FRT-2011-1 and third party defendant MERS, Inc. to respond to the counterclaim and third party complaint in the above-referenced action. Thank you for your cooperation.

babc_logo

Mark S. Wierman
Attorney

Phone 704-338-6023
Fax 704-338-6080
Email mwierman@babc.com

Bank of America Corporate Center
100 N. Tryon Street, Suite 2690
Charlotte, NC 28202

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DEBT COLLECTOR: This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message

is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

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FW: US Bank v. Jamie Singleton (2011-CP-28-871)

Jeff Barnes <jeff@wjbarneslaw.com>

Fri 9/25/2015 2:15 PM

To: Bill Sloan <whs@sloanlawfirm.net>;

Cc: Jamie Singleton (jsingle39@gmail.com) <jsingle39@gmail.com>;

This e-mail will be attached to the CMC motion also.

W.J. Barnes, P.A.

Florida office:	California office:
1515 North Federal Highway	9350 Wilshire Boulevard
Suite 300	Suite 308
Boca Raton, Florida 33432	Beverly Hills, California 90212
Tel: (561) 864-1067	Tel: (310) 275-5150
Fax: (310) 275-5157	Fax: (310) 275-5157

From: Bill Sloan [mailto:whs@sloanlawfirm.net]
Sent: Wednesday, September 16, 2015 12:42 PM
To: Karissa Richardson; Jeff Barnes
Cc: Erica Lybrand; Jamie Singleton (jsingle39@gmail.com)
Subject: Re: US Bank v. Jamie Singleton (2011-CP-28-871)

Karissa: You said you would be supplementing responses in the next few days. It has been 2 weeks. Please advise. Thanks, Bill

William H. Sloan
Sloan Law Firm PA
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Summerville, SC 29484
843-873-7531
Fax 843-873-7527
This e-mail is subject to attorney-client privilege. Destroy this e-mail if received in error.

From: Karissa Richardson <Karissa.Richardson@rtt-law.com>
Sent: Tuesday, September 1, 2015 9:34 AM
To: Bill Sloan; 'Jeff Barnes'
Cc: Erica Lybrand
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Mr. Sloan,

We are revising our responses and will serve them this week.

Thank you

Karissa Richardson

rtt-law.com

Karissa Richardson Direct [illegible]
Paralegal to Erica G. Lybrand Fax [illegible]
[illegible] Main [illegible]
[illegible] Visit rtt-law.com
[illegible]

From: Bill Sloan [mailto:whs@sloanlawfirm.net]
Sent: Wednesday, August 05, 2015 12:31 PM
To: Erica Lybrand; 'Jeff Barnes'
Cc: Karissa Richardson; 'Jamie Singleton (jsingle39@gmail.com)'
Subject: Re: US Bank v. Jamie Singleton (2011-CP-28-871)

That's fine.

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
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Sent: Wednesday, August 5, 2015 12:29 PM
To: Bill Sloan; 'Jeff Barnes'
Cc: Karissa Richardson; 'Jamie Singleton (jsingle39@gmail.com)'
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Bill,

I don't believe I've heard back from you regarding my extension request as to the Requests for Admission and Requests for Production to the Plaintiff. Please advise.

Thank you,

Erica Lybrand

From: Erica Lybrand
Sent: Friday, July 24, 2015 2:11 PM
To: Bill Sloan; Jeff Barnes
Cc: Karissa Richardson; Jamie Singleton (jsingle39@gmail.com)
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Bill,

I plan to still manage the case from home but to the extent someone in the office needs to be involved, those inquiries can be directed to Charlie Gwynne.

Thanks,

Erica Lybrand

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Erica G. Lybrand
Attorney

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Direct 803.744.5389
Fax 803.343.7017

Main 803.771.7900
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As such, please advise as to whether you are willing to grant a 30 day extension on the Requests for Production to the Plaintiff, making those responses due September 18.

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Attorney

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Direct 803.744.5289
Fax 803.744.7015

Main 803.771.7900
Visit rtt-law.com

From: Jeff Barnes [mailto:jeff@wjbarneslaw.com]
Sent: Tuesday, May 26, 2015 2:34 PM
To: Bill Sloan; Erica Lybrand
Cc: Jamie Singleton
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

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Please advise.

W.J. Barnes, P.A.
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Fax: (310) 275-5157

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rtt-law.com

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30 day extension - Yes. Please remind me what date your new clients got served.
Consent to Amend the PLaintiff- We will get back to you on that next week.

Thanks, Bill

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Sent: Wednesday, May 20, 2015 1:24 PM
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Cc: Jeff Barnes
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Bill,

I will be representing FCI Lender Services and likely MERS as to the Cross-Complaint. Can you provide an additional 30 days extension for me to answer on behalf of these entities?

Also, the new owner of the note will need to be subbed in as Plaintiff. This entity will be US BANK TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE OF WESTVUE NPL TRUST, SERIES 2014-1. We are working on getting the assignment recorded now. Will you consent to substitute this entity as Plaintiff?

Please advise.

Thank you,

Erica Lybrand

rtt-law.com

Erica G. Lybrand
Attorney

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220 Executive Center Drive
Columbia, SC 29210

Direct 803.744.5289
Fax 803.343.7017
Main 803.771.7900
Visit rtt-law.com

From: Bill Sloan [mailto:whs@sloanlawfirm.net]
Sent: Tuesday, May 12, 2015 10:35 AM
To: Wierman, Mark
Cc: Griffin, Michael; Jamie Singleton; Jeff Barnes; Erica Lybrand
Subject: Re: US Bank v. Jamie Singleton (2011-CP-28-871)

Hi Mark: I confirm. Are you going to be taking over representation of the Plaintiff for Rtt? Or co-counsel? Let me know. Thanks, Bill

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
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From: Wierman, Mark <mwierman@babc.com>
Sent: Tuesday, May 12, 2015 10:15 AM
To: Bill Sloan
Cc: Griffin, Michael
Subject: US Bank v. Jamie Singleton (2011-CP-28-871)

Bill,
This email is to confirm that you have granted an extension to June 28, 2015 for plaintiff US Bank as Trustee for FRT-2011-1 and third party defendant MERS, Inc. to respond to the counterclaim and third party complaint in the above-referenced action. Thank you for your cooperation.

babc_logo

Mark S. Wierman
Attorney

Phone 704-338-6023
Fax 704-338-6080
Email mwierman@babc.com

Bank of America Corporate Center
100 N. Tryon Street, Suite 2690
Charlotte, NC 28202

Confidentiality Notice: This e-mail is from a law firm and may be protected by the attorney-client or work product privileges. If you have received this message in error, please notify the sender by replying to this e-mail and then delete it from your computer.

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DEBT COLLECTOR: This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

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FW: US Bank v. Jamie Singleton (2011-CP-28-871)

Jeff Barnes <jeff@wjbarneslaw.com>

Fri 9/25/2015 2:16 PM

To: Bill Sloan <wlhs@sloanlawfirm.net>;

Cc: Jamie Singleton (jsingle39@gmail.com) <jsingle39@gmail.com>;

This e-mail string will be attached as well.

W.J. Barnes, P.A.

Florida office:	California office:
1515 North Federal Highway	9350 Wilshire Boulevard
Suite 300	Suite 308
Boca Raton, Florida 33432	Beverly Hills, California 90212
Tel: (561) 864-1067	Tel: (310) 275-5150
Fax: (310) 275-5157	Fax: (310) 275-5157

From: Jeff Barnes
Sent: Wednesday, September 16, 2015 1:17 PM
To: 'Erica Lybrand'; Bill Sloan
Cc: Karissa Richardson; Jamie Singleton (jsingle39@gmail.com)
Subject: RE: US Bank v. Jamie Singleton (2011-CP-28-871)

Include all explanations please.

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From: Erica Lybrand [mailto:Erica.Lybrand@rtt-law.com]
Sent: Wednesday, September 16, 2015 1:10 PM
To: Bill Sloan
Cc: Karissa Richardson; Jeff Barnes; Jamie Singleton (jsingle39@gmail.com)
Subject: Re: US Bank v. Jamie Singleton (2011-CP-28-871)

Bill,

I'm working on them from home which is taking a bit more time than expected. I do appreciate your patience and understanding while I'm out on maternity leave.

Also, as to your requests to the Plaintiff, as you're aware the loan has been sold and service transferred to a new entity. I now no longer represent the named plaintiff but do represent the new owner/ servicer

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Thank you,

Erica Lybrand

Sent from my iPhone

On Sep 16, 2015, at 3:41 PM, Bill Sloan <whs@sloanlawfirm.net> wrote:

> **Karissa: You said you would be supplementing responses in the next few days. It has been 2 weeks. Please advise. Thanks, Bill**
>
> William H. Sloan
> Sloan Law Firm PA
> Post Office Box 85
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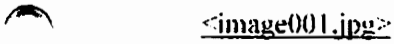

Karissa Richardson Direct 803 744 5713
Paralegal to Erica G. Lybrand Fax 803 343 7017
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<image001.jpg>

Erica G. Lybrand **Direct** 803 744[illegible]
Attorney **Fax** 803 [illegible]

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<image001.jpg>

Erica G. Lybrand
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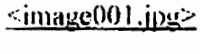

Erica G. Lybrand **Direct** 803.744.5.89
Attorney **Fax** 803.343.701-

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Bill,

I will be representing FCI Lender Services and likely MERS as to the Cross-Complaint. Can you provide an additional 30 days extension for me to answer on behalf of these entities?

Also, the new owner of the note will need to be subbed in as Plaintiff. This entity will be US BANK TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE OF WESTVUE NPL TRUST, SERIES 2014-1. We are working on getting the assignment recorded now. Will you consent to substitute this entity as Plaintiff?

Please advise.

Thank you,

Erica Lybrand

<image001.jpg>

Erica G. Lybrand
Attorney

Direct 803.744.5289
Fax 803.343.7017

Rogers Townsend & Thomas PC
220 Executive Center Drive
Columbia SC 29210

Main 803.771.7900
Visit rtt-law.com

From: Bill Sloan [mailto:whs@sloanlawfirm.net]
Sent: Tuesday, May 12, 2015 10:35 AM
To: Wierman, Mark
Cc: Griffin, Michael; Jamie Singleton; Jeff Barnes; Erica Lybrand
Subject: Re: US Bank v. Jamie Singleton (2011-CP-28-871)

Hi Mark: I confirm. Are you going to be taking over representation of the Plaintiff for Rtt? Or co-counsel? Let me know. Thanks, Bill

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
This e-mail is subject to attorney-client privilege. Destroy this e-mail if received in error.

From: Wierman, Mark <mwierman@babc.com>
Sent: Tuesday, May 12, 2015 10:15 AM
To: Bill Sloan
Cc: Griffin, Michael
Subject: US Bank v. Jamie Singleton (2011-CP-28-871)

Bill,

This email is to confirm that you have granted an extension to June 28, 2015 for plaintiff US Bank as Trustee for FRT-2011-1 and third party defendant MERS, Inc. to respond to the counterclaim and third party complaint in the above-referenced action. Thank you for your cooperation.

babc_logo

Mark S. Wierman
Attorney

Phone 704-338-6023
Fax 704-338-6080
Email mwierman@babc.com

Bank of America Corporate Center
100 N. Tryon Street, Suite 2690
Charlotte, NC 28202

Confidentiality Notice: This e-mail is from a law firm and may be protected by the attorney-client or work product privileges. If you have received this message in error, please notify the sender by replying to this e-mail and then delete it from your computer.

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DEBT COLLECTOR: This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)
)
US BANK, AS Trustee of the FRT-2011-1 Trust) CASE NO.

2015 SEP 30 PM 1:21

Plaintiff) 2011-CP-18-871

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

v.) MOTION AND ORDER INFORMATION
) FORM AND COVER SHEET
JAMIE SINGLETON AND INDIGO POINTE)
HOMEOWNERS ASSOCIATION.
x Defendants.)

Attorney for Defendant Singleton William H. Sloan, Esq., Bar No. 69630 Address: Post Office Box 85, Summerville, SC 29484 phone: (843) 873-7531 fax: (843) 873-873-7527 e-mail: whs@sloanlawfirm.net other:	Plaintiff's Attorney: Erica Lybrand, Esq., Rogers Townsend and Thomas Bar No. Address: Post Office Box 100200, Columbia, SC 29202 phone: 803-744-444 fax: 803-343-7013 e-mail: other:

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)xFORM 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: Motion for Case Management Conference
Estimated Time Needed: 90 minutes Court Reporter Needed: x YES / NO

SECTION II: Motion/Order Type

Written motion attached
x Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / xDefendant — September 28, 2015 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69. SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION Date Filed: Collected by: _____
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

Emily Hill, Esq.
Haynsworth, Sinkler and Boyd
1201 Main St., Suite 2200
Columbia, SC 29201

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee for FRT 2011-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association

Defendant(s).

Jamie Singleton,

Counter-Plaintiff and Cross-Defendant

v.

US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 By 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Shellpoint Mortgage Servicing; NNPL Trust Series 2012-1; New Penn Financial, LLC; FCI Lender Services, Inc., and Does 1-10;

Counter-Defendants and Cross-Defendants

(522291.00001 EL1)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

SECOND LIS PENDENS
Deficiency Judgment Waived

RECORD
2016 JAN -8 AM 11:28
CHERYL ... CLERK OF COURT
DORCHESTER COUNTY

NOTICE IS HEREBY GIVEN THAT an action has been commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendants for the foreclosure of a certain mortgage of real estate given by Jaime Singleton to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., its successors and assigns (MIN 100273900102812475) dated January 4, 2006, and recorded in the Office of the RMC/ROD for Dorchester County on January 12, 2006, in Mortgage Book 5142 at Page 168.

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

> All that certain piece, parcel or lot of land, situate, lying and being in the City of North Charleston, County of Dorchester, State of South Carolina and shown and designated as Lot 69, on a Plat of Indigo Point At Indigo Fields Subdivision, Phase V-A, located in the

City of North Charleston, Dorchester County, South Carolina, prepared by Trico Engineering Consultants, Inc., on February 1, 1999, revised February 16, 1999 and recorded in the RMC Office for Dorchester County on March 15, 1999 in Plat Book J at Page 128. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

This being the identical property conveyed to Jamie Singleton by deed of James D. Wilson dated January 4, 2006 and recorded January 12, 2006 in Book 5142 at Page 165 in the Office of the Register of Mesne Conveyance for Dorchester County.

Property Address: 5505 Rowsham Place
North Charleston, SC 29418

TMS# 181-10-06-037-000

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors.

Columbia, South Carolina
January 6, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

2016 JAN 19 PM 1:43

DOCKET NO. 2011-CP-18-00871

CLERK OF COURT
DORCHESTER COUNTY

US Bank, NA as Trustee for FRT 2011-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association.

Defendants.

NOTICE OF MOTION HEARING ON PLAINTIFF'S MOTION TO SUBSTITUTE PLAINTIFF

Jamie Singleton,

Counter-Plaintiff and Cross-Plaintiff,

v.

US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 BY 50 REO, LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Shellpoint Mortgage Servicing; NNPL Trust Series 2012-1; New Penn Financial, LLC; FCI Lender Services, Inc.; and Does 1-10,

Counter-Defendant and Cross- Defendants.

(522291.00001 EL1)

TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT, by virtue of the Order of Reference issued in the above matter, James E. Chellis, as Master In Equity for Dorchester County, has appointed January 27, 2016, at 3:00 P.M., at the Dorchester County Courthouse, located at 5200 East Jim Bilton Blvd. St. George, SC 29477, as the time and place for holding a hearing on the merits.

All interested parties shall appear at this designated time and place.

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
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January 14, 2016

V

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

2016 JAN 22 AM 11:43

DOCKET NO. 2011-CP-18-00871

CLERK OF COURT
DORCHESTER COUNTY

US Bank, NA as Trustee for FRT 2011

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association.

Defendants.

AMENDED NOTICE OF MOTION HEARING ON PLAINTIFF'S MOTION TO SUBSTITUTE PLAINTIFF

Jamie Singleton,

Counter-Plaintiff and Cross-Plaintiff,

v.

US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 BY 50 REO, LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Shellpoint Mortgage Servicing; NNPL Trust Series 2012-1; New Penn Financial, LLC; FCI Lender Services, Inc.; and Does 1-10,

Counter-Defendant and Cross- Defendants.

(522291.00001 EL1)

TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT, by virtue of the Order of Reference issued in the above matter, James E. Chellis, as Master In Equity for Dorchester County, has appointed February 10, 2016, at 2:00 P.M., at the Dorchester County Courthouse, located at 5200 East Jim Bilton Blvd. St. George, SC 29477, as the time and place for holding a hearing on the merits.

All interested parties shall appear at this designated time and place.

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors.

January 20, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

Case No. 2011-CP-18-00871

US Bank, NA as Trustee for FRT 2011-1,

Plaintiff,

vs.

Jamie Singleton and Indigo Pointe Homeowners Association,

Defendants.

Jamie Singleton,

Counter-Plaintiff and Cross Defendant.

vs.

US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Shellpoint Mortgage Servicing; NNPL Trust Series 2012-1; New Penn Financial, LLC; FCI Lender Services, Inc., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

RECORDED
2016 JAN 29 PM 1:42
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

STIPULATION OF DISMISSAL AS TO CROSS-CLAIM DEFENDANT NEW PENN FINANCIAL, LLC ONLY
(Not Ending Action)

Pursuant to Rule 41(a)(1)(B), SCRCP, Jamie Singleton ("Singleton") and Cross-Claim Defendant New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing ("New Penn") hereby stipulate as follows:

Singleton seeks to name New Penn as a cross-claim defendant in his proposed Amended Answer and Cross-Claims in this foreclosure action. As of the filing of this Stipulation, Singleton has obtained a court order allowing him to file an amended pleading, naming New Penn as cross-claim defendant, but he has not filed the amended pleading. New Penn was served with an un-filed pleading and thus filed a Motion to Strike Affidavit of Service or, in the alternative, Motion to Dismiss in response. Having since obtained information sufficient to satisfy him that New Penn no longer has any interest in the loan that is the subject of this foreclosure action, Singleton no longer seeks to assert any claims against New Penn nor to add it as a party to the case.

Therefore, Singleton hereby dismisses with prejudice all claims it asserted or intended to assert against New Penn in this action. He shall not include New Penn as a party in the caption or allegations of his amended pleading when it is submitted to the Court for filing. The parties shall bear his or its own costs and fees associated with this action.

AND IT IS SO STIPULATED.

WE SO STIPULATE:

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville SC 29484

Attorneys for Singleton
Dated: January 27, 2016

WE SO STIPULATE:

Emily H. Farr
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11885
Columbia, SC 29211-1889

Attorneys for New Penn
Dated: January 27, 2016

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee for FRT 2011-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association.

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2011-CP-18-00871

FILED - RECORDED
2016 FEB -8 PM 12:41
CHERYL ... CLERK OF COURT DORCHESTER COUNTY

MOTION TO WITHDRAW AS COUNSEL FOR US BANK, NA AS TRUSTEE FOR FRT 2011-1

(522291-00001 ELI)

Attorney Erica G. Lybrand and the firm of Rogers Townsend & Thomas, PC, respectfully move for leave to withdraw as counsel for US Bank, NA as Trustee for FRT 2011-1. US Bank, NA as Trustee for FRT 2011-1 is a former holder of the Note at issue in this case, but that entity has since sold the note. As a result of the sale, the undersigned and the firm of Rogers Townsend & Thomas, PC, have discontinued the representation of the current named Plaintiff in this action, and have been retained by the new servicer and holder of the note US BANK TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE OF WESTVUE NPL TRUST, SERIES 2014-1. A Motion to Substitute the Plaintiff is currently pending before the court.

WHEREFORE, the undersigned respectfully requests that the Court enter an Order granting leave to withdraw as counsel for US Bank, NA as Trustee for FRT 2011-1.

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

February 5, 2016

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 2011-CP-18-00871

I, Karissa Richardson, an employee for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on February 5, 2016, at the following addresses:

Document Served:

Amended Notice of Motion Hearing on Plaintiff's Motion to Substitute Plaintiff

Parties/Counsel Served:

William H. Sloan, Esquire
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484

William Jeff Barnes, Esquire
W.J. Barnes, P.A.
9350 Wilshire Blvd.
Beverly Hills, CA 90212

US Bank, NA, as Trustee of the FRT 2011-1 Trust
300 Delaware AVE, 9th Floor
Wilmington, DE 19801

Seneca Mortgage Servicing, LLC
611 Jamison Road
Elma, NY 14059

AMS Servicing, Inc. n/k/a Seneca Mortgage Servicing
3374 Walden AVE # 120
Depew, NY 14043

RECORDED
2016 FEB -8 PM 12:41
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

Karissa Richardson
Paralegal for Erica G. Lybrand
Rogers Townsend & Thomas, PC and its staff are debt collectors.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

US Bank, NA as Trustee for FRT 2011-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association.

Defendants.

Jamie Singleton,

Counter-Plaintiff and Cross-Plaintiff,

v.

US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 BY 50 REO, LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Shellpoint Mortgage Servicing; NNPL Trust Series 2012-1; New Penn Financial, LLC; FCI Lender Services, Inc.; and Does 1-10,

Counter-Defendant and Cross- Defendants.

(522291.00001 EL1)

AMENDED NOTICE OF MOTION HEARING ON PLAINTIFF'S MOTION TO SUBSTITUTE PLAINTIFF

2016 FEB 11 AM 11:45
CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT, by virtue of the Order of Reference issued in the above matter, James E. Chellis, as Master In Equity for Dorchester County, has appointed February 29, 2016, at 2:00 P.M., at the Dorchester County Courthouse, located at 5200 East Jim Bilton Blvd. St. George, SC 29477, as the time and place for holding a hearing on the merits.

All interested parties shall appear at this designated time and place.

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors.

February 8, 2016

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	DOCKET NO.: 2011-CP-18-00871
US Bank, NA as Trustee for FRT 2011-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association. Defendants.	**NOTICE OF WITHDRAWAL OF MOTION TO WITHDRAW AS COUNSEL FOR US BANK, NA AS TRUSTEE FOR FRT 2011-1**

2016 FEB 29 PM 1:07

CLERK OF COURT
DORCHESTER COUNTY

(522291-00001 ELI)

NOTICE IS HEREBY GIVEN that the undersigned hereby withdraws the Motion to Withdraw as Counsel for US Bank, NA as Trustee for FRT 2011-1, which was filed on February 8, 2016.

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

February 25, 2016

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 2011-CP-18-00871

2016 FEB 29 PM 1:07
CLERK OF COURT
DORCHESTER COUNTY

I, Karissa Richardson, an employee for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid. on February 25, 2016, at the following addresses:

Document Served:

Notice of Withdrawal of Motion to Withdraw as Counsel for Us Bank, NA as Trustee For FRT 2011-1

Parties/Counsel Served:

William H. Sloan, Esquire
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484

William Jeff Barnes, Esquire
W.J. Barnes, P.A.
9350 Wilshire Blvd.
Beverly Hills, CA 90212

Karissa Richardson
Paralegal for Erica G. Lybrand
Rogers Townsend & Thomas, PC and its staff are debt collectors.

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER US Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association Defendants. Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1, Counter-Defendant.	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871 **SINGLETON'S MOTION TO COMPEL AGAINST COUNTER-DEFENDANT**

2016 MAY 25 PM 12:27
CLERK OF COURT
DORCHESTER COUNTY

Comes now, Counter-Plaintiff, Jamie Singleton, through his undersigned attorney, to Move for an Order compelling discovery against the Third Party Defendant based on the following:

1. On or near July 15, 2015, Singleton, through his attorneys, served Erica Lybrand, Esq., attorney for the Counter-Defendant (who was the Plaintiff in this case until March 1, 2016) Requests for Production.
2. While Ms. Lybrand received these and forwarded them to the client, and while she responded to the Requests for Admission, Counter-Defendant has failed to authorize the mailing of the responses.

3. Repeated requests were made on this prior to this Motion being filed, as recently as the week of May 16, 2016.
4. Time is now of the essence as this case has been scheduled for trial on July 27-29, 2016 and the discovery was due over nine months ago.

WHEREFORE, Singleton moves for the following relief against the Counter-Defendant for the following relief:

A. An order compelling discovery of the Requests for Production;
B. Attorney fees and costs for being forced to file and prosecute this Motion;
C. Any other such relief that this Court deems equitable.

William H. Sloan, Esquire
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484
Attorney for Counter Plaintiff Singleton
843-873-7531
whs@sloanlawfirm.net
May 13 2016

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871
US Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association Defendants.	NOTICE OF HEARING
Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1, Counter-Defendant.	

FILED - RECORDED
2016 JUN -6 PM 1:46
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Please take notice that the Jamie Singleton's Motion to Compel in this case against Counter-Defendant has been scheduled before The Honorable James Chellis, Master-in-Equity for Dorchester County.

To: Rogers, Townsend
Attn: Erica Lybrand, Esq.
Post Office Box 100200
Columbia, SC 29202
Attorney for Plaintiff

The hearing shall take place at:

Dorchester County Courthouse
5200 E. Jim Bilton Blvd.
St. George, SC 29477

The hearing shall take place on June 16, 2016 at 2pm.

William H. Sloan, Esquire
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484
Attorney for Counter Plaintiff Singleton
843-873-7531
whs@sloanlawfirm.net
June 2, 2016

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

US Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association

Defendants.

Jamie Singleton,

Counter-Plaintiff,

v.

US Bank, NA as Trustee for FRT 2011-1,

Counter-Defendant.

(522291-00001 EL1)

CONSENT MOTION FOR CONTINUANCE

2016 JUL -5 PM 4:11
CHERYL ... RECORDS
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff US Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1, by and through the undersigned counsel, hereby respectfully moves the court for an Order continuing the trial of this matter, currently scheduled for July 27, 2016. This motion is based upon the fact that the witness and representative for the Plaintiff will be unavailable July 25, 2016 through August 5, 2016, and his presence is necessary to allow fair and complete adjudication of this matter.

{Continued on Next Page}

Pursuant to the foregoing, the Plaintiff respectfully request that this matter be continued from the July 27, 2016, trial date, and rescheduled for a date not before August 5, 2016.

For the purposes of this motion only, a copy of signatures will serve as the original.

Respectfully Submitted,

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

~~April~~ May 16, 2016

I CONSENT:

William H. Sloan, Esquire
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484

S/ William Jeff Barnes

William Jeff Barnes, Esquire
W.J. Barnes, P.A.
9350 Wilshire Blvd.
Beverly Hills, CA 90212

**ATTORNEYS FOR DEFENDANT/
COUNTER-PLAINTIFF JAMIE SINGLETON**

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US Bank, Trust, NA, not in its individual Capacity, but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

Jamie Singleton,
Counter-Plaintiff,
VS.

US Bank, NA, Trustee for FRT 2011-1,
Counter-Defendant

JAMIE SINGLETON'S MOTION TO DISBURSE INSURANCE PROCEEDS

FILED
2017 SEP -5 PM 2:09
CLERK OF COURT
DORCHESTER COUNTY

Comes now Jamie Singleton, moving before this Court as follows:

1. The property that is the subject of this matter was insured with Liberty Mutual Insurance on June 17, 2012,
2. On June 17, 2012, the property suffered damage to the kitchen which totaled approximately $21,901.00.
3. AMS Servicing, Inc., the servicing agent at the time, sent documents to Singleton to facilitate the agreement for disbursement of insurance proceeds to the contractor picked by Singleton which was Benjiman C. Crawford, Crawford Construction. A copy of his estimate for work is enclosed with this Motion as Exhibit A.
4. Singleton, upon information and belief, was under the understanding that Liberty Mutual Insurance has already approved the disbursement proceeds for this case as evidenced by sending Mr. Singleton the check for the loss minus Mr. Singleton's deducible. A copy of this "disbursement sheet" from Liberty Mutual Insurance is enclosed as Exhibit B. Mr Singleton endorsed this check and sent it to servicing agent, AMS Servicing for disbursement to Crawford Construction.
5. Plaintiff, at the time, 50 by 50 REO, LLC, through its agent, AMS Servicing, acted in bad faith to facilitate the disbursement of the settlement proceeds to the contractor to the detriment of Singleton.
6. As a result, Singleton filed a Motion in this case to disburse insurance proceeds in 2012, which was denied by Judge Murphy, the Master in Equity at the time.

7. Singleton, to protect his property and have a working kitchen for his family, made the repairs himself. Had he failed to do so, he would have violated No. 7 of the Mortgage which requires the Borrower to not allow the property to deteriorate.
8. During this case, over the last five years, there has been several servicing transfers and ownership transfers, but the Plaintiffs, including the current one, have refused to release these funds to Singleton or to apply the proceeds as a set off to any alleged balance due.
9. AS Exhibit B shows, the amount of the insurance funds at issue is $19,183.89.
10. While these funds were first listed in a "suspense" account on various billing statements from servicers, this money is no longer listed on billing statements with the current servicer and is not noted to reduce any alleged balance owed.
11. Prior to this Motion being heard, Singleton will submit an affidavit stating in detail the work he performed and pictures of the kitchen in a repaired state as of today

WHEREFORE, Defendant Singleton moves for the following relief before this Court:

A. Disbursement of the Insurance Proceeds to Singleton as reimbursement for the work he performed on the property;
B. As an alternative to A, a set-off on the alleged balance owed;
C. Any other relief that this Court deems prudent, just and proper.

William H. Sloan
Sloan Law Firm
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
Attorney for Singleton
September 1, 2017

Ex. A

Crawford Construction
1149 Venning Road
Mt. Pleasant SC.

Benjamin C. Crawford
SC. Residential Builder
012443
Home Inspection
482
Contractor's
100064

Phone (843) 884-5294
200-3076

2017 SEP -5 PM 2:10
CLERK OF COURT
DORCHESTER COUNTY

Jamie Singleton
5505 Rawsham Place
N. Charleston SC 29481

The Above mentioned contractor has requested the finial construction payment of the loan approved by the owner of 5505 Rawsham Place. in the amount of $ 10,950.50 By inspection, I authorize payment of Ten Thousand Nine Hundred Fifty 00/100. $ 10,950 .50 as my authority as Owner.

First Payment	$ 10,950.50	$ 10,950.50
Second Payment	$ 0.00	
Third Payment		
Fourth Payment		
Fifth Payment		
Total		

I approve the payment request for work complete to date.

Jamie Singleton
Program Signature

8-3-12
Date

Contractor Signature

8-3-12
Date

Certificate and release for payment of contract and release of liens

RE: Property at: 5505 Rawsham Place

Total Contract Amount $ 21,901.00

1. The undersigned hereby certifies that there is due from and payable by the Owner to the Contractor under the Contract and duly approved Change Orders and modification the payment of $.

2. The undersigned further certifies that all work required under this phase of the contract including work required under Change Order No. ___ claims of laborers or mechanics for unpaid wages arising out of the performance of this contract, and unpaid claims or materials, supplies and equipment.

3. That in consideration of the payment of the amount stated in paragraph 1. hereof, the undersigned does hereby release the Owner from any and all claims arising under or as authorized by the Contact and duly approved Change Order.

IN WITTINESS WHEREOF, the undersigned has signed this instrument this 3 day of Aug.

Contractor

Affiance further that the matters and things stated therein are, to the best of his knowledge and belief, true.

Contractor

APPLICATION AND CERTIFICATE FOR PAYMENT

Owner: Jamie Singleton

Project: 5505 Rawsham

Contractor: Crawford Construction

Contract For: Kitchen Rehab

---

1. Original Contract Sum: ..... $ 21,901.00
2. Net Change by Change Order:..... $ 0.00
3. Contract Sum to Date ..... $ 21,901.00
4. Total Complete & Stored to Date:..... $ 10,950.50

5. Retain age:
   A. 0% of complete work:..... $ 0.00
   B. 0% of stored material:..... $ 0.00
   Total Retainage (line5a+5b):..... $ 0.00

6. Total Earned less Retainage:..... $ 10,950.50
(line 4 less line 5 total)
7. Less Previous certificates for
   Payment (line 6 from prior Certificate)..... $ 0.00
8. Current Payment Due:..... $ 10,950.50
9. Balance To finish, Plus Retainage:..... $ 10,950.50
   (line3 less line 6)
Amount Certified:..... $ 10,950.50

By: Jamie Singleton Date: 8.3.12

The undersigned Contractor certified that to the best of the contractor's knowledge, information and belief the work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by Contractor for Work for which pervious Certificates for Payment were issued and payments received from the owner, and that current payment shown herein is now due.

_____ Date: 8-3-12

Ex. B

Liberty Mutual

Southern Region
PO Box 100131
Marietta, GA 30061-7031
Office: (800) 318-6572
Fax: (866) 265-0922

2017 SEP -5 PM 2:11
CLERK OF COURT
DORCHESTER COUNTY

Insured:	SINGLETON, CANACE & SINGLETON, JAMIE	Home:	(843) 810-0070
Property:	5505 ROWSHAM PL NORTH CHARLESTON, SC 29418-2623		
Home:	5505 ROWSHAM PL NORTH CHARLESTON, SC 29418-2623		
Estimator:	Scott Hurst	Business:	(800) 318-6572 x 74900
		Fax:	(866) 999-8941
Business:	P.O. Box 100131 Marietta, GA 30061-7031		

Claim Number: 023126304-01 **Policy Number:** H37258612806401 6 **Type of Loss:** Fire

Coverage	Deductible	Estimate Summary (before deductions)
Dwelling	$5,000.00	$26,870.99
TOTALS		$26,870.99

Date Contacted:	6/27/2012 3:00 PM
Date of Loss:	6/17/2012
Date Inspected:	7/17/2012 3:00 PM
Price List:	SCCH7X_JUN12

In the following pages you will find the estimated amount of damages for your personal property and/or the estimated cost of covered repairs to your home. The estimated cost of covered repairs to your home is calculated using current local prices that are usual and customary. This estimate is based on the replacement cost of the damaged property less your policy deductible and any applicable depreciation.

We encourage you to work with a contractor of your choice in completing the repairs to your home. If you or your contractor has any questions or concerns about this estimate, please contact me at the number shown above. It is important to call me with questions prior to beginning repairs, as any changes in the scope of damages or pricing must be pre-approved by Liberty Mutual.

Your current mortgage company may be listed as the payee on payment(s) for the covered repairs to your home. If so, you will need to contact your mortgage company to determine their procedures for processing claims payments. The mortgage company will not be listed on payments for your personal property.

Thank you for insuring with Liberty Mutual Insurance. We appreciate your business.

Liberty Mutual

Southern Region
PO Box 100131
Marietta, GA 30061-7031
Office: (800) 318-6572
Fax: (866) 265-0922

Dwelling Line Item Detail

Description	Qty	Unit Price	Estimate Amount	Replacement Cost Value	Depreciation	Actual Cash Value
Interior						
1. Cabinetry (Bid Item)	1.00 EA	$26,870.99	$26,870.99	$26,870.99	-$2,687.10	$24,183.89
Above line item per estimate from insured's contractor Paul Lawton Construction in file. Agree with scope and pricing for fire/smoke remediation and build-back						
Note: cabinets are no longer available for reasonable match						
Subtotals - Interior			**$26,870.99**	**$26,870.99**	**-$2,687.10**	**$24,183.89**
Totals			**$26,870.99**	**$26,870.99**	**-$2,687.10**	**$24,183.89**

* The value in the Additional column consists of taxes, overhead and profit, and base service charges, as applicable.
<> Indicates depreciation amount is non-recoverable

Liberty Mutual

Southern Region
PO Box 100131
Marietta, GA 30061-7031
Office: (800) 318-6572
Fax: (866) 265-0922

Summary for Dwelling

Replacement Cost Value	**$26,870.99**
Less Depreciation	(2,687.10)
Actual Cash Value	**$24,183.89**
Less Deductible	(5,000.00)
Net Claim	**$19,183.89**
Total Recoverable Depreciation	2,687.10
Net Claim if Depreciation is Recovered	**$21,870.99**

Scott Hurst

Liberty Mutual

Southern Region
PO Box 100131
Marietta, GA 30061-7031
Office: (800) 318-6572
Fax: (866) 265-0922

Loss Recap Summary

Line of Coverage	Code	Replacement Cost - RCV	Recoverable Depreciation	Deductible	Net Claim*
Structural		**$26,870.99**	**$2,687.10**	**$5,000.00**	**$19,183.89**
	Dwelling	$26,870.99	$2,687.10	$5,000.00	$19,183.89
TOTAL		**$26,870.99**	**$2,687.10**	**$5,000.00**	**$19,183.89**

*** The Net Claim amount may include deductions for prior payment(s), and/or salvage retention. Please see the individual summary section(s) for these details.**

Any person who knowingly, and with the intent to injure, defraud or deceive, submits information to an insurer that is false, incomplete or misleading, may be guilty of a crime.

$25.00 MB

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
US BANK, Trust NA, not, AS Owner Trustee of the) 2017 SEP -5 PM 2:09
WestVue NPL Trust, Series 2014-1,
Plaintiff)
CLERK OF COURT
v. DORCHESTER COUNTY)
)
JAMIE SINGLETON AND INDIGO POINTE)
HOMEOWNERS ASSOCIATION and US BANK,
AS Trustee of the FRT-2011-1 Trust.
x Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-18-871

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Attorney for Defendant Singleton	Plaintiff's Attorney (and Attorney for 2011-1 Trust)
William H. Sloan, Esq., Bar No. 69630 Address: Post Office Box 85, Summerville, SC 29484 phone: (843) 873-7531 fax: (843) 873-873-7527 e-mail: whs@sloanlawfirm.net other:	Erica Lybrand, Esq., Rogers Townsend and Thomas Bar No. Address: Post Office Box 100200, Columbia, SC 29202 phone: 803-744-444 fax: 803-343-7013 e-mail: other:

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)xFORM 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: Motion to Disburse Insurance Proceeds
Estimated Time Needed: 60 minutes Court Reporter Needed: x YES / NO

SECTION II: Motion/Order Type

Written motion attached
x Form Motion/Order
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 — September 1, 2017 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

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

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION Date Filed: Collected by: _____
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series 2014-1,

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendant.

(513044.00057 EL1)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

MOTION TO SUBSTITUTE PLAINTIFF

FILED - RECORDED
2017 SEP 22 PM 3:53
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff, US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series 2014-1, respectfully moves the court for an Order substituting **Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1** as Plaintiff in this matter, pursuant to the below:

US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series 2014-1 is the current Plaintiff in the above styled action which was brought to foreclose a mortgage lien on property more fully described in the Complaint;

US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series 2014-1 no longer holds any interest in the subject Note and Mortgage and **Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1** is now the real party in interest as it holds the subject Note and Mortgage.

As **Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1** is now the true holder of the subject Note and current assignee of the Mortgage, Plaintiff respectfully requests that **Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1** be substituted for US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series 2014-1, as the Plaintiff in this action.

Respectfully submitted,

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
1221 Main Street, 14th Floor
Columbia, South Carolina 29201
(803)771-7900
ATTORNEYS FOR PLAINTIFF

September 14, 2017

Rogers Townsend & Thomas, PC and its staff are debt collectors

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

2017 SEP 29 AM 10:55

CLERK OF COURT
DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series 2014-1,

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendant.

(513044.00057 EL1)

STIPULATION AS TO AMENDMENT OF PLEADINGS AND SUBSTITUTION OF PLAINTIFF

Counsel for the parties hereby file this Stipulation as to Amendment of Pleadings, and agree and stipulate as follows:

1. Counsel for Defendant was previously granted leave to amend his pleadings following a change in ownership of the loan the subject of this action and thus a change in Plaintiff.

2. There is ongoing discovery pursuant to Defendant's previously filed Motion to Compel and this Court's grant thereof.

3. Since the prior change in Plaintiff, counsel for Plaintiff has notified counsel for Defendant that the loan has been transferred again, prompting another request for substitution of the Plaintiff.

4. Counsel hereby agree and stipulate that the Plaintiff may be substituted without the necessity of a hearing to reflect Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 as Plaintiff in this matter, and that Defendant may further amend his pleadings incident to the substitution, without the necessity of further Motion or hearing.

AGREED AND STIPULATED TO BY THE FOLLOWING COUNSEL OF RECORD:

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
1221 Main Street, 14th Floor
Columbia, South Carolina 29201
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

Date: 9/14/17

William Sloan, Esq.
P.O. Box 85
Summerville, South Carolina 29484
Counsel for Defendant

Date: 9/12/2017

Jeff Barnes, Esq.
W.J. Barnes, P.A.
1515 North Federal Highway, Suite 300
Boca Raton, Florid 33432
PHV/co-counsel for Defendant

Date: Sept. 12, 2017

ELECTRONICALLY FILED - 2018 Jul 23 4:04 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY IN ITS CAPACITY AS CERTIFICATE TRUSTEE FOR NNPL TRUST SERIES 2012-1,

Plaintiff,

CONSENT MOTION TO SUBSTITUTE COUNSEL

v.

JAMIE SINGLETON; INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendant(s).

The Plaintiff motions the Court to request that Jonathan M. Riddle of Stern & Eisenberg Southern, PC be substituted as counsel for Plaintiff and MERS, Inc. in the above referenced action for the foreclosure only and that Crawford & Von Keller, LLC be relieved as Plaintiff's counsel and as counsel for MERS, Inc. Both counsels have noted their consent to this motion and no unreasonable delay or prejudice will accrue.

Whereas, counsel have noted their consent to the motion, and no unreasonable delay or prejudice will accrue.

WE SO MOVE:

s/ Jonathan M. Riddle
Elizabeth R. Polk #11673
Jonathan M. Riddle #101475
Stern & Eisenberg Southern, PC
1709 Devonshire Drive
Columbia, SC 29204
Telephone: (803) 462-5006
Facsimile: (803) 929-0830
Attorneys for Plaintiff and MERS, Inc.

s/ Sara C. Hutchins
Sara C. Hutchins
Crawford & Von Keller, LLC
P.O. Box 4216
Columbia, SC 29240
Telephone: (803) 790-2626
Facsimile: (803) 790-1277

ELECTRONICALLY FILED - 2018 Jul 29 2:05 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA, not in its individual capacity, but Solely as owner Trustee of Westvue NPL Trust, Series 2014-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

JAMIE SINGLETON,

Counter-Plaintiff,

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY IN ITS CAPACITY AS CERTIFICATE TRUSTEE FOR NNPL TRUST SERIES 2012-1; FCI LENDER SERVICES, INC., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

JAMIE SINGLETON's
ANSWER, COUNTERCLAIM AND CROSS-CLAIMS

Counter-Plaintiff JAMIE SINGLETON, by and through his undersigned counsel, files and serves his Answer, Counterclaim and Cross Claims against Plaintiff and Counter-Defendants and sues said parties for Declaratory Relief and other relief, and states:

ANSWER TO THE ORIGINAL COMPLAINT

Any item that is not specifically and fully admitted is denied.

ELECTRONICALLY FILED - 2018 Jul 29 2:05 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

I. ANSWERS TO THE ALLEGATIONS OF THE COMPLAINT

1. Defendant (Singleton only) admits No. 1 of complaint.
2. Defendant denies No. 2 of Complaint and demands strict proof thereof.
3. Defendant denies No. 3 of Complaint.
4. Defendant requires a more definitive statement to No. 4 of Complaint before it can answer. Defendant does not know who the servicer is and does not know the investor mentioned in No. 4. Further, No. 4 of Complaint as it is stated is a violation of the ***Administrative Order of Chief Justice Toal dated May 22, 2009 RE: Mortgage Foreclosures and the Home Affordable Modification Program (HMP)and the Administrative Order Re: Mortgage Foreclosure Actions, May2, 2011***

No. 4 of Complaint states that Modification attempts cannot be completed and have not been completed per the requirements of the ***Administrative Order*** mentioned above. Therefore, because of the defects admitted in No. 4 of Complaint, the Complaint states a claim where relief cannot be granted and this case should be dismissed under Rule 12-b-6, SC Rules of Civil Procedure and/or this case should be stayed per the said ***Administrative Orders*** until the investor gives the servicer the authority to negotiate and actually does negotiate a mortgage modification in this case.

5. Defendant admits No. 5 of Complaint.
6. With regards to No. 6 of Complaint, Defendant admits Defendant Indigo Pointe may have a lien on the subject property. Defendant Singleton does not admit the validity of any such lien filed on his property by Co-Defendant Indigo Pointe.
7. Defendant admits that he signed such a promissory Note as mentioned in No. 7. To non-party People's Choice Home Loans, Inc. Defendant does not admit the validity of such Note or that the Plaintiff has any right to enforce said Note.
8. Defendant admits that he signed a Mortgage in favor of Non-parties MERS, Inc. and People's Choice Home Loan, Inc. as noted in No. 8 of Complaint. Defendant denies the validity of Plaintiff to enforce such Mortgage.
9. Defendant admits No. 9 that all the documents were recorded as such. Defendant denies the remainder of No. 9 as far as validity of all the documents.
10. Defendant denies No. 10 of Complaint.
11. Defendant requests a more definitive statement as to No. 11 of Complaint as No. 11 of Complaint does not actually state whether Plaintiff or its agents sent any Notices to the Defendant.
12. Defendant is without information and belief sufficient to admit or deny No. 12 of Complaint, and therefore, denies same, and demands strict proof thereof.
13. Defendant denies No. 13 of Complaint that Plaintiff has the right to demand such deficiency balance. Defendant need not admit or deny No. 13 of Complaint as it is a prayer for relief. Plaintiff's predecessor in interest, GMAC Mortgage, LLC, waived its right to a deficiency against Mr. Singleton in this Court in case number 2008-CP-18-871. Therefore, judicial estoppel should apply in this case.
14. Plaintiff admits No. 14 of Complaint that counsel has been hired by the servicer. Defendant denies the remainder of No. 14 of Complaint.

15. Defendant lacks information sufficient to answer No. 15 of Complaint as Plaintiff has not specified any such payments made for taxes or insurances that they have made.
16. No. 16 of Complaint is a prayer for relief and Defendant need not respond to same and Defendant denies that they are entitled to same.
17. Defendant admits No. 17 of Complaint that Defendant Indigo may have an interest in property. Defendant denies the validity of such liens filed by Indigo.

II. MOTION FOR MORE DEFINITIVE STATEMENT

18. Defendant repeats §1-17 of the Answer as if they were repeated verbatim right here.
19. Defendant Singleton cannot respond to No. 4 of Complaint and requests a more definitive statement.
20. With regards to No. 4, Plaintiff has failed to state the investor that must approve a modification and has failed to mention the servicer. Defendant requests that Plaintiff identify the servicer and the investor that must approve any modification in this case before Defendant can respond to it.

III. MOTION TO DISMISS RULE 12-B-6 OR MOTION TO STAY

21. Defendant repeats §1-20 of Answer as if they are repeated verbatim right here.
22. No. 4 of Complaint claims the mortgage that is the subject of this case is not subject for modification because the investor has failed to give permission to the servicer to negotiate a modification.
23. This is not sufficient reason for the investor of the Mortgage to deny the Defendant a modification as mentioned in No. 1 of ***Administrative Order*** of 2009 mentioned in No. 4 of this Answer. The Plaintiff admitted that it is participating in the applicable Home Affordable Modification Program, "HMP". The ***Administrative Order*** is applicable for this loan as this loan was originated before 2009 and is the primary residence of the Defendant.
24. Therefore, the Plaintiff has failed to state a cause of relief where relief can be granted at this time and this case should be dismissed per Rule 12-b-6, SCRCP or the Court should order the case be stayed until attempts at HMP Modification have been completed per the aforementioned ***Administrative Order.***

IV. AFFIRMATIVE DEFENSE- LACK OF STANDING

25. Defendant repeats §1-24 of this Answer as if repeated verbatim right here.
26. Defendant purports to have standing to bring this action based on an assignment of Mortgage from People's Choice Home Loan, Inc., the original creditor via Mortgage Electronic Registration Systems. Inc. "MERS" to GMAC Mortgage, LLC and then a subsequent assignment to the Plaintiff from said GMAC.
27. MERS, Inc. has no authority to assign the mortgage that is the subject of this case. There is no Power of Attorney in this matter recorded which allows MERS, Inc. to assign the mortgage of this case. Therefore, the chain of custody of the Mortgage in this case has been broken the Plaintiff lacks the ownership of the Mortgage and the standing to sue in this case.

ELECTRONICALLY FILED - 2018 Jul 29 2:05 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2018 Jul 29 2:05 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

V. AFFIRMATIVE DEFENSE- INSURANCE

28. Defendant repeats §1-27 of this Answer as if repeated verbatim right here.
29. Defendant asserts assert that that is mortgage is a securitized mortgage loan trust, and that in connection with the formation thereof and pursuant to applicable rules and regulations of the Securities and Exchange Commission, one or more insurances was/were placed on the loan the subject hereof in connection therewith. Such insurances, and other credit enhancements available to the securitized mortgage loan trust, provide benefits on default by the borrower with no recourse or subrogation against the borrower. To the extent that any benefits were paid on default as a result of available credit enhancements or other insurances, Defendant is entitled to a setoff as to any amounts claimed due by Plaintiff herein.

VI. AFFIRMATIVE DEFENSE- UNCLEAN HANDS

30. Defendant repeats §1-29 of this Answer as if repeated verbatim right here.
31. Plaintiff has brought this case forward with unclean hands and should be barred from relief under the equitable doctrine of unclean hands.

VII. AFFIRMATIVE DEFENSE- WAIVER AND LACHES

32. Defendant repeats §1-31 of this Answer as if repeated verbatim right here.
33. Defendant asserts the defense of waiver and laches in this case, especially with regards for the right of Plaintiff to recover a deficiency balance in this case. GMAC Mortgage, LLC, alleged former holder and owner of the Note and Mortgage the subject of this case, waived a deficiency balance on the Note and Mortgage in this case when they sued Defendant Singleton before this Court in 2008 in case number 2008-CP-18-871. This waiver should be held in this equity court against the Plaintiff in this matter.

VIII. AFFIRMATIVE DEFENSE- BAD FAITH AND UNFAIR DEALING RE: ADMINISTRATIVE ORDER

34. Defendant repeats §1-33 of this Answer as if repeated verbatim right here.
35. Defendant alleges that Plaintiff has failed to act in good faith that is required in the foreclosures of primary residences with regards to the ***Administrative Order Re: Mortgage Foreclosures*** dated May 2, 2011. Plaintiff offered a Defendant a "take it or leave it" mortgage modification offer and, as a result, the Defendant believes Plaintiff has

failed to act in good faith as required by the ***Administrative Order***. Defendant requests that the Court makes an inquiry into this case and determine whether or not Plaintiff has acted in bad faith or not. This case is applicable to the said ***Administrative Order*** as this is a foreclosure for a property that is the primary residence of the Defendant.

IX. AFFIRMATIVE DEFENSE- MORTGAGE UNENFORCEABLE AS THE NOTE AND MORTGAGE HAVE BEEN SEPARATED

36. Defendant repeats §1-35 of this Answer as if repeated verbatim right here.
37. The Note that is the subject of this matter was signed in favor of non-party People's Choice Home Loans, Inc. The Mortgage that is the subject of this action was assigned to non-party Mortgage Electronic Registration Systems, Inc. and then assigned from MERS to Plaintiff.
38. Ownership of the Note and Mortgage have been split forever and therefore, the Mortgage is unenforceable. Per ***Carpenter v. Longan, 16 Wall. 271, 83 U.S. 271, 275, 21 L.Ed. 313 (1872)*** the mortgage, the Security Instrument follows the Note, the Debt Instrument. Therefore, this Note is unsecured and separated from the Note keeping the Plaintiff from validly foreclosing on the Mortgage.

XI. AFFMIRMATIVE DEFENSE-LACK OF VALID NOTICE OF ACCELERATION

39. Defendant repeats §1-38 of this Answer as if repeated verbatim right here.
40. §22 of the Mortgage requires any notice of acceleration come directly from the Lender. Defendant has received no Notice of same from People's Home Choice Home Loan, Inc. the lender listed on the Mortgage, nor MERS, its nominee listed on the Mortgage.
41. Therefore, the Plaintiff lacks the right to accelerate the Note and Mortgage in this case.

XII. AFFIRMATIVE DEFENSE- JUDICIAL ESTOPPEL

42. Defendant repeats §1-41 of this Answer as if repeated verbatim right here.

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43. In A 2008 case for foreclosure, Plaintiff's predecessor in interest, GMAC, LLC filed a waiver of deficiency on the mortgage that is the subject of this action. Judicial estoppel should be applied preventing Plaintiff from demanding a deficiency balance in this case.

XIII. AFFIRMATIVE DEFENSE- RESERVATION OF DEFENSES

44. Defendant repeats §1-43 of this Answer as if repeated verbatim right here.
45. Defendant reserves all other defenses that have not come to light at this time.

COUNTERCLAIM-QUIET TITLE

The answering Defendants, Jamie Singleton, as Counter-Plaintiff, counterclaim against the Plaintiff, for Declaratory and Injunctive Relief, and state as follows in support thereof:

A. Parties and Jurisdiction

46. This is an action for declaratory and injunctive relief which is properly within the jurisdiction of this Court as provided by applicable statutes and rules of court.

47. Counter-Plaintiff is and was at all times material *sui juris* residents of the State of South Carolina over the age of eighteen (18) and who are the legal owners of the residential real property the subject of this action located at located at 5505 Rowsham Place, North Charleston, South Carolina 29418 Dorchester County, (hereafter the "Property").

48. Plaintiff is and was at all times material hereto an entity whose corporate structure is unknown and which purports to be in an alleged trust relationship with an LLC owned and controlled by a Wall Street banking institution, which has subjected itself to the jurisdiction of this Court through the filing of the main action herein.

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49. All transactions and occurrences material hereto took place in or were substantially intended to effect real property within Dorchester County, South Carolina making jurisdiction and venue proper.

a. Material Facts Common to All Counts

50. On or about January 4, 2006, Counter-Plaintiffs executed a note and mortgage in favor of non-party People's Choice Home Loan, Inc., (hereafter the "mortgage loan").

51. At some point in time unknown to the Counter-Plaintiffs, the mortgage loan was sold, in parsed fashion, to one or more third parties.

52. On or about April 25, 2011, Cross-Defendant instituted the instant foreclosure action and then assigned their rights and substituted the Plaintiff to other Plaintiffs, then this Plaintiff.

53. Plaintiff admitted in its Motion to Substitute Plaintiff that the Court granted verbally on February 29, 2016 that it did not have an assignment of the Note and Mortgage when the Motion was filed or at the date of the hearing.

54. Following the filing of the Defendant's Motion to Dismiss, counter Defendant "50 by 50" produced an alleged "Assignment of Mortgage" by which non-party GMAC purported to assign the Note and Mortgage to Defendant "50 by 50". In addition, there is an Assignment of the Note and Mortgage from original creditor People's Choice Home Loan, Inc. by Mortgage Registrations Systems, Inc. ("MERS"), as nominee for People's Choice Home Loan, Inc. to GMAC which purported to assign the Mortgage and Note in the first place.

55. The purported Assignment of Mortgage from People's Choice Home Loan, Inc. to GMAC is defective as a matter of law as MERS has no legal authority, as "nominee", to

transfer anything, and thus the true owner and holder of the Note and Mortgage are unknown. Rule 17(a), South Carolina Rules of Civil Procedure require that "every action shall be prosecuted in the name of the real party in interest."

COUNT I: DECLARATORY RELIEF

56. Counter-Plaintiffs reallege and reaffirm paragraphs 1 through 10 hereinabove as if set forth more fully hereinbelow.

57. This is an action for declaratory relief which is brought pursuant to SC Code. 15-53-10 *et seq.*

58. Pursuant to SC Code 15-53-20, this Court has the power and authority to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

59. Pursuant to SC Code 15-53-30, any person interested under, *inter alia*, a deed or written contract or other writings constituting a contract or whose rights, status, or other legal relations are affected by a contract may have determined any question of construction or validity arising under the contract and obtain a declaration of rights, status, or other legal relations thereunder.

60. SC Code 15-53-130 provides that the chapter is declared to be remedial and its purpose to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

61. Plaintiff and Defendant Singleton are "persons" within the meaning of SC Code 15-53-30.

62. Defendant Singleton is a person who have an interest under a deed to the Property and the mortgage loan contract and whose rights and status have been affected by the Plaintiff's actions. Defendant is thus entitled to have determined the question of their

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rights and status as to the Property and in connection with the mortgage loan, and obtain a declaration of rights and status with respect thereto.

63. SC Code 15-53-60 provides that the enumeration in SC Code 15-53-30 to 15-53-50 does not limit or restrict the exercise of the general powers conferred in SC Code 15-53-20 in any proceeding where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove the uncertainty.

64. Singleton has requested further relief in the form of injunctive and other relief. SC Code 15-53-120 provides that further relief based on a declaratory judgment or decree may be granted whenever necessary or proper, and that the application for such relief shall be made to a court having jurisdiction to grant the relief. This Court has such jurisdiction.

65. As set forth above, Singleton's rights and legal status as to the Property and under the mortgage loan contract have been affected by the Plaintiff's actions in seeking to foreclose on the Property through legally faulty and ineffective "Assignments".

66. Singleton thus requests that this Court issue and decree that Plaintiff has no legal interest in either the note or the mortgage, and that thus Plaintiff does not possess the requisite legal standing to institute a foreclosure.

67. As the disposition of this claim necessarily involves the determination of an issue of fact, SC Code 15-53-90 provides that such issue and determination may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in this Court.

68. Defendant also requests, pursuant to SC Code 15-53-100, that they be awarded their costs as are equitable and just.

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CROSS CLAIM AGAINST CROSS-DEFENDANTS

A. Parties, Jurisdiction and Venue

69. This is an action for Declaratory Relief which is a proper Counterclaim to the main action, and the Cross-Claims are proper within this Court as the operative facts giving rise to the claims for relief arose out of the same series of transactions related to the same mortgage loan and the same borrower (Mr. Singleton).

70. Counter- and Cross-Plaintiff JAMIE SINGLETON is and was at all times material hereto a *sui juris* resident of the State of South Carolina over the age of eighteen (18), and is a Defendant in the main action.

71. Counter-Defendant US BANK NA AS TRUSTEE FOR FRT 2011-1 (hereafter "USB") is and was at all times material a foreign (non-South Carolina incorporated) private equity investment bank which did business in the State of South Carolina and invoked the jurisdiction of this Court by filing the main action which seeks to foreclose on the mortgage loan the subject of both the main action and this action prior to assigning their interest in the Note and Mortgage to the current Plaintiff.

72. Cross-Defendant NOMURA HOLDINGS, INC. (hereafter "Nomura") is and was at all times hereto a foreign (non-South Carolina incorporated) subsidiary holding company of Nomura Bank, which is a Japanese banking concern. Nomura claims to have purchased the mortgage loan the subject of this action from the original lender, that being People's Choice, and claims to have sold the loan to Cross-Defendant 50 BY 50 REO LLC.

73. Cross-Defendant 50 By 50 REO LLC (hereafter "50 By 50") is and was at all times material hereto a New York limited liability company which claims to have come into ownership of the mortgage loan the subject of this action.

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74. Cross-Defendant DB 50 2007-1 Trust is and was at all times material hereto a New York business trust which claims to have come into ownership of the mortgage loan the subject of this action.

75. Cross-Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (hereafter "MERS") is and was at all times material hereto a Delaware corporation with its principal place of business being located in Virginia. MERS regularly conducts business in South Carolina and regularly purports to transfer mortgage loans of South Carolina borrowers and undertake actions to further foreclosure actions in South Carolina.

76. Cross-Defendant Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 (hereafter "Wilmington") appears to be a Delaware statutory (business) Trust established under the laws of the State of Delaware and located at c/o Christiana Trust, 500 Delaware Avenue, 11th Floor, Wilmington, Delaware 19801.

77. Cross-Defendant FCI FINANCIAL SERVICES, INC. (hereafter "FCI") appears to be a California corporation by virtue of Shellpoint's identification of FCI as having a P.O. Box numbered 27370 in Anaheim, California and is apparently the current servicer of the Mortgage.

78. Cross-Defendants DOES 1-10 are not identified at this point but are reserved in the event that discovery reveals other parties which may be added if any such parties are found or claim to have an interest in the outcome of this action.

79. Cross-Defendants Nomura, 50 By 50, MERS, DB50 2007-1, NNPL, and FCI are subject to the jurisdiction of this Court as they engaged in business in South Carolina by claiming to have acquired and transferred interests in the mortgage loan the subject of this action on which Counter-Defendant USB is attempting to foreclose. The single act of allegedly

transferring an interest in the mortgage loan the subject of this and the main action to Plaintiff/Counter-Defendant USB constitutes the type of single act which has caused harm to Counter/Cross-Plaintiff in South Carolina as the foreclosure arises out of and relates to the acts of the Cross-Defendants as set forth below, thus establishing the minimum contacts necessary to hale the Cross-Defendants into this Court.

80. Further, the relief sought is Declaratory relief, which requires the joinder of any party which may have an interest in the outcome of the claim. The State of South Carolina thus has an interest in exercising jurisdiction over the Cross-Defendants, the acts of whom gave rise to the assertion of the foreclosure claim by Counter-Defendant USB. There is no inconvenience for the Cross-Defendants in this action and even if claimed, the inconvenience to Counter/Cross-Plaintiff with any severance of any claim as to any Cross-Defendant greatly outweighs any claim of prejudice to any of the Cross-Defendants. Further, severance of any claim as to any Cross-Defendant would unduly complicate this litigation and result in the possibility of inconsistent verdicts or orders.

81. All actions of the Counter-Defendant and the Cross-Defendants were directed toward and had their effects in South Carolina, and were intended by the Counter-Defendant and Cross-Defendants to be directed toward South Carolina.

B. Background Facts

82. Counter/Cross-Plaintiff originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007.

83. On January 15, 2009, Counter/Cross-Plaintiff received a letter from an entity styled Madison Home Loan Consulting Company ("MHLCC") which stated that the mortgage on the

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Property was owned by Cross-Defendant DB50 2007-1 Trust. No notice was provided to Counter/Cross-Plaintiff that there had been any transfer of his loan out of the People's Choice bankruptcy to any other entity, or that there had been any sale or transfer of the loan from People's Choice to any entity prior to the filing of the Bankruptcy by People's Choice.

84. Cross-Defendant Nomura claims to have purchased the mortgage loan the subject of this action as of January 6, 2006 from People's Choice. However, none of the loan transfer documentation required by the Mortgage Loan Purchase Agreement has been produced, including the interim assignments of mortgage and the intervening endorsements for the Note.

85. People's Choice filed for Bankruptcy on March 20, 2007.

86. Cross-Defendant Nomura claims to have sold the mortgage loan the subject of this action to Cross-Defendant 50 By 50.

87. Counter-Defendant had previously produced an Assignment of Mortgage by Cross-Defendant MERS dated July 14, 2008, which is 16 months after People's Choice filed Bankruptcy, whereby MERS claims to assign the Mortgage to GMAC, which itself filed for Bankruptcy on May 14, 2012.

88. Counter-Defendant had previously produced a letter dated November 23, 2011 from an entity styled AMS Servicing, LLC which stated that "On October 31, 2011, FRT 2011-1 Trust acquired your mortgage loan". There is no evidence of any transfer of either the Note or the Mortgage from the bankrupt original lender (People's Choice) to the FRT 2011-1 Trust, or from either GMAC or the DB 50 2007-1 Trust back to anyone for later transfer to the FRT 2011-1 Trust.

89. There is a second "Assignment of Mortgage" which was filed in the public records by which Cross-Defendant 50 By 50 purportedly assigned the Mortgage to the Counter-

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Defendant, US Bank, NA, as Trustee. This Assignment, dated September 24, 2012, contains no language as to any assignment of the Note, and is dated 4 years and 2 months after the prior Assignment of Mortgage from MERS as "nominee" for the bankrupt People's Choice to GMAC. There is no evidence of any re-transfer of the Mortgage from GMAC or any other prior transferee back to any entity for purposes of an assignment of the Mortgage to the Counter-Defendant.

90. Further, Cross-Defendant US BANK, NA AS TRUSTEE FOR FRT 2011-1 filed a Motion to Substitute Plaintiff to current Plaintiff while waiting to record two assignments of Mortgage which the Court granted from the bench on February 29, 2016.

91. There is no evidence of any assignment or lawful transfer of either the Mortgage or the Note from the bankrupt original lender, or the bankrupt GMAC, or the FRT 2001-1 Trust, to Cross-Defendant 50 By 50 or to US BANK, NA AS TRUSTEE FOR FRT 2011-1 or to current Defendant.

92. If Cross-Defendant Nomura sold the loan to Cross-Defendant 50 By 50, there was nothing for Cross-Defendant MERS to assign to GMAC on July 14, 2008; conversely, if Cross-Defendant MERS did assign the mortgage to GMAC (which itself later filed for Bankruptcy), Cross-Defendant Nomura did not sell the loan to Cross-Defendant 50 By 50, and the loan remained in the inventory of People's Choice, which had filed bankruptcy.

93. If the loan was a retained asset within the inventory of People's Choice as of the time it filed Bankruptcy on March 20, 2007, there was nothing for Cross-Defendant Nomura to sell to Cross-Defendant 50 By 50 on September 27, 2007, and nothing for Cross-Defendant MERS to assign to GMAC on July 14, 2008.

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94. If the loan was assigned by Cross-Defendant MERS to GMAC on July 14, 2008 or was in the inventory of the DB50 2007-1 Trust as of January 15, 2009, the FRT 2011-1 Trust (of which the Counter-Defendant is the claimed "trustee") could not have acquired the loan on October 31, 2011.

95. It is without dispute that Counter-Defendant US BANK, NA AS TRUSTEE FOR FRT 2011-1 was not the original lender; did not extend Counter/Cross-Plaintiff any credit; and is not named or identified in either the Note or the Mortgage. It is also without dispute that this action was originally filed by Cross-Defendant 50 By 50, which is also not the original lender; did not extend Counter/Cross-Plaintiff any credit; and is not named or identified in either the Note or the Mortgage.

96. Mr. Singleton was advised by the prior servicer (BSI Financial Services) that the servicing of the loan would be transferred to a new entity, that being Shellpoint Mortgage Servicing of Greenville, South Carolina. Shellpoint confirmed this change of servicing by letter to Mr. Singleton dated November 26, 2014.

97. By letter dated October 23, 2014, Shellpoint advised Mr. Singleton that the mortgage loan is being sold to Cross-Defendant NNPL (identified as the "New Owner") located in Wilmington, Delaware, but that Cross-Defendant Shellpoint has been hired by this New Owner to service the loan. Shellpoint retained counsel and signed an Affidavit when they were the servicer of the Note and Mortgage and therefore, is no longer a Cross-Defendant in this case along with New Penn Financial, who they were servicing the Mortgage for.

98. However, by letter dated December 1, 2014 from Shellpoint, Shellpoint advised that the "new creditor to whom the debt is owed" is New Penn. No address for this new entity is provided in the letter. This directly conflicts with the letter from Cross-Defendant Shellpoint

dated October 23, 2014, and there is no document which states that the loan was sold from NNPL to New Penn.

99. By letter from Cross-Defendant Shellpoint dated January 16, 2015, Shellpoint advised Mr. Singleton that the servicing of the loan was being transferred from Shellpoint to Cross-Defendant FCI as of February 5, 2015. It is unknown whether, in connection with the transfer of servicing, whether the loan itself was sold again, nor does this letter identify the current owner of the loan. If the loan is owned by Cross-Defendant NNPL, Cross-Defendant Shellpoint was identified as the servicer.

100. Although the loan documents provide that the loan may be "sold", there is no disclosure in the loan documents that the loan may be sold from a Federally-regulated mortgage lender to an unregulated private equity investment entity (Plaintiff herein).

101. The alleged residential mortgage loan herein was thus converted to a commercial investment transaction by which the obligation evidenced by the promissory Note was converted to a vehicle for the purpose of providing an income-stream to fund a commercial investment for the benefit of non-parties to the "loan", thus changing the essential character of the Note and the loan without any disclosure to or consent of Mr. Singleton, and without any additional consideration being provided to Mr. Singleton. These facts were intentionally withheld from Mr. Singleton in order to induce him to enter into the alleged loan transaction and continue to make payments thereon.

102. At all times material, all of the various alleged owners of the loan and Plaintiff herein had actual knowledge that the intended use for the "loan" was to be, in truth and in fact, a vehicle for providing a revenue stream, together with hundreds of other alleged "residential"

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mortgage loans, for the purpose of funding numerous non-residential mortgage loan transactions, including but not limited to:

(a) payment to the securitization Trustee ;

(b) payment to the Master Servicer;

(c) payment to the subservicer;

(d) payment of "expenses" of the securitization Trust; and, if any monies remained after payment of these expenses,

(e) payment to the investors in the MBS which are collateralized by the loans in the securitization Trust.

103. Once so converted, the Note was pooled with thousands of other loans for the purpose of providing partial collateral security in connection with the issuance of the MBS, resulting in the loan not being owned by any single party and with the rights to the income stream from the loan being purchased and claimed by multiple parties including those identified above, which material change in the character of the loan was never disclosed to Mr. Singleton and was intentionally withheld from him in order to induce him to enter into the alleged loan transaction and continue to make payments thereon.

104. The change in the essential character of the loan from what was represented to be a residential mortgage loan to a commercial investment eliminated benefits associated with Federally-regulated mortgage loans and lenders thereof, including the ability to refinance; the ability to restructure the loan; and the ability to deal directly with the actual lender. These facts were not disclosed to Mr. Singleton and were intentionally withheld from him in order to induce him to enter into the alleged loan transaction and continue to make payments thereon.

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105. The change in character of the Note from what was represented to be a residential mortgage loan to a commercial investment also involved the addition of one or more third-party "servicers" which destroyed the direct relationship between Mr. Singleton and the alleged true "lender", especially as the loan became part of the securitization trust almost immediately after the Note and Mortgage were signed. These facts were not disclosed to Mr. Singleton and were intentionally withheld from him in order to induce him to enter into the alleged loan transaction and continue to make payments thereon, and the change in character of the Note was a unilateral act without disclosure to or consent of Mr. Singleton which has operated to his detriment and damage.

106. The conversion of the Note from what was represented to be a residential mortgage loan to a commercial investment, which was then pooled with thousands of other loans and placed into numerous tranches of a securitization trust together with other loans, resulted in the loan being inextricably intertwined with other loans, resulted in a unilateral change of the character of the Note which was never consented to by Mr. Singleton; which was never disclosed to Mr. Singleton; and was intentionally withheld from Mr. Singleton in order to induce him to enter into the alleged loan transaction and continue to make payments thereon.

107. At all times material, all subsequent alleged "owners" of the loan had actual knowledge that the alleged "loan" obligation (which was actually a commercial investment vehicle to provide an income stream to benefit third parties not associated with the property and with no obligation to Mr. Singleton), was fully insured through numerous avenues, including but not limited to specialized insurances such credit default swaps, first loss reserves, and other sources which provided payment on the income stream in the event of a default, which insurances and sources were in fact funded by borrower payments on the alleged loan obligation.

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These material facts were never disclosed to Mr. Singleton and were intentionally withheld from him in order to induce him to enter into the alleged loan transaction and continue to make payments thereon.

108. With full knowledge of the facts set forth above, the various Plaintiffs throughout the history of this action prepared what they knew to be fraudulent foreclosure documents, including (a) a fraudulent Assignment of Mortgage; (b) a fraudulent foreclosure complaint (in this action); and (c) fraudulent documents filed in this proceeding. At all times material hereto, all Plaintiffs had actual knowledge that the alleged "loan" was illegally unilaterally modified and that none of the various Plaintiffs had any rights to enforce under the "Note" and "Mortgage".

109. All of the various Plaintiffs herein thus had actual knowledge, from the time that the Complaint in this action was filed, that they were perpetrating a fraudulent foreclosure upon this Court, yet did so willfully, intentionally, and with reckless disregard to the rights of Mr. Singleton.

110. As a direct and proximate result of the matters hereinabove, Cross-Plaintiff is in doubt as to his rights under the Note and Mortgage contracts.

COUNT I: DECLARATORY RELIEF

111. Counter/Cross-Plaintiff reaffirms and realleges paragraphs 1 through 110 hereinabove as if set forth more fully hereinbelow.

112. This is an action for Declaratory Relief which is brought pursuant to S.C. Code Ann. sec. 15-53-10 *et seq.* and is a proper counterclaim to the main action.

113. S.C. Code Ann. sec. 15-53-30 provides that any person interested under a deed, will, written contract or other writing constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have

determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

114. It is without dispute that the Note and Mortgage are contracts in which Counter/Cross-Plaintiff has an interest.

115. It is also without dispute that the actions of the Counter-Defendant and Cross-Defendants set forth above have affected the rights of the Counter/Cross-Plaintiff in the Note and Mortgage contracts, and that the claims of the Counter- and Cross-Defendants are conflicting and ambiguous. Further, there was no identification of who Shellpoint was servicing the loan for.

116. S.C. Code Ann. Sec. 15-53-20 provides that courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed, and that no action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. It is without dispute that this Court has jurisdiction over this action for declaratory relief and may grant the relief requested.

117. S.C. Code Ann. sec. 15-53-130 provides that the Declaratory Judgments Act is declared to be remedial with its purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

118. S.C. Code Ann. sec. 15-53-40 provides that a contract may be construed either before or after there has been a breach thereof.

119. S.C. Code Ann. sec. 15-53-80 provides that when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the

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declaration. Counter/Cross-Plaintiff has thus joined the Counter-Defendant and the Cross-Defendants who have all claimed an interest in the mortgage loan the subject of this action and the contracts associated therewith.

120. S.C. Code Ann. sec. 15-53-90 provides that when a proceeding for declaratory relief involves the determination of an issue of fact that such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending, and all existing rights to jury trials are preserved.

121. There are numerous issues of material fact as revealed by the facts set forth above, and Counter/Cross-Plaintiff hereby demands trial by jury of all such issues.

122. S.C. Code Ann. Sec. 15-53-100 provides that in any proceeding instituted under the Chapter (for declaratory relief) that the court may make such award of costs as may seem equitable and just.

123. As Counter/Cross-Plaintiff has been forced to bring this action to determine his rights under the Note and Mortgage contracts as a result of the actions of the Counter-Defendant and Cross-Defendants, Counter/Cross Plaintiff requests an award of his costs.

124. S.C. Code Ann. Sec. 15-53-120 provides that further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. Counter/Cross-Plaintiff reserves the right to amend this claim to request any such additional relief as this matter progresses.

WHEREFORE, Counter/Cross-Plaintiff demands the entry of a Declaratory Judgment declaring his rights and legal relations and status with relation to the Note and Mortgage contracts, and also requests a declaration that neither the Plaintiff nor any of the Cross-Defendants have any rights in and never had any rights or interest in the Note or the Mortgage

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for the reasons set forth above, and for any other and further relief which this Court deems just and proper.

Dated this 29th day of July, 2018.

s/William H. Sloan
William H. Sloan, Esq.
Attorney for Jamie Singleton
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July 29, 2018

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STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA, not in its individual capacity, but Solely as owner Trustee of Westvue NPL Trust, Series 2014-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

JAMIE SINGLETON,

Counter-Plaintiff,

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY IN ITS CAPACITY AS CERTIFICATE TRUSTEE FOR NNPL TRUST SERIES 2012-1; FCI LENDER SERVICES, INC., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

MOTION TO MODIFY SCHEDULING ORDER

Counter-Plaintiff JAMIE SINGLETON, by and through his undersigned counsel, files this Motion to modify the scheduling Order for the following reason(s):

1. This is an action for foreclosure on the primary residence of the Defendant Jamie Singleton.

2. The active parties in this case, through counsel, agreed to a Scheduling Order.

3. Subsequent to this Order being entered, Singleton's lead counsel, W. Jeff Barnes, Esq., admitted to this case pro hac vice, encountered an unavoidable scheduling conflict wherein he cannot take the depositions of the "30-b-6 witnesses" until October 2018.
4. Prior to the filing of this motion, the undersigned and Mr. Barnes consulted with Plaintiff's counsel and she did not consent. Further, Mr. Singleton has stated his preference for Mr. Barnes to take the depositions.
5. With a case that has continued for over seven years, largely due to several substitutions of Plaintiff and of Plaintiff's counsel, and the repeated sales of Mr. Singleton's loan to numerous different parties in addition to the numerous change of servicers, an additional delay of 30 days will cause no prejudice to the new Plaintiff.
6. This Motion is filed in good faith and not for any purpose of delay, and opposing counsel refused to consent to the relief requested herein.

WHEREFORE, having completed this Motion, Defendant Jamie Singleton moves for the following relief:

A. Modifying the Scheduling Order to allow Singleton's counsel to take depositions through October 31, 2018;
B. Moving the subsequent deadlines in the Scheduling Order back one month;
C. Any other such relief that this Court deems equitable!

s/William H. Sloan
William H. Sloan, Esq.
Attorney for Jamie Singleton
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ELECTRONICALLY FILED - 2018 Aug 08 10:58 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

August 7, 2018

ELECTRONICALLY FILED - 2018 Aug 08 10:58 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP180871

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ELECTRONICALLY FILED - 2018 Aug 13 5:56 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY IN ITS CAPACITY AS CERTIFICATE TRUSTEE FOR NNPL TRUST SERIES 2012-1,

Plaintiff,

CONSENT MOTION TO SUBSTITUTE COUNSEL

v.

JAMIE SINGLETON; INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendant(s).

The Plaintiff motions the Court to request that Jonathan M. Riddle of Stern & Eisenberg Southern, PC be substituted as counsel for MERS, Inc. in the above referenced action and that Crawford & Von Keller, LLC be relieved as counsel for MERS, Inc. Both counsels have noted their consent to this motion and no unreasonable delay or prejudice will accrue.

Whereas, counsel have noted their consent to the motion, and no unreasonable delay or prejudice will accrue.

WE SO MOVE:

s/ Jonathan M. Riddle
Elizabeth R. Polk #11673
Jonathan M. Riddle #101475
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Attorneys for Plaintiff and MERS, Inc.

s/ Sara C. Hutchins
Sara C. Hutchins
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Telephone: (803) 790-2626
Facsimile: (803) 790-1277

ELECTRONICALLY FILED - 2018 Aug 13 4:56 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2011-CP-18-00871
Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, Plaintiff, v. Jamie Singleton; Indigo Pointe Homeowners Association, Defendants;	ANSWER OF CROSSCLAIM DEFENDANT US BANK, NA, AS TRUSTEE FOR FRT 2011-1
Jamie Singleton, Counter-Plaintiff, v. US Bank, NA, As Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity, but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1; FCI Lender Services, Inc., and DOES 1-10, Counter-Defendant and Cross Defendants.	

(514978-00008 EL1)

Crossclaim Defendant US Bank, NA, as Trustee for FRT 2011-1 ("Trustee"), by way of an Answer to the crossclaim asserted against it within the Answer, Counterclaims, and Crossclaims of Defendant Jamie Singleton ("Crossclaim Plaintiff"), would respectfully show unto the Court as follows:

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FOR A FIRST DEFENSE
(General Denial)

1. Each and every allegation contained in the Answer, Counterclaim, and Crossclaims which is not hereinafter specifically admitted or otherwise qualified, is denied, and strict proof is demanded thereof.

2. Upon information and belief, paragraphs 1 through 45, including all affirmative defenses, of Crossclaim Plaintiff's Answer, Counterclaim, and Crossclaims do not require a response. To the extent that a response is required, these paragraphs are denied.

As to Counterclaim-Quiet Title

3. No response to Paragraphs 46 through 55 is required; however, to the extent that a response is deemed required, the Paragraphs are denied.

As to Count I: Declaratory Relief

4. No response to Paragraphs 56 through 68 is required; however, to the extent that a response is deemed required, the Paragraphs are denied.

As to the Crossclaim

5. No response to Paragraph 69 is required; however, to the extent that a response is deemed required, the Paragraph is denied.

6. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70; therefore, it is denied.

7. Paragraph 71 is admitted.

8. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72; therefore, it is denied.

9. The Trustee is without knowledge or information sufficient to form a belief as to

the truth of the allegations in Paragraph 73; therefore, it is denied.

10. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74; therefore, it is denied.

11. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 75; therefore, it is denied.

12. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76; therefore, it is denied.

13. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77; therefore, it is denied.

14. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 78; therefore, it is denied.

15. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79; therefore, it is denied.

16. Paragraph 80 is denied.

17. Paragraph 81 is denied.

18. Paragraph 82 is admitted only to the extent that it can be construed as alleging that Trustee entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 82; they are therefore denied.

19. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 83; therefore, it is denied.

20. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 84; therefore, it is denied.

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21. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 85; therefore, it is denied.

22. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 86; therefore, it is denied.

23. Paragraph 87 is admitted only to the extent that it alleges the production of an Assignment of Mortgage from MERS to GMAC, dated July 14, 2008. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 87; therefore, they are denied.

24. Paragraph 88 is admitted only to the extent that it alleges the production of a letter dated November 23, 2011, from AMS Servicing, LLC. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 88; therefore, any additional allegations are denied.

25. Paragraph 89 is denied.

26. Paragraph 90 admitted only to the extent that a Motion to Substitute Plaintiff was granted on February 29, 2016. The remaining allegations of Paragraph 90 are denied. Further, the captioned Plaintiff in Jamie Singleton's Answer, Counterclaim, and Cross-Claim is not the proper Plaintiff pursuant to Order Granting Plaintiff's Motion to Substitute Plaintiff filed September 29, 2017.

27. Paragraph 91 is denied.

28. Paragraph 92 is denied.

29. Paragraph 93 is denied.

30. Paragraph 94 is denied.

31. The first sentence of Paragraph 95 is admitted. The Trustee is without knowledge

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or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 95; therefore, it is denied.

32. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 96; therefore, it is denied.

33. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 97; therefore, it is denied.

34. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 98; therefore, it is denied.

35. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 99; therefore, it is denied.

36. Paragraph 100 is denied.

37. Paragraph 101 is denied.

38. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 102; therefore, it is denied.

39. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 103; therefore, it is denied.

40. Paragraph 104 is denied.

41. Paragraph 105 is denied.

42. Paragraph 106 is denied.

43. Paragraph 107 is denied.

44. Paragraph 108 is denied.

45. Paragraph 109 is denied.

46. Paragraph 110 is denied.

47. No response to Paragraph 111 is necessary; however, to the extent that a response is deemed required, that paragraph is denied.

48. No response to Paragraph 112 is necessary; however, to the extent that a response is deemed required, that paragraph is denied.

49. No response to Paragraph 113 is necessary; however, to the extent that a response is deemed required, that paragraph is denied.

50. Paragraph 114 is admitted.

51. Paragraph 115 is denied.

52. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 116; therefore, it is denied.

53. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 117; therefore, it is denied.

54. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 118; therefore, it is denied.

55. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 119; therefore, it is denied.

56. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 120; therefore, it is denied.

57. Paragraph 121 is denied.

58. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 122; therefore, it is denied.

59. Paragraph 123 is denied.

60. The Trustee is without knowledge or information sufficient to form a belief as to

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the truth of the allegations in Paragraph 124; therefore, it is denied.

61. The subsequent allegations and/or the prayers for relief as set forth in the Answer, Counterclaim, and Crossclaims following the "WHEREFORE" provision are denied.

FOR A SECOND DEFENSE
(Unclean Hands)

62. Crossclaim Plaintiff signed the Note and Mortgage with an opportunity to do so with the advice of an attorney of his own choosing, and he accepted the benefits of the financing and the loan is now in default. Because the Crossclaim Plaintiff has unclean hands, he should be barred from the relief sought in his crossclaim against the Trustee.

FOR A THIRD DEFENSE
(Failure to State a Cause of Action)

63. Crossclaim Plaintiff's claims fail to state facts sufficient to constitute a cause of action against Trustee.

FOR A FOURTH DEFENSE
(Claims Barred by Statutes of Limitation)

64. Crossclaim Plaintiff's claims are barred by the applicable statutes of limitation, if any.

FOR A FIFTH DEFENSE
(Waiver, Estoppel, and Laches)

65. Crossclaim Plaintiff's claims are barred by the doctrines of waiver, estoppel, and laches.

FOR A SIXTH DEFENSE
(Failure to Mitigate Damages)

66. Crossclaim Plaintiff failed to mitigate his damages, and his failure bars the Crossclaim Plaintiff from recovering those damages that he could have prevented by the exercise of reasonable care.

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FOR A SEVENTH DEFENSE
(Lack of Notice)

67. Crossclaim Plaintiff failed to give Trustee either adequate or timely notice of the complaints set forth in his crossclaim; thus, he should be barred from making such complaints now.

FOR AN EIGHTH DEFENSE
(Liability/Remedy Limitations)

68. Crossclaim Plaintiff's claims and remedies are limited, restricted, or excluded by the provisions of the loan documents, including the Note and Mortgage. Further, the Trustee's liability, if any, may be limited, restricted, or excluded by the rights, responsibilities, and liability of Crossclaim Plaintiff and/or third parties, either by contract, statute, or equity.

FOR A NINTH DEFENSE
(Assumption of Risk)

69. Any damage sustained by Crossclaim Plaintiff was the result of conditions and risks the nature and extent of which were fully appreciated by Crossclaim Plaintiff, and he voluntarily and knowingly exposed himself to those conditions or risks.

FOR A TWELFTH DEFENSE
(Non-waiver)

70. The Trustee reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, having fully set forth its Answer to the crossclaim asserted against it within the Answer, Counterclaims, and Crossclaims, the Trustee prays that this Honorable Court inquire into the matters at issue and:

1. Dismiss all claims asserted against the Trustee;

2. Award to the Trustee reasonable attorney's fees and costs in accordance with the terms of the Note and Mortgage; and

3. Award to the Trustee such other and further relief as may be just and proper.

/s Erica G. Lybrand
Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
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(803)771-7900
Erica.Lybrand@rtt-law.com

Attorneys for Crossclaim Defendant US Bank, NA, as Trustee for FRT 2011-1
Rogers Townsend & Thomas, PC and its staff are debt collectors

August 13, 2018

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association

Defendants.

PLAINTIFF'S REPLY TO ANSWER AND COUNTERCLAIM/CROSSCLAIM OF DEFENDANT JAMIE SINGLETON

Jamie Singleton,

Counter-Plaintiff,

v.

US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc., and DOES 1-10,

Counter-Defendants.

The Plaintiff, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 (hereinafter referred to as "Plaintiff"), replies to the Answer and Counterclaim/Crossclaim of Defendant Jamie Singleton (hereinafter referred to as "Defendant"), as follows:

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FOR A FIRST DEFENSE
(General Denial)

1. Responding to the Allegations of the Defendants' Answer and Counterclaim/Crossclaim, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations.
2. Responding to the Allegations of Paragraphs 4, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraphs 4, specifically that it lacks standing, has failed to state a proper claims, and that the case should be stayed per the Administrative Order.
3. Responding to the Allegations of Paragraphs 7, Plaintiff repeats and realleges the allegations of the Complaint denies the allegations of Paragraphs 7 stating that it does not have any right to enforce the Note signed by Defendant.
4. Responding to the Allegations of Paragraphs 8, Plaintiff repeats and realleges the allegations of the Complaint denies the allegations of Paragraphs 8 stating that it does not have any right to enforce the Mortgage signed by Defendant.
5. Responding to the Allegations of Paragraphs 9, Plaintiff repeats and realleges the allegations of the Complaint denies the allegations of Paragraphs 9 regarding the non-validity of documents recorded in the Register of Deeds.
6. Responding to the Allegations of Paragraphs 13, Plaintiff repeats and realleges the allegations of the Complaint denies the allegations of Paragraphs 13 stating that it has nor right to demand a deficiency balance.

AS TO THE FIRST DEFENSE
(Motion for More Definitive Statement)

7. Plaintiff incorporates all responses above.
8. Responding to the Allegations of Paragraphs 18 through 20, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraphs 18

through 20.

AS TO THE SECOND DEFENSE
(Motion to Dismiss Rule 12(b)(6) or Motion to Stay)

9. Plaintiff incorporates all responses above.

10. Responding to the Allegations of Paragraphs 21 through 24, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraphs 21 through 24

AS TO THE THIRD DEFENSE
(Lack of Standing)

11. Plaintiff incorporates all responses above.

12. Responding to the Allegations of Paragraphs 25 through 27, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraphs 25 through 27.

AS TO THE FOURTH DEFENSE
(Insurance)

13. Plaintiff incorporates all responses above.

14. Responding to the Allegations of Paragraphs 28 and 29, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraphs 28 and 29.

AS TO THE FIFTH DEFENSE
(Unclean Hands)

15. Plaintiff incorporates all responses above.

16. Responding to the Allegations of Paragraphs 30 and 31, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraphs 30 and 31.

AS TO THE SIXTH DEFENSE
(Waiver and Laches)

17. Plaintiff incorporates all responses above.

18. Responding to the Allegations of Paragraphs 32 and 33, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraphs 32 and 33.

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AS TO THE SEVENTH DEFENSE
(Bad Faith and Unfair Dealing)

19. Plaintiff incorporates all responses above.

20. Responding to the Allegations of Paragraphs 34 and 35, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraphs 34 and 35.

AS TO THE EIGHTH DEFENSE
(Mortgage Unenforceable)

21. Plaintiff incorporates all responses above.

22. Responding to the Allegations of Paragraphs 36 through 38, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraphs 36 through 38.

AS TO THE NINTH DEFENSE
(Lack of Valid Notice of Acceleration)

23. Plaintiff incorporates all responses above.

24. Responding to the Allegations of Paragraphs 39 through 41, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraphs 39 through 41.

AS TO THE TENTH DEFENSE
(Judicial Estoppel)

25. Plaintiff incorporates all responses above.

26. Responding to the Allegations of Paragraphs 42 and 43, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraphs 42 and 43.

AS TO THE COUNTERCLAIM
(Quiet Title)

27. Plaintiff incorporates all responses above.

28. Defendant has improperly identified the current Plaintiff in its Answer and Counterclaim/Crossclaim. As such, Plaintiff is responding as the Counterclaim is alleged

against it and not the improperly identified Plaintiff, U.S. Bank, NA, not in its individual capacity, but solely as owner Trustee of Westvue NPL Trust, Series 2014-1.

29. No response is required to Paragraph 46; to the extent a response is required, Plaintiff denies the allegations.

30. Plaintiff is without sufficient information or knowledge to form a belief as to the truth of Paragraph 47; as such, it is denied.

31. Plaintiff admits the allegations of Paragraph 48, only in so much as it is subject to the jurisdiction of this court; all other allegations are denied.

32. Plaintiff admits the allegations of Paragraph 49.

33. Plaintiff admits the allegations of Paragraph 50.

34. Plaintiff admits the allegations of Paragraph 51, only so far as the loan was sold. Plaintiff is without sufficient information or knowledge to form a belief as to Defendant's personal knowledge; as such, any further allegations are denied.

35. Plaintiff admits the allegations of Paragraph 52.

36. Plaintiff denies the allegations of Paragraph 53, and craves reference to the filed Order to Substitute Plaintiff dated September 29, 2017.

37. Plaintiff admits the allegations of Paragraph 54, only in so much as that the mortgage loan has been assigned to the other parties in this case; all other allegations or inferences as to the nature of the assignments are denied.

38. Responding to the Allegations of Paragraph 55, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraph 55.

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AS TO COUNT 1
(Declaratory Relief)

39. No response is required to Paragraph 56; to the extent a response is required, Plaintiff denies the allegations.

40. No response is required to Paragraph 56; to the extent a response is required, Plaintiff denies the allegations.

41. No response is required to Paragraph 58; to the extent a response is required, Plaintiff denies the allegations.

42. No response is required to Paragraph 59; to the extent a response is required, Plaintiff denies the allegations.

43. Plaintiff admits Paragraph 61.

44. Responding to the Allegations of Paragraph 62, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraph 62.

45. No response is required to Paragraph 63; to the extent a response is required, Plaintiff denies the allegations.

46. No response is required to Paragraph 64; to the extent a response is required, Plaintiff denies the allegations.

47. Responding to the Allegations of Paragraph 65, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraph 65.

48. Responding to the Allegations of Paragraph 66, Plaintiff repeats and realleges the allegations of the Complaint and denies the allegations of Paragraph 66.

49. No response is required to Paragraph 67; to the extent a response is required, Plaintiff denies the allegations.

50. No response is required to Paragraph 68; to the extent a response is required, Plaintiff

denies the allegations.

AS TO THE CROSS CLAIM

51. No response by Plaintiff is required to Paragraphs 69 through 124, other than the misidentification of Plaintiff as a Cross-Defendant in Paragraph 76; to the extent a response is required, Plaintiff denies the allegations.

AS A FIRST DEFENSE

52. Plaintiff pleads the applicable statute of limitation as a complete bar to this action.

AS A SECOND DEFENSE

53. To extent Defendants experienced and actual damage, which is denied, Defendants failed to mitigate any damages.

AS A THIRD DEFENSE

54. Plaintiff pleads judicial estoppel as a complete bar to this action.

AS A FOURTH DEFENSE

55. Plaintiff pleads laches as a complete bar to this action.

AS A FIFTH DEFENSE

56. Plaintiff pleads waiver as a complete bar to this action.

AS A SIXTH DEFENSE

57. Plaintiff pleads unclean hands as a complete bar to this action.

AS A SEVENTH DEFENSE

58. Defendants' Answer and Counterclaim fail to state a claim upon which relief can be granted.

AS AN EIGHTH DEFENSE

59. Plaintiff reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired by discovery or otherwise.

WHEREFORE, having fully replied to the Answer and Counterclaim/Crossclaim, Plaintiff requests that the Court dismiss the Answer and Counterclaim, grant the relief prayed for in its

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Complaint, award Plaintiff fees and costs associated with defending this action, and for such other and further relief as this Court deems, just, fit, and proper.

Date: August 28, 2018

By: /s Jonathan M. Riddle

Jonathan M. Riddle #101475
Stern & Eisenberg Southern, PC
1709 Devonshire Drive
Columbia, SC 29204
Telephone: (803) 929-0760
Facsimile: (803) 929-0830
Attorney for Plaintiff

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1,

MERS,

v.

Jamie Singleton and Indigo Pointe Homeowners Association

Defendants.

ANSWER OF CROSSCLAIM DEFENDANT MORTGAGE ELECTRONIC REGESTRATION SYSTEMS, INC.

Jamie Singleton,

Counter-MERS,

v.

US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc., and DOES 1-10,

Counter-Defendants.

The Crossclaim Defendant, Mortgage Electronic Registration Systems, Inc. (hereinafter referred to as "MERS"), by way of Answer to the Crossclaim asserted against it in the Answer and Counterclaim/Crossclaim of Defendant Jamie Singleton (hereinafter referred to as "Crossclaim Plaintiff"), would show unto the court as follows:

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FOR A FIRST DEFENSE
(General Denial)

1. Each and every allegation contained in the Answer and Counterclaim/Crossclaim not specifically admitted or otherwise qualified is denied.

2. Upon information and belief, no response by MERS is required to Paragraphs 1 through 45, including all affirmative defenses; to the extent a response is required, MERS denies the allegations.

AS TO THE COUNTERCLAIM
(Quiet Title)

3. MERS incorporates all responses above.

4. No response is required to Paragraphs 46 through 55; to the extent a response is required, MERS denies the allegations.

AS TO COUNT 1
(Declaratory Relief)

5. No response is required to Paragraphs 56 through 68; to the extent a response is required, MERS denies the allegations

AS TO THE CROSS CLAIM

6. No response is required to Paragraph 69; to the extent a response is required, MERS denies the allegations.

7. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 70; as such, it is denied.

8. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 71; as such, it is denied.

9. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 72; as such, it is denied.

10. MERS is without sufficient information or knowledge to form a belief as to the truth of

Paragraph 73; as such, it is denied.

11. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 74; as such, it is denied.

12. MERS admits the allegations of Paragraph 75.

13. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 76; as such, it is denied.

14. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 77; as such, it is denied.

15. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 78; as such, it is denied.

16. MERS admits the allegations of Paragraph 79 only to the extent that it is subject to the jurisdiction of this court and regularly conducts business in South Carolina; all other allegations or characterizations are denied.

17. MERS denies the allegations of Paragraph 80.

18. MERS denies the allegations of Paragraph 81.

19. MERS admits the allegations of Paragraph 82 only to the extent that Crossclaim Plaintiff entered into a mortgage loan transaction; MERS is without sufficient information or knowledge to form a belief as to the remaining allegations of Paragraph 82; as such, they are denied.

20. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 83; as such, it is denied.

21. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 84; as such, it is denied.

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22. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 85; as such, it is denied.

23. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 86; as such, it is denied.

24. MERS admits the allegations of Paragraph 87 only to the extent that it alleges the Assignment of Mortgage from MERS to GMAC dated July 24, 2008; MERS is without sufficient information or knowledge to form a belief as to the remaining allegations of Paragraph 87; as such, they are denied.

25. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 88; as such, it is denied.

26. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 89, would crave reference to any and all Assignments filed with the Register of Deeds, and denies any further allegations.

27. MERS admits the allegations of Paragraph 90 only to the extent that a Motion to Substitute Plaintiff was granted on February 29, 2016, and filed with the Clerk of Court on ; MERS is without sufficient information or knowledge to form a belief as to the remaining allegations of Paragraph 90; as such, they are denied.

28. MERS denies the allegations of Paragraph 91.

29. MERS denies the allegations of Paragraph 92.

30. MERS denies the allegations of Paragraph 93.

31. MERS denies the allegations of Paragraph 94.

32. MERS admits the allegations of Paragraph 95 only to the extent that US Bank was not the original lender; MERS is without sufficient information or knowledge to form a belief as

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to the remaining allegations of Paragraph 95; as such, they are denied.

33. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 96; as such, it is denied.

34. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 97; as such, it is denied.

35. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 98; as such, it is denied.

36. MERS is without sufficient information or knowledge to form a belief as to the truth of Paragraph 99; as such, it is denied.

37. MERS denies the allegations of Paragraph 100.

38. MERS denies the allegations of Paragraph 101.

39. MERS denies the allegations of Paragraph 102.

40. MERS denies the allegations of Paragraph 103.

41. MERS denies the allegations of Paragraph 104.

42. MERS denies the allegations of Paragraph 105.

43. MERS denies the allegations of Paragraph 106.

44. MERS denies the allegations of Paragraph 107.

45. MERS denies the allegations of Paragraph 108.

46. MERS denies the allegations of Paragraph 109.

47. MERS denies the allegations of Paragraph 110.

AS TO COUNT 1
(Declaratory Relief)

48. No response is required to Paragraph 111; to the extent a response is required, MERS denies the allegations.

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49. No response is required to Paragraph 112; to the extent a response is required, MERS denies the allegations.

50. No response is required to Paragraph 113; to the extent a response is required, MERS denies the allegations.

51. MERS admits the allegations of Paragraph 114.

52. MERS denies the allegations of Paragraph 115.

53. No response is required to Paragraph 116; to the extent a response is required, MERS denies the allegations.

54. No response is required to Paragraph 117; to the extent a response is required, MERS denies the allegations.

55. No response is required to Paragraph 118; to the extent a response is required, MERS denies the allegations.

56. No response is required to Paragraph 119; to the extent a response is required, MERS denies the allegations.

57. No response is required to Paragraph 120; to the extent a response is required, MERS denies the allegations.

58. MERS denies the allegations of Paragraph 121.

59. No response is required to Paragraph 122; to the extent a response is required, MERS denies the allegations.

60. MERS denies the allegations of Paragraph 123.

61. No response is required to Paragraph 124; to the extent a response is required, MERS denies the allegations.

62. MERS further denies all allegations and prayers for relief as set out in the Answer and

Counterclaim/Crossclaim.

AS A FIRST DEFENSE

63. MERS pleads the applicable statute of limitation as a complete bar to this action.

AS A SECOND DEFENSE

64. To extent Defendants experienced and actual damage, which is denied, Defendants failed to mitigate any damages.

AS A THIRD DEFENSE

65. MERS pleads judicial estoppel as a complete bar to this action.

AS A FOURTH DEFENSE

66. MERS pleads laches as a complete bar to this action.

AS A FIFTH DEFENSE

67. MERS pleads waiver as a complete bar to this action.

AS A SIXTH DEFENSE

68. MERS pleads unclean hands as a complete bar to this action.

AS A SEVENTH DEFENSE

69. Counter Plaintff's Answer and Counterclaim/Crossclaim fail to state a claim upon which relief can be granted.

AS AN EIGHTH DEFENSE

70. MERS reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired by discovery or otherwise.

WHEREFORE, having fully set forth its Answer to the crossclaim asserted against it MERS requests that the Court dismiss all claims against it as laid out in the Answer and Counterclaim/Crossclaim, award MERS fees and costs associated with defending this action, and for such other and further relief as this Court deems, just, fit, and proper.

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Date: August 28, 2018

By: /s Jonathan M. Riddle
Jonathan M. Riddle #101475
Stern & Eisenberg Southern, PC
1709 Devonshire Drive
Columbia, SC 29204
Telephone: (803) 929-0760
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Attorney for MERS

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ELECTRONICALLY FILED - 2018 Oct 15 4:41 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871
Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association, Defendants.	**NOTICE OF DEPOSITION**
Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc., and DOES 1-10, Counter-Defendants.	

TO THE DEFENDANT(S) NAMED ABOVE:

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, the undersigned will take the deposition upon oral examination of Jamie Singleton. The deposition will begin at 1:30 p.m. on October 25th, 2018 at the office of Attorney William Sloan, Sloan Law Firm PA located at 1055-F North Main St., Summerville, SC.

October 15, 2018

By: ***/s/ Jonathan M. Riddle***

Jonathan M. Riddle #101475
Stern & Eisenberg Southern, PC
1709 Devonshire Drive
Columbia, SC 29204
Telephone: (803) 462-5006
Facsimile: (803) 929-0830
Attorney for Plaintiff

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE RECEIVED A DISCHARGE IN A CHAPTER 7 BANKRUPTCY, WE ARE AWARE YOU ARE NOT PERSONALLY OBLIGATED FOR THIS DEBT. PLEASE BE ADVISED THAT THIS NOTICE IS REQUIRED FOR FORECLOSURE IN THIS STATE.

ELECTRONICALLY FILED - 2018 Nov 28 3:28 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2011-CP-18-00871
Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, Plaintiff, v. Jamie Singleton; Indigo Pointe Homeowners Association, Defendants;	**CROSSCLAIM DEFENDANT US BANK, NA, AS TRUSTEE FOR FRT 2011-1'S MOTION FOR SUMMARY JUDGMENT**
Jamie Singleton, Counter-Plaintiff, v. US Bank, NA, As Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity, but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1; FCI Lender Services, Inc., and DOES 1-10, Counter-Defendant and Cross Defendants.	

(514978-00008 EL1)

TO: THE ABOVE NAMED DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that the Crossclaim Defendant, US Bank, NA, as Trustee for FRT 2011-1 ("FRT Trust"), through its undersigned attorney, will move before the Master in Equity for Dorchester County, on the tenth (10) day after service hereof or as soon thereafter as counsel may be heard at such earlier date and time as counsel may agree or the court may order, for an Order granting summary judgment in favor of FRT Trust as to the crossclaim.

Specifically, based on the pleadings, discovery, the Affidavit of David C. Jenkins, attached hereto as Exhibit A, as well as a memorandum to be filed at a later date, Crossclaim Defendant, FRT Trust, no longer has or claims to have any interest in subject loan or real estate, and therefore, Singleton's requested relief as to it is unnecessary, and FRT Trust need not be a party to this matter.

Respectfully submitted,

s/ Erica G. Lybrand

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
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(803)771-7900
Erica.Lybrand@rtt-law.com
Attorneys for Crossclaim Defendant US Bank, NA, as Trustee for FRT 2011-1
Rogers Townsend & Thomas, PC and its staff are debt collectors

November 28, 2018

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1,

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants;

AFFIDAVIT OF DAVID C. JENKINS

Jamie Singleton,

Counter-Plaintiff,

v.

US Bank, NA, As Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity, but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1; FCI Lender Services, Inc., and DOES 1-10,

Counter-Defendant and Cross Defendants.

(514978-00008 EL1)

PERSONALLY APPEARED before me, David C. Jenkins, who, being duly sworn, deposes and says as follows:

1. I am a Director of FIG, LLC; a subsidiary of FIG, LLC is the sole administrator of the FRT 2011-1 Trust, FRT 2013-1 Trust and FORT Asset Funding 2013-1 LLC. These entities have previously owned the subject mortgage loan.

2. The FRT 2011-1 Trust was managed by FIG from August 25, 2011 to present.

3. I am authorized to execute this affidavit on behalf of Cross-Defendant US Bank, NA as Trustee for FRT 2011-1.

4. I have reviewed Fortress' records regarding the mortgage loan which is the subject of this action, hereinafter referred to as the "Singleton loan."

5. The Singleton loan was deposited into the FRT 2011-1 Trust on October 31, 2011.

6. On November 19, 2013, the Singleton loan was sold to FORT Asset Funding 2013-1 LLC and immediately deposited into the FORT 2013-1 Trust.

7. On September 24, 2014, the Singleton loan was sold to NNPL Trust Series 2012-1.

8. Fortress is unrelated to NNPL Trust Series 2012-1.

9. US Bank, NA as Trustee for the FRT 2011-1 Trust, including US Bank, NA as Trustee, no longer have or claim to have any interest in subject loan or real estate.

AFFIANT FURTHER SAYETH NAUGHT.

David C. Jenkins
Director; FIG, LLC

SWORN to before me this 16
day of November, 2018.

Notary Public for Summit
My Commission Expires: March 05, 2022

Notary Public
KAREN MARIE MUFFETT
COMMISSION NUMBER 699294
My Commission Expires
March 05, 2022
STATE OF UTAH

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STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA, not in its individual capacity, but Solely as owner Trustee of Westvue NPL Trust, Series 2014-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

JAMIE SINGLETON,

Counter-Plaintiff,

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY IN ITS CAPACITY AS CERTIFICATE TRUSTEE FOR NNPL TRUST SERIES 2012-1; FCI LENDER SERVICES, INC., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

MOTION OF DEFENDANT JAMIE SINGLETON FOR SUMMARY JUDGMENT

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys and in view of recent admissions under oath in depositions, files his Amended Motion for Summary Judgment and requests that Final Summary Judgment be entered in his favor, and as grounds states:

A. Introduction and Procedural History

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1. Mr. Singleton originally filed a motion for summary judgment in early September of 2013 at which time a different Plaintiff was named, which Motion was heard and denied by the Court on April 29, 2014.

2. Since that time, the Plaintiff has been substituted, and Mr. Singleton has taken the depositions of the designated representatives of the current Plaintiff and of Mortgage Electronic Registration Systems, Inc. (hereafter "MERS") which depositions were taken on October 24 and 25, 2018. The transcripts of these depositions are filed separately but incorporated herein by reference.

3. Pursuant to the sworn testimony of the depositions of the designated representatives of the current Plaintiff and MERS, Mr. Singleton asserts that there is no genuine issue of material fact as to of any timely or legal transfer of either the Note or the Mortgage to the current Plaintiff, and that the first Assignment of Mortgage executed by MERS as "nominee" for the bankrupt original lender, which Assignment purported to transfer both the Note and the Mortgage from the bankrupt original lender to GMAC, is a legal nullity as the MERS representative has testified, under oath, that MERS cannot act for a non-functional entity. Further, MERS could not have transferred an interest which it was not in possession of, as any interest in the Mortgage would have devolved to the Bankruptcy Trustee having jurisdiction over the bankruptcy of the original lender as of the time of the Bankruptcy filing of the original lender on March 20, 2007.

4. There is thus no evidence of either a timely or legally proper transfer of the Singleton loan to the Trust of which the Plaintiff is the claimed "owner Trustee", warranting the entry of Final Summary Judgment in favor of Mr. Singleton as Plaintiff has not and cannot prove that it ever acquired standing to seek enforcement of either the Note or the Mortgage.

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B. Undisputed Material Facts

5. Mr. Singleton originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007. This Court may take judicial notice of the People's Choice Bankruptcy pursuant to SCRE Rule 201(b)(2), as the subject bankruptcy filing is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and its accuracy may be ascertained by reference to readily available sources of indisputable reliability. *See, e.g.,* www.reuters.com/article/us-usa-subprime/peopleschoice/peoples-choice-home-loans-files-for-chapter-11; www.pacermonitor.com/public/case/99669/Peoples_Choice_Home_Loan_Inc. *Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct.App. 2002) citing *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 172, 470 S.E.2d 397, 401 (Ct.App. 1966).

6. The named Plaintiff in this case is U.S. Bank, National Association not in its individual capacity but as Owner Trustee of WestVue NPL Trust Series 2014-1 (hereafter "USBTE"). It is without dispute that USBTE was not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage. It is also without dispute that there have been multiple substitutions of the Plaintiff, all of which are based on alleged Assignments of Mortgage.

7. There is a first "Assignment of Mortgage" which has been recorded in the public records dated July 14, 2008 by which MERS purported to assign the Mortgage "together with the Note" to GMAC Mortgage, LLC. A copy of this purported Assignment is attached hereto marked Exhibit "B" and incorporated herein by reference.

8. This Assignment, which is dated July 14, 2008, which is 16 months after People's Choice filed Bankruptcy.

9. On October 25, 2018, counsel for Mr. Singleton took the deposition of Joseph Patry, the designated representative for MERS, who testified that he is and has been senior counsel for MersCorp Holdings, which is the parent company of MERS, since August of 2017. (Patry deposition, page 4, lines 24-25; page 5, lines 2-4; page 5, lines 10-11; page 10, lines 13-17). A copy of the Patry deposition transcript has been filed separately.

10. Mr. Patry testified that MERS does not own notes and that neither MERS nor MersCorp lend money. (Patry deposition, page 17, lines 3-9).

11. Mr. Patry was repeatedly asked for the source of any authority which would permit MERS to sign documents on behalf of a bankrupt entity (Patry deposition, pages 24-26 and page 26, lines 15-25). In response thereto, Mr. Patry, who is an attorney and senior general counsel for MERS (as a subsidiary of MersCorp Holdings), testified under oath: "Again, we don't sign documents on behalf of entities that are non-functional". (Patry deposition, page 27, lies 1-2).

12. There is thus no genuine issue of material fact that:

(a) the original lender filed for Bankruptcy on March 20, 2007 and was thus non-functional as of March 20, 2007;

(b) MERS does not own promissory Notes;

(c) the MERS Assignment of Mortgage dated July 14, 2008, by which MERS purported to assign the Mortgage "together with the Note" was executed by MERS as nominee for a non-functional entity which MERS does not do;

(d) The Assignment of Mortgage dated July 14, 2008 could not assign the Note as MERS does not own promissory Note; and.

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(e) Nothing was assigned by the July 14, 2008 Assignment of Mortgage.

13. On July 9, 2013, counsel for Mr. Singleton took the deposition of one James P. George, who was designated as the representative of the then-Plaintiff (George deposition, page 15, lines 7-17). Mr. George testified that he was an employee of an entity styled AMS Servicing located at 3374 Walden Avenue, Suite 120, Depew, New York (hereafter "AMS"). The original transcript of the deposition of Mr. George has been previously filed.

14. Mr. George testified that he has never seen an order from the bankruptcy court having jurisdiction over the People's Choice bankruptcy which permitted the assignment of the Singleton loan out of the People's Choice bankruptcy estate (George deposition, page 27, lines 18-23).

15. Thereafter, the Plaintiff herein was substituted several times.

16. On October 24, 2018, counsel for Mr. Singleton took the deposition of Michael Dolan. A copy of the Dolan deposition transcript has been filed separately.

17. Mr. Dolan testified that he was appearing as the designated representative of the current Plaintiff (Dolan deposition, page 11, lines 5-20).

18. Mr. Dolan testified that he has never seen the original Note or Mortgage. (Dolan deposition, page 21, lines 13-15).

19. Mr. Dolan testified that he has no knowledge of whether the transfer of the Singleton loan to the Trust was done in compliance with the Sale and Administration Agreement (Dolan deposition, page 58, lines 5-15 and page 59, lines 3-12).

20. Mr. Dolan testified that he has no knowledge of when any transfers of the loan took place; what consideration, if any, was paid; or how any such transfer was effected. (Dolan deposition, page 63, lines 3-8).

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21. Mr. Dolan testified that endorsements and allonges are not dated and thus the date of an assignment is used as the date of transfer. (Dolan deposition, page 69, lines 7-24).

C. Applicable Law and Argument

22. SC Code sec. 36-3-203(b), which governs the transfer of instruments and rights acquired by transfer, provides in pertinent part that transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument.

23. SC Code sec. 36-3-203(d) expressly provides that if the transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur and the transferee obtains no rights under the statute and has only the rights of a partial assignee.

24. In South Carolina, the assignment of a mortgage alone does not carry with it an assignment of the Note. *Hahn v. Smith*, 157 S.C. 157, 164, 154 S.E. 112, 115 (1930), cited in *Bank of America, et al. v. Draper*, No. 2012-208806, Opinion No. 5140 (Ct.App. June 5, 2012) and citing SC Code sec. 36-3-203(b).

25. The Statute and the decisional law clearly provide that the transfer of an instrument vests in the transferee any rights the transferor had, and that an assignment of a mortgage alone does not carry with it an assignment of the Note. Again, MERS' designated representative Patry testified, under oath, that (a) MERS does not own promissory notes, and (b) that MERS does not sign documents on behalf of non-functional entities.

26. There is no law which permits a non-lender third party (in this case, MERS) to "assign" an interest of a bankrupt lender, and MERS' designated representative testified under oath that MERS does not sign documents on behalf of non-functional entities. Where there is no law from the appellate courts of South Carolina on a particular issue, the Courts of this state look

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to their own general principles of law as well as the law of other jurisdictions for instruction. *State v. Williams*, 624 S.E.2d 443, 446, 367 S.C. 192 (SC 2006); *Simmons v. Tuomey Regional Medical Center*, 341 SC 32, 44, 533 S.E.2d 312 (S.C. 2000); *Heilker v. Zoning Bd. of Appeals*, 346 S.C. 401, 407, 552 S.E.2d 42 (S.C. App. 2001); *Hardin Construction Group, Inc. v. Carlisle Construction Company*, 388 S.E.2d 794, 300 S.C. 456 (S.C. 1989).

27. The general principles of law in South Carolina which are set forth in both statutory and decisional law as to what interests, if any, result from an assignment are cited above. The closest case as to the alleged effect of an assignment of an interest in a mortgage by an out-of-business original lender is explained in *Drouin v. American Home Mortgage Servicing, Inc.*, No. 11-cv-596-JL (D. New Hampshire, May 18, 2012). A copy of the *Drouin* decision is attached hereto.

28. In *Drouin*, American Home Mortgage and Wells Fargo claimed to possess an assignment of the homeowners' mortgage from Sand Canyon Corporation, the successor-in-interest to the original lender (Option One). The homeowners claimed that Sand Canyon could not have assigned the mortgage to Wells Fargo because the assignor (Sand Canyon) ceased holding any mortgages years before the assignment. There was evidence presented that Sand Canyon ceased business operations in 2008, yet purportedly assigned the homeowners' mortgage to Wells Fargo on March 24, 2011, with Wells Fargo thereafter instituting foreclosure.

29. The New Hampshire Federal Court relied on New Hampshire case law which provides that a debtor may raise defenses to an assignment and the lack of a plaintiff's title or right to sue, and Section 336 of the Restatement (Second) of Contracts (1981) which provides that by an assignment the assignee acquires a right against the obligor only to the extent that the obligor is under a duty to the assignor; and if the right of the assignor would be voidable by the

obligor *or unenforceable against him if no assignment had been made*, the right of the assignee is subject to the infirmity. (emphasis supplied)

30. Applying the general principles of law and the Restatement of Contracts, the Federal Court found that the homeowners had standing to pursue their claim that since the assigning party did not hold their mortgage, it could not have been assigned to Wells Fargo. The Court cited from the opinion in *Newitt v. Wells Fargo Bank, N.A.*, No. 213-2011-CV-00173 (N.H. Super. July 14, 2011), which held that "[t]he assignment from Sand Canyon to Wells Fargo of an interest which Sand Canyon did not possess" was no more effective to assign the mortgage "than the lack of any assignment at all".

31. South Carolina courts regularly rely upon the principles of the Restatement (Second) of Contracts. *See, e.g., Electro Lab of Aiken v. Sharp Const.*, 357 S.C. 363, 369, 593 S.E.2d 170 (S.C.App. 2004); *Holler v. Holler*, 364 S.C. 256, 612 S.E.2d 469, 475 (SC, 2005); *Collins Entertainment Corporation v. Coats and Coats Rental Amusement*, 629 S>E.2d 635, 637 368 S.C. 410 (S.C. 2006).

32. Applying South Carolina general law, the New Hampshire Federal decision, and the principles of the Restatement (Second) of Contracts to the undisputed facts of this case including the sworn testimony of Dolan and Patry, the Plaintiff, USBTE, has no interest to enforce. The first Assignment by MERS was executed over a year after the original lender was out of business and had filed Bankruptcy, and thus MERS, as the alleged "nominee" of the bankrupt People's Choice, not only had nothing to assign, but could not assign any interest in either the Note or the Mortgage as its designated representative, who is an attorney, testified under oath that MERS (a) does not own promissory Notes (and thus the July 14, 2008 MERS Assignment could not have assigned a Note that it did not own), and (b) MERS does not sign documents on behalf of non-

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functional entities (and thus could not assign an interest in the Mortgage as the entity for which MERS was purporting to act was non-functional well prior to and also as of the date of the Assignment).

33. There is also no evidence that such assignment was permitted by the Bankruptcy Court having jurisdiction over the bankruptcy of the original lender, and no evidence of any lawful transfer of either the Note or the Mortgage from the bankrupt People's Choice to the current Plaintiff given the testimony of the current Plaintiff's designated representative.

34. Given the undisputed facts, sworn admissions of the designated representatives of the Plaintiff and MERS, and applicable law, there was no transfer or negotiation of either the Note or the Mortgage at any time. The current named Plaintiff (USBTE) has no rights in either the Note or the Mortgage and is thus precluded, as a matter of undisputed facts and law, from prosecuting this action.

35. The purpose of summary judgment in South Carolina is to expedite disposition of cases which do not require the services of a factfinder, and is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *D.R. Horton, Inc. v. Westcott Land Co.*, 730 S.E.2d 340, 347, 398 S.C. 528 (S.C. App. 2012), citing SCRCP Rule 56(c).

36. There is no genuine issue of material fact that there was not and could not have been any transfer of any interest in either the Note or the Mortgage from the bankrupt original lender, People's Choice, to any person or entity. This "break in the chain" results in any downline (past-July 14, 2008) purported transfers being legal nullities, as none of the subsequent transferees had anything to assign or transfer.

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37. The law in South Carolina is well-established that no person is permitted to acquire a right of action from their own unlawful act, and that one who participates in an unlawful act cannot recover damages for the consequences of that act, and further that these rules apply at both law and in equity and whether the cause of action is in contract or tort. *Wachovia Bank, NA v. Coffey*, 389 S.C. 68, 698 S.E.2d 244, 248 (S.C. App. 2010) (affirming summary judgment in favor of homeowner on foreclosure filed by Wachovia), citing *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71.

38. The purported MERS Assignment of July 14, 2008 was an unlawful act by virtue of the sworn testimony of MERS' own designated representative, who is an attorney and senior counsel for MERS.

39. The Plaintiff's designated representative testified that the date of transfer of any interest is the date of the assignment. As the first assignment was an unlawful act which was legally infirm and thus of no legal significance, the current Plaintiff, a downline alleged transferee, never acquired any interest in either the Singleton Note or Mortgage and thus never acquired standing to seek to enforce either the Note of the Mortgage.

40. Mr. Singleton is thus entitled to the entry of Final Judgment in his favor as a matter of law.

D. Conclusion

There is no genuine issue of material fact that no interest in either the Note or the Mortgage was ever transferred from the bankrupt original lender to any person or entity. There is no genuine issue of material fact that the July 14, 2008 Assignment transferred nothing, and thus nothing was transferred by any subsequent assignment as there was nothing to assign. USBTE, which claims its alleged "rights" based on admitted wrongful actions, is precluded by South

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Carolina precedent from recovering anything or prosecuting this action. Final Summary Judgment should thus be entered in favor of Mr. Singleton.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court enter Final Summary Judgment in his favor for the reasons set forth herein, determine him to be the "prevailing party" under the mortgage documents for purposes of attorneys' fees and costs, and that this Court reserve jurisdiction to enter a Judgment in favor of JAMIE SINGLETON for his attorneys' fees and costs to be assessed against Plaintiff, with such relief being requested for the reasons set forth and for any other and further relief which is just and proper.

Dated this 13th day of December, 2018.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
:
COUNTY OF DORCHESTER) Case No. 2011-CP-18-871

US BANK, NA, not in it's individual capacity, but solely as owner Trustee of Westvue NPL Trust, Series 2014-1,

Plaintiff(s),

-vs-

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendant(s).

DEPOSITION OF:

MICHAEL DOLAN

Given before Molly C. Newton, Court Reporter and Notary Public, at the Sloan Law Firm, 1055-F North Main Street, Summerville, South Carolina, on Wednesday, October 24th, 2018, commencing at 9:50 o'clock, a.m.

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(Michael Dolan, being duly sworn, testified as follows:)

DIRECT EXAMINATION BY MR. BARNES:

Q. Could you please tell us your name, sir?

A. Michael Dolan, M-I-C-H-A-E-L, Dolan, D-O-L-A-N.

Q. Mr. Dolan, my name is Jeff Barnes and together with Bill Sloan I represent Mr. Jamie Singleton in this matter; we're here today for a deposition; I'm going to take you through some preliminary instructions which I'm sure you may have heard before however I have to do it for purposes of this deposition as well; before we get started, have you ever had your deposition taken before?

A. Yes.

Q. How many times in the last 12 months?

A. None.

Q. How many times in the last five years?

A. Over 100.

Q. Is there a particular reason you haven't been deposed at all in the last 12 months?

A. People know who I am and know it won't help them much.

Q. So, anyway, since you've been deposed over 100 times you should be familiar with these

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instructions; I'm going to ask you questions and you give me answers on what's called personal knowledge and by that I mean please don't speculate, guess, or assume; if you don't know the answer to my question the words I don't know are perfectly acceptable; some of the things I'm going to ask you about happened several years ago, if you don't recall something taking place, I don't recall is also acceptable; once we get started the answers have to be in the form of words, audibles, not nods of the head, hand gestures, or mm-hmm because we don't know if that is a yes or no, although in the old days they used to say, Witness nods head in the affirmative, we don't do that anymore; this is not meant to be an endurance contest, if you need to take a break just raise your hand and we'll take a break, the only caveat being that during any break you don't discuss my questions or any answers with your counsel; I do a lot of these and I don't anticipate this taking more than three hours, it should take two hours and some change, on average and we will be marking some exhibits today which I will give to you and your counsel which we have here on the table;

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during the course of the deposition your counsel may not like one of my questions and he may object but unless he tells you specifically, Do not answer the question, which would only be if I ask for an answer which called for disclosure between you and your lawyer, which I've never done in 30 years and I don't intend to start doing today, you do need to answer the question despite the objection; do you have any questions for me before we get started?

A. No, sir.

Q. Who is your current employer?

A. The Statebridge Company, LLC.

Q. Out of which office?

A. The only office which is in Denver, Colorado.

Q. The Statebridge Company, LLC is what, what is their line of business?

A. We are a loan servicer and we currently service the subject loan.

Q. You mean the loan that is the subject of this litigation?

A. Correct.

Q. You said currently, when did Statebridge start servicing this loan?

A. Earlier this year, I believe, April, May.

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Q. Who did Statebridge take over servicing from?
A. I do not recall.
Q. I'm going to go through your employment history; how long have you been with Statebridge?
A. I've been with Statebridge since September of 2015.
Q. What are you day to day duties and responsibilities with Statebridge?
A. I manage a portfolio of loans that are involved in either contested litigation or defensive litigation; I work with attorneys and appear as witnesses, mediations, depositions, and working with the investor to decide strategies.
Q. How long have you been doing that for?
A. Since 2010.
Q. I'm sorry, you said you started with Statebridge nine of 15 -
A. That's correct.
Q. Have your duties and responsibilities with Statebridge changed between nine of 15 to the present?
A. No.
Q. Prior to Statebridge who were you employed with?
A. Beginning in 1984 I began working at a company called World Savings; in 2006 -

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Q. Wait. We're going to take these little by little; worked at World Savings out of what office?

A. The Oakland, California office, their main headquarters, until 2001. In 2001, I moved to their operations center in San Antonio, Texas.

Q. And what were your day to day responsibilities with World Savings during that time from 1984 to 2001?

A. I had a variety of upper management positions and the corporate planning, records and acquisitions and market research departments.

Q. Why did you leave World Savings?

A. I didn't.

Q. They were swallowed up by Wells Fargo?

A. In 2001 I moved to Texas. In 2006 they were acquired by Wachovia. In 2009 Wells Fargo acquired Wachovia. I remained until 2014 at which time I had over 30 years and took early retirement.

Q. So you stayed on with World Savings which was swallowed up by Wachovia which was acquired by Wells Fargo?

A. Yes, sir.

Q. Did your duties and responsibilities change

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throughout that period?

A. Yes, sir.

Q. Tell me how.

A. Between 2001 and 2007 I worked in the loan servicing department as the Director of Operations and Finance. After the Wachovia merger that role shifted to working with the legal department on a part time basis. By 2010 I was working for the legal department on a full time basis, assisting with the defense of various defense, foreclosure, and other legal matters.

Q. When did you take early retirement?

A. At the end of 2014, December 31st.

Q. So what did you do for employment, if anything, between 12/31 of 14 and nine of 15?

A. Nothing.

Q. Okay. Why did you decide to go to work with Statebridge?

A. A personal friend was the general counsel and offered me the opportunity and I decided to take it.

Q. I'm going to mark as Exhibit One the Notice of Taking Deposition; do you have one?

(NOTICE MARKED AS DEFENDANT'S EXHIBIT

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NUMBER ONE FOR IDENTIFICATION.)

MR. RIDDLE: I have one as well and I'll take a look at your copy.

MR. BARNES: Yeah, that's what I wanted to do. Make sure we're on the same page here.

MR. RIDDLE: The only other thing I want to make is once again the current plaintiff is being the current plaintiff is the current plaintiff.

MR. BARNES: Well, we'll get to that.

Q. So again, we've marked as Exhibit Number One the Notice of Deposition; have you seen this document before today?

A. I have.

Q. And not withstanding the fact that you are employed by Statebridge do you understand that you are appearing today as the designated representative of the named current plaintiff, US Bank, NA, not in it's individual capacity but solely as owner Trustee of Westvue NPL, all caps no spaces, -

MR. RIDDLE: I'm going to object to the form of that question again because there has been a substitution of plaintiff filed with The Court.

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MR. BARNES: Okay.

MR. RIDDLE: So you can -

MR. BARNES: No. Let's not do it that way.

Q. So, do you understand that you are appearing today as a representative of the current plaintiff pursuant to this substitution, that being Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in it's individual capacity but solely in it's capacity as certificate trustee for NNPL Trust Series 2012 dash One?

A. I am appearing today for the substituted trustee that the substituted plaintiff that was formerly US Bank, not in it's individual capacity.

Q. Right. But what I'm asking you -

A. Oh. The Christiana Trust, yes.

Q. Well, actually there is a longer name which I just read; do you understand you -

A. Yes. I understand.

Q. Okay. The other instruction I forgot to give you and I apologize to you, the preliminary questions are very simple and I know you want to jump in and answer them but it makes her job very difficult and she is the most important

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person in the room today so if I could finish my question and then you give me your answer so we don't get a piece of you talking, a piece of me talking, a piece of you talking, a piece of me talking, all right?

A. I understand.

Q. For her benefit.

A. Yes.

Q. So again, you understand you're appearing for the recently substituted plaintiff, Wilmington Savings Fund Society FSB DBA Christiana Trust not in it's individual capacity but solely in it's capacity as certificate trustee for NPL Trust Series 2012-1?

A. Correct.

Q. And you understand that everything you say here today is attributable to and binding upon that entity?

A. Yes.

Q. Okay. So have you ever worked for US Bank NA?

A. No, sir.

Q. Have you ever worked for Holdings, Inc?

A. No, sir.

Q. Have you ever worked for 50 by 50 REO, LLC?

A. No, sir.

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Q. Have you ever worked for DB 50 2007 dash One trust?
A. No, sir.
Q. Have you ever worked for Wilmington Savings Funds Society FSB DBA Christiana Trust, not in it's individual capacity but solely in it's capacity of certificate trustee of NPL Trust Series 2012 dash one?
A. No, sir.
Q. Do you know what a securitization trust is?
A. Yes, sir.
Q. Tell me what you understand it to be.
A. A securitization trust is where trust is established for holding of securities that are possibly registered with the SEC.
Q. Anything else?
A. No.
Q. I want you to turn to the second page of the Notice; there are a series of categories that begin at the bottom of the page as far as areas of inquiry staring with, the first one is not numbered but should be Number One, and then there is Two, Three, and continues on to the second page and the third page, et cetera; have you reviewed those?

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A. Yes, sir.
Q. Okay. Let me ask you this, the part who you are appearing on behalf of, this Wilmington Savings Fund entity, can we agree that they were not the original lender?
A. Yes.
Q. Who was the original lender?
A. I would have to look at the note. I don't recall.
Q. Okay. Do you know how Wilmington allegedly acquired the loan?
A. They purchased the loan or I should say the entity who they are trustee for purchased the loan and they received an assignment of mortgage or assignment of the security instrument.
Q. Who did they buy it from?
A. I would have to look at the assignments.
Q. Have you looked at this before today?
A. Yes. I have.
Q. Have you looked at the note?
A. Yes. I have.
Q. But you just don't recall?
A. That is correct.
Q. You mentioned the term assignment of mortgage, what is that?

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A. I think that's a legal term and I don't know if I'm qualified to answer that. I can tell you what a layperson would say.
Q. Then tell me what a layperson would say in your position.
A. An assignment of a mortgage is where an entity that is currently the holder of the mortgage assigns it twice to another party. These are typically then recorded at the county clerk's office.
Q. We're going to put this up for a minute and go to some other exhibits; Exhibit Two is actually a composite, it's going to have parts to it.
(COMPOSITE MARKED AS DEFENDANT'S EXHIBIT NUMBER TWO FOR IDENTIFICATION.)
Q. I want to go to the first couple of pages where it says Loan Ownership History Singleton comma Jamie; do you see that?
A. Yes, sir.
Q. Okay. We're going to go to the second page first; the first entity says People's Choice Home Loan, Inc., date obtained interest 1/4/2006, date of origination; do you see that?
A. Yes, sir.
Q. Does that refresh your recollection as to who

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the loan originator was?

A. Yes, sir.

Q. Okay. Is that who you understand to be the original loan entity?

A. Yes. I do.

Q. Are you aware that People's Choice Home Loan, Inc. filed for bankruptcy?

A. No.

Q. Okay. The next entry says Nomura Credit and Capital comma Inc; do you see that?

A. Yes, sir.

Q. Date obtained interest, 3/1/2006 which would have been 60 days after the origination?

A. Yes, sir.

Q. And it says date divested interest, 9-27-2007.

A. That is correct.

Q. And if you look just above it to the People's Choice Home Loan, Inc. entry it says date divested interest 3-1-2006; do you see that?

A. Yes, sir.

Q. That corresponds with the date that Nomura obtained the interest in the loan, correct?

A. Yes.

Q. Are you familiar with that transaction?

A. No.

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Q. Have you ever worked for Nomura Credit and Capital?
A. No.
Q. Okay. The next entry says 50 by 50 LLC, date obtained interest 9/27/07, date divested interest 10/31/07; do you see that?
A. Yes, sir.
Q. All right. The date that 50 by 50 obtained it's interest would correspond to the date Nomura divested it's interest, correct?
A. Correct.
Q. Okay. And apparently it was a sale of the loan, at least according to this document?
A. Yes. The document suggests the sale of the loan from Nomura to 50 by 50.
Q. Does Statebridge have a file concerning this loan or more than one file concerning this loan?
A. We have a file concerning this loan.
Q. What's the name of it?
A. Jamie Singleton and then the loan number we have assigned to it which is 43608.
Q. I'm sorry, four what?
A. 43608.
Q. What does that number indicate?
A. The account number of the loan at Statebridge.

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Q. Are all the documents concerning the Singleton loan that are in the custody or systems of Statebridge maintained in this file?
A. No.
Q. Where are other documents maintained?
A. I do not know.
Q. How do you know there are other documents?
A. Well, for example, I don't have the loan application. I don't know where the loan application is. I don't need the loan application to service the loan.
Q. Maybe my question wasn't fair; what I'm saying is you said - I'm sorry, was there something funny?
A. Nothing funny at all.
Q. Okay. My question was this, you said that Statebridge has a file as to Mr. Singleton with his loan number, 43608; my question was are all the documents that are in Statebridge's care, custody, control, concerning this loan, within this one file?
A. Yes. They are.
Q. Does Statebridge have to maintain any documents in electronic form as to the Singleton file?
A. We maintain all of our documents in electronic

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form.

Q. So this is an electronic file?

A. Yes.

Q. There are no paper files?

A. That is correct. The only exception would be the original note and mortgage that are held by a custodian.

Q. Who is the custodian?

A. Currently if the original note and mortgage are not with the attorney they would be at Wells Fargo Bank.

Q. Where?

A. Minneapolis.

Q. Why would they be maintained by Wells Fargo?

A. Because they have a nice vault and that's a service they offer to private investors.

Q. Okay. Do you know what a collateral file is?

A. I do.

Q. What is a collateral file?

A. I would define it as the original note and mortgage.

Q. Nothing else?

A. That's correct.

Q. Do you know who prepared these three pages we're looking at?

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A. I do not.
Q. Okay. Now, we've been going through a couple of these transfers on the loan, People's Choice to Nomura, Nomura to 50 by 50; does Statebridge have any documents in the Jamie Singleton file concerning these transfers?
A. We have copies of the assignments.
Q. Which assignments?
A. All of the assignments.
Q. Assignments of what?
A. Assignments of the security instrument.
Q. You mean the mortgage?
A. Yes.
Q. Does Statebridge maintain any documents concerning the sale of the note from one entity to the other?
A. No, sir.
Q. So let's continue on - Oh, by the way, before I go on, do you know whether Statebridge has prepared a loan ownership history similar with the information in the exhibit we're looking at?
A. Not that I'm aware of.
Q. And is this loan ownership history that we're looking at contained within Statebridge's documents in the Jamie Singleton file?

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A. It is only to the extent it is in the legal portion of his file.
Q. What do you mean the legal portion?
A. Well, within any file we keep electronic records of all the court documents. This is in that area of the file.
Q. You say that is -
A. This document as well as any pleadings.
Q. Okay.
A. We do keep an electronic copy of.
Q. In this same file?
A. Yes, sir.
Q. Have you ever personally seen what is claimed to be the real original note and mortgage?
A. I have not.
Q. And since you testified that you were not aware that the originating lender, People's Choice Home Loan, Inc. had filed bankruptcy, you would not know whether or not the Singleton loan was a retained asset at the time of bankruptcy was filed, correct?
A. I have no idea.
Q. Okay. So continuing on, the third entry where it says 50 by 50, LLC depositor, do you know what that means?

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A. That is the name of the private investor who was the owner and holder of the note and who the mortgage had been assigned to.
Q. Can you look over to the last column on that entry and it says, 50 by 50, LLC immediately deposited the loan into the DB50 Trust; do you see that?
A. Yes.
Q. Do you know whether the DB50 Trust was a securitization trust?
A. I do not know.
Q. Okay. Then it says, back to the left hand side of that column, DB50 2007 dash One Trust, paren, LaSalle Bank as Trustee, paren; do you see that?
A. Yes, sir.
Q. Have you ever worked for LaSalle Bank?
A. No, sir.
Q. Were you involved in any way with this transfer?
A. No, sir.
Q. Okay. The next entry says Montana Drive Mortgage Holdings, LLC, Sole Certificate Holder DB50; do you see that?
A. Yes, sir.
Q. And under that it says FRT 2011 dash One Trust, paren, US Bank, NA as Trustee; do you see that?

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A. Yes, sir.
Q. Okay. If you look to the right of that entry it says PSA colon PL underline double oh eight six three; do you know what a PSA is?
A. It can have a couple of meanings. One is a principle servicing agreement or a principle sale agreement.
Q. Okay. So what is a principle servicing agreement or principle sale agreement?
A. A servicing agreement is an agreement I have with their investor that outlines my responsibilities to service the loan. The sale agreement would be one between two parties where they are selling mortgage or mortgages from one firm to the other and what the terms and conditions of that sale are.
Q. And you said I have, you mean Statebridge and not yourself personally?
A. That's right.
Q. Okay. And underneath PSA colon it says sale and admin agreement; do you see that?
A. Yes.
Q. Do you know what that is?
A. Not this particular one. No.
Q. Okay. I want to go back now to the first page

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because of the way this was structured; at the top it says Fort or FRT, mine is kind of kind of blurred, 2013 dash One Trust slash FRT 2011 dash One Trust, Seller; do you see that?

A. Yes, sir.

Q. And under that it says NNPL Trust Series 2012 dash One?

A. Yes.

Q. Do you know what NNPL Trust Series 2012 dash One is?

A. The next acquirer of the loan.

Q. Do you know what a trust series is?

A. Not with respect to the way that's used. I don't.

Q. The next entry says, WestVue, W-E-S-T, capital V-U-E, all one word, NPL Trust Roman Two Series 2014 dash One; do you see that?

A. Yes, sir.

Q. Do you know what that is?

A. That's the name of the next entity that was the purchaser of the loan.

Q. And the last entry on the page one says NNPL Trust Series 2012 dash One; do you see that?

A. Yes.

Q. Next to that it says repurchase effective date;

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do you know what that means?

A. I don't know why that would be there.

Q. Are you aware of any consideration paid in connection with any of these transfers?

A. No, sir.

Q. And again, just so I'm clear and I'm not trying to be repetitive but Statebridge, according to your testimony has copies of assignments of mortgage but nothing in terms of documentation concerning the sale on the note from one entity to the other, correct?

A. That is correct, with the caveat unless it's something that had been contained in the litigation piece of documents that had been previously filed.

Q. The third page of this document has a list of entities and start dates and transfer dates and there are various entities starting with People's Choice and Ocwen, O-C-W-E-N, GMAC Mortgage, LLC, Wealthbridge Mortgage Corp, AMS Servicing comma Inc., Seneca Mortgage Servicing, LLC, fda AMS Servicing, Inc., Shellpoint Mortgage Servicing dba New Penn, LLC, Shellpoint Mortgage Servicing slash New Penn, LLC, paren, Interim Servicer, paren, FCI, and then again

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Shellpiont Mortgage Servicing dba New Penn, LLC; do you see that?

A. I do.

Q. Have you ever worked for any of those entities?

A. No, sir.

Q. What do you understand, if anything, this particular page to represent?

A. Well, I believe it purports to represent who was actually servicing the loan, which means doing the collections, mailing the regulatory notices. I will point out that it does have an apparent error.

Q. Okay. Where is that?

A. The third column from the bottom. It says Shellpoint Servicing from 12/24/14 to 2/9/14 and I'm sure that they meant to put 2/9/15, and to answer your question from earlier that I could not recall, Shellpoint was the prior servicer to Statebridge.

Q. You mean the immediate prior servicer?

A. That is correct.

Q. And just so I'm clear Statebridge is not claiming to have any ownership interest in either the note or the mortgage, correct?

A. That is correct.

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Q. When Statebridge acquires a servicing platform from another servicer such as Shellpoint do you know of any investigations, due diligence, that is done to make sure the platform is in a complete form, that all the documents are there, that all the information correlates?

A. I don't understand the word platform; we've never acquired a platform.

Q. Okay.

A. We acquire servicing rights.

Q. Okay. Do you acquire servicing contracts?

A. No. In this situation the servicing for the loan was transferred from Shellpoint Servicing DBA New Penn, LLC to Statebridge. That process is called a boarding process where it goes from one servicer to the next.

Q. So then when Statebridge acquires this Servicing through this boarding process, is that a purchase?

A. No.

Q. So Statebridge just gets the servicing for nothing?

A. We service the loan for the investor. The investor is who pays the bill. We do not acquire servicing or pay for it. The investor

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decides I'm tired of Company A servicing the loan and I would like Company B to service the loan and they transfer servicing.

Q. Tell me how this transfer of servicing takes place.

A. First off, we're notified by the investor that they are going to be transferring loans. We have a loan boarding group. They work with the prior servicer, um, and that the transfer is accomplished in a couple of stages. Stage One is we're given preliminary information. The preliminary information we put into a test environment to make sure we are getting all the information to service the loan in it's current status, and then once the final date comes we get the final information and then it's put into our system. If, in the preliminary state, we find we're missing information we're able to get that before we go live with it. Also during this process all of the Hello and Goodbye letters required by federal regulation are mailed. The second part is the transfer of the electronic images. These are all the things that are copies of all of the records. This comes in, um, more images than data. We

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integrate those records into our system. There are federal standards that everyone uses when this occurs. Both Shellpoint and Statebridge are Freddie Mac servicers. Freddie Mac has a process to transfer the servicing so that it goes nice and smooth. Both Shellpoint and Statebridge are audited by the FDIC to make sure our boarding practices are proper pursuant to these Freddie Mac regulations.

Q. I'm sorry. I thought you said it was a three part process and we've gotten through part two.

A. No. Part one was the preliminary, part two is final, part three is documents.

Q. Okay. You just said the second part is the transfer of electronic images.

A. The third part we would go live with the final data.

Q. What does that mean?

A. That means that prior to the day we go live if you were to input the loan number 43608 for Jamie Singleton into our system it would say Loan number does not exist. Once it goes live then all the information becomes available to the appropriate parties at Statebridge.

Q. Okay. So now in terms of this loan, at the time

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that Statebridge acquired servicing was the loan being paid?

A. No, sir.

Q. In general, when a borrower slash homeowner makes payments on a loan to a servicer what happens to the money?

A. If the company is servicing the loan on behalf of a third party the money goes into a bank account that may or may not be specific for that investor and then once a month the funds are transferred to the investor where all the payments are turned over less any expenses that the servicer may have incurred such as paying property taxes, insurance, and the servicing fees earned against that so that the net amount goes to the investor.

Q. Net after expenses?

A. Correct.

Q. So you said the money goes into a bank account which may or may not be specific for that investor?

A. Correct.

Q. What do you mean by that?

A. Some investors such as Freddie Mac require that you put the money into a specific bank account

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that is not mixed with other corporate money. Some investors are so small they just say, Send me a check, you don't have to have a specific bank account so it can go into a Statebridge general account.

Q. Does Statebridge service other loans for this Wilmington Savings Fund entity other than the Singleton loan?

A. Yes.

Q. So I would assume that there are homeowners slash borrowers who are making payments to Statebridge in connection with Wilmington being the investor?

A. Not in this pool. No.

Q. None?

A. None.

Q. So the entire pool of funds acquired by Statebridge for servicing where the investor Wilmington Savings Fund, none of those loans are being paid?

A. That is correct.

Q. Okay. So then what does Statebridge do as far as servicing on the loans if nobody is paying on the loans?

A. Statebridge comes to depositions like I am here

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today.

Q. Anything else?

A. We go through and hire attorneys in appropriate states to begin foreclosure cases or we get a hold of the prior foreclosure counsel because most of the loans were already in some stage of foreclosure and continue that process.

Q. Okay. You told me earlier when money comes in from borrowers to Statebridge it's placed either in a segregated or non-segregated bank account, Statebridge then takes whatever expenses out for taxes and insurance escrows and any fees and turns over the net to the investor, correct?

A. Correct.

Q. Well, in this situation if there is no money coming in how does Statebridge get paid for it's services?

A. The investor sends us a check.

Q. Do you know where that money comes from?

A. No.

Q. And is that on a portfolio basis or a loan by loan basis?

A. They are invoiced on a loan by loan basis. They pay once.

Q. Once a month?

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A. I think everything settles monthly.
Q. So does Statebridge invoice the investor?
A. Yes.
Q. On a loan by loan basis?
A. No. We give them an invoice that describes how much was paid for each loan.
Q. You mean advanced?
A. Advanced.
Q. Okay. Well, if the borrowers aren't paying in where are the advances for taxes and insurance escrow coming from?
A. Well, a lot of times we actually go to sale and the property is sold third party and we collect the money and if we don't collect any money, as I previously said, the investor pays us a check. If we do have proceeds from foreclosure sales then we would send that net of our expenses.
Q. Let me do it this way, you just testified that on this entire pool of loans that Statebridge is servicing on behalf of this Wilmington Savings Fund entity, none of the borrowers are paying it.
A. None of the borrowers are making monthly payments. That is correct.
Q. Right. Now taxes and insurance escrows have to

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be funded, correct?
A. That is correct.
Q. Where does that money come from?
A. From the investor.
Q. And Statebridge has to be paid money for what it's doing, correct?
A. Correct.
Q. Which you said is also paid for by the investor?
A. That is correct.
Q. Okay. And this just goes on how long, forever?
A. Yes.
Q. Okay. You mentioned that when we have a sale there are proceeds realized from a sale; is the reconciliation for that particular loan in terms of repaying or reimbursing escrows taken out of that sale for that loan?
A. As I said we put everything in one settlement. All of the proceeds and cash in from third party sales as money due the investor, less all the advances and expenses on all the other loans, and there is a monthly settlement.
Q. Okay. So if I understand what you're telling me then, all of the net from foreclosure sales that Statebridge obtains as a result of selling these properties in foreclosure is put into some

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general fund?

A. No.

Q. Okay. Where does that money go?

A. It depends on the investor. This particular investor requires a segregated bank account so we have an account for this investor for all of their transactions.

Q. Okay.

A. When we receive money, short sales, foreclosure sales, it gets deposited in that account.

Q. Hold on. That account for this investor?

A. This investor.

Q. So it's a general fund for this investor?

A. Correct.

Q. Okay. That's what I was getting at. It's not in a segregated bank account as to a property by property or loan by loan basis?

A. No. It's put into a general fund for the investor.

Q. And then the general fund for that investor is the proceeds realized for those sales are put in that general fund are used to pay tax and insurance escrows on other property?

A. Correct.

Q. Okay. What if there is not enough in a general

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fund on a monthly basis to fund or pay for all of the escrows and other expenses as to all the other properties where Wilmington is the investor; where does the shortfall come from?

A. The investor makes the shortfall to Statebridge as part of the monthly settlement.

Q. Okay. And Statebridge is the one who actually makes the payments to the taxing authorities and the insurance companies on these properties?

A. Correct.

Q. Using money from the investor?

A. No. We use our money and then we're reimbursed by the investor. We write a check from the Statebridge operating account and we're reimbursed on a monthly basis by the investor if there is a shortfall.

Q. So the money that you talked about coming from the foreclosure sales, short sales, whatever it is, that goes into the general fund for the investor, you said is used to pay these escrows, et cetera, right?

A. It's used to reimburse Statebridge to pay those. We don't write checks out of that account. We wire money to the investor out of that account. There is no checkbook per se.

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Q. Okay. So then you just said that the investor then reimburses Statebridge, right?

A. So in a scenario Statebridge would go through and write checks from it's operating funds for taxes and insurance on any loan. At the end of the month we request payment for that. We get the payment from the segregated account wired to the Statebridge general account, funds to reimburse us, and then if there's not enough money after any deposits made then the investor wires the Statebridge general account the balance.

Q. I'm not being difficult and pardon me but this is your business and I'm trying to understand this because, and I'll be honest with you, no representative in one of these depositions has ever had this level of knowledge that you have so I'm trying to learn from you; if I understand your testimony there is a general fund for Wilmington Savings Fund into which goes money from foreclosure sales, short sales, and that sort of thing, yes?

A. There is a specific bank account. I wouldn't call it a general fund. There is a specific bank account.

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Q. Who manages that bank account?
A. Statebridge manages the bank account, reconciles the bank account, owns the bank account.
Q. Okay. So Statebridge on authority from the investor manages this bank account, reconciles it, and owns it, correct?
A. Correct.
Q. Out of that bank account are taxes and insurance escrows and expenses paid?
A. Yes. Reimbursed, not paid. Taxes, insurance are paid by Statebridge, reimbursed from money in the segregated account.
Q. So the taxes and insurance payments and expense payments are made from a separate bank account?
A. They are made by the Statebridge general fund, the same that writes me my paycheck.
Q. So Statebridge makes these payments out of it's bank account and is reimbursed from the investor's account?
A. Correct.
Q. Got it. This investor's account, would this include money coming in, from theory anyway, from borrower's who are making payments?
A. In theory. Yes.
Q. Okay. But in reality, in this case there isn't

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any?

A. No. With respect to this portfolio, yes, that is correct.

Q. Okay. So the only monies coming into the account for the investor would be from the net proceeds of foreclosure sales and those other things you mentioned?

A. Correct.

Q. You're not aware of whether or not Wilmington would be putting other money in that account from other sources?

A. Not that I'm aware of. No. I don't think they could because they have no deposit slips.

Q. Well, okay. You're just not aware; that's all I need to know. Okay. If you know, if Wilmington is the investor and Wilmington is reimbursing Statebridge for making these taxes and insurance escrow payments and expense payments, do you know why Wilmington just doesn't make those payments directly?

A. Which payments?

Q. The taxes and insurance escrows that Statebridge pays; why is there this reimbursement vehicle; why doesn't Wilmington just pay it directly if they are the investor?

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A. That's why they hire Statebridge is to manage that process.
Q. Okay. So Wilmington is essentially third partying out all these mechanics of payment to Statebridge?
A. Correct.
Q. Is this Wilmington portfolio which we've been discussing which I assume the Singleton loan is part of, yes?
A. Yes.
Q. Is that the only Wilmington portfolio that Statebridge is servicing?
A. No.
Q. So Statebridge is servicing other Wilmington portfolios?
A. That is correct.
Q. And in any of those other portfolios are borrowers making payments?
A. Yes.
Q. Is there any particular reason that you know of why there are no borrower payments being made within this particular portfolio?
A. The nature of the loans at the time of acquisition.
Q. What does that mean; does Wilmington and

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Statebridge put all their defaulted loans into one portfolio, they're not being -

A. I don't know how the investor decides which fund to put them in. There are transactions where they acquire performing loans. There are transactions such as this where they acquire non-performing loans. I don't know how they decide.

Q. That's fine. So on these other portfolios where borrowers are making payments when the payments are made to Statebridge what happens to the money?

A. Well, the first step is the money goes into a Statebridge general account which is where we pay bills from. At the end of the month we transfer the money to the segregated account.

Q. The net, you mean?

A. The net.

Q. Which segregated account?

A. The account that is specific to the investor.

Q. For that portfolio?

A. For that portfolio.

Q. Okay. What happens to it then?

A. I don't know.

Q. Okay. When you said the net goes into the

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account specific to that investor, is that a Statebridge account or is that an investor account?

A. As I previously said it's an account for the investor that is owned, maintained, and reconciled by Statebridge. If they request the money I'm sure we wire it to them.

Q. But you don't know what happens to it after it's sent, for example, to Wilmington?

A. No.

Q. Okay. You okay?

A. I'm good. I just need to stretch my leg every hour or so. We can keep going.

Q. I'm going to next go to the document that was immediately underneath the spreadsheet, first three pages of Exhibit Two.

A. Yes.

Q. This is a document entitled, Notice of Servicing Transfer.

A. Yes.

Q. Is this something you refer to in the vernacular as a hello letter?

A. Yes.

Q. Okay. And the next document, Welcome Letter, is that also a hello letter?

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A. Yes.
Q. Okay. Skip the next page and the privacy policy; next document, Truth In Lending At Ownership Transfer Notice; do you see that?
A. Yes.
Q. Do you understand that to be something that is required to be sent to the borrower pursuant to federal law?
A. Yes. This is what we refer to as the goodbye letter.
Q. And the next page is from Seneca Mortgage Servicing?
A. Yes.
Q. Dated September 29th, 2014; this is a goodbye letter as well?
A. Correct.
Q. If you go back to page three of Exhibit Two, the spreadsheet of the servicers -
A. Yes.
Q. I don't see Seneca on there - I'm sorry. They are. Let's keep going. Um, we're going to the affidavit of Olivia Miller; by the way these various hello and goodbye letters we just referred to, do you know if they are part of Statebridge's file, Jamie Singleton?

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A. They are.
Q. Okay. This affidavit of Olivia Miller, is that part of Statebridge's file on Jamie Singleton?
A. It is only in the legal file because this is something that has been entered in The Court.
Q. Is there a separate legal file separate from the Jamie Singleton file?
A. No. It's just in the legal portion and we don't acquire documents such as this from the prior servicer. We acquire documents such as this from the attorneys.
Q. So within the Jamie Singleton file there would be, for lack of a better word, a sub-file of legal documents?
A. Correct.
Q. Okay. Do you know who Olivia Miller is?
A. I do not.
Q. Then you wouldn't know if this is her signature, correct?
A. That is correct.
Q. Okay. Next document is from Shellpoint Mortgaging Service dated 1-16-2015; it appears to be some sort of servicing transfer letter?
A. A goodbye letter.
Q. Okay. Next document is also from Shellpoint

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dated 10-23-2014, Notice of Sale of Ownership of Mortgage.

A. Correct.

Q. This does not relate to servicing, correct?

A. There is a servicing letter. There can be an ownership letter as well.

Q. This one, unlike the letters we went over, says just below center, Your new owner is NPL Trust Series 2012 dash One.

A. Correct.

Q. Does that mean the owner of the loan or the owner of the servicing?

A. The owner of the loan.

Q. I think you already told me before that other than assignments of mortgage there would be no documents in Statebridge's Jamie Singleton file evidencing any sale of the loan from one entity to another?

A. Correct.

Q. Okay. And by that I mean anything, mortgage loan purchase agreement, contract for sale, anything of that nature?

A. The only things would be anything that was produced to you that was part of the discovery file in the legal subfolder.

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Q. Right. But you had told me earlier that Statebridge does not maintain documents concerning the sale of loans?
A. We typically do not. The only reason we would have them is if they were part of the discovery in this case.
Q. Okay.
A. Must judges say the borrower is not a party to that contract therefore they are not entitled to have it.
Q. You already told us you're not a lawyer so we're not going to get into that.
A. Yes.
Q. Next document is titled Truth in Lending Act Ownership Notice; do you see that?
A. Yes. I do.
Q. Is this something you understand that the lending law requires to be sent to the borrower when the mortgage is sold or transferred?
A. Yes.
Q. Next document is titled Notice of Assignment Sale or Transfer Servicing Rights; do you see that?
A. It's page three of something.
Q. That was my question; it says Shellpoint Welcome

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Package Page Three.

A. Correct.

Q. So is it your testimony or understanding that this would be part of a hello letter?

A. It would be part of a hello package.

Q. Package.

A. You have the transfer, you have privacy notices, and you have debt validation letters that go out as a single package.

Q. Next document is from Shellpoint, Validation of Debt Notice, and paragraph two of that letter dated 6-17 of '16 says, The name of the creditor to whom the debt is owed is New Penn Financial, LLC; do you see that?

A. Yes.

Q. Okay. Does Statebridge service any loans for New Penn Financial?

A. No.

Q. The next series of documents concern a Motion to Strike, et cetera, which I'm not going to ask you about; I want to go to the People's Choice Home Loan letter of 6-2-06.

A. Yes.

Q. It says, People's Choice Home Loan, Inc. does hereby notify you that the servicing of your

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loan, the right to collect payments, has been assigned, sold, and transferred from People's Choice Home Loan, Inc. to Aqua Loan Servicing, LLC; do you see that?

A. Yes.

Q. Okay. Would you characterize this as a hello letter or a goodbye letter?

A. A goodbye letter.

Q. Okay. The next series of documents are payment statements which I'm not going to ask you about; I'm going to go to the letter of Shellpoint dated 3-12-18; it says, Dear Homeowner, this letter is to serve as notification that the servicing of your mortgage loan is getting transferred from Shellpoint to The Statebridge Company, LLC; that's a goodbye letter?

A. Yes, sir.

Q. Okay. Next document is a validation of debt notice dated 12-1 of 2014; paragraph two again says, the creditor to whom the debt is owed is New Penn Financial, correct?

A. That is what the letter says. Yes.

Q. Okay. Then there is some mortgage statements which I'm not going to ask you about; an affidavit concerning judgement; the only thing I

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want to ask you about is do you know who James George is?

A. No.

Q. So you wouldn't know if that is his signature?

A. That is correct.

Q. James George was deposed in this case previously; have you read his deposition?

A. I have.

Q. You have?

A. I have.

Q. Is it part of Jamie Singleton's file?

A. It is part of the legal portion.

Q. Is there anything you recollect reading in that deposition that you believe not to be true or is inaccurate?

A. No.

Q. Is there any particular reason why you read James George's depo?

A. Just curious, and the Broncos weren't playing that weekend.

Q. Broncos fan, huh? All right.

(Deposition went off the record for a brief period.)

Q. Do you know what MERS, M-E-R-S, all caps, no spaces, no periods, the acronym being for Mortgage Electronic Registration System, Inc is?

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A. They are an electronic registration system to register as nominee for the beneficiary of security instruments.
Q. In lay terms mortgages and deeds of trust?
A. Correct. Or security deeds in Georgia.
Q. I was just going to say that. That's what I tell judges all the time.
A. That's right.
Q. Have you ever been a MERS certifying officer?
A. No.
Q. Have you ever taken any courses from MERS?
A. No.
Q. Have you ever signed a document such as an assignment of mortgage on behalf of MERS?
A. No.
Q. Are you familiar with the MERS terms and conditions?
A. No.
Q. You talked about the portfolio of loans that the Singleton loan is part of earlier in the deposition; do you recollect that?
A. Yes. I do.
Q. What's a portfolio of loans?
A. The context that I use it in is that this loan along with several hundred other loans are part

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of the pool of loans that came to Statebridge to service as one transaction.

Q. You'd mentioned earlier, we were talking about the name of the plaintiff in this case, Wilmington Savings Fund Society, FSB, dba Christiana Trust, not in it's individual capacity but solely as capacity as certificate trustee for NPL Trust Series 2012 dash one; do you know what Christiana Trust is?

A. Christiana Trust is the name of the Christiana Trust Bank that was acquired by Wilmington Savings but they felt there was value to keeping the Christiana Trust name so it is part of Wilmington but it's doing business as the Christiana Trust and they offer trustee services.

Q. In the context of being a mortgage securitization trust?

A. I don't know all the services they offer.

Q. Okay. And you said Statebridge is servicing this loan for the investor; who is the investor here?

A. He investor has the legal name which you just described. We don't refer to it except as the certificate holder.

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Q. Certificate holder of what?
A. NPL - I got it right here. The NNPL Trust Series 2012 dash One, is who I refer to as the investor.
Q. Is NNPL Trust Series an entity; what is it, if you know?
A. I don't know.
Q. Okay. In the context of a mortgage securitization trust, is it your understanding that the mortgage loans serve as partial collateral to protect the investors?
A. I do not know.
Q. Okay. Would you agree with me that a mortgage loan is a form of perishable collateral; borrower could die, borrower could go into bankruptcy, property could be washed away in a flood?
A. I don't understand the question because in all those cases there's still value. The only time the value in a mortgage goes away is if you hit some sort of statue of limitations in a state where it's been deemed uncollectible then it perishes.
Q. Well that was my point; if it's deemed uncollectible then it perishes, right?

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A. No. If it's deemed uncollectible then that means that the security interest, you can't foreclose on it. It doesn't mean you can't get a judgement and attempt to collect through that method.

Q. Assuming the borrower is collectable.

A. Well, everybody is collectable at some point if they just win the lottery. That's why people go after judgements on deficiencies, because they last for some period of years and you never know what will happen.

Q. Assuming for the sake of arguing that the borrower files bankruptcy, the note obligation is discharged and the property simultaneously is lost in some natural disaster -

A. Then the lender, investor, is entitled to the insurance proceeds.

Q. What insurance proceeds?

A. Every property has hazzard and possibly flood insurance and possibly wind insurance through a policy that was being paid on behalf of the borrower or through the what we call lender placed insurance where we are paying it directly with an insurer who covers us for those risks.

Q. That's what I want to talk about, this lender

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placed insurance; have you heard that referred to as LPMI?

A. It could be that, Lender Placed Mortgage Insurance.

Q. Okay. Have you heard of a term called first lost reserve?

A. No, sir.

Q. Okay. Eagle Nine Policy?

A. No, sir.

Q. Dead Interest Margin Policy?

A. No.

Q. So this lender insurance, premiums are funded by who?

A. They are paid by Statebridge and then reimbursed by the investor.

Q. If a borrower is making payments on a loan to a servicer such as Statebridge is a portion of the interest payment used to fund these insurances?

A. No.

Q. You sure?

A. Yes.

Q. Okay.

A. That would be something that might be private mortgage insurance but this loan I'm not aware has private mortgage insurance, nor any of the

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loans in this portfolio. That would be different than lender placed insurance.

Q. I'm sorry. Would you read that back, please?

(Court Reporter plays back last statement.)

Q. What do you mean by private mortgage insurance?

A. If a loan at origination had a loan to value ratio in excess of 80 percent then federal guidelines would require the originator, and in this case it was a bank so it would be a federal requirement, to purchase private mortgage insurance to insure the portion of the loan that was above the 80 percent loan to value ratio. This is typically done by purchasing a separate policy with an insurer such as MGIC and the borrower would make premium payments to MGIC. The borrower could eliminate the private mortgage insurance if they were to obtain an appraisal showing that the current loan to value at that time was less than 80 percent because of property appreciation and loan paid down. Some lenders decided to self insure where they would just charge a higher interest rate. Unfortunately, because this was a bank they could not do private self insurance. That would have been against federal regulations.

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Q. You're talking about the originating lender, People's Choice?
A. That's correct.
Q. Okay. What about the securitization trust; are you aware as to whether or not through whatever vehicle they purchased insurance to insure against the risk borrower defaults on loans in the portfolio?
A. I do not know anything about what they do for reinsurance.
Q. I wasn't asking about reinsurance; I was asking about insurance.
A. I am not aware of anything they do with respect to the portfolio as far as providing additional protection.
Q. Okay. I have marked as exhibit - We're going to talk about a series of documents that were produced by the plaintiff, the first one will be Exhibit Three, bates numbers PL underline double oh 1287 through PL underline double oh 1290.

(PL_0087-1292 DOCUMENTS MARKED AS DEFENDANT'S EXHIBIT NUMBER THREE FOR IDENTIFICATION.)

Q. Are you aware of whether this document is in Statebridge's file?

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A. It is in our file in the legal section. It was provided by discovery.

Q. Okay. So I think earlier on you had told us that any documents produced during the course of litigation would be within this legal subfile of the Jamie Singleton file; is that accurate?

A. That is accurate.

Q. And we can move through these pretty quickly I would think; we'll do this as a composite; the next series of documents would be bates PL underline double oh 1291 through 1292, a Limited Power of Attorney, including 1293, Exhibit A; that would be in Statebridge's file for Jamie Singleton?

A. Yes, sir.

Q. Okay. The next document is rather lengthy; it runs from bates PL underline double oh 1294 through, I believe it's the end of this series of documents, 1500 and I'm obviously not going to go through this entire thing but we'll mark that as an exhibit too; have you seen this before?

(PL_1294 THROUGH 1500 DOCUMENTS MARKED AS DEFENDANT'S EXHIBIT NUMBER FOUR FOR IDENTIFICATION.)

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A. Yes. I have.
Q. What is it?
A. Are you referring to Three or Four?
Q. Four.
A. It is the Sale and Administration Agreement for the subject loan dated December 19th, 2013 between a variety of parties, FRFT 2013 dash One Trust is issuer, Ford Asset Funding 2013 dash One, LLC is depositor, CFRESIWL, LLC comma CF SBCWL, LLC comma DBRESIWL, LLC, and Fort Two Oh One One Dash One Investor, LLC as sellers, US Bank National Association as trustee, Ford Asset Administrator, LLC as service administrator, and Wells Fargo Bank NA as securities administrator.
Q. Have you read this document?
A. No. I have not.
Q. Have you ever directed one of these documents?
A. No.
Q. Have you ever provided any information to anyone for purposes of preparing one of these documents?
A. I have not.
Q. Okay. If you would go to page 27 of the document which is bates page PL underline double

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oh 1325.

A. Yes, sir.

Q. Advance of the Trust Estate Conveyance, I'm sorry, Note Principal Amounts; do you see that?

A. Yes, sir.

Q. And there are various provisions that go on over to page PL underline double oh 1326.

A. Yes, sir.

Q. Do you have any personal knowledge as to whether or not any transfer of the Singleton loan was done in compliance with these provisions?

A. I have no knowledge.

Q. Okay. I want to go to PL underline double oh 1364; it says Exhibit capital A dash One dash capital A, RPL Mortgage Loan Schedule; do you see that?

A. Yes, sir.

Q. Okay. Would you agree with me that there are no loans listed on this particular page?

A. I would agree.

Q. Okay. And then there are a series of blackened out AKA redacted pages that run from PL double oh 1365 through PL underline double oh 1415.

A. Yes, sir.

Q. Would you agree with me that there is no date on

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any of these documents indicating when any of these documents were prepared?

A. I would agree.

Q. All right. And I'm assuming you would not know who prepared this series of documents, correct?

A. That is correct.

Q. Okay. Are you familiar with the filing of mortgage loan schedules for securitization trusts with the SEC?

A. No.

Q. Okay. Are you familiar with federal code revision known as 26 CFR section 860 F?

A. No, not by that nomenclature.

Q. I don't understand your answer; what do you mean?

A. I'm familiar with the term Reg Z but not with the federal statute number.

Q. To your understanding what is Reg Z?

A. Regulation Z would be truth in lending as I recall.

Q. Okay. If you go to the next page, PL underline double oh 1416.

A. Yes, sir.

Q. There is a series of representations and warranties regarding each mortgage asset?

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A. Yes, sir.
Q. And the mortgage asset would consist of what, if you know?
A. The mortgage asset would consist of a note and a mortgage and that they would be free and clear of any title issues and that there is nothing that the seller is aware of that would prevent collection of that underlying note.
Q. So is it your understanding that the seller is essentially promising that the mortgage loans that are being transferred with this agreement are performing?
A. No. I would not go that far necessarily.
Q. You said there is nothing the seller is aware of that would prevent collection on the note.
A. The fact that it's non-performing doesn't prevent collection.
Q. Is it your understanding that non-performing loans can be transferred into a securitization trust?
A. I know non-performing loans can be sold, whether they can go into a specific type of trust would depend on how that trust is set up.
Q. Okay. So then if, for example, the particular trust says that you cannot transfer defaulted

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mortgage loans into the trust then any transfer or purported transfer of a defaulted loan into that trust would not be affective, would it?

A. Never depend on the document.

Q. Right.

A. If I said said document that would be a breach of the document whether that was something that was recourse or whatever would be specified in the document. I can't pull off one provision to tell you the entire contract.

Q. As you said it depends on what the agreement or the contract or the document provides, correct?

A. Correct.

Q. One of the parties involved in the servicing list on page three of Exhibit Two was GMAC.

A. Yes, sir.

Q. Are you aware that they filed bankruptcy in 2012?

A. Yes. I am.

Q. Were you involved in that bankruptcy at all?

A. No, sir.

Q. Okay. And I may have asked this before but neither you nor Statebridge was involved in any way in respect to the transfers of sale from one entity to another from the originating lender,

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correct?

A. That is correct.

Q. Okay. So then you as the designated witness for the plaintiff would have no knowledge as to when these transfers took place, what consideration was paid, if any, and how the transfer was effected, correct?

A. That is correct.

Q. Okay. You mentioned there were assignments of mortgage that you had viewed in the Singleton file, correct?

A. That is correct.

Q. Do you know many there were that you reviewed?

A. I believe I reviewed the entire chain starting with People's and ending with the current plaintiff.

Q. And were there assignments of mortgage executed in connection with each of those transfers?

A. I do not know.

Q. Okay. Do you mind if I take a few moments with my co-counsel?

A. Sure.

(Deposition went off the record for a brief period of time.)

Q. Just a couple more questions; are you aware that

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Mr. Singleton served discovery on the plaintiff in this case?

A. Yes.

Q. Did you take part in the preparations of any of the responses to any interrogatories or request for admissions?

A. No, sir.

Q. Did you gather any documents in response to any request production?

A. No, sir.

Q. Did you ask anyone to do so other than a lawyer?

A. No, sir.

Q. Okay. Before today's deposition did you discuss today's deposition with anyone other than a lawyer?

A. No.

Q. Okay.

A. My wife.

Q. That you had to be here, and Statebridge knew you had to be here?

A. My bosses and attorney.

Q. No one from Statebridge told you what questions might be asked and what answers to give?

A. No.

Q. Okay. Unless you have anything, counsel?

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MR. SLOAN: No further questions from the defendant subject to questions by plaintiff's counsel.

CROSS EXAMINATION BY MR. RIDDLE:

Q. I just want to go through again, I think there was a question about the different insurances, when you talk about lender placed insurance, that's what we commonly call hazard insurance, flood insurance, that only protects against a tree falling on the house, fire?

A. That's hazard insurance which typically includes wind, flood, fire.

Q. And normally, and you kind of explained the situation that, you know, I know from personal experience that can either be paid for by the lender or an escrow account the borrower pays, correct?

A. Correct.

Q. And in certain cases of non-performing loans there is placed insurance because the security instrument allows the lender to place insurance if the borrower has not bought their own insurance or bought it through an escrow account?

A. Yes. That is correct.

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Q. Okay. And private mortgage insurance, that's a default insurance?

A. It is essentially default insurance that is established at the time of origination. In this case, because it was a bank, they could only legally do a first mortgage that was 80 percent of the original loan to value meaning that the amount of the loan divided by the market value of the property at that time. Anything above 80 percent would need insurance. That insurance comes in a couple of forms, private mortgage insurance through a private carrier, FHA insurance where the borrower pays an extra amount which the lender then passes on to the FHA or in the case of a non-bank mortgage originator they can pay a higher interest rate because the loan to value ratio is higher hence more risk.

Q. And in this particular loan do you know if Mr. Singleton had set up an escrow account to pay taxes and hazard insurance through his monthly payments?

A. I don't recall.

Q. You said that the collateral file which is that the original documents were maintained in a

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vault, would the collateral file, if you reviewed original notes, would you understand what an allonge or endorsement is to those notes?

A. I do.

Q. And when you say the original note does that include any particular stamps or endorsements that would be with that document?

A. It would be with the original assignments.

Q. Okay. And allonges and endorsements, are they always separate documents?

A. It depends. Many loans are endorsed in blank therefore they don't need an allonge or endorsement. If the note was endorsed to a specific entity then there would be allonges to transfer from the named entity of the endorsement to the next party and so forth. Sometimes allonges are given in blank and so you only have one allonge. You would have to go through and just as we track the assignment of mortgage we also track to make sure that the note has been properly passed through to the current holder with all of the either endorsements or allonges.

Q. Now explain, if there is an allonge in blank

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there would be no more allonges after that?
A. There would be no need for it because it's payable to the order of blank.
Q. And in those notes who is blank?
A. The current holder would be blank.
Q. And as far as your knowledge the current holder at this point is Statebridge?
A. No. We're not the holder -
Q. I'm sorry. The plaintiff.
A. It would be the plaintiff.
MR. SLOAN: Object to the form.
Q. Do you know who the current holder of the note is at this point?
A. Yes. I do.
Q. And do you know where the original note with signature is?
MR. BARNES: I think he already testified to that.
A. It's with Wells Fargo.
Q. Okay. And just to your personal knowledge in reviewing copies of the note, would copies of the notes that Statebridge maintains have copies of the allonges or endorsements?
A. They do.
Q. Have you reviewed or do you remember any of the

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allonges or endorsements on this particular note?

A. I reviewed them. I found no issues but I don't remember each one specifically.

Q. Okay.

RE-EXAMINATION BY MR. BARNES:

Q. When I had asked you earlier if Statebridge maintained any documents regarding the transfer or sale of the notes you said no but now you're telling us that these transfers are documented by either endorsement or allonge, correct?

A. They are documented because endorsements and assignments aren't dated. We use the assignments because the mortgage always follows the note to document the timing. We do not have purchase and sale agreement with the exception of what is in the discovery in this file. We normally never have those.

Q. So you said the endorsements and allonges are not dated so you use the transfer date as the date of the assignment, correct?

A. We use the date that the assignment is executed as the date of the legal transfer because the mortgage always follows the note.

Q. And just so I'm clear, you are not aware of any

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separate or specific insurances that may be taken out by the securitization trust to insure against the risk of borrower's defaults on the loans in the portfolio, correct?

A. That is correct.

Q. Okay. That's it. Do you have anything else?

MR. SLOAN: May we have just one minute?

(Deposition went off the record for a brief period.)

RE-EXAMINATION BY MR. SLOAN: Mr. Dolan, AMS Servicing was the servicer of this mortgage in the summer of 2012; is that correct?

A. Yes, sir.

Q. Were you aware that your records indicate that there was a fire at the property?

A. They do.

Q. In June of 2012?

A. Yes, sir.

Q. And were you aware that AMS retained the insurance proceeds of approximately $19,000?

A. $19,183.89 pursuant to what's in Exhibit Two.

Q. Yes. And how is Statebridge accounting for that $19,183.89?

A. Shellpoint, the prior servicer, applied this to the loan, pursuant to the terms of the security agreement, so they have advanced the due date

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from the original complaint, applied the 19 thousand as 10 payments.

Q. Very well. Is your investor concerned about repairs being done to the property subsequent to that fire?

A. I'm not aware of any concern. This transfer of funds was not done - Shellpoint did not receive the check so I think this check may not have ever been cashed. It was reissued. I believe it was 2016 and that's when they applied it to the mortgage.

Q. So I believe I understand they applied the 19 thousand toward 10 monthly payments?

A. Correct.

Q. That's all the questions that I have.

MR. RIDDLE: I have no more questions.

RE-EXAMINATION BY MR. BARNES:

Q. I have one. You said that this 19 thousand and change was applied to the loan pursuant to what?

A. Security instrument.

Q. The day to day mortgage?

A. The mortgage.

Q. Okay. Not withstanding that the money was issued by the insurance company to pay for the repairs to the property?

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A. Not withstanding that. That is correct.

Q. Okay.

(Deposition concluded at 11:47 o'clock, p.m.)

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STATE OF SOUTH CAROLINA)

: C-E-R-T-I-F-I-C-A-T-E

COUNTY OF BERKELEY)

I, Molly C. Newton, Court Reporter and Notary Public, certify that I did have Michael Dolan to appear before me at 9:50 o'clock, a.m. at Sloan Law Firm, 1055-F North Main Street, Summerville, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 7th day of November, 2018.

_____

Notary Public for South Carolina

My Commission Expires: March 4, 2019

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
:
COUNTY OF DORCHESTER) Case No. 2011-CP-18-871

US BANK, NA, not in it's individual capacity, but solely as owner Trustee of Westvue NPL Trust, Series 2014-1,

Plaintiff(s),

-vs-

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendant(s).

DEPOSITION OF:

JOSEPH PATRY

Given before Molly C. Newton, Court Reporter and Notary Public, at the Sloan Law Firm, 1055-F North Main Street, Summerville, South Carolina, on Thursday, October 25th, 2018, commencing at 9:53 o'clock, a.m.

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(Joseph Patry, being duly sworn, testified as follows:)

DIRECT EXAMINATION BY MR. BARNES:

Q. Good morning, sir; my name is Jeff Barnes and together with Bill Sloan I represent Jamie Singleton in this case; could you please tell us your name?

A. Sure. Joseph Patry. Last name is P-A-T-R-Y.

Q. Mr. Patry, I'm going to be asking you a series of questions this morning and the first thing I need to know is have you ever had your deposition taken before?

A. No.

Q. Okay. I'm going to give you a little more detail than I give most people -

A. I have taken depositions but I have never been deposed myself.

Q. Are you an attorney?

A. Yes.

Q. Oh, okay. Where are you licensed?

A. Virginia, Maine, Massachusetts, and the District of Columbia.

Q. Okay. Do you practice law presently?

A. I am a senior counsel at MERSCORP Holdings, Inc.

Q. Do you work out of the DC office?

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A. Virginia.
Q. How long have you had that position?
A. I have been senior counsel since August of 2017. I was counsel from May to August, 2017. Before that I was an associate for Blank Rome in their Washington DC office and before that I was counsel at MERS Corp Holdings from January of '08 to June of 2012.
Q. Okay. That was with MERS?
A. Well, MERS Corp Holding, the parent company of MERS.
Q. Right. How long were you with Blank Rome?
A. Almost five years.
Q. Okay. So you are familiar with a deposition so I'll go back to using my abbreviated instructions; as you know, the idea here is I ask questions and you give me answers on personal knowledge and by that I mean I don't want you to speculate, guess or assume; once we get started all the answers have to be in the form of words, they can't be nods of the head, hand gestures or mm-hmms; this is not meant to be an endurance contest, this deposition shouldn't take very long at all but if you do need to take a break just raise your hand and

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we'll take a break, the only caveat being you don't discuss my questions or answers with your counsel during the deposition; during the deposition your attorney may make objections if eh doesn't like a question I ask but unless he specifically instructs you not to answer a question that I ask you do need to answer the question; I'm assuming you're familiar with all these instructions?

A. Yes.

Q. Okay. Did you discuss today's deposition today with anybody other than a lawyer?

A. No.

Q. You said you had been licensed in several states and we're going to take them one at a time; when were you first licensed to practice law in Virginia?

A. 2006.

Q. And did you practice law in Virginia?

A. Yes.

Q. Doing what sort of work?

A. From 2006 to 2008 I worked at a couple of small firms in the DC area and beginning in January 2008 I was counselor at MERS Corp Holdings.

Q. Why did you decide to become associated with

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MERS Corp Holdings?

A. I heard about an opportunity and wanted to take it. It sounded like an interesting opportunity.

Q. And MERS Corp Holdings is located where?

A. The office is in Weston, Virginia.

Q. Have you ever had an office in Ocala, Florida.

A. MERSCORP Holdings did not have an office there.

Q. How about MERS, Mortgage Electronic Registration System, Inc.?

A. No.

Q. Okay. So if there was an assignment of mortgage or a mortgage document or any document that listed MERS, Mortgage Electronic Registration Systems has an office in Ocala, Florida that would not have been correct?

A. Without seeing the document I really can't speculate.

Q. But to your knowledge MERS has never had an office in Ocala?

A. That is correct. We did at one point have a mail room operated by a different company in Ocala but MERS or MERSCORP, neither, have had an office in Ocala.

Q. A mail room, what is that?

A. A facility where mail was processed.

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Q. Was it a physical office, was it a warehouse, was it a Mailboxes, Et Cetera?
A. I did not visit that office. My understanding is it was a physical actual mail room.
Q. Okay. Back to Virginia, when did you obtain your license in Maine?
A. 2007.
Q. And what was the purpose of doing that?
A. I wanted to be licensed in Maine. I'm from there.
Q. Okay. Did you practice law in Maine?
A. I have represented a couple of different servicers and actions in Maine. I have never had an office in Maine.
Q. By the way, are all these licenses still active?
A. Yes. All active and all in good standing.
Q. Okay. Massachusetts -
A. 2013.
Q. The other instruction I forgot to give you is that the most important person in the room today is Molly, the Court Reporter, because she's taking down everything we say today so even though some of these questions are easy if you would let me finish them and then answer because otherwise Molly is going to have a piece of you

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and a piece of me.

A. Certainly.

Q. Anyway, Massachusetts, when were you first licensed there?

A. 2013.

Q. And for what purpose?

A. I was at Blank Rome at the time and we had some matters in Massachusetts at the time.

Q. Fair enough. Do you still practice there?

A. I have not handled matters in Massachusetts since leaving Blank Rome.

Q. Which was when?

A. April of 2017.

Q. I think I asked you this but you left Blank Rome because you saw an opportunity with MERS?

A. No. I was at a couple of small firms in the DC area when I first came to MERS, then I went to Blank Rome, I was laid off from Blank Rome in April of 2017 and went back to MERSCORP.

Q. Okay. They did a RIF?

A. Yes.

Q. That's R-I-F. It's an acronym for reduction in force. Okay, so DC.

A. Yes.

Q. I'm assuming that's District of Columbia?

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A. Yes.
Q. When were you first licensed there?
A. 2007.
Q. For what reason?
A. I was practicing at that point in the DC area.
Q. Do you still practice in DC?
A. I have not practiced in DC since leaving Blank Rome.
Q. So for purposes of your current employment do you work out of the Weston, Virginia office of MERSCORP Holdings?
A. Yes.
Q. What is the relationship between MERS, Mortgage Electronic Registration Systems, Inc. and MERSCORP Holdings?
A. MERS is a wholly owned subsidiary of MERSCORP Holdings.
Q. Okay. And I believe and correct me if I'm wrong, that MERS is a Delaware corporation?
A. That's correct.
Q. I would assume but I'll ask anyway, are you a MERS Certifying Officer?
A. I am not.
Q. Oh. Have you ever been?
A. No.

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Q. So what do you do at MERS on a day to day basis presently?
A. I mange a litigation across the country. I edit and review and revise pleadings directed by outside counsel, provide advice and guidance to the corporation on various matters.
Q. Appear for depositions?
A. This is my first deposition but yes.
Q. You have taken depositions?
A. Yes.
Q. On behalf of MERS?
A. No. I took the depositions when I was representing various clients at Blank Rome.
Q. Did any of those involved MERS at all?
A. I don't recall.
Q. What did you do at Blank Rome; what was your area that you were practicing in?
A. I was an associate in the consumer finance area so I handled cases on behalf of a number of mortgage loan services such as Bank of America, OCWEN, and Ditech.
Q. At present, day to day, you manage litigation across the country; that's kind of a broad umbrella; what do you mean by that?
A. Revising pleadings, assisting with discovery

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responses, providing strategy and insight into the mortgage industry when necessary.

Q. Okay. Are you aware there was discovery propounded by Mr. Singleton in this case?

A. I'm aware.

Q. Did you take part in providing any documents or information in response to any discovery that was purpounded by Mr. Singleton?

A. I did not.

Q. If I understand your employment history you were with MERSCORP, Blank Rome, back to MERSCORP?

A. That's correct.

Q. The prior employment with MERSCORP, what did you do on a day to day basis?

A. Similar things.

Q. Like you do now?

A. Yes.

Q. Okay . Have you ever been employed by MERS?

A. No.

Q. Do you have authority on behalf of MERSCORP to sign documents such as assignments of mortgages or assignments of deed of trust or substitutions of trustee?

A. I do not.

Q. Did you ever receive any taken any instructional

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courses from MERS, either online, in person, or otherwise in connection with your employment with MERSCORP?

A. What do you mean instructional courses?

Q. Let me do that differently. While you were employed at MERSCORP previously and presently, were you ever required or did you ever take any training courses concerning the operation of MERSCORP or MERS either online or in person?

A. I don't recall. I don't believe so but I don't recall.

Q. Are you familiar with the something called the MERS Terms and Conditions?

A. I am.

Q. What are those?

A. Those were, we've now incorporated them into the rules, the MERS System Rules and Membership, those were part of the MERS governing documents and the terms and conditions governed the relationship between MERS, MERSCORP, and MERS System members.

Q. Are you aware that page one, paragraph six of the MERS Terms and Conditions provided that the MERS System was not to be used as a vehicle for either the creation or transfer of beneficial

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interests in mortgage loans?

A. I don't recall the paragraph number but that sentence does sound like it is something from the terms and conditions.

Q. Would you agree with me that an assignment of a deed of trust or an assignment of mortgage is a transfer of a beneficial interest in a mortgage loan, a mortgage instrument, security instrument

A. What do you mean by beneficial interest?

Q. Well, you're an attorney, you work for MERSCORP, tell me what you understand that term to mean.

A. To me the term beneficial interest means having ownership interest in the actual promissory note and using that definition of beneficial interest than MERS Mortgage Electronic Registration System does not transfer beneficial interest in that sense.

Q. Well, you're familiar with deeds of trust, correct?

A. Yes. I am.

Q. Is it accurate to state that in a deed of trust there is a beneficiary?

A. Yes.

Q. And in deeds of trust -- have you reviewed deeds of trust before?

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A. I have.
Q. Have you reviewed deeds of trust which provide that MERS is the beneficiary under this instrument?
A. I have.
Q. Okay. So would you agree with me that in that situation the deed of trust is providing MERS with a beneficial interest in the property and the security identified in the deed of trust?
A. I would that MERS would be the beneficiary of the deed of trust and have a record interest in the deed of trust.
Q. Okay.
A. But the beneficial interest would be limited to the interest in the deed of trust. It would not be a beneficial interest in the ownership of the actual note.
Q. Right. I didn't ask you about the note; I was just asking about security instruments such as deeds of trust and mortgages.
A. Okay.
Q. Are you familiar with the term nominee?
A. I am.
Q. What does that mean?
A. To me that means an agent.

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Q. Is there a scope of the agency?
A. If we're talking about the authority given to MERS as a nominee for the owner of a promissory note -
Q. Well, we weren't yet. I was going from macro to micro but we'll do both if you want to do it that way.
A. If we're talking about - Is there a scope of the agency relationship for MERS as a nominee, then yes.
Q. That's what I want to know. What is the scope of MERS' agency nominee?
A. MERS holds a mortgage or a deed of trust whether as mortgagee or beneficiary of the deed of trust as an agent of the note owner and MERS can take certain actions such as assign the mortgage, release the mortgage, but MERS can only take those actions as an agent of a note owner or the note owner's agent who is typically the loan servicer.
Q. Would you agree that the technical definition of nominee is someone that holds, quote, bare legal title, unquote?
A. I would agree that MERS holds bare legal title to mortgage liens.

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Q. In contrast to equitable title which is ownership, correct?
A. I would define equitable title as ownership in the actual underlying dead instrument in the note.
Q. Which MERS does not have, right?
A. MERS does not have or own notes, so, yes.
Q. Okay. MERS also does not lend money, correct?
A. That is correct. Nor does MERSCORP.
Q. And MERS is not the servicer on a mortgage loan, correct?
A. Correct.
Q. MERS does not issue monthly statements to borrowers?
A. Correct.
Q. MERS is never the creditor, correct?
A. It depends on which context. Obviously MERS holds the lien on behalf of a note owner depending on which context would we be a creditor. I suppose there could be situations where we could be as the mortgage holder the creditor.
Q. Have you ever seen that before?
A. Not that I can recall. No.
Q. Okay. You mentioned something, MERS holds the

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lien; did I hear that right?
A. Yes.
Q. What lien does MERS hold?
A. A mortgage is a lien.
Q. Well, you would agree with me that there is a lien that is created as a result of the execution of a mortgage instrument, whether it be a mortgage, deed of trust, or what they call in Georgia a security deed?
A. Yes.
Q. So that lien is created by the instrument itself, correct?
A. Yes.
Q. And the instrument identifies whoever the lender is?
A. Yes. The lender parties.
Q. Among other parties, yes, but the lender is actually the one who has rights to the lien, correct?
A. I'm not sure what you mean by who has rights to it.
Q. Let me do it this way, the security instrument, whatever it is, the execution and recording of that instrument creates a lien on the real property which secures repayment of the note?

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A. Yes.
Q. That lien is in favor of the lender that lent the money in connection with the underlying transaction, correct?
A. Correct. Well, MERS holds the mortgage as an agent of the lender.
Q. Well, the hold a physical document, correct?
A. No. The physical document is recorded in the land records.
Q. Okay. So what does MERS hold?
A. It holds that mortgage interest and to me a lien is a mortgage. To me the terms are synonymous.
Q. Okay. What you're telling me is MERS holds the lien which you understand to be the mortgage interest?
A. Yes.
Q. So are you telling me MERS can institute a foreclosure action and foreclose on the lien?
A. Under the rules of membership foreclosures cannot be filed in MERS' name since, I believe, 2010 or 2011.
Q. Are you aware of two cases, one is called Knight A versus GMAC and the other is Tolgarum versus Green Point?
A. I am vaguely aware of those cases. I don't know

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details.

Q. Are you aware that those cases were published decisions from the Supreme Courts of Oregon and Montana?

A. I'm aware of that. Yes.

Q. Are you aware that both cases consistently held that under the definition under beneficiary under state law in both states that MERS is not, was never, and could never be the beneficiary?

A. I have not reviewed those decisions in preparation for today's deposition so I shouldn't comment on what exactly those decisions say. I don't recall.

Q. Okay. So I'm still trying to understand the statement that you made that MERS holds the mortgage interest and MERS holds the lien; by what vehicle or by what legal principle does MERS hold a lien when it did not loan any money to the borrower?

A. MERS on the mortgage instrument, as with Mr. Singleton's mortgage, MERS was named as the official mortgagee of record meaning that MERS held the mortgage as the agent of the note owner, the actual entity that lent the money.

Q. And when you say holds the mortgage, what do you

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mean by that if you told me that the mortgage is recorded?

A. To hold the mortgage means that Mr. Singleton, for example, granted MERS interest in his property as mortgagee of record so MERS has record title in the mortgage and if there were to be, for example, a tax sale, MERS would be a necessary party because it is the mortgagee.

Q. That's the case in Tennessee; Ditto, it's called.

A. Yes. Vaguely remember but I didn't review that in preparation for today.

Q. But that's where that concept came from, correct?

A. Well the idea that if there is a tax sale MERS has to be named, that's been a - Most states you have to name all interested in the property so it's not just one state, it's most state's statute.

(NOTICE MARKED AS DEFENDANT'S EXHIBIT NUMBER ONE FOR IDENTIFICATION.)

Q. Okay. The first exhibit I'm going to hand you is the Notice of Taking Deposition; have you seen that?

A. I have.

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Q. Okay. And are you aware that you are being produced today as a designated representative of defendant, MERS?
A. I am.
Q. And you understand that everything you say here today is attributable to and binding upon MERS?
A. Yes.
Q. Okay. There are a series of topics listed on page two, numbers one, two, and three?
A. Yes.
Q. Are there any of those three topics that you feel you are not qualified to discuss?
A. No. I am qualified to discuss these topics.
Q. Okay. You can put that up and the next exhibit I'm going to hand you is Exhibit Two, which is the first of three assignments of mortgage.

(ASSIGNMENT MARKED AS DEFENDANT'S EXHIBIT NUMBER TWO FOR IDENTIFICATION.)

Q. The first pages is essentially a recorder's cover page.
A. Yes.
Q. The second page is a document styled, Assignment of Mortgage, and it appears to be signed by someone named Jeffrey Stephan, S-T-E-P-H-A-N; do you see that?

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A. I do.
Q. Do you know who he is?
A. I know he was appointed as a MERS certified officer.
Q. How do you know that?
A. It was pursuant to a corporate resolution assigned by the MERS corporate secretary in 2003, Mr. William Hultman.
Q. Spell the last name?
A. Sure. It's H-U-L-T-M-A-N.
Q. Do you know that Mr. Stephan has testified under oath in a deposition that he signed thousands of documents in a week and has no idea what he's signing?
A. I'm generally aware that he testified but I don't know the statistics of his testimony.
Q. Okay. So this assignment is dated July 14th of 2008, correct?
A. Yes.
Q. Have you ever met Mr. Stephan?
A. No.
Q. Do you know if this is his signature?
A. I don't.
Q. There are two witnesses whose names I can't make out from these signatures; do you know who they

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are?

A. I do not. I also do not recognize their signatures.

Q. Okay. Thank you for answering my next question. The assignments signed by Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loan; do you see that?

A. I do.

Q. And this assignment is dated July 14th, 2008?

A. Yes.

Q. Are you aware that People's Choice Home Loan, Inc. filed for bankruptcy on March 21st of 2007?

A. I did not know that.

Q. Okay. When someone signs an assignment of mortgage on behalf of MERS as nominee for some other entity, does anyone at MERS do any due diligence to find out if MERS has authority to sign for that entity?

A. If you could rephrase, please.

Q. Sure. For example, in this case, this document is dated July 14th, 2008 and it was signed by Mr. Stephan claiming to be a vice president of MERS as nominee for People's Choice Home Loans; my question is, when these type of documents are signed, if you know, does anyone at MERS check

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to see whether or not they are allowed to sign for nominee for the entity they are serving as nominee for?

A. I don't know.

Q. Okay. So do you know of any authority by which MERS could sign as nominee for a bankrupt entity?

A. The original mortgage requested to MERS as a nominee for the original lender, People's Choice and it's successors and assigns so when MERS signed the assignment it wouldn't have been acting on behalf of People's Choice, it would have been acting on behalf of whoever owned the note at that time.

Q. Well I'm looking at the signature block and it says Mortgage Electronic Systems, Inc. as nominee for People's Choice Home Loan, Inc. period.

A. It does say that.

Q. Right. And I'm going to represent to you that People's Choice Home Loan had filed for bankruptcy on March 21st, 2007 which was about a year and a half before this document was even signed; my question is do you know of any authority that would permit MERS to sign an

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assignment of mortgage on behalf of a bankrupt entity?

A. Again, I don't know who owned the note in July 2008 but whichever entity would have owned the note, that would have been the entity on whose behalf MERS was acting, not People's Choice.

Q. Again, I'm not trying to be obnoxious but I'm trying to get an answer to a very direct question, do you know of any authority by which MERS could sign as nominee for a bankrupt entity, yes or no?

A. Well, the issue is the question is presuming we're signing a document on behalf of a bank or entity and my position is we are not.

Q. Again, what the signature block says is Mortgage Electronic Systems, Inc. as nominee for People's Choice Home Loan, Inc. period, by Jeffrey Stephan, Vice President, on July 14th, 2008, and I'm representing to you that People's Choice, and you can look it up, had filed for bankruptcy a year and a half earlier, so given those facts and being a lawyer for MERSCORP for many years, do you know of any authority which would allow MERS to sign as nominee for a bank or entity, yes or no?

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A. Again, we don't sign documents on behalf of entities that are non-functional -

Q. Just answer my question.

MR. RIDDLE: You can let him finish. You asked a question and if you don't like the answer he gave, you opened the door

MR. BARNES: No. He answered the question.

MR. RIDDLE: You asked him six times. Just because you don't like the additional -

MR. BARNES: No. He was answering something I didn't ask but I'm not going to argue.

Q. Anyway, I'm going to go above the signature line where it says In Witness Whereof ; do you see that?

A. I do.

Q. It says, Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loans, Inc. period, correct?

A. I see that.

Q. Okay. You can put that up.

A. Okay.

(ASSIGNMENT MARKED AS DEFENDANT'S EXHIBIT NUMBER THREE FOR IDENTIFICATION.)

Q. Next is Exhibit Three which is another assignment of mortgage -

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MR. SLOAN: Can we go off the record for a minute?

(Deposition went off the record for a brief period.)

Q. Exhibit Three is a two page document, the first page being a cover page from the clerk which I'm not going to ask you about; I'm going to go to the actual assignment which is dated August 31st, 2011.

A. Okay.

Q. And this assignment purports to transfer what?

A. Well, MERS didn't execute this document.

Q. Understood.

A. The only thing I would know is what is on the document itself which it is purporting to transfer.

Q. Okay.

A. I have not seen it before.

Q. Fair enough. When there is foreclosure involving MERS, does MERS or MERSCORP maintain a file as to that foreclosure; in other words, does MERS have a Jamie Singleton file for this case?

A. As I testified before foreclosures are no longer brought in MERS' name.

Q. Understood.

A. What do you mean by foreclosure file?

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Q. Well, MERS is a named defendant in this case, correct?
A. Yes.
Q. So MERS knows about the lawsuit and is participating in the lawsuit?
A. Yes.
Q. Okay. Now that that is going on, did MERS or MERSCORP create one or more files concerning this lawsuit?
A. We have an internal database of litigated cases and I believe there is file for this case but I have not reviewed it.
Q. Do you know if the file exists or are you assuming?
A. I believe that a file does exist but I have not reviewed it, and by file I mean an entry in a database. We don't have a physical file.
Q. That was my next question, paper, electronic, which is it?
A. I believe we have an electronic file in our database but we do not have a paper file.
Q. What I'm trying to get at is servicers create files; OCWEN has something called The Vault -
A. Yes.
Q. Bank of America has something called AS400 which

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is their document maintenance system.

A. Yes.

Q. Does MERS have a similar type of system for creating electronic files as to individual foreclosures?

A. Not in the sense that the servicers would have. The MERS system, the database that is with MERSCORP, there is an entry with Mr. Singleton that has information that has been reported to MERSCORP by various entities about his loan.

Q. Now that you mention that, there is a MERS - Fannie Mae calls it a lookup tool, it's something else when you go on MERS to try to track where the mortgage is gone?

A. Yes.

Q. What is that called?

A. I'm assuming you're referring to what we call MERS Servicer ID.

Q. Okay.

A. That system, if you have the MIN number, which is an 18 digit number unique to each mortgage, any person can plug a MIN number into the MERS Servicer ID and learn who was reported to MERS ad the last loan servicer of that mortgage loan and will provide contact information.

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Q. Only the servicer?
A. Uh, yes. I believe that the borrowers themselves can gain a little more information about the loan.
Q. When you look up something with the MIN number does it list on that system the owner of the loan or just the servicer?
A. Just the servicer, I believe. I haven't used it in quite some time.
Q. And who inputs the information in the system that is seen by someone trying to look up information.
A. That is reported to MERSCORP by MERS System members.
Q. So if a member tells MERS, We are now the new servicer, we acquired servicing from, let's say, Shellpoint, and it's not Statebridge, like this one, Statebridge would then report that to MERS and it would go up on the MERS website?
A. It would go into the MERS System.
Q. Okay.
A. But for this particular loan we have no information after October 31st, 2007 which is when Mr. Singleton's mortgage was deactivated in the system so we don't know anything about that

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loan after -

Q. October of 2007?

A. Correct.

Q. Why was it deactivated?

A. Um, I don't know why. The loan servicer at that point was OCWEN in our system.

Q. What would cause a deactivation on the MERS system in general?

A. Either the loan has been assigned out of MERS or for many reasons. Usually an assignment or the loan has been paid off, something of that nature, something where MERS is no longer the lien holder.

Q. So is it your position in this case that MERS is not the lien holder.

A. Not anymore. No.

Q. Was it ever?

A. Until the assignment was executed. Yes.

Q. Which one?

A. From MERS to the 2008 assignment.

Q. Do you know if it's incumbent upon servicers to report a change of servicing to MERS; is there some sort of obligation when servicing changed to report that to MERS?

A. Yes.

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Q. Are you aware that there have been several changes of servicer since October 2007 on this loan?

A. Once the mortgage was deactivated from the MERS system it is no longer a loan that we are tracking so no, we wouldn't have any information or MERSCORP wouldn't have any information.

Q. And that's one of the things I want to know, you said we, who is we?

A. MERSCORP. In that sentence I mean MERSCORP.

Q. Okay. Does MERSCORP do the tracking or does MERS do the tracking?

A. The database of our system is administrated by MERSCORP and based off of information that is reported to MERSCORP by MERS system members.

Q. Which would be the servicers?

A. Yes.

Q. And no one has reported anything to MERS since October 2007?

A. That's right, for Mr. Singleton's file.

Q. Of course. And I understand that MERS had nothing to do with, as far as you know, this second assignment, Exhibit Three, correct?

A. Correct.

Q. I just need to know that from your mouth because

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I can't testify.

A. I understand.

(ASSIGNMENT MARKED AS DEFENDANT'S EXHIBIT NUMBER FOUR FOR IDENTIFICATION.)

Q. I'm going to show you Exhibit Four which is another assignment of mortgage; again, we're not going to deal with the cover page, and this assignment does not appear to have anything to do with MERS either, correct?

A. Correct.

(ASSIGNMENT MARKED AS EXHIBIT NUMBER FIVE FOR IDENTIFICATION.)

Q. Exhibit Five is going to be the last in a series of assignments of mortgage; again, we're not going to deal with the cover page, this apparently does not have anything to do with MERS either, correct?

A. That is correct.

Q. So as far as the documentation that I have shown you so far, MERS' involvement in this loan ended as of the time of the first assignment which was Exhibit Two; is that accurate?

A. Yes.

Q. When MERS transfers an interest in a mortgage pursuant to an assignment of mortgage, MERS only

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transfers what it has, correct?
A. That is correct.
Q. Okay. And since you're not familiar with the People's Choice bankruptcy, is it fair to state you would not know what interest MERS had, if any, at the time of Exhibit Two?
A. MERS was the mortgagee, the lienholder, of record.
Q. Are you aware of how bankruptcy works?
A. Yes, generally, yes.
Q. Are you aware that when a lender files bankruptcy all assets of the lender become under the direction and control of the bankruptcy trustee?
A. Yes.
Q. If that is true and this assignment was executed after People's Choice filed bankruptcy, how is it that MERS could have any interest if the bankruptcy trustee had taken whatever interest People's Choice had in the loan?
A. Again, when MERS executed the assignment would have been acting on behalf of the note holder or the owner of the time of the assignment.
Q. Which pursuant to the two items I showed you, the witness clause and the signature block, MERS

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was acting solely for People's Choice Home Loans, Inc., at least that is what it says.

A. It is what it says. I would note that the original mortgage was given to MERS as an agent of People's Choice and it's successors and assigns which is not on the assignment.

Q. Right. And correct me if I'm wrong but given that you were not aware of People's Choice bankruptcy you would likewise not be aware of whether or not the Singleton loan was a retained asset of People's Choice at the time they filed bankruptcy on March 21st, 2007, correct?

A. I do not know. That's correct.

Q. I just want to go back to Exhibit Two a minute and ask you a couple of questions about it.

A. Okay.

Q. The opening paragraph after the State of South Carolina, County of Dorchester information, for value received we hereby set over and transfer and assign unto GMAC Mortgage, LLC, GMAC Mortgage Corp, it's successors and assigns, et cetera, rights and interest in a certain mortgage, together with the note; do you see that?

A. I do see that.

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Q. What authority, if any, does MERS have to transfer an interest in a promissory note which it never owned?
A. None.
Q. Okay. Is it your testimony that this assignment of mortgage did not and could not have transferred the note?
A. Correct. That is my testimony.
Q. If you look at Exhibit Three, which I understand MERS had nothing to do with, this is signed by GMAC Mortgage, LLC, and it transfers the mortgage to an entity called 50 by 50, REO, LLC, care of AMS Servicing, LLC; do you see that?
A. I do see that.
Q. And this is dated 31st of August, 2011, correct?
A. Correct.
Q. Go back to Exhibit One, are you aware that GMAC Mortgage filed for bankruptcy in May of 2012?
A. I am generally aware.
Q. Okay.
A. I know they filed bankruptcy at some point and I have no reason to dispute it was on that day.
Q. Okay. I'm going to go back up to the full value received paragraph.
A. Okay.

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Q. Exhibit Two.
A. Yes.
Q. Okay. In that paragraph it says, I think it's the third and fourth line down, it says executed by Jamie Singleton to Mortgage Electronic Systems, Inc. as nominee for People's Choice Home Loan, Inc. period; do you see that?
A. Yes.
Q. So the successors and assigns language doesn't appear in this paragraph here, correct?
A. That's correct.
Q. Okay. And as in the signature block, this MIN number 100273900102812475, is that the MIN number designation that you referred to earlier in general?
A. Yes.
Q. What is the MIN number?
A. Each mortgage where MERS is the mortgagee of record is assigned a MIN number and that MIN number is the number that is recorded in the MERS system which is how each individual mortgage is tracked so that is the MIN number for Mr. Singleton's loan.
Q. Okay. Are you aware that there has been a claim made in this case by the present plaintiff and

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was also made by the prior plaintiff, US Bank, NA as trustee, that the Singleton loan was transferred to a mortgage securitization trust; are you aware of that?

A. No.

Q. Okay. And just a couple of final questions, but the notary that is listed here, Nikole Shelton, N-I-K-O-L-E; do you know who she is?

A. I do not.

Q. Okay. If you'd give me one minute I might be done.

(Deposition went off the record for a brief period.)

Q. Exhibit Two, again, assuming for the sake of argument that People's Choice had filed bankruptcy a year and a half before this assignment was signed, do we know looking at Exhibit Two who the note holder was when this was signed; do you know?

A. I do not. I know that Mr. Stephan was a MERS certifying officer for GMAC.

Q. You said that.

A. But GMAC was not the note holder. From this document I don't know who the note holder was.

Q. Okay. That's all I have unless your counsel has any questions they need to follow up on.

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CROSS EXAMINATION BY MR. RIDDLE:

Q. Just a couple, you know who Jeffrey Stephan - Do you know who he was working for in 2008?

A. GMAC Mortgage, LLC.

Q. Okay. Now, how does someone who works for GMAC have the authority to sign on behalf of MERS?

A. So Mr. Stephan was appointed as a MERS certifying officer which through employment with GMAC, meaning that for loans that GMAC was the note holder or otherwise had certain types of interest, that he was authorized to sign certain documents including assignments and mortgages?

Q. So in 2008 if GMAC was the note holder Jeffrey Stephan would have authority to sign on behalf of MERS?

MR. SLOAN: Object to the form.

A. Yes. Under those circumstances, yes.

Q. Now, you said other interest; what other interest would GMAC have if they were not the note holder in 2008?

A. They could have been the note owner. GMAC did not appear in the MERS system for Mr. Singleton's loan.

Q. And you said they could have been the note owner, what other could they have been, the note

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servicer?

A. They could have been but GMAC was not.

Q. And you said in 2007 it was deactivated, who was the record servicer in 2007?

A. It was People's Choice and then it became OCWEN.

Q. When it was deactivated did it show that OCWEN was no longer the servicer in 2007?

A. In October of 2007 it was deactivated. OCWEN was the last servicer on the MERS system.

Q. So you would have no record of who was the servicer after 2007?

A. Correct.

Q. Okay. Now, going to note assignments, is there an assignment of mortgage necessarily every time a note is transferred?

A. No. There would not be.

Q. Do you know why a note owner would own a note but not have the mortgage assigned at the time?

A. If the mortgage in question was held by MERS, MERS would have had the mortgage on behalf of the original note owner and each of the subsequent owners of the note until MERS executed an assignment.

Q. Who was the original mortgagee of record in 2006 when the mortgage was signed?

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A. MERS was the original mortgagee.
Q. And who was the mortgagee of record when the assignment was signed in 2008?
A. MERS was still the mortgagee.
Q. And that mortgage would have been filed where?
A. It was recorded in Dorchester County, South Carolina.
Q. Okay. I think that's all of my questions.

RE-EXAMINATION BY MR. BARNES:

Q. There is an indication, back on Exhibit Two, on the bottom left that says return to Rogers, Townsend, Thomas, PC?
A. I see that. Yes.
Q. Do you know if they prepared this document?
A. I do not.
Q. Okay. And in response to something that your counsel asked you, did I hear you say that as of 7-14-08 Mr. Stephan worked for GMAC?
A. According to our records, yes.

MR. SLOAN: I'm good.

(Deposition concluded at 12:48 o'clock, p.m.)

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STATE OF SOUTH CAROLINA)
: C-E-R-T-I-F-I-C-A-T-E
COUNTY OF BERKELEY)

I, Molly C. Newton, Court Reporter and Notary Public, certify that I did have Joseph Patry to appear before me at 9:53 o'clock, a.m. at Sloan Law Firm, 1055-F North Main Street, Summerville, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 9th day of November, 2018.

_____

Notary Public for South Carolina

My Commission Expires: March 4, 2019

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STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA, not in its individual capacity, but Solely as owner Trustee of Westvue NPL Trust, Series 2014-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

JAMIE SINGLETON,

Counter-Plaintiff,

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY IN ITS CAPACITY AS CERTIFICATE TRUSTEE FOR NNPL TRUST SERIES 2012-1; FCI LENDER SERVICES, INC., and DOES 1-10,

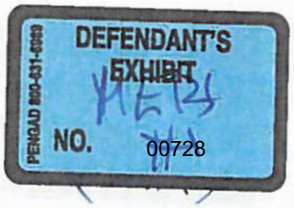
Counter-Defendant and Cross-Defendants.

NOTICE OF DEPOSITION OF MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

To: Jonathan Riddle, Esq. , Attorney for Mortgage Electronic Registrations Systems, Inc.

Stern and Eisberg
1709 Devonshire Drive
Columbia, SC 29204

YOU ARE HEREBY NOTIFIED that the undersigned will take the deposition, for purposes of discovery and trial, of the designated representative of the Plaintiff, as follows:



ELECTRONICALLY FILED - 2018 Dec 14 8:00 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Name: tbd
Date: October 25, 2018
Time: 10:00am
Location: Sloan Law Firm, PA
1055-F North Main St.
Summerville, SC 29483

The deposition will be taken pursuant to Rule 30-b-6 of the South Carolina Rules of Civil Procedure and the inquiry and testimony will be recorded by a Notary Public or other suitable officer to be determined of the State of South Carolina which has no interest, whether financial or otherwise, in the outcome of this action. The deposition will continue from hour to hour until completed and is expected to last 1 to 2 hours. The deponent will be questioned as to all matters in the Pleadings any responses from Plaintiff and its predecessors to Singleton's discovery, all matters concerning the formation and operation of the Trust that is the Plaintiff in this case, and U.S. Bank National Association's duties, responsibilities, and involvement as Trustee for the Trust named as the Plaintiff.

In addition, the Defendant's attorneys will question the witness on the following:

1 The history of the transfer of the Note and Mortgage from the original lender identified on the Note and Mortgage to any entity at any time.

2. All facts and circumstances relating to or concerning each and every assignment or transfer of the note and mortgage which are the subject of this action, including all related documents such as but not limited to powers of attorney, corporate authorizations, and other documents regarding the grant of any authority for such assignment or transfer.

3. Mortgage Electronic Registration Systems, Inc.'s ("MERS") terms and conditions, and limitations on MERS' authority.

The deposition will be conducted by W.J. Barnes, Esq., who has been admitted pro hac vice to this case and is affiliated with Sloan Law Firm, PA in this case.

ELECTRONICALLY FILED - 2018 Dec 14 8:00 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing has been forwarded, via regular mail to:
Jonathan Riddle, Esq.
Stern and Eisberg
1709 Devonshire Drive
Columbia, SC 29204

_____
William H. Sloan
Attorney for Defendant Singleton
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
October 9, 2018

ELECTRONICALLY FILED - 2018 Dec 14 8:00 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Recording Date: 07/22/2008 Instrument: 84 Book: 6727 Page: 330-331

FILED-RECORDED
RMC / ROD

2008 Jul 22 PM 2:11:42

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 6.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

THIS PAGE IS HEREBY ATTACHED AND MADE PART OF THE PERMANENT RECORD OF THIS DOCUMENT. IT IS NOT TO BE DETACHED OR REMOVED AND MUST BE CITED AS THE FIRST PAGE OF THE RECORDED DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR RECORDING PURPOSES AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

DEFENDANT'S EXHIBIT NO. 2

ELECTRONICALLY FILED - 2018 Dec 14 8:00 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

FILED/RECORDED
JULY 22, 2008
DORCHESTER COUNTY
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

ASSIGNMENT OF MORTGAGE
Mortgage Book 5142 at Page 168

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto GMAC Mortgage, LLC, GMAC Mortgage Corp., 500 Enterprise Road, Horsham, PA19044, its successors and assigns, all its rights, title and interest in and to a certain Mortgage, together with the Note executed by Jamie Singleton to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc. (MIN#100273900102812475) dated January 4, 2006, and duly recorded in the public records of Dorchester County, State of South Carolina, on January 12, 2006, in Mortgage Book 5142 at Page 168.

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc. (MIN#100273900102812475) has caused this instrument to be executed in its corporate name and behalf by Jeffrey Stephan as its VP, duly authorized, on this 14 day of July, 2008.

Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc. (MIN#100273900102812475)

Witness No. 1

By: _____

its: Jeffrey Stephan
Vice President

Witness No. 2

STATE OF Pennsylvania

COUNTY OF Montgomery

ACKNOWLEDGMENT
S.C. Code § 30-5-30
(Effective January 1, 1995)

I, the undersigned, Notary Public for the State of Pennsylvania, do hereby certify that Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc. (MIN#100273900102812475) by Jeffrey Stephan, its VP, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 14 day of July, 2008.

Nikole Shelton
NOTARY PUBLIC FOR _____
My Commission Expires: _____

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Nikole Shelton, Notary Public
Horsham Twp., Montgomery County
My Commission Expires Aug. 11, 2010
Member, Pennsylvania Association of Notaries

RETURN TO:
Rogers, Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202
(008045-00946)

JDW

ELECTRONICALLY FILED - 2018 Dec 14 8:00 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Recording Date: 09/14/2011 Instrument: 78 Book: 8010 Page: 230-231

FILED-RECORDED
RMC / ROD

2011 Sep 14 PM 1:36:12

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 6.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

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REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

DEFENDANT'S EXHIBIT NO. Exh 3

00733

ELECTRONICALLY FILED - 2018 Dec 14 8:00 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Recording Date: 10/02/2012 Instrument: 31 Book: 8483 Page: 135-136

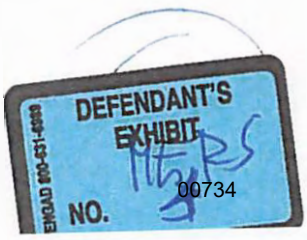
FILED-RECORDED
RMC / ROD

2012 Oct 02 PM 12:43:52

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 6.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

THIS PAGE IS HEREBY ATTACHED AND MADE PART OF THE PERMANENT RECORD OF THIS DOCUMENT. IT IS NOT TO BE DETACHED OR REMOVED AND MUST BE CITED AS THE FIRST PAGE OF THE RECORDED DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR RECORDING PURPOSES AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181



6

FILED/RECORDED
October 2, 2012
DORCHESTER COUNTY
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

ASSIGNMENT OF MORTGAGE
Mortgage Book 5142 at Page 168

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto **US Bank, N.A., as Trustee of the FRT 2011-1 Trust**, c/o AMS Servicing, LLC, 3374 Walden Ave, Depew, NY 14043,its successors and assigns, all its rights, title and interest in and to a certain Mortgage, executed by Jamie Singleton to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., its successors and assigns (MIN 100273900102812475) dated January 4, 2006, and duly recorded in the public records of Dorchester County, State of South Carolina, on January 12, 2006, in Mortgage Book 5142 at Page 168. This mortgage was subsequently assigned to GMAC Mortgage, LLC by assignment of mortgage dated July 14, 2008, and recorded July 22, 2008, in Mortgage Book 6727 at Page 331. This mortgage was subsequently assigned to 50 by 50 REO, LLC by assignment of mortgage dated August 31, 2011, and recorded September 14, 2011, in Mortgage Book 8010 at Page 230.

IN WITNESS WHEREOF, 50 by 50 REO, LLC has caused this instrument to be executed in its corporate name and behalf by TIMOTHY R HAPEMAN, as its ASST VICE PRESIDENT, duly authorized, on this 24TH day of SEPTEMBER, 2012.

50 by 50 REO, LLC

By: TIMOTHY R HAPEMAN

Its: ASST VICE PRESIDENT AMS SERVICING, LLC AS ATTORNEY IN FACT

Witness No. 1 Richard Seeger

Witness No. 2 Suzie E. Turnberry

STATE OF NEW YORK

COUNTY OF ERIE

ACKNOWLEDGMENT
S.C. Code § 30-5-30

I, the undersigned, Notary Public for the State of NEW YORK, do hereby certify that 50 by 50 REO, LLC by TIMOTHY R. HAPEMAN, its ASSISTANT VICE PRESIDENT personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 25 day of September, 2012.

NOTARY PUBLIC FOR ERIE County/NY STATE
My Commission Expires: 3/20/14

RETURN TO:
Rogers, Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202
(514978-00008)

LISA J. COSTA
Notary Public, State of New York
No. 01CO6037786
Qualified in Erie County
Commission Expires March 20, 2014

Singleton
5505 Rowsham Pl
North Charleston, SC 29418

00735

ELECTRONICALLY FILED - 2018 Dec 14 8:00 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

MARGARET L BAILEY
DORCHESTER COUNTY
REGISTER OF DEEDS

201 Johnston Street ~ Saint George, SC 29477 (843) 563-0181

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

Instrument #:	2016905184		
Receipt Number:	1991	**Return To:**	ROGERS TOWNSEND THOMAS
Recorded As:	ASSIGNMENT		
Recorded On:	March 07, 2016		
Recorded At:	11:11:46 AM	**Received From:**	ROGERS TOWNSEND THOMAS
Recorded By:	NW	**Parties:**	
Book/Page:	RB 10126: 197 - 199		Direct- SINGLETON, JAMIE
Total Pages:	3		Indirect- US BANK NA

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$7.00
Tax Charge:	$0.00

Margaret Bailey

Margaret Bailey - Register of Deeds

DEFENDANT'S EXHIBIT NO. 25

ELECTRONICALLY FILED - 2018 Dec 14 8:00 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2018 Dec 14 8:00 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

after Recording Return to:
Firm/Company: Single Source Property Solutions
Address:2570 Boyce Plaza Road
Address 2: Bldg. III
City, State, Zip: Pittsburgh, PA 15241

FILED/RECORDED
March 7, 2016
DORCHESTER COUNTY
REGISTER OF DEEDS

Loan # 170954046

Assessor's Property Tax Parcel/Account Number:
181-10-06-037

Above This Line Reserved For Official Use Only

ASSIGNMENT OF MORTGAGE

Name and Address of Assignor:
US Bank, N.A, as Trustee of the FRT 2011-1 Trust
1345 Avenue of the Americas, 46th Floor
New York, NY 10105

Name and Address of Assignee:
Wilmington Savings Fund Soc for NNPL Trust Series 2012-1
500 Delaware Avenue, 11th Floor
Wilmington, Delaware 19801

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, the undersigned, US Bank, N.A, as Trustee of the FRT 2011-1 Trust , "Assignor", whose address is above, does hereby grant, sell, assign, transfer and convey to Wilmington Savings Fund Soc for NNPL Trust Series 2012-1, "Assignee," whose address is above, all interest of the undersigned Assignor in and to the following described mortgage:

Date of Mortgage: 01/04/2006, **Executed by (Mortgagor(s)):** Jamie Singleton, **To and in favor of (Mortgagee):** Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., **Filed of Record:** in Book 5142, page 168, in the Office of the Clerk Court of Dorchester County, South Carolina, on 01/12/2006.

Property: 5505 Rowsham Place, North Charleston, SC 29418 As described in the Mortgage.

Given: to secure a certain Promissory Note in the amount of $212,000.00 payable to Mortgagee.

Together with the note(s) and obligations therein described or referred to, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Mortgage.

TO HAVE AND TO HOLD the same unto Assignee and unto its successors and assigns forever, subject only to the terms and conditions of the above-described Mortgage.

Assignor is the present holder of the above-described Mortgage.

IN WITNESS WHEREOF, this assignment was executed by the undersigned Assignor on this the 8 day of Feb, 2016.

US Bank, N.A, as Trustee of the FRT 2011-1 Trust

BY: DEWAYNE CHIN
TITLE: AUTHORIZED SIGNATORY

Signed, Sealed and Delivered
in the presence of:

Witness

Witness

STATE OF NY
COUNTY OF NY

The foregoing instrument was acknowledged before me this 2/8/16 (date) by DeWayne Chin (name of officer or agent, title of officer or agent) of US Bank, N.A, as Trustee of the FRT 2011-1 Trust (name of corporation acknowledging) a DE (state or place of incorporation) corporation, on behalf of the corporation.

Notary Public

Print Name: THOMAS SANTORA
Notary Public, State of New York
Qualified in New York County
No. 01SA6191079
My Commission Expires Aug. 4, 2016

My Commission Expires:

THOMAS SANTORA
Notary Public, State of New York
Qualified in New York County
No. 01SA6191079
My Commission Expires Aug. 4, 2016

Prepared by:
Single Source Property Solutions
2570 Boyce Plaza Road
Pittsburgh, PA 15241

ELECTRONICALLY FILED - 2018 Dec 14 8:00 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2018 Dec 14 8:00 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

6'

GMAC#: 0359522979

FILED/RECORDED
September 14, 2011
DORCHESTER COUNTY
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

ASSIGNMENT OF MORTGAGE

Mortgage Book 5142 at Page 168

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto **50 by 50 REO, LLC, c/o AMS Servicing, LLC, 3374 Walden Ave, Depew, NY 14043**, its successors and assigns, all its rights, title and interest in and to a certain Mortgage, executed by Jamie Singleton to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., its successors and assigns (MIN 100273900102812475) dated January 4, 2006, and duly recorded in the public records of Dorchester County, State of South Carolina, on January 12, 2006, in Mortgage Book 5142 at Page 168.

IN WITNESS WHEREOF, GMAC Mortgage, LLC has caused this instrument to be executed in its corporate name and behalf by ELIZABETH FOUST as its AUTHORIZED OFFICER duly authorized, on this 31st day of August, 2011.

GMAC Mortgage, LLC

By: _____
ELIZABETH FOUST, AUTHORIZED OFFICER

_____
Witness: VICKIE HICKSON

_____
Witness: RACHEL MOORE

STATE OF IOWA

S.C. Code § 30-5-30
(Effective January 1, 1995)

COUNTY OF BLACK HAWK

I, the undersigned, Notary Public for the State of IOWA do hereby certify that GMAC Mortgage, LLC by ELIZABETH FOUST its AUTHORIZED OFFICER personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 31st day of August, 2011.

_____
SALLY NELSON, Notary Public
My Commission Expires: 04/20/2014

SALLY NELSON
COMMISSION NO. 222056
MY COMMISSION EXPIRES
April 20, 2014

RETURN TO:
Rogers, Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202
(014978-00008)

Singleton
5505 Rowsham Pl
North Charleston, SC 29418

ELECTRONICALLY FILED - 2018 Dec 27 2:51 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1,

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants;

NOTICE OF HEARING ON CROSSCLAIM DEFENDANT US BANK, NA, AS TRUSTEE FOR FRT 2011-1's MOTION FOR SUMMARY JUDGMENT

Jamie Singleton,

Counter-Plaintiff,

v.

US Bank, NA, As Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity, but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1; FCI Lender Services, Inc., and DOES 1-10,

Counter-Defendant and Cross Defendants.

(514978-00008 EL1)

TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT, a hearing on the Crossclaim Defendant US Bank, NA, as Trustee for FRT 2011-1's Motion for Summary Judgment has been set in the above-referenced matter for January 24, 2019 at 11:30 A.M., at the Dorchester County

Courthouse, 5200 East Jim Bilton Boulevard, St. George, South Carolina, 29477, before the Honorable James E. Chellis, Master in Equity for Dorchester County. All interested parties shall appear at this designated time and place.

s/Erica G. Lybrand
Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
Post Office Box 100200 (29202)
1221 Main Street, 14th Floor
Columbia, South Carolina 29201
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors.

December 27, 2018

ELECTRONICALLY FILED - 2018 Dec 27 2:51 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2018 Dec 31 5:34 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association Defendants. Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc., and DOES 1-10, Counter-Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871 **PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT**

YOU WILL PLEASE TAKE NOTICE that Plaintiff, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 (hereinafter referred to as "Plaintiff"), by and through its undersigned counsel, will, on the tenth (10th) day of service hereof, or as soon thereafter as counsel may be heard, move this Honorable Court for an Order, pursuant to S.C. R.

Civ. P. 56, granting Plaintiff summary judgment on the cause(s) of action contained in its Complaint.

Plaintiff makes this Motion on the grounds that no genuine issue of material fact exists and Plaintiff is entitled to judgment as a matter of law. This Motion is based on the pleadings, filings or record, evidence and affidavits attached hereto and/or filed of record, the facts of the case, and the applicable case law and/or statutory law.

Date: December 31, 2018

By: /s Jonathan M. Riddle

Jonathan M. Riddle #101475
Stern & Eisenberg Southern, PC
1709 Devonshire Drive
Columbia, SC 29204
Telephone: (803) 929-0760
Facsimile: (803) 929-0830
Attorney for Plaintiff

ELECTRONICALLY FILED - 2018 Dec 31 5:34 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP180871

ELECTRONICALLY FILED - 2018 Dec 31 5:34 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association Defendants. Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc., and DOES 1-10, Counter-Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871 **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Plaintiff, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 (hereinafter referred to as "Plaintiff"), by and through its undersigned counsel, by and through its undersigned counsel, and submits the within memorandum of law in support of its Motion for Summary Judgment, averring as follows:

ELECTRONICALLY FILED - 2018 Dec 31 5:34 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

INTRODUCTION AND STATEMENT OF FACTS

On January 4, 2006, Defendant Jamie Singleton ("Borrower") obtained a loan from Peoples Choice Home Loan, Inc. in the original principal amount of $212,000.00 (the "Loan"). The terms of the Loan were reduced to writing, and Mr. Singleton signed a promissory note (the "Note") on the same day. To secure repayment of the Note, Mr. Singleton executed a Mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for People Choice Home Loans, encumbering certain real property located at 5505 Rowsham Place, North Charleston, SC 29418, Charleston, the same being more fully described in the Complaint (the "Property").

The Mortgage was recorded on January 12, 2006 in the Office of the Register of Deeds for Dorchester County in Book 5142 at Page 2168. The Mortgage constitutes a first priority mortgage lien encumbering the Property.

The Note was subsequently transferred several times before finally being transferred to Plaintiff, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1. In addition, the loan is currently serviced by Statebridge Company, LLC. On or around August 2006, the Note was transferred to Namura Holdings, LLC by People's Choice Home Loans. The Note was endorsed in blank by People's Choice Home Loans at the time of said transfer. Following the transfer of the Note, People Choice Home Loans filed for bankruptcy on March 20, 2007. At that time, People Choice had no interest in the subject loan or Note.

Subsequently, on or around November of 2007, Nomura Holdings transferred the Note to DB50 2007-1. After that transfer, GMAC Mortgage, LLC, serviced the loan. In March of 2008, Mr. Singleton defaulted on the loan. In preparation of potential foreclosure action by GMAC, an Assignment of Mortgage was given by Mortgage Electronic Registration Systems, Inc., as

nominee for People's Choice Home Loans to GMAC on July 4, 2008. The assignment was signed by a MERS signing officer who had authority to sing on behalf of MERS. At all times, the Assignment was meant to function not as a transfer of interest, but as notice to other potential creditors of the status of the mortgage.

GMAC filed a previous foreclosure action on July 11, 2008, and obtained a Judgement of Foreclosure and Sale. Prior to the scheduled sale, Mr.. Singleton filed Chapter 13 bankruptcy, and the sale was cancelled. Mr. Singleton failed to make the payments according to the plan, and the bankruptcy was dismissed on October 15, 2009. During that time, in July of 2009, servicing was transferred to Wealthbridge Management. The Note was transferred to 50 by 50 REO, LLC in October of 2010, and servicing was transferred to AMS. Due to a loss mitigation workout, the new holder of the Note dismissed the 2009 foreclosure judgment.

Due to Mr. Singleton's default on the loss mitigation plan, the immediate action was filed on April 25, 2011. Another Assignment of Mortgage into 50 by 50 REO, LLC was executed on August 31, 20111, and recorded on September 14, 2011 on Book 5142 at Page 168.

Defendant Singleton, filed a Motion to Dismiss on May 24, 2011. The file was also stayed due to the South Carolina Supreme Court Administrative Order 2011-05-02-01. The case was removed from the active docket so as to allow for continued loss mitigation options.

During the stay for loss mitigation, the loan was transferred to FRT 2011-1 Trust, with US Bank, NA, as trustee. AMS continued to act as Servicer. 50 by 50 REO, LLC executed an Assignment of Mortgage to US Bank, N.A., as trustee for FRT 2011-1 Trust.

Due to failure of loss mitigation options, an Attorney Certification with the Administrative Order was filed on December 19, 2011, and the case was restored to the active docket on June 1, 2012. Since being restored, Defendant has filed its Answer and

ELECTRONICALLY FILED - 2018 Dec 31 5:34 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Counterclaim/Crossclaim, first filing on July 11, 2012. The matter was referred to the Honorable James E. Chellis as Master in equity for Dorchester County on June 8, 2012. The case became litigated and parties have engaged in extensive discovery, including depositions, with the most recent depositions of representatives for the Plaintiff, MERS, and Defendant Singleton occurring on October 25, 2018.

During the pendency of the litigation, servicing of the loan was transferred numerous times. On September 24, 2014, servicing was transferred to Shellpoint Mortgage Servicing from Seneca, the successor in interest to AMS servicing. On February 9, 2015, servicing was transferred to FCI. It was transferred back to Shellpoint on June 8, 2016.

Prior to the transfer to Shellpoint in June of 2016, the Note, after transfer to other entities, but also with US Bank as trustee, was finally transferred to the current Plaintiff. Another Assignment of Mortgage into Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 was executed on February 18, 2016, and recorded on March 7, 2016 in Book 10126 at Page 198. At the time, Wilmington Savings Fund is the current holder of the Note and Mortgage, and Statebridge Company , LLC is the current servicer.

By Order of the Court dated September 29, 2017, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 was substituted as the Plaintiff in the current action. Defendant Singleton was granted leave to amend his Answer and Cross-Claim, which was filed on July 29, 2018. Plaintiff filed its Reply on August 28, 2018. The parties are currently under a Third Amended Scheduling Order filed on September 5, 2018. Discovery and

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depositions are now complete, and the parties have filed competing dispositive motions. Plaintiff is asking for summary judgment for the reasons set below.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citation omitted). "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 that 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.'" *Metts v. Mims*, 384 S.C. 491, 499, 682 S.E.2d 813, 818 (2009) (quoting S.C. R. Civ. P. 56(c)). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004) (citations omitted).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003) (citations omitted). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Id.* To avoid the granting of a motion for summary judgment, "[i]t is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine." *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). "The trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case." *Harris v. Rose's Stores, Inc.*,

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315 S.C. 344, 346, 433 S.E.2d 905, 906 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L.Ed.2d. 265 (1986)).

ARGUMENT

A. Borrowers breached the contract and Plaintiff is entitled to foreclosure.

Plaintiff is entitled to foreclose the Property because Defendant breached the terms of the Note and Mortgage. A "party seeking foreclosure has the burden of establishing the existence of the debt and mortgagor's default on that debt." *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct. App. 2009) (citations omitted). An action for foreclosure is, in essence, that of breach of contract. "The elements for a breach of contract are the existence of the contract, its breach, and the damages caused by such breach." *Southern Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012) (citing *Fuller v. Eastern Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)).

In its Complaint, Plaintiff alleges a binding contract was entered into by the parties. Defendant has not contested in his Answer or during the deposition that he did not enter into loan at issue. While he is arguing whether the loan is enforceable, the underlying transaction is not in dispute. Mr. Singleton obtained a loan at the terms contained in the Note and intended to secure the Note by giving a Mortgage on his home. Accordingly, no genuine issue of material fact exists regarding the existence of the binding contract between the parties, and Plaintiff has satisfied the first element.

Plaintiff further alleges in its Complaint that Borrowers breached and unjustifiably failed to perform under the terms of the contract by virtue of their failure to make the monthly payments as they became due. When questioned, Mr. Singleton did not dispute that he had not made payments on the loan since 2010 (Dep. Of Jamie Singleton, pg. 15). Furthermore, he

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admitted that he first had trouble making payments in 2008, leading him to enter forbearance and modification agreements. (*Id.* At 13-14). Defendant has offered no evidence to show that the loan is in default due to failure to make payments, as understood by the Note and Mortgage. Accordingly, no genuine issue of material fact exists regarding the breach of the contract by Borrowers, and Plaintiff has satisfied the second element.

Plaintiff alleges in its Complaint that it has been damaged as a direct and proximate result of said breach by Borrowers. Plaintiff continues to suffer damages in the form of lost funds and accrued interest due to continued missed payments. Borrowers have produced no information or evidence to contradict the amount of damages sustained by Plaintiff as a result of Borrowers' breach of the contract. Accordingly, no genuine issue of material fact exists as to whether Plaintiff has been damaged, and Plaintiff has satisfied the third and final element.

Based on the admissions, undisputed facts, and the evidence submitted by Plaintiff in this matter, Plaintiff has proven "the existence of the contract, its breach, and the damages caused by such breach." *Kemper*, 399 S.C. at 491-92, 732 S.E.2d at 209 (citation omitted). As a result, no genuine issue as to any material fact exists, and Plaintiff is entitled to judgment as a matter of law.

B. Plaintiff possesses standing and is the real party-in-interest.

Plaintiff is the real party-in-interest in this matter because Plaintiff is the owner and holder of the Note and is in physical possession of the Note through its custodial agent, thereby making Plaintiff the party entitled to enforce the Note. The Mortgage was originally given to Mortgage Electronic Registration Systems, Inc., as nominee for People Choice Home Loans. Furthermore, the Note was originally given to People's Choice Home Loans. The Note was endorsed by People's Choice in blank. Plaintiff is currently in physical possession of the Note,

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as evidence by the testimony of it's servicer. As such, it has full legal rights of the Note. The Mortgage was properly assigned to the current Plaintiff by Assignment of Mortgage as laid out previously. Plaintiff is the record holder of the Mortgage and has full legal rights as the Mortgagee.

Accordingly, as Plaintiff is the holder of the Note and Mortgage. Plaintiff is the proper party-in-interest and possesses full legal standing to bring this action. *See, Bank of America, N.A. v. Draper*, 405 S.C. 214, 223-24, 746 S.E.2d 478, 483 (Ct. App. 2013) (finding that the holder of an indorsed note is the party entitled to enforce it). Negotiable instruments, which include promissory notes, are governed by Article 3 of the UCC, codified in South Carolina as Title 36, Chapter 3 of the *South Carolina Code*. The UCC states that "Person entitled to enforce and instrument means (1) the holder of the instrument." A "holder" is the person or entity "who is in possession of a document or title or an instrument or a certified investment security drawn, issued or indorsed to him or to his order or in blank." S.C. Code Ann. §36-1-201. A note initially made payable to "order" may become a bearer instrument if it is endorsed in blank. §36-3-109(c). "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone." §36-3-205(b). Further, possession of the Note is *prima facie* evidence of ownership of the instrument. *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008).

Plaintiff holds the original Note, as established by testimony of Michael Dolan, and will present the original, with the endorsements, at hearing. The Note was endorsed in blank by the original holder People's Choice. After transfer to the current Plaintiff, it was maintained by Plaintiff by use of a custodian. In addition, the Note contained allonges from subsequent owners of the Note, to show that Plaintiff was negotiated at each point from the prior holder to the

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current holder. Even if these allonges were not present or invalid, South Carolina law would still allow Plaintiff to enforce as the Note was endorsed in blank. Therefore, Plaintiff has the requisite standing to enforce the Note by possession and negotiation.

Furthermore, with regards to Assignments, South Carolina "does not require both possession of the note and written assignment of the mortgage to prove ownership." *Id.* "South Carolina carries with it the 'familiar and uncontroverted proposition' that 'the assignment of a note secured by a mortgage carries with it an assignment of the mortgage.'" *Midfirst Bank, SSb v. C.W. Haynes& Co., Inc.*, 893 F. Supp. 1304, 1318 (D.S.C. 1994). "The assignment of mortgage is distinct from the debt it secures is nugatory and confers no rights upon the transferee." *South Carolina Nat'l Bank v. Halter*, 293 S.C. 121, 128 (Ct.App 1987). Therefore, enforcement of a Note in South Carolina does not require a written assignment of mortgage.

Defendant contends that the first Assignment of Mortgage, executed July 4, 2008, is invalid, because People's Choice Home Loans filed for bankruptcy prior to July 4, 2008. However, People's Choice Home Loans was not the entity that held the Mortgage, as the Mortgage was given to Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loans. People's Choice transferred the loan to Nomura Holdings before filing for bankruptcy, as stated previously, and had no interest in the Loan prior to its bankruptcy filing.

Furthermore, the testimony of David Paltry established the system by which MERS assigns mortgages at the behest of a servicer. In this case, the first Assignment of Mortgage was executed on behalf of MERS by a registered signing officer with GMAC, who was the current servicer at the time of transfer. Defendant has not disputed list and chronology of servicers. As such, Defendant does not dispute that on July 4, 2008, GMAC serviced the loan. Also,

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Defendant has not disputed the validity of the other assignments, including the assignment to Plaintiff.

In addition, the authority stated shows that the assignments are irrelevant to standing anyway. Plaintiff is the holder of the Note, endorsed in blank, which secures the Mortgage. AS the owner of the Note, Plaintiff also owns the Mortgage. An Assignment of Mortgage is not intended as a sales or transfer document. Rather, it gives legal notice to any potential creditors or lienholders as to the status of a Mortgage encumbering a certain property and is created solely for their benefit. In this case, Plaintiff need not establish a valid assignment because it holds the Note. As a final Note, Plaintiff will be able to produce the original signed Mortgage as it is maintained by Plaintiff.

As such, no genuine issue as to any material fact exists, and Plaintiff is entitled to judgment as a matter of law.

CONCLUSION

Based on the foregoing reasons and arguments, Plaintiff contends that no genuine issue as to any material fact exists, and it is entitled to judgment as a matter of law. Plaintiff hereby respectfully requests that this Honorable Court grant Plaintiff's Motion pursuant to S.C. R. Civ. P. 56 as to the cause(s) of action contained in its Complaint, and award Plaintiff the fees and costs associated with this matter.

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Date: December 31, 2018

By: /s Jonathan M. Riddle

Jonathan M. Riddle #101475
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Attorney for Plaintiff

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STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871
Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association Defendants.	**NOTICE OF HEARING**
Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc., and DOES 1-10, Counter-Defendants.	

TO THE DEFENDANT(S) NAMED ABOVE:

YOU WILL PLEASE TAKE NOTICE that a hearing on Plaintiff's Motion for Summary Judgement will be held in the within captioned matter before the Honorable James E. Chellis, Master-in-Equity for Dorchester County at 5200 E. Jim Bilton Blvd., St. George, SC 29477 at 11:30 a.m. on January 24, 2019.

YOU ARE INVITED TO ATTEND.

January 14, 2019

/s/ Jonathan M. Riddle
Priti M. Patel #79835
Jonathan M. Riddle #101475
Stern & Eisenberg Southern, PC
1709 Devonshire Drive
Columbia, SC 29204
Telephone: (803) 462-5006
Facsimile: (803) 929-0830
Attorney for Plaintiff

SC201800000080

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STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association Defendants. Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc., and DOES 1-10, Counter-Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871 **AMENDED MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Plaintiff, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 (hereinafter referred to as "Plaintiff"), by and through its undersigned counsel, by and through its undersigned counsel, and submits the within memorandum of law in support of its Motion for Summary Judgment, averring as follows:

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INTRODUCTION AND STATEMENT OF FACTS

On January 4, 2006, Defendant Jamie Singleton ("Borrower") obtained a loan from Peoples Choice Home Loan, Inc. in the original principal amount of $212,000.00 (the "Loan"). The terms of the Loan were reduced to writing, and Mr. Singleton signed a promissory note (the "Note") on the same day. To secure repayment of the Note, Mr. Singleton executed a Mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for People Choice Home Loans, its successor and assigns, encumbering certain real property located at 5505 Rowsham Place, North Charleston, SC 29418, Charleston, the same being more fully described in the Complaint (the "Property").

The Mortgage was recorded on January 12, 2006 in the Office of the Register of Deeds for Dorchester County in Book 5142 at Page 2168. The Mortgage constitutes a first priority mortgage lien encumbering the Property.

The Note was subsequently transferred several times before finally being transferred to Plaintiff, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1. In addition, the loan is currently serviced by Statebridge Company, LLC. On or around August 2006, the Note was transferred to Namura Holdings, LLC by People's Choice Home Loans. The Note was endorsed in blank by People's Choice Home Loans at the time of said transfer. Following the transfer of the Note, People Choice Home Loans filed for bankruptcy on March 20, 2007. At that time, People Choice had no interest in the subject loan or Note.

Subsequently, on or around November of 2007, Nomura Holdings transferred the Note to DB50 2007-1. After that transfer, GMAC Mortgage, LLC, serviced the loan. In March of 2008, Mr. Singleton defaulted on the loan. In preparation of potential foreclosure action by GMAC, an

Assignment of Mortgage was given by Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loans to GMAC on July 4, 2008. The assignment was signed by a MERS signing officer who had authority to sign on behalf of MERS. At all times, the Assignment was meant to function not as a transfer of interest, but as notice to other potential creditors of the status of the mortgage and that GMAC was now the mortgagee under the mortgage.

GMAC filed a previous foreclosure action on July 11, 2008, and obtained a Judgement of Foreclosure and Sale. Prior to the scheduled sale, Mr.. Singleton filed Chapter 13 bankruptcy, and the sale was cancelled. Mr. Singleton failed to make the payments according to the plan, and the bankruptcy was dismissed on October 15, 2009. During that time, in July of 2009, servicing was transferred to Wealthbridge Management. The Note was transferred to 50 by 50 REO, LLC in October of 2010, and servicing was transferred to AMS. Due to a loss mitigation workout, the new holder of the Note dismissed the 2009 foreclosure judgment.

Due to Mr. Singleton's default on the loss mitigation plan, the immediate action was filed on April 25, 2011. An Assignment of Mortgage into 50 by 50 REO, LLC was executed on August 31, 20111, and recorded on September 14, 2011 on Book 5142 at Page 168.

Defendant Singleton, filed a Motion to Dismiss on May 24, 2011. The file was also stayed due to the South Carolina Supreme Court Administrative Order 2011-05-02-01. The case was removed from the active docket so as to allow for continued loss mitigation options.

During the stay for loss mitigation, the loan was transferred to FRT 2011-1 Trust, with US Bank, NA, as trustee. AMS continued to act as Servicer. 50 by 50 REO, LLC executed an Assignment of Mortgage to US Bank, N.A., as trustee for FRT 2011-1 Trust.

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Due to failure of loss mitigation options, an Attorney Certification with the Administrative Order was filed on December 19, 2011, and the case was restored to the active docket on June 1, 2012. Since being restored, Defendant has filed its Answer and Counterclaim/Crossclaim, first filing on July 11, 2012. The matter was referred to the Honorable James E. Chellis as Master in equity for Dorchester County on June 8, 2012. The case became litigated and parties have engaged in extensive discovery, including depositions, with the most recent depositions of representatives for the Plaintiff, MERS, and Defendant Singleton occurring on October 25, 2018.

During the pendency of the litigation, servicing of the loan was transferred numerous times. On September 24, 2014, servicing was transferred to Shellpoint Mortgage Servicing from Seneca, the successor in interest to AMS servicing. On February 9, 2015, servicing was transferred to FCI. It was transferred back to Shellpoint on June 8, 2016.

Prior to the transfer to Shellpoint in June of 2016, the Note, after transfer to other entities, including to US Bank as trustee, was finally transferred to the current Plaintiff. An Assignment of Mortgage into Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 was executed on February 18, 2016, and recorded on March 7, 2016 in Book 10126 at Page 198. At this time, Wilmington Savings Fund is the current holder of the Note and Mortgage, and Statebridge Company , LLC is the current servicer.

By Order of the Court dated September 29, 2017, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 was substituted as the Plaintiff in the current action. Defendant Singleton was granted leave to amend his Answer and Cross-Claim, which was filed on July 29, 2018. Plaintiff filed its Reply on August 28, 2018. The parties are

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currently under a Third Amended Scheduling Order filed on September 5, 2018. Discovery and depositions are now complete, and the parties have filed competing dispositive motions. Plaintiff is asking for summary judgment for the reasons set below.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citation omitted). "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 that 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.'" *Metts v. Mims*, 384 S.C. 491, 499, 682 S.E.2d 813, 818 (2009) (quoting S.C. R. Civ. P. 56(c)). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004) (citations omitted).

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315 S.C. 344, 346, 433 S.E.2d 905, 906 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L.Ed.2d. 265 (1986)).

ARGUMENT

A. Borrowers breached the contract and Plaintiff is entitled to foreclosure.

Plaintiff is entitled to foreclose the Property because Defendant breached the terms of the Note and Mortgage. A "party seeking foreclosure has the burden of establishing the existence of the debt and mortgagor's default on that debt." *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct. App. 2009) (citations omitted). An action for foreclosure is, in essence, that of breach of contract. "The elements for a breach of contract are the existence of the contract, its breach, and the damages caused by such breach." *Southern Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012) (citing *Fuller v. Eastern Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)).

In its Complaint, Plaintiff alleges a binding contract was entered into by the parties. Defendant has not contested in his Answer or during the deposition that he did not enter into loan at issue. While he is arguing whether the loan is enforceable, the underlying transaction is not in dispute. Mr. Singleton obtained a loan at the terms contained in the Note and intended to secure the Note by giving a Mortgage on his home. Accordingly, no genuine issue of material fact exists regarding the existence of the binding contract between the parties, and Plaintiff has satisfied the first element.

Plaintiff further alleges in its Complaint that Borrowers breached and unjustifiably failed to perform under the terms of the contract by virtue of their failure to make the monthly payments as they became due. When questioned, Mr. Singleton did not dispute that he had not made payments on the loan since 2010 (Dep. Of Jamie Singleton, pg. 15). Furthermore, he

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admitted that he first had trouble making payments in 2008, leading him to enter forbearance and modification agreements. (*Id.* At 13-14). Defendant has offered no evidence to show that the loan is in default due to failure to make payments, as understood by the Note and Mortgage. Accordingly, no genuine issue of material fact exists regarding the breach of the contract by Borrowers, and Plaintiff has satisfied the second element.

Plaintiff alleges in its Complaint that it has been damaged as a direct and proximate result of said breach by Borrowers. Plaintiff continues to suffer damages in the form of lost funds and accrued interest due to continued missed payments. Borrowers have produced no information or evidence to contradict the amount of damages sustained by Plaintiff as a result of Borrowers' breach of the contract. Accordingly, no genuine issue of material fact exists as to whether Plaintiff has been damaged, and Plaintiff has satisfied the third and final element.

Based on the admissions, undisputed facts, and the evidence submitted by Plaintiff in this matter, Plaintiff has proven "the existence of the contract, its breach, and the damages caused by such breach." *Kemper*, 399 S.C. at 491-92, 732 S.E.2d at 209 (citation omitted). As a result, no genuine issue as to any material fact exists, and Plaintiff is entitled to judgment as a matter of law.

B. Plaintiff possesses standing and is the real party-in-interest.

Plaintiff is the real party-in-interest in this matter because Plaintiff is the owner and holder of the Note and is in physical possession of the Note through its custodial agent, thereby making Plaintiff the party entitled to enforce the Note. The Mortgage was originally given to Mortgage Electronic Registration Systems, Inc., as nominee for People Choice Home Loans, its successors and assigns. Furthermore, the Note was originally given to People's Choice Home Loans. The Note was endorsed by People's Choice in blank. Plaintiff is currently in physical

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possession of the Note, as evidence by the testimony of its servicer. As such, it has full legal rights of the Note. The Mortgage was properly assigned to the current Plaintiff by Assignment of Mortgage as laid out previously. Plaintiff is the record holder of the Mortgage and has full legal rights as the Mortgagee.

Accordingly, as Plaintiff is the holder of the Note and Mortgage. Plaintiff is the proper party-in-interest and possesses full legal standing to bring this action. *See*, *Bank of America, N.A. v. Draper*, 405 S.C. 214, 223-24, 746 S.E.2d 478, 483 (Ct. App. 2013) (finding that the holder of an indorsed note is the party entitled to enforce it). Negotiable instruments, which include promissory notes, are governed by Article 3 of the UCC, codified in South Carolina as Title 36, Chapter 3 of the *South Carolina Code*. The UCC states that "Person entitled to enforce and instrument means (1) the holder of the instrument." A "holder" is the person or entity "who is in possession of a document or title or an instrument or a certified investment security drawn, issued or indorsed to him or to his order or in blank." S.C. Code Ann. §36-1-201. A note initially made payable to "order" may become a bearer instrument if it is endorsed in blank. §36-3-109(c). "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone." §36-3-205(b). Further, possession of the Note is *prima facie* evidence of ownership of the instrument. *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008).

Plaintiff holds the original Note, as established by testimony of Michael Dolan, and will present the original, with the endorsements, at hearing. The Note was endorsed in blank by the original holder People's Choice. After transfer to the current Plaintiff, it was maintained by Plaintiff by use of a custodian. In addition, the Note contained allonges from subsequent owners of the Note, to show that Plaintiff was negotiated at each point from the prior holder to the

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current holder. Even if these allonges were not present or invalid, South Carolina law would still allow Plaintiff to enforce as the Note was endorsed in blank. Therefore, Plaintiff has the requisite standing to enforce the Note by possession and negotiation.

Furthermore, with regards to assignments of mortgage, South Carolina "does not require both possession of the note and written assignment of the mortgage to prove ownership." Id. "The assignment of mortgage is distinct from the debt it secures is nugatory and confers no rights upon the transferee." South Carolina Nat'l Bank v. Halter, 293 S.C. 121, 128 (Ct.App 1987). Therefore, enforcement of a Note in South Carolina does not require a written assignment of mortgage.

Defendant contends that the first Assignment of Mortgage, executed July 4, 2008, is invalid, because People's Choice Home Loans filed for bankruptcy prior to July 4, 2008. Defendant misrepresents facts as undisputed in its Motion. Defendant states the assignment purported to transfer the Note and Mortgage. However, People's Choice Home Loans was not the entity that held the Mortgage, as the Mortgage was given to Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loans, its successors and assigns. People's Choice transferred the Note to Nomura Holdings before filing for bankruptcy, as stated previously, and had no interest in the Loan prior to its bankruptcy filing. Additionally, equitable interest in a Note is not transferred by an Assignment of Mortgage. Rather, Notes must be negotiated, as was the Note here. Regardless of any language in the assignment of mortgage to the contrary, the Assignment of Mortgage has no effect on the evidence of the transfers of the note submitted to the court

Furthermore, the testimony of Joseph Patry established the process by which MERS assigns mortgages at the behest of a servicer. While it is correct that Mr. Patry's testimony states

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that MERS does not execute documents on behalf of non-functional entities, Defendant once again misrepresents the transactions presented and who MERS was acting on behalf of when signing the first assignment. As MERS was the holder of the Mortgage until 2008, MERS and its signing officer was not acting at the direction of Peoples Choice (or any non-functional entity) given that Peoples Choice had already transferred the Note as shown by the evidence submitted by the Plaintiff. Rather the first Assignment of Mortgage was executed at the direction of the then loan servicer, GMAC. The individual who executed the Assignment of Mortgage was a MERS signing officer employed by GMAC, who was appointed by MERS as an officer of MERS with the authority to execute documents, such as assignments of mortgage.

Defendant attempts to rely on two cases from New Hampshire, that speak to the effect when an Assignment of Mortgage is given by an entity that was not named as the mortgagee. However, these case are not applicable to the facts of this case, as at all times prior to the first Assignment, the mortgagee as named in the original Mortgage was MERS. MERS held legal interest in the Mortgage at the time it was assigned; as such, the case law Defendant purports to rely is distinguishable to the facts here. In addition, Defendant has not disputed the list and chronology of servicers. As such, Defendant does not dispute that on July 4, 2008, GMAC serviced the loan. The testimony shows that MERS relies on the servicer of the loan to determine when the mortgage needs to be assigned to another entity and relies on the servicer who acts on behalf of the current Note holder. Finally, Defendant has not disputed the validity of the other assignments, including the assignment to Plaintiff.

In addition, the authority stated shows that the assignments are irrelevant to standing anyway. Plaintiff is the holder of the Note, endorsed in blank, which secures the Mortgage. AS the owner of the Note, Plaintiff also owns the Mortgage. An Assignment of Mortgage is not

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intended as a sales or transfer document. Rather, it gives legal notice to any potential creditors or lienholders as to the status of a Mortgage encumbering a certain property and is created solely for their benefit. In this case, Plaintiff need not establish a valid assignment because it holds the Note. As a final Note, Plaintiff will be able to produce the original signed Mortgage as it is maintained by Plaintiff.

As such, no genuine issue as to any material fact exists, and Plaintiff is entitled to judgment as a matter of law.

CONCLUSION

Based on the foregoing reasons and arguments, Plaintiff contends that no genuine issue as to any material fact exists, and it is entitled to judgment as a matter of law. Plaintiff hereby respectfully requests that this Honorable Court grant Plaintiff's Motion pursuant to S.C. R. Civ. P. 56 as to the cause(s) of action contained in its Complaint, and award Plaintiff the fees and costs associated with this matter.

Date: January 22, 2019

By: /s Jonathan M. Riddle

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STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association Defendants. Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc., and DOES 1-10, Counter-Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871 **MEMORANDUM OF LAW IN OPPOSITION OF JAMIE SINGLETON'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Counter-Defendant, Mortgage Electronic Registration Systems, Inc. (hereinafter referred to as "MERS"), by and through its undersigned counsel, by and through its undersigned counsel, and submits the within memorandum of law in support of its Motion for Summary Judgment, averring as follows:

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INTRODUCTION AND STATEMENT OF FACTS

On January 4, 2006, Defendant Jamie Singleton ("Borrower") obtained a loan from Peoples Choice Home Loan, Inc. in the original principal amount of $212,000.00 (the "Loan"). The terms of the Loan were reduced to writing, and Mr. Singleton signed a promissory note (the "Note") on the same day. To secure repayment of the Note, Mr. Singleton executed a Mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for People Choice Home Loans, its successor and assigns, encumbering certain real property located at 5505 Rowsham Place, North Charleston, SC 29418, Charleston, the same being more fully described in the Complaint (the "Property").

The Mortgage was recorded on January 12, 2006 in the Office of the Register of Deeds for Dorchester County in Book 5142 at Page 2168. The Mortgage constitutes a first priority mortgage lien encumbering the Property.

The Note was subsequently transferred several times before finally being transferred to Plaintiff, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1. In addition, the loan is currently serviced by Statebridge Company, LLC. On or around August 2006, the Note was transferred to Namura Holdings, LLC by People's Choice Home Loans. The Note was endorsed in blank by People's Choice Home Loans at the time of said transfer. Following the transfer of the Note, People Choice Home Loans filed for bankruptcy on March 20, 2007. At that time, People Choice had no interest in the subject loan or Note.

Subsequently, on or around November of 2007, Nomura Holdings transferred the Note to DB50 2007-1. After that transfer, GMAC Mortgage, LLC, serviced the loan. In March of 2008, Mr. Singleton defaulted on the loan. In preparation of potential foreclosure action by GMAC, an

Assignment of Mortgage was given by Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loans to GMAC on July 4, 2008. The assignment was signed by a MERS signing officer who had authority to sign on behalf of MERS. At all times, the Assignment was meant to function not as a transfer of interest, but as notice to other potential creditors of the status of the mortgage and that GMAC was now the mortgagee under the mortgage.

GMAC filed a previous foreclosure action on July 11, 2008, and obtained a Judgement of Foreclosure and Sale. Prior to the scheduled sale, Mr.. Singleton filed Chapter 13 bankruptcy, and the sale was cancelled. Mr. Singleton failed to make the payments according to the plan, and the bankruptcy was dismissed on October 15, 2009. During that time, in July of 2009, servicing was transferred to Wealthbridge Management. The Note was transferred to 50 by 50 REO, LLC in October of 2010, and servicing was transferred to AMS. Due to a loss mitigation workout, the new holder of the Note dismissed the 2009 foreclosure judgment.

Due to Mr. Singleton's default on the loss mitigation plan, the immediate action was filed on April 25, 2011. An Assignment of Mortgage into 50 by 50 REO, LLC was executed on August 31, 20111, and recorded on September 14, 2011 on Book 5142 at Page 168.

Defendant Singleton, filed a Motion to Dismiss on May 24, 2011. The file was also stayed due to the South Carolina Supreme Court Administrative Order 2011-05-02-01. The case was removed from the active docket so as to allow for continued loss mitigation options.

During the stay for loss mitigation, the loan was transferred to FRT 2011-1 Trust, with US Bank, NA, as trustee. AMS continued to act as Servicer. 50 by 50 REO, LLC executed an Assignment of Mortgage to US Bank, N.A., as trustee for FRT 2011-1 Trust.

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Due to failure of loss mitigation options, an Attorney Certification with the Administrative Order was filed on December 19, 2011, and the case was restored to the active docket on June 1, 2012. Since being restored, Defendant has filed its Answer and Counterclaim/Crossclaim, first filing on July 11, 2012. The matter was referred to the Honorable James E. Chellis as Master in equity for Dorchester County on June 8, 2012. The case became litigated and parties have engaged in extensive discovery, including depositions, with the most recent depositions of representatives for the Plaintiff, MERS, and Defendant Singleton occurring on October 25, 2018.

During the pendency of the litigation, servicing of the loan was transferred numerous times. On September 24, 2014, servicing was transferred to Shellpoint Mortgage Servicing from Seneca, the successor in interest to AMS servicing. On February 9, 2015, servicing was transferred to FCI. It was transferred back to Shellpoint on June 8, 2016.

Prior to the transfer to Shellpoint in June of 2016, the Note, after transfer to other entities, including to US Bank as trustee, was finally transferred to the current Plaintiff. An Assignment of Mortgage into Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 was executed on February 18, 2016, and recorded on March 7, 2016 in Book 10126 at Page 198. At this time, Wilmington Savings Fund is the current holder of the Note and Mortgage, and Statebridge Company , LLC is the current servicer.

By Order of the Court dated September 29, 2017, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 was substituted as the Plaintiff in the current action. Defendant Singleton was granted leave to amend his Answer and Cross-Claim, which

was filed on July 29, 2018. Plaintiff filed its Reply on August 28, 2018. The parties are currently under a Third Amended Scheduling Order filed on September 5, 2018. Discovery and depositions are now complete, and the parties have filed competing dispositive motions. Plaintiff is asking for summary judgment for the reasons set below.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citation omitted). "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 that 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.'" *Metts v. Mims*, 384 S.C. 491, 499, 682 S.E.2d 813, 818 (2009) (quoting S.C. R. Civ. P. 56(c)). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004) (citations omitted).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003) (citations omitted). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Id.* To avoid the granting of a motion for summary judgment, "[i]t is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine." *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). "The trial court should grant summary judgment against a party who has failed to make a showing sufficient to

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establish the existence of an essential element of that party's case." *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 346, 433 S.E.2d 905, 906 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L.Ed.2d. 265 (1986)).

ARGUMENT

A. Plaintiff possesses standing and is the real party-in-interest as there was no failure ion the original Assignment of Mortgage as executed by MERS.

Plaintiff is the real party-in-interest in this matter because Plaintiff is the owner and holder of the Note and is in physical possession of the Note through its custodial agent, thereby making Plaintiff the party entitled to enforce the Note. The Mortgage was originally given to Mortgage Electronic Registration Systems, Inc., as nominee for People Choice Home Loans, its successors and assigns. Furthermore, the Note was originally given to People's Choice Home Loans. The Note was endorsed by People's Choice in blank. Plaintiff is currently in physical possession of the Note, as evidence by the testimony of its servicer. As such, it has full legal rights of the Note. The Mortgage was properly assigned to the current Plaintiff by Assignment of Mortgage as laid out previously. Plaintiff is the record holder of the Mortgage and has full legal rights as the Mortgagee.

Accordingly, as Plaintiff is the holder of the Note and Mortgage. Plaintiff is the proper party-in-interest and possesses full legal standing to bring this action. *See*, *Bank of America, N.A. v. Draper*, 405 S.C. 214, 223-24, 746 S.E.2d 478, 483 (Ct. App. 2013) (finding that the holder of an indorsed note is the party entitled to enforce it). Negotiable instruments, which include promissory notes, are governed by Article 3 of the UCC, codified in South Carolina as Title 36, Chapter 3 of the *South Carolina Code*. The UCC states that "Person entitled to enforce and instrument means (1) the holder of the instrument." A "holder" is the person or entity "who

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is in possession of a document or title or an instrument or a certified investment security drawn, issued or indorsed to him or to his order or in blank." S.C. Code Ann. §36-1-201. A note initially made payable to "order" may become a bearer instrument if it is endorsed in blank. §36-3-109(c). "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone." §36-3-205(b). Further, possession of the Note is *prima facie* evidence of ownership of the instrument. *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008).

Plaintiff holds the original Note, as established by testimony of Michael Dolan, and will present the original, with the endorsements, at hearing. The Note was endorsed in blank by the original holder People's Choice. After transfer to the current Plaintiff, it was maintained by Plaintiff by use of a custodian. In addition, the Note contained allonges from subsequent owners of the Note, to show that Plaintiff was negotiated at each point from the prior holder to the current holder. Even if these allonges were not present or invalid, South Carolina law would still allow Plaintiff to enforce as the Note was endorsed in blank. Therefore, Plaintiff has the requisite standing to enforce the Note by possession and negotiation.

Furthermore, with regards to assignments of mortgage, South Carolina "does not require both possession of the note and written assignment of the mortgage to prove ownership." *Id.* "The assignment of mortgage is distinct from the debt it secures is nugatory and confers no rights upon the transferee." *South Carolina Nat'l Bank v. Halter*, 293 S.C. 121, 128 (Ct.App 1987). Therefore, enforcement of a Note in South Carolina does not require a written assignment of mortgage.

Defendant contends that the first Assignment of Mortgage, executed July 4, 2008, is invalid, because People's Choice Home Loans filed for bankruptcy prior to July 4, 2008.

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Defendant misrepresents facts as undisputed in its Motion. Defendant states the assignment purported to transfer the Note and Mortgage. However, People's Choice Home Loans was not the entity that held the Mortgage, as the Mortgage was given to Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loans, its successors and assigns. People's Choice transferred the Note to Nomura Holdings before filing for bankruptcy, as stated previously, and had no interest in the Loan prior to its bankruptcy filing. Additionally, equitable interest in a Note is not transferred by an Assignment of Mortgage. Rather, Notes must be negotiated, as was the Note here. Regardless of any language in the assignment of mortgage to the contrary, the Assignment of Mortgage has no effect on the evidence of the transfers of the note submitted to the court

Furthermore, the testimony of Joseph Patry established the process by which MERS assigns mortgages at the behest of a servicer. While it is correct that Mr. Patry's testimony states that MERS does not execute documents on behalf of non-functional entities, Defendant once again misrepresents the transactions presented and who MERS was acting on behalf of when signing the first assignment. As MERS was the holder of the Mortgage until 2008, MERS and its signing officer was not acting at the direction of Peoples Choice (or any non-functional entity) given that Peoples Choice had already transferred the Note as shown by the evidence submitted by the Plaintiff. Rather the first Assignment of Mortgage was executed at the direction of the then loan servicer, GMAC. The individual who executed the Assignment of Mortgage was a MERS signing officer employed by GMAC, who was appointed by MERS as an officer of MERS with the authority to execute documents, such as assignments of mortgage.

Defendant attempts to rely on two cases from New Hampshire, that speak to the effect when an Assignment of Mortgage is given by an entity that was not named as the mortgagee.

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However, these case are not applicable to the facts of this case, as at all times prior to the first Assignment, the mortgagee as named in the original Mortgage was MERS. MERS held legal interest in the Mortgage at the time it was assigned; as such, the case law Defendant purports to rely is distinguishable to the facts here. In addition, Defendant has not disputed the list and chronology of servicers. As such, Defendant does not dispute that on July 4, 2008, GMAC serviced the loan. The testimony shows that MERS relies on the servicer of the loan to determine when the mortgage needs to be assigned to another entity and relies on the servicer who acts on behalf of the current Note holder. Finally, Defendant has not disputed the validity of the other assignments, including the assignment to Plaintiff.

In addition, the authority stated shows that the assignments are irrelevant to an entity's standing to foreclose anyway. Plaintiff is the holder of the Note, endorsed in blank, which secures the Mortgage. As the owner of the Note, Plaintiff also owns the Mortgage. Defendant mischaracterizes an Assignment of Mortgage as it is understood in South Carolina law, as in South Carolina, an Assignment of Mortgage is not intended as a sales or transfer document of a promissory note. Rather, it gives legal notice to any potential creditors or lienholders as to the status of a Mortgage encumbering a certain property and is created solely for their benefit. In this case, Plaintiff need not establish a valid assignment because it holds the Note. In this case, Plaintiff is able to show not just proper transfer of the Note, as it is the holder of the physical Note, endorsed in blank, but numerous assignments of mortgage ending with an assignment into the current Plaintiff. As a final Note, Plaintiff will be able to produce the original signed Mortgage as it is maintained by Plaintiff.

As such, no genuine issue as to any material fact exists, and Plaintiff is entitled to judgment as a matter of law.

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CONCLUSION

Based on the foregoing reasons and arguments, Plaintiff contends that no genuine issue as to any material fact exists, and it is entitled to judgment as a matter of law. Plaintiff hereby respectfully requests that this Honorable Court grant Plaintiff's Motion pursuant to S.C. R. Civ. P. 56 as to the cause(s) of action contained in its Complaint, and award Plaintiff the fees and costs associated with this matter.

Date: January 22, 2018

By: /s Jonathan M. Riddle

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STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA, not in its individual capacity, but Solely as owner Trustee of Westvue NPL Trust, Series 2014-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

JAMIE SINGLETON,

Counter-Plaintiff,

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY IN ITS CAPACITY AS CERTIFICATE TRUSTEE FOR NNPL TRUST SERIES 2012-1; FCI LENDER SERVICES, INC., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

MEMORANDUM OF JAMIE SINGLETON IN OPPOSITION TO CROSS DEFENDANTS' US BANKS' MOTION FOR SUMMARY JUDGMENT

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys, files and serves his Response and Opposition to Crossclaim Defendant U.S. Bank's, N.A.'s (hereafter "USB") Motion for Summary Judgment (hereafter "USB MSJ"), and states:

I. Introduction

Crossclaim Defendant USB has filed a Motion for Summary Judgment which is based on nothing more than an Affidavit from a person who claims to be a Director of a third party which claims to be the "sole administrator" of three securitization trusts. The subject Affidavit raises numerous genuine issues of material fact, and interjects not only a new entity in the chain of title to the Singleton loan but also makes unproven conclusions with no documentation. The USB MSJ must thus be denied.

II. Standard on Summary Judgment

Summary judgment is appropriate only where there is no genuine issue of material fact and it is clear that the moving party is entitled to judgment as a matter of law. *Hancock v. Mid-South Management Co., Inc.*, 673 S.E.2d 801, 802, 381 S.C. 326 (S.C. 2009). It is incumbent upon the moving party to first demonstrate an absence of evidentiary support for the opposing party's case. *Griffin Plumbing & Heating v. JJ &* G, 351 S.C. 459, 470, 570 S.E.2d 197 (S.C.App. 2002). USB has raised numerous genuine issues of material fact through the Affidavit filed with its pithy MSJ, warranting denial of the MSJ.

III. Matters Within the Affidavit of USB's MSJ which Raise Genuine Issues of Material Fact

The following facts are derived from the "Affidavit of David C. Jenkins" (hereafter the "Jenkins Affidavit") filed by Crossclaim Defendant USB in alleged support of its MSJ, and matters of record:

1. The current named Plaintiff in this case is Wilmington Savings Fund Society FSB DBA Christiana Trust, not in its individual capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 (hereafter "Wilmington"). It is without dispute that Wilmington was not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage. It is also without dispute that there have

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been multiple substitutions of the Plaintiff throughout this litigation, all of which are based on alleged Assignments of Mortgage.

2. Wilmington claims to be a downline transferee of the Singleton loan pursuant to a series of transfers which are set forth in Mr. Singleton's pleadings.

3. One of the alleged transferees in the chain is an entity styled FRT 2011-1 Trust.

4. The Jenkins Affidavit is executed by David C. Jenkins, who claims to be a Director of "FIG, LLC"; and that "a subsidiary of FIG, LLC is the sole administrator of the FRT 2011-1 Trust, FRT 2013-1 Trust and FORT Asset Funding 2013-1 LLC." However, the "subsidiary of FIG LLC" is not identified by name or capacity, and there is no documentation attached to the Jenkins Affidavit which identifies this mystery subsidiary.

5. Paragraph 1 of the Jenkins Affidavit also alleges that "These entities have previously owned the subject mortgage loan". However, the "subject mortgage loan" is not identified, nor is there any identification as to (a) which entity(ies) owned the (unidentified) loan at what time and by what manner such alleged ownership was acquired or from whom.

6. Paragraph 4 of the Jenkins Affidavit makes a statement that records of "Fortress" have been reviewed, but there is no statement as to how "Fortress" (whatever that may be) is related to either FIG LLC, or the FRT 2011-1 Trust, or the FRT 2013-1 Trust, or FORT Asset Funding 2013-1 LLC.

7. Paragraph 5 of the Jenkins Affidavit states that the Singleton loan was deposited into the FRT 2011-1 Trust on October 31, 2011, but there is no statement as to which entity(ies) made the alleged deposit. The purported "deposit" is also questionable at best given the legal inability of MERS to have effected the first alleged transfer of the Singleton loan, which was

after the original lender had filed Bankruptcy. These matters give rise to genuine issues of material fact as to how the alleged deposit could have been made and by whom it was made.

8. Paragraph 6 of the Jenkins Affidavit claims that on November 19, 2013, the Singleton loan was sold to FORT Asset Funding 2013-1 LLC. However, there is no identification of who or which entity allegedly "sold" the Singleton loan or how the seller was able to do so given the legal infirmity of the first alleged transfer of the loan by MERS (which was alleged to be acting on behalf of the bankrupt original lender)..

9. Paragraph 7 of the Jenkins Affidavit states that on September 24, 2014, the Singleton loan was sold to NNPL Trust Series 2012-1. There is no identification of who the "seller" was or how the seller was able to accomplish this claimed sale given the legal infirmity of the first alleged transfer of the loan by MERS (which was alleged to be acting on behalf of the bankrupt original lender).

10. Paragraph 8 of the Jenkins Affidavit makes a statement that "Fortress" is unrelated to NNPL Trust Series 2012-1 again without identifying or explaining what "Fortress" is.

11. Paragraph 9 of the Jenkins Affidavit makes a statement that US Bank, NA as Trustee for the FRT 2011-1 Trust "no longer have or claim to have any interest in the subject loan or real estate", yet does not identify what interest US Bank, NA ever had in the subject loan and when any such interest was divested.

12. The matters in paragraph 9 of the Jenkins Affidavit are further suspect given the statement in paragraph 2 of the Affidavit, which claims that "The FRT 2011-1 Trust "was" managed by FIG from August 25, 2011 "to present", and given the statement in paragraph 3 of the Affidavit which states that Mr. Jenkins is authorized to execute the affidavit "on behalf of Cross-Defendant US Bank, NA as Trustee for FRT 2011-1".

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IV. The Jenkins Affidavit Raises Issues of Fact as to Plaintiff's Standing

In South Carolina, standing is a fundamental requirement for instituting an action, and a party must be a real party in interest to the litigation to have standing. *Bank of America, N.A. v. Draper*, 405 S.C. 214, 219, 746 S.E.2d 478, 480-481 (S.C. App. 2013), citing, *inter alia*, *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (S.C. App. 1994) and *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010). South Carolina law defines "real party in interest" for purposes of standing as a party with a real, material, or substantial interest in the outcome of the litigation. *Draper, supra* at 481, citing *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010). Thus, a party filing a foreclosure complaint must have standing at the time that the Complaint is filed, meaning that the party filing the action must have a real, material, or substantial interest in the outcome of the litigation.

The USB MSJ and Jenkins Affidavit raise genuine issues of material fact not only as to the matters in the Affidavit, but also as to how the current Plaintiff, which claims to be a downline transferee of the Singleton loan, ever acquired standing especially given the gaps and internal inconsistencies in the Jenkins Affidavit especially when viewed against the sworn testimony of Plaintiff's representatives (identified in Mr. Singleton's motion for summary judgment, which is incorporated herein by reference); as (a) there is no law which permits MERS to act on behalf of a bankrupt entity; and (b) the only dates of any transfers are post-bankruptcy as confirmed under oath by Plaintiff's representative Dolan who stated, under oath, that the date of transfer used is the date of the assignment. USB's MSJ thus gives rise to even more genuine issues of material fact in this case than were present before the subject MSJ was filed.

USB's MSJ and the Jenkins Affidavit demonstrate not only that Crossclaim Defendant USB is not entitled to summary judgment, but also show that Plaintiff has failed to prove (a) the

existence of a debt ***owed to the Plaintiff or the Plaintiff's principal*** or a right to collect payments. *U.S. Bank National Association v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (SC App. 2009); *In Re Neals*, 459 B.R. 612, 617 (Bankr. D.S.C. 2011). The genuine issues of material fact raised by USB's MSJ and the Jenkins Affidavit preclude summary judgment.

VII. Conclusion

Crossclaim Defendant USB's MSJ and accompanying Affidavit raise numerous genuine issues of material fact and have further complicated this case with the interjection of additional parties (including FIG LLC and "Fortress"), both of which obviously have an interest in or may be affected by the outcome of this action mandating their joinder for purposes of a Declaratory Judgment. USB's MSJ must thus be denied.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court enter and Order denying Crossclaim Defendant USB's MSJ for the reasons set forth herein, and for any other and further relief which is just and proper.

Dated this 22nd day of January, 2019.

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January 22, 2019

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STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association Defendants. Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc., and DOES 1-10, Counter-Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871 **MEMORANDUM OF LAW IN OPPOSITION OF JAMIE SINGLETON'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Plaintiff, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 (hereinafter referred to as "Plaintiff"), by and through its undersigned counsel, by and through its undersigned counsel, and submits the within memorandum of law in support of its Motion for Summary Judgment, averring as follows:

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INTRODUCTION AND STATEMENT OF FACTS

On January 4, 2006, Defendant Jamie Singleton ("Borrower") obtained a loan from Peoples Choice Home Loan, Inc. in the original principal amount of $212,000.00 (the "Loan"). The terms of the Loan were reduced to writing, and Mr. Singleton signed a promissory note (the "Note") on the same day. To secure repayment of the Note, Mr. Singleton executed a Mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for People Choice Home Loans, its successor and assigns, encumbering certain real property located at 5505 Rowsham Place, North Charleston, SC 29418, Charleston, the same being more fully described in the Complaint (the "Property").

The Mortgage was recorded on January 12, 2006 in the Office of the Register of Deeds for Dorchester County in Book 5142 at Page 2168. The Mortgage constitutes a first priority mortgage lien encumbering the Property.

The Note was subsequently transferred several times before finally being transferred to Plaintiff, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1. In addition, the loan is currently serviced by Statebridge Company, LLC. On or around August 2006, the Note was transferred to Namura Holdings, LLC by People's Choice Home Loans. The Note was endorsed in blank by People's Choice Home Loans at the time of said transfer. Following the transfer of the Note, People Choice Home Loans filed for bankruptcy on March 20, 2007. At that time, People Choice had no interest in the subject loan or Note.

Subsequently, on or around November of 2007, Nomura Holdings transferred the Note to DB50 2007-1. After that transfer, GMAC Mortgage, LLC, serviced the loan. In March of 2008, Mr. Singleton defaulted on the loan. In preparation of potential foreclosure action by GMAC, an

Assignment of Mortgage was given by Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loans to GMAC on July 4, 2008. The assignment was signed by a MERS signing officer who had authority to sign on behalf of MERS. At all times, the Assignment was meant to function not as a transfer of interest, but as notice to other potential creditors of the status of the mortgage and that GMAC was now the mortgagee under the mortgage.

GMAC filed a previous foreclosure action on July 11, 2008, and obtained a Judgement of Foreclosure and Sale. Prior to the scheduled sale, Mr.. Singleton filed Chapter 13 bankruptcy, and the sale was cancelled. Mr. Singleton failed to make the payments according to the plan, and the bankruptcy was dismissed on October 15, 2009. During that time, in July of 2009, servicing was transferred to Wealthbridge Management. The Note was transferred to 50 by 50 REO, LLC in October of 2010, and servicing was transferred to AMS. Due to a loss mitigation workout, the new holder of the Note dismissed the 2009 foreclosure judgment.

Due to Mr. Singleton's default on the loss mitigation plan, the immediate action was filed on April 25, 2011. An Assignment of Mortgage into 50 by 50 REO, LLC was executed on August 31, 20111, and recorded on September 14, 2011 on Book 5142 at Page 168.

Defendant Singleton, filed a Motion to Dismiss on May 24, 2011. The file was also stayed due to the South Carolina Supreme Court Administrative Order 2011-05-02-01. The case was removed from the active docket so as to allow for continued loss mitigation options.

During the stay for loss mitigation, the loan was transferred to FRT 2011-1 Trust, with US Bank, NA, as trustee. AMS continued to act as Servicer. 50 by 50 REO, LLC executed an Assignment of Mortgage to US Bank, N.A., as trustee for FRT 2011-1 Trust.

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Due to failure of loss mitigation options, an Attorney Certification with the Administrative Order was filed on December 19, 2011, and the case was restored to the active docket on June 1, 2012. Since being restored, Defendant has filed its Answer and Counterclaim/Crossclaim, first filing on July 11, 2012. The matter was referred to the Honorable James E. Chellis as Master in equity for Dorchester County on June 8, 2012. The case became litigated and parties have engaged in extensive discovery, including depositions, with the most recent depositions of representatives for the Plaintiff, MERS, and Defendant Singleton occurring on October 25, 2018.

During the pendency of the litigation, servicing of the loan was transferred numerous times. On September 24, 2014, servicing was transferred to Shellpoint Mortgage Servicing from Seneca, the successor in interest to AMS servicing. On February 9, 2015, servicing was transferred to FCI. It was transferred back to Shellpoint on June 8, 2016.

Prior to the transfer to Shellpoint in June of 2016, the Note, after transfer to other entities, including to US Bank as trustee, was finally transferred to the current Plaintiff. An Assignment of Mortgage into Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 was executed on February 18, 2016, and recorded on March 7, 2016 in Book 10126 at Page 198. At this time, Wilmington Savings Fund is the current holder of the Note and Mortgage, and Statebridge Company , LLC is the current servicer.

By Order of the Court dated September 29, 2017, Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 was substituted as the Plaintiff in the current action. Defendant Singleton was granted leave to amend his Answer and Cross-Claim, which

was filed on July 29, 2018. Plaintiff filed its Reply on August 28, 2018. The parties are currently under a Third Amended Scheduling Order filed on September 5, 2018. Discovery and depositions are now complete, and the parties have filed competing dispositive motions. Plaintiff is asking for summary judgment for the reasons set below.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citation omitted). "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 that 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.'" *Metts v. Mims*, 384 S.C. 491, 499, 682 S.E.2d 813, 818 (2009) (quoting S.C. R. Civ. P. 56(c)). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004) (citations omitted).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003) (citations omitted). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Id.* To avoid the granting of a motion for summary judgment, "[i]t is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine." *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). "The trial court should grant summary judgment against a party who has failed to make a showing sufficient to

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establish the existence of an essential element of that party's case." *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 346, 433 S.E.2d 905, 906 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L.Ed.2d. 265 (1986)).

ARGUMENT

A. Plaintiff possesses standing and is the real party-in-interest.

Plaintiff is the real party-in-interest in this matter because Plaintiff is the owner and holder of the Note and is in physical possession of the Note through its custodial agent, thereby making Plaintiff the party entitled to enforce the Note. The Mortgage was originally given to Mortgage Electronic Registration Systems, Inc., as nominee for People Choice Home Loans, its successors and assigns. Furthermore, the Note was originally given to People's Choice Home Loans. The Note was endorsed by People's Choice in blank. Plaintiff is currently in physical possession of the Note, as evidence by the testimony of its servicer. As such, it has full legal rights of the Note. The Mortgage was properly assigned to the current Plaintiff by Assignment of Mortgage as laid out previously. Plaintiff is the record holder of the Mortgage and has full legal rights as the Mortgagee.

Accordingly, as Plaintiff is the holder of the Note and Mortgage. Plaintiff is the proper party-in-interest and possesses full legal standing to bring this action. *See, Bank of America, N.A. v. Draper*, 405 S.C. 214, 223-24, 746 S.E.2d 478, 483 (Ct. App. 2013) (finding that the holder of an indorsed note is the party entitled to enforce it). Negotiable instruments, which include promissory notes, are governed by Article 3 of the UCC, codified in South Carolina as Title 36, Chapter 3 of the *South Carolina Code*. The UCC states that "Person entitled to enforce and instrument means (1) the holder of the instrument." A "holder" is the person or entity "who is in possession of a document or title or an instrument or a certified investment security drawn,

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issued or indorsed to him or to his order or in blank." S.C. Code Ann. §36-1-201. A note initially made payable to "order" may become a bearer instrument if it is endorsed in blank. §36-3-109(c). "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone." §36-3-205(b). Further, possession of the Note is *prima facie* evidence of ownership of the instrument. *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008).

Plaintiff holds the original Note, as established by testimony of Michael Dolan, and will present the original, with the endorsements, at hearing. The Note was endorsed in blank by the original holder People's Choice. After transfer to the current Plaintiff, it was maintained by Plaintiff by use of a custodian. In addition, the Note contained allonges from subsequent owners of the Note, to show that Plaintiff was negotiated at each point from the prior holder to the current holder. Even if these allonges were not present or invalid, South Carolina law would still allow Plaintiff to enforce as the Note was endorsed in blank. Therefore, Plaintiff has the requisite standing to enforce the Note by possession and negotiation.

Furthermore, with regards to assignments of mortgage, South Carolina "does not require both possession of the note and written assignment of the mortgage to prove ownership." *Id.* "The assignment of mortgage is distinct from the debt it secures is nugatory and confers no rights upon the transferee." *South Carolina Nat'l Bank v. Halter*, 293 S.C. 121, 128 (Ct.App 1987). Therefore, enforcement of a Note in South Carolina does not require a written assignment of mortgage.

Defendant contends that the first Assignment of Mortgage, executed July 4, 2008, is invalid, because People's Choice Home Loans filed for bankruptcy prior to July 4, 2008. Defendant misrepresents facts as undisputed in its Motion. Defendant states the assignment

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purported to transfer the Note and Mortgage. However, People's Choice Home Loans was not the entity that held the Mortgage, as the Mortgage was given to Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loans, its successors and assigns. People's Choice transferred the Note to Nomura Holdings before filing for bankruptcy, as stated previously, and had no interest in the Loan prior to its bankruptcy filing. Additionally, equitable interest in a Note is not transferred by an Assignment of Mortgage. Rahter, Notes must be negotiated, as was the Note here. Regardless of any language in the assignment of mortgage to the contrary, the Assignment of Mortgage has no effect on the evidence of the transfers of the note submitted to the court

Furthermore, the testimony of Joseph Patry established the process by which MERS assigns mortgages at the behest of a servicer. While it is correct that Mr. Patry's testimony states that MERTS does not execute documents on behalf of non-functional entities, Defendant once again misrepresents the transactions presented and who MERS was acting on behalf of when signing the first assignment. As MERS was the holder of the Mortgage until 2008, MERS and its signing officer was not acting at the direction of Peoples Choice (or any non-functional entity) given that Peoples Choice had already transferred the Note as shown by the evidence submitted by the Plaintiff. Rather the first Assignment of Mortgage was executed at the direction of the then loan servicer, GMAC. The individual who executed the Assignment of Mortgage was a MERS signing officer employed by GMAC, who was appointed by MERS as an officer of MERS with the authority to execute documents, such as assignments of mortgage.

Defendant attempts to rely on two cases from Newe Hampshire, that speak to the effect when an Assignment of Mortgage is given by an entity that was not named as the mortgagee. However, these case are not applicable to the facts of this case, as at all times prior to the first

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Assignment, the mortgagee as named in the original Mortgage was MERS. MERS held legal interest in the Mortgage at the time it was assigned; as such, the case law Defendant purports to rely is distinguishable to the facts here. In addition, Defendant has not disputed the list and chronology of servicers. As such, Defendant does not dispute that on July 4, 2008, GMAC serviced the loan. The testimony shows that MERS relies on the servicer of the loan to determine when the mortgage needs to be assigned to another entity and relies on the servicer who acts on behalf of the current Note holder. Finally, Defendant has not disputed the validity of the other assignments, including the assignment to Plaintiff.

In addition, the authority stated shows that the assignments are irrelevant to an entity's standing to foreclose anyway. Plaintiff is the holder of the Note, endorsed in blank, which secures the Mortgage. As the owner of the Note, Plaintiff also owns the Mortgage. Defendant mischaracterizes an Assignment of Mortgage as it is understood in South Carolina law, as in South Carolina, an Assignment of Mortgage is not intended as a sales or transfer document of a promissory note. Rather, it gives legal notice to any potential creditors or lienholders as to the status of a Mortgage encumbering a certain property and is created solely for their benefit. In this case, Plaintiff need not establish a valid assignment because it holds the Note. In this case, Plaintiff is able to show not just proper transfer of the Note, as it is the holder of the physical Note, endorsed in blank, but numerous assignments of mortgage ending with an assignment into the current Plaintiff. As a final Note, Plaintiff will be able to produce the original signed Mortgage as it is maintained by Plaintiff.

As such, no genuine issue as to any material fact exists, and Plaintiff is entitled to judgment as a matter of law.

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CONCLUSION

Based on the foregoing reasons and arguments, Plaintiff contends that no genuine issue as to any material fact exists, and it is entitled to judgment as a matter of law. Plaintiff hereby respectfully requests that this Honorable Court grant Plaintiff's Motion pursuant to S.C. R. Civ. P. 56 as to the cause(s) of action contained in its Complaint, and award Plaintiff the fees and costs associated with this matter.

Date: January 22, 2018

By: /s Jonathan M. Riddle

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STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA, not in its individual capacity, but Solely as owner Trustee of Westvue NPL Trust, Series 2014-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

JAMIE SINGLETON,

Counter-Plaintiff,

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY IN ITS CAPACITY AS CERTIFICATE TRUSTEE FOR NNPL TRUST SERIES 2012-1; FCI LENDER SERVICES, INC., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

OPPOSTION OF DFENDANT SINGLETON TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys, files and serves his Response and Opposition to the Plaintiff's Motion for Summary Judgment (hereafter "MSJ"), and states:

I. Introduction

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Mr. Singleton has filed a Motion for Summary Judgment which sets forth that there is no genuine issue of material fact as to the matters raised which demonstrate the Plaintiff's legal inability to obtain a foreclosure. Plaintiff subsequently filed its MSJ which is legally infirm and fails to satisfy the Plaintiff's burden on summary judgment. Significantly, Plaintiff has failed to file an Affidavit in support of its MSJ, and has not and cannot overcome the matters in Mr. Singleton's motion for summary judgment. Plaintiff's MSJ must thus be denied.

II. Standard on Summary Judgment

Summary judgment is appropriate only where there is no genuine issue of material fact and it is clear that the moving party is entitled to judgment as a matter of law. *Hancock v. Mid-South Management Co., Inc.*, 673 S.E.2d 801, 802, 381 S.C. 326 (S.C. 2009). It is incumbent upon the moving party to first demonstrate an absence of evidentiary support for the opposing party's case. *Griffin Plumbing & Heating v. JJ &* G, 351 S.C. 459, 470, 570 S.E.2d 197 (S.C.App. 2002).

Plaintiff has failed to support its otherwise unsworn conclusions set forth on pages 7-9 of its MSJ by evidence, thus further demonstrating Plaintiff's failure to carry its initial burden. Its MSJ must thus be denied on this threshold failure alone.

Plaintiff cannot prevail on summary judgment as Mr. Singleton has come forth with specific facts of record which are set forth in both is motion for summary judgment and hereinbelow, the majority of which have been sworn to and thus constitute evidence, demonstrating why the Plaintiff cannot prevail on summary judgment and simultaneously demonstrating that Mr. Singleton is entitled to summary judgment. As Plaintiff has not and cannot meet its initial burden, its MSJ must be denied.

III. Undisputed Material Facts

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The following undisputed material facts are derived from the record; from sworn deposition testimony; and pursuant to matters of which this Court may take judicial notice:

1. Mr. Singleton originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007. This Court may take judicial notice of the People's Choice Bankruptcy pursuant to SCRE Rule 201(b)(2), as the subject bankruptcy filing is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and its accuracy may be ascertained by reference to readily available sources of indisputable reliability. *See, e.g.*, www.reuters.com/article/us-usa-subprime/peopleschoice/peoples-choice-home-loans-files-for-chapter-11; www.pacermonitor.com/public/case/99669/Peoples_Choice_Home_Loan_Inc. *Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct.App. 2002) citing *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 172, 470 S.E.2d 397, 401 (Ct.App. 1966).

2. The current named Plaintiff in this case is Wilmington Savings Fund Society FSB DBA Christiana Trust, not in its individual capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1 (hereafter "Wilmington"). It is without dispute that Wilmington was not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage. It is also without dispute that there have been multiple substitutions of the Plaintiff throughout this litigation, all of which are based on alleged Assignments of Mortgage.

3. There is a first "Assignment of Mortgage" which has been recorded in the public records dated July 14, 2008 by which MERS purported to assign the Mortgage "together with the Note" to GMAC Mortgage, LLC. A copy of this purported Assignment is attached to Mr.

Singleton's motion for summary judgment marked Exhibit "B" and incorporated herein by reference.

4. This Assignment, which is dated July 14, 2008, which is 16 months after the original lender, People's Choice Home Loan, filed Bankruptcy.

5. On October 25, 2018, counsel for Mr. Singleton took the deposition of Joseph Patry, the designated representative for MERS, who testified that he is and has been senior counsel for MersCorp Holdings, which is the parent company of MERS, since August of 2017. (Patry deposition, page 4, lines 24-25; page 5, lines 2-4; page 5, lines 10-11; page 10, lines 13-17). A copy of the Patry deposition transcript has been filed separately.

6. Mr. Patry testified that MERS does not own notes and that neither MERS nor MersCorp lend money. (Patry deposition, page 17, lines 3-9).

7. Mr. Patry was repeatedly asked for the source of any authority which would permit MERS to sign documents on behalf of a bankrupt entity (Patry deposition, pages 24-26 and page 26, lines 15-25). In response thereto, Mr. Patry, who is an attorney and senior general counsel for MERS (as a subsidiary of MersCorp Holdings), testified under oath: "Again, we don't sign documents on behalf of entities that are non-functional". (Patry deposition, page 27, lies 1-2).

8. The original lender filed for Bankruptcy on March 20, 2007 and was thus non-functional as of March 20, 2007.

9. The MERS Assignment of Mortgage dated July 14, 2008, by which MERS purported to assign the Mortgage "together with the Note" was executed by MERS as nominee for a non-functional entity which MERS does not do.

10. The Assignment of Mortgage dated July 14, 2008 did not assign the Note as MERS does not own promissory Notes.

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11. On July 9, 2013, counsel for Mr. Singleton took the deposition of one James P. George, who was designated as the representative of the then-Plaintiff (George deposition, page 15, lines 7-17). Mr. George testified that he was an employee of an entity styled AMS Servicing located at 3374 Walden Avenue, Suite 120, Depew, New York (hereafter "AMS"). The original transcript of the deposition of Mr. George has been previously filed.

12. Mr. George testified that he has never seen an order from the bankruptcy court having jurisdiction over the People's Choice bankruptcy which permitted the assignment of the Singleton loan out of the People's Choice bankruptcy estate (George deposition, page 27, lines 18-23).

13. Thereafter, the Plaintiff herein was substituted several times.

14. On October 24, 2018, counsel for Mr. Singleton took the deposition of Michael Dolan. A copy of the Dolan deposition transcript has been filed separately.

15. Mr. Dolan testified that he was appearing as the designated representative of the current Plaintiff (Dolan deposition, page 11, lines 5-20).

16. Mr. Dolan testified that he has never seen the original Note or Mortgage. (Dolan deposition, page 21, lines 13-15).

17. Mr. Dolan testified that he has no knowledge of whether the transfer of the Singleton loan to the Trust was done in compliance with the Sale and Administration Agreement (Dolan deposition, page 58, lines 5-15 and page 59, lines 3-12).

18. Mr. Dolan testified that he has no knowledge of when any transfers of the loan took place; what consideration, if any, was paid; or how any such transfer was effected. (Dolan deposition, page 63, lines 3-8).

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19. Mr. Dolan testified that endorsements and allonges are not dated and thus the date of an assignment is used as the date of transfer. (Dolan deposition, page 69, lines 7-24).

IV. Plaintiff Never Acquired an Interest in the Note and Thus Never Had Standing

In South Carolina, standing is a fundamental requirement for instituting an action, and a party must be a real party in interest to the litigation to have standing. *Bank of America, N.A. v. Draper*, 405 S.C. 214, 219, 746 S.E.2d 478, 480-481 (S.C. App. 2013), citing, *inter alia*, *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (S.C. App. 1994) and *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010). South Carolina law defines "real party in interest" for purposes of standing as a party with a real, material, or substantial interest in the outcome of the litigation. *Draper, supra* at 481, citing *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010). Thus, a party filing a foreclosure complaint must have standing at the time that the Complaint is filed, meaning that the party filing the action must have a real, material, or substantial interest in the outcome of the litigation.

The fallacy in Plaintiff's MSJ is that it rests initially on an unproven and speculative assumption that Plaintiff had legally acquired an enforceable interest in the Note and Mortgage prior to the filing of the original Complaint. The sworn testimony of Plaintiff's representatives demonstrates that neither the current Plaintiff, nor the Plaintiff before it, nor the Plaintiff before that, nor any Plaintiff in the claimed chain of transfers, ever acquired a lawful or enforceable interest in the Singleton loan as (a) there is no law which permits MERS to act on behalf of a bankrupt entity, and (b) the only dates of any transfers are post-bankruptcy as confirmed under oath by Plaintiff's representative Dolan who stated, under oath, that the date of transfer used is the date of the assignment.

SC Code sec. 36-3-203(b), which governs the transfer of instruments and rights acquired by transfer, provides in pertinent part that transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument. SC Code sec. 36-3-203(d) expressly provides that if the transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur and the transferee obtains no rights under the statute and has only the rights of a partial assignee. In South Carolina, the assignment of a mortgage alone does not carry with it an assignment of the Note. *Hahn v. Smith*, 157 S.C. 157, 164, 154 S.E. 112, 115 (1930), cited in *Bank of America, et al. v. Draper*, No. 2012-208806, Opinion No. 5140 (Ct.App. June 5, 2012) and citing SC Code sec. 36-3-203(b).

The Statute and decisional law clearly provide that the transfer of an instrument vests in the transferee only any rights the transferor had, and that an assignment of a mortgage alone does not carry with it an assignment of the Note. Again, MERS' designated representative Patry testified, under oath, that (a) MERS does not own promissory notes, and (b) that MERS does not sign documents on behalf of non-functional entities (which the original lender, People's Choice, was as of the time of the alleged assignment).

There is no law which permits a non-lender third party (in this case, MERS) to "assign" an interest of a bankrupt lender, and MERS' designated representative testified under oath that MERS does not sign documents on behalf of non-functional entities. Where there is no law from the appellate courts of South Carolina on a particular issue, the Courts of this state look to their own general principles of law as well as the law of other jurisdictions for instruction. *State v. Williams*, 624 S.E.2d 443, 446, 367 S.C. 192 (SC 2006); *Simmons v. Tuomey Regional Medical Center*, 341 SC 32, 44, 533 S.E.2d 312 (S.C. 2000); *Heilker v. Zoning Bd. of Appeals*, 346 S.C.

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401, 407, 552 S.E.2d 42 (S.C. App. 2001); *Hardin Construction Group, Inc. v. Carlisle Construction Company*, 388 S.E.2d 794, 300 S.C. 456 (S.C. 1989).

The closest case as to the alleged effect of an assignment of an interest in a mortgage by an out-of-business original lender is explained in *Drouin v. American Home Mortgage Servicing, Inc.*, No. 11-cv-596-JL (D. New Hampshire, May 18, 2012). A copy of the *Drouin* decision has been filed with Mr. Singleton's motion for summary judgment, and is incorporated herein by reference.

In *Drouin*, American Home Mortgage and Wells Fargo claimed to possess an assignment of the homeowners' mortgage from Sand Canyon Corporation, the successor-in-interest to the original lender (Option One). The homeowners claimed that Sand Canyon could not have assigned the mortgage to Wells Fargo because the assignor (Sand Canyon) ceased holding any mortgages years before the assignment. There was evidence presented that Sand Canyon ceased business operations in 2008, yet purportedly assigned the homeowners' mortgage to Wells Fargo on March 24, 2011, with Wells Fargo thereafter instituting foreclosure.

The New Hampshire Federal Court relied on New Hampshire case law which provides that a debtor may raise defenses to an assignment and the lack of a plaintiff's title or right to sue, and Section 336 of the Restatement (Second) of Contracts (1981) which provides that by an assignment the assignee acquires a right against the obligor only to the extent that the obligor is under a duty to the assignor; and if the right of the assignor would be voidable by the obligor *or unenforceable against him if no assignment had been made*, the right of the assignee is subject to the infirmity. (emphasis supplied). Applying the general principles of law and the Restatement of Contracts, the Federal Court found that the homeowners had standing to pursue their claim that since the assigning party did not hold their mortgage, it could not have been assigned to Wells

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Fargo. The Court cited from the opinion in *Newitt v. Wells Fargo Bank, N.A.*, No. 213-2011-CV-00173 (N.H. Super. July 14, 2011), which held that "[t]he assignment from Sand Canyon to Wells Fargo of an interest which Sand Canyon did not possess" was no more effective to assign the mortgage "than the lack of any assignment at all".

South Carolina courts regularly rely upon the principles of the Restatement (Second) of Contracts. *See, e.g., Electro Lab of Aiken v. Sharp Const.*, 357 S.C. 363, 369, 593 S.E.2d 170 (S.C.App. 2004); *Holler v. Holler*, 364 S.C. 256, 612 S.E.2d 469, 475 (SC, 2005); *Collins Entertainment Corporation v. Coats and Coats Rental Amusement*, 629 S.E.2d 635, 637 368 S.C. 410 (S.C. 2006). Applying South Carolina general law, the New Hampshire Federal decision, and the principles of the Restatement (Second) of Contracts to the undisputed facts of this case including the sworn testimony of Dolan and Patry, the Plaintiff has no (and never had any) interest to enforce. The first Assignment by MERS was executed over a year after the original lender was out of business and had filed Bankruptcy, and thus MERS, as the alleged "nominee" of the bankrupt People's Choice, not only had nothing to assign, but could not assign any interest in either the Note or the Mortgage as its designated representative, *who is an attorney*, testified under oath that MERS (a) does not own promissory Notes (and thus the July 14, 2008 MERS Assignment could not have assigned a Note that it did not own), and (b) MERS does not sign documents on behalf of non-functional entities (and thus could not assign an interest in the Mortgage as the entity for which MERS was purporting to act was non-functional well prior to and also as of the date of the Assignment). These undisputed material facts alone warrant denial of the Plaintiff's MSJ, and the granting of Mr. Singleton's motion for summary judgment.

There is also no evidence that any such assignment was permitted by the Bankruptcy Court having jurisdiction over the bankruptcy of the original lender, and no evidence of any

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lawful transfer of either the Note or the Mortgage from the bankrupt People's Choice to the current Plaintiff given the testimony of the prior Plaintiff's designated representative James George, who testified that he has never seen an order from the bankruptcy court having jurisdiction over the People's Choice bankruptcy which permitted the assignment of the Singleton loan out of the People's Choice bankruptcy estate (George deposition, page 27, lines 18-23).

South Carolina law is well-established that no person is permitted to acquire a right of action from their own unlawful act; that one who participates in an unlawful act cannot recover damages for the consequences of that act; and further that these rules apply at both law and in equity and whether the cause of action is in contract or tort. *Wachovia Bank, NA v. Coffey*, 389 S.C. 68, 698 S.E.2d 244, 248 (S.C. App. 2010) (affirming summary judgment in favor of homeowner on foreclosure filed by Wachovia), citing *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71.

The purported MERS Assignment of July 14, 2008 was an unlawful act by virtue of the sworn testimony of MERS' own designated representative, who is an attorney and senior counsel for MERS. The Plaintiff's designated representative testified that the date of transfer of any interest is the date of the assignment. As the first assignment was an unlawful act which was legally infirm and thus of no legal significance, the current Plaintiff, a downline alleged transferee, never acquired any interest in either the Singleton Note or Mortgage and thus never acquired standing to seek to enforce either the Note of the Mortgage. Plaintiff's MSJ must thus be denied.

This Court previously ordered the prior Plaintiff to produce documentation detailing ***all*** transfers of the Note and Mortgage including date of transfer and consideration paid in

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connection therewith. Plaintiff has failed to do so including but not limited to the alleged transfer to Nomura, and has failed to provide any evidence, in its MSJ, as to such transfers. This failure of proof alone warrants the denial of Plaintiff's MSJ.

Plaintiff has thus failed to prove (a) the existence of a debt ***owed to the Plaintiff or the Plaintiff's principal*** or a right to collect payments. *U.S. Bank National Association v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (SC App. 2009); *In Re Neals*, 459 B.R. 612, 617 (Bankr. D.S.C. 2011). Given the undisputed facts, sworn admissions of the designated representatives of the Plaintiff and MERS, and applicable law, there was no transfer or negotiation of either the Note or the Mortgage at any time. The current named Plaintiff has no rights in either the Note or the Mortgage and is thus precluded, as a matter of undisputed facts and law, from prosecuting this action, warranting both the denial of Plaintiff's MSJ and the granting of Mr. Singleton's MSJ.

V. Issues of MERS' Alleged Agency Preclude Summary Judgment

Plaintiff has taken the position that MERS was an authorized agent to effect a transfer of the Singleton loan, yet MERS' designated representative testified under oath that MERS does not execute documents on behalf of non-functioning entities (which the original lender clearly was at the time of the first Assignment). Notwithstanding the dispute of material fact as to MERS' alleged authority to act on behalf of a bankrupt entity, the issue of MERS' agency is a question for the jury which alone precludes summary judgment for the Plaintiff. *Froneberger v. Kirkland Dale Smith et al.*, 408 S.C. 37, 748 S.E.2d 625, 632 (S.C. App. 2013), citing *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 226, 317 S.E.2d 748 at 752 (S.C. App. 1984). *See also Fernandez v. v. Thigpen*, 278 S.C. 140, 142, 293 S.E.2d 424, 425 (S.C. 1982)("[Q]uestions of

agency ordinarily should not be resolved on summary judgment where there are ***any*** facts giving rise to an inference of an agency relationship". (emphasis added)

VI. Plaintiff's Failure to Negate Mr. Singleton's Affirmative Defenses

Mr. Singleton has asserted numerous affirmative defenses to Plaintiff's Complaint in his Answer, which he incorporates herein by reference. Affirmative defenses create genuine issues of material fact which preclude summary judgment. *Engleret, Inc. v. Leafguard Usa, Inc.*, 659 S.E.2d 496, 498, 377 S.C. 129 (S.C. 2008). Plaintiff has failed to demonstrate that there is no genuine issue of material fact by failing to negate Mr. Singleton's Affirmative Defenses with proper evidence, nor has Plaintiff legally disproven Mr. Singleton's Counterclaims. Plaintiff's MSJ must thus be denied.

VII. Conclusion

Plaintiff has failed to meet its initial burden on summary judgment, and the testimony of its own designated representatives and of the representative of MERS not only raise genuine issues of material fact, but affirmatively show that Plaintiff is not entitled to summary judgment. Plaintiff has failed to prove standing or that it is the real party in interest, and has failed to negate Mr. Singleton's affirmative defenses or his Counterclaim. Issues of MERS' agency preclude summary judgment as well. Plaintiff's MSJ is thus properly denied.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court enter and Order denying Plaintiff's MSJ and entering Final Summary Judgment in Mr. Singleton's favor for the reasons set forth herein and in Mr. Singleton's Motion for Summary Judgment, determine him to be the "prevailing party" under the mortgage documents for purposes of attorneys' fees and costs, and that this Court reserve jurisdiction to enter a Judgment in favor of Mr. Singleton

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for his attorneys' fees and costs to be assessed against Plaintiff, with such relief being requested for the reasons set forth and for any other and further relief which is just and proper.

Dated this 22nd day of January, 2019.

s/William H. Sloan
William H. Sloan, Esq.
Attorney for Jamie Singleton
Post Office Box 85
Summerville, SC 29484
Tel: 843-873-7531
whs@sloanlawfirm.net

s/Jeff Barnes
Jeff Barnes, Esq.
W.J. Barnes, P.A.
PHV co-counsel for Jamie Singleton
1515 North Federal Highway, Suite 300
Tel: (561) 864-1067
jeff@wjbarneslaw.com

January 22, 2019

ELECTRONICALLY FILED - 2019 Jan 22 7:42 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2019 Sep 06 4:05 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

50 BY 50 REO, LLC

Plaintiff,

v.

JAMIE SINGLETON; INDIGO POINTE HOMEOWNERS ASSOCIATION;

Defendant(s).

NOTICE OF FINAL HEARING

TO THE DEFENDANT(S) NAMED ABOVE:

YOU WILL PLEASE TAKE NOTICE that a hearing will be held in the within captioned matter before the Honorable James E. Chellis, at 5200 E. Jim Bilton Blvd., St. George, SC 29477 on November 21, 2019 at 10:00 am.

All issues raised in the pleadings will be decided at this hearing.

YOU ARE INVITED TO ATTEND.

September 6, 2019

By: /s/ Priti M. Patel
Priti M. Patel #79835
Stern & Eisenberg Southern, PC
1709 Devonshire Drive
Columbia, SC 29204
Telephone: (803) 462-5006
Facsimile: (803) 929-0830
Attorney for Plaintiff

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE RECEIVED A DISCHARGE IN A CHAPTER 7 BANKRUPTCY, WE ARE AWARE YOU ARE NOT PERSONALLY OBLIGATED FOR THIS DEBT. PLEASE BE ADVISED THAT THIS NOTICE IS REQUIRED FOR FORECLOSURE IN THIS STATE.

ELECTRONICALLY FILED - 2019 Sep 06 4:05 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

50 BY 50 REO, LLC

Plaintiff,

v.

JAMIE SINGLETON; INDIGO POINTE HOMEOWNERS ASSOCIATION;

Defendant(s).

Certificate of Mailing
(Non-Jury Foreclosure)

I HEREBY CERTIFY that a copy of there herein below listed pleading was served upon the Defendant(s) by depositing in the United States Mail, proper postage affixed thereto, a true and accurate copy thereof on September 6, 2019.

PLEADING: NOTICE OF FINAL HEARING

PARTY SERVED:

W.J. Barnes
W.J. Barnes PA
1515 North Federal Hwy., Suite 300
Boca Raton, FL 33432
Attorney for Jamie Singleton

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
Attorney for Jamie Singleton

Indigo Pointe Homeowners Association
c/o Max Welch
1720 Cranbrook
Charleston, SC 29414

September 6, 2019

By: Stefen Ohlsson
Stefen Ohlsson, Paralegal

ELECTRONICALLY FILED - 2019 Sep 16 3:01 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871
Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association, Defendants.	**AMENDED NOTICE OF HEARING**
Jamie Singleton, Counter-Plaintiff, v. Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc. and DOES 1-10, Counter-Defendants.	

TO THE DEFENDANT(S) NAMED ABOVE:

YOU WILL PLEASE TAKE NOTICE that a hearing will be held in the within captioned matter before the Honorable James E. Chellis, at 5200 E. Jim Bilton Blvd., St. George, SC 29477 on November 21, 2019 at 10:00 am.

All issues raised in the pleadings will be decided at this hearing.

YOU ARE INVITED TO ATTEND.

SC201800000080

September 16, 2019

By: s/ Priti M. Patel
Priti M. Patel #79835
Stern & Eisenberg Southern, PC
1709 Devonshire Drive
Columbia, SC 29204
Telephone: (803) 462-5006
Facsimile: (803) 929-0830
Attorney for Plaintiff *and*
Mortgage Electronic Registration Systems, Inc.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE RECEIVED A DISCHARGE IN A CHAPTER 7 BANKRUPTCY, WE ARE AWARE YOU ARE NOT PERSONALLY OBLIGATED FOR THIS DEBT. PLEASE BE ADVISED THAT THIS NOTICE IS REQUIRED FOR FORECLOSURE IN THIS STATE.

ELECTRONICALLY FILED - 2019 Sep 16 3:01 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Wilmington Savings Fund Society, FSB, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association, Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871 MOTION TO DISMISS

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys, files and serves his Motion to Dismiss and for Attorneys' Fees and Costs, and as grounds states:

1. The current named Plaintiff in this case is not the original lender and has failed to demonstrate that it has legally acquired any enforceable interest in either the Note or the Mortgage which were originated by a long-bankrupt entity.

2. On or about October 3, 2019, Plaintiff's new counsel prepared a letter (copy attached hereto and incorporated herein by reference as Exhibit A) directed to Mr. Singleton which claims that the alleged creditor is U.S. Bank, N.A. as Trustee for Waterfall Victoria Grantor Trust II, Series G, and that the servicer is Statebridge Company.

3. This claim is in direct contradiction to the claim of the current named Plaintiff that it is the alleged creditor.

4. South Carolina law, including SCRP 17(a), requires that a foreclosure action must be brought in the name of the real party in interest. *Bank of America, N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (S.C. App. 2013), which held that ownership of the right sought to be enforced determines the real party in interest).

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5. To have standing, one must have a personal stake in the subject matter of the lawsuit, that being a real party in interest, which is one who has a real, material, or substantial interest in the subject matter of the action. *Sea Pines Ass'n for Prot. Of Wildlife v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001).

6. The subject October 3, 2019 letter demonstrates that the current named Plaintiff is not the real party in interest and has no stake in this action, and that the current Plaintiff thus has no standing to seek enforcement of either the Note or the Mortgage, warranting dismissal of this action.

7. This Court previously entered an Order (copy attached hereto and incorporated herein by reference as Exhibit B) which granted Mr. Singleton's Motion to Compel, which Order required the Plaintiff to provide specific information as to each alleged transfer of the Note including date of transfer, parties involved in the transfer, identification of documentation as to the transfer, and the consideration paid for any such transfer.

8. Plaintiff has yet to comply with the subject Order as to what appears to be yet another in a repeated series of alleged transfers of the Note from one entity to another.

9. Plaintiff's refusal to comply with this Court's Order warrants dismissal of this action. *Therens v. Faircloth*, 354 S.E.2d 54, 55, 291 S.C. 451 (S.C. App. 1987)(a defendant may move for dismissal of an action based upon the failure of the plaintiff to comply with any order of the court, citing SCRP 41(b)).

10. Plaintiff's noncompliance with this Court's Order which granted Mr. Singleton's Motion to Compel is without justification or excuse, thus demonstrating that the noncompliance was willful and deliberate and demonstrating a lack of respect for this Court's authority.

11. Dismissal of this action results in Mr. Singleton being the "prevailing party" under the loan documents, entitling him to seek his costs in defending this action and to have those attorneys' fees and costs assessed against Plaintiff.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court enter and Order dismissing this action with prejudice and awarding him costs to be assessed against the Plaintiff for the reasons set forth herein, and for any other and further relief which is just and equitable.

Dated this 16th day of October, 2019.

s/William H. Sloan
William H. Sloan, Esq.
Attorney for Jamie Singleton
Post Office Box 85
Summerville, SC 29484
Tel: 843-873-7531
whs@sloanlawfirm.net

s/Jeff Barnes
Jeff Barnes, Esq.
W.J. Barnes, P.A.
PHV co-counsel for Jamie Singleton
1515 North Federal Highway, Suite 300
Tel: (561) 864-1067
jeff@wjbarneslaw.com

ELECTRONICALLY FILED - 2019 Oct 16 3:00 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

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SC2019-00247

McMichael Taylor Gray, LLC

3550 Engineering Drive|Suite 260|Peachtree Corners, GA 30092
Office: 404-474-7149|Fax: 404-745-8121

October 3, 2019

JAMIE SINGLETON
5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418

Re: Property Address: 5505 Rowsham Pl, North Charleston, SC 29418
Loan No: XXXXXX3608

Dear Sir/Madam:

Please be advised that Statebridge Company, servicer for US Bank NA as Trustee for Waterfall Victoria Grantor Trust II, Series G, has referred the above-referenced loan to this office. The following information is provided to you as required by the Federal Fair Debt Collection Practices Act **(15 U.S.C. Section 1692 et seq.)**:

1. As of October 3, 2019, the total amount due is $453,017.34. This amount consists of:

Category			Amount
Principal Balance			$207,389.66
Deferred Unpaid Principal Balance			$ 0.00
Interest Amount			$213,288.46
Escrow Balance			$ 0.00
Escrow Advance			$9,763.10
Late Charges			$5,514.78
Property Inspections			$ 195.00
Hazard Ins.			$ 0.00
PMI			$ 0.00
Corporate Advance			$ 0.00
Prior Default Fees and Costs			$2,190.82
Recoverable Balance			$ 0.00
Suspense Balance			$-1,801.75
BPO			$ 400.00
Prior Servicer gal Fees			$16,077.27

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE RECEIVED A DISCHARGE IN A CHAPTER 7 BANKRUPTCY, WE ARE AWARE YOU ARE NOT PERSONALLY OBLIGATED FOR THIS DEBT AND THIS NOTICE IS FOR INFORMATIONAL PURPOSES ONLY

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Please be advised that this amount does not include amounts that may accrue after October 3, 2019, including, but not limited to interest, late fees, attorney's fees and various other charges. Accordingly, prior to submitting any funds please contact our office at 404-474-7149 for an updated payoff quote.

2. The creditor to whom the debt is owed is US Bank NA as Trustee for Waterfall Victoria Grantor Trust II, Series G. Statebridge Company is authorized to collect payment on your loan.

3. Unless you dispute the validity of this debt or any portion of it within thirty (30) days after receipt of this notice, this office will assume the debt is valid.

4. If you notify this office in writing within thirty (30) days of receipt of this notice that you dispute the debt or any portion thereof, or that you want to know the name of the original creditor, if that creditor is different from US Bank NA as Trustee for Waterfall Victoria Grantor Trust II, Series G, then this office will obtain and mail to you verification of the debt and/or the name and address of the original creditor.

5. The Fair Debt Collection Practices Act does not require that we wait until thirty (30) days from the date you receive this letter before initiating legal proceedings. Please be advised that this office may have already initiated proceedings and you may receive, shortly hereafter, notification(s) of such proceedings.

Please be advised that because of interest, late fees, and various other charges, the total amount due, as referenced above, may change daily. Hence, if you forward this office payoff funds reflecting the amount referenced above, an adjustment may be necessary, and the amount forwarded to this office may be insufficient to pay off the debt entirely. In such an event, this office will inform you before depositing the check for collection.

If you have received a discharge in a Bankruptcy proceeding and this debt was not reaffirmed, this notice is not intended to indicate that you are personally liable for this debt or that we are attempting to collect a debt from you. In this instance, the information concerning the associated debt owed is for informational purposes only and should be disregarded for any purpose other than that of conducting a foreclosure and/or exercising in rem rights and obligations under the security instrument pursuant to applicable state and federal law. If you are involved in an active bankruptcy case and no relief from the automatic stay has been obtained by your lender, please immediately fax your bankruptcy information to 404-745-8121.

Respectfully,

McMichael Taylor Gray, LLC

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE RECEIVED A DISCHARGE IN A CHAPTER 7 BANKRUPTCY, WE ARE AWARE YOU ARE NOT PERSONALLY OBLIGATED FOR THIS DEBT AND THIS NOTICE IS FOR INFORMATIONAL PURPOSES ONLY

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P.O. Box 23159
San Diego, CA 92193-3159

IMPORTANT INFORMATION
ENCLOSED

(11) 969 0024 8874 5499 6

Mailed On: 10/10/2019 **Order Number:** 0005378-01
ClientID: JTaylor000488 FC **Reference Number:** SC2019-00247

JAMIE SINGLETON
5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418

GenericAddressInsert.doc

Rev. 12/19/2018

Ex B

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800871

US Bank Trust, National Association, not in its Individual		Jamie Singleton	Indigo Pointe Homeowners Association

PLAINTIFF(S) DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

2016 AUG 31 PM 3:59
CHERYL S. CAMPBELL
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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.**

Master in Equity	3078 Judge Code	8/31/2016 Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

ELECTRONICALLY FILED - 2019 Oct 16 3:00 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2019 Oct 16 3:00 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

For Clerk of Court Office Use Only

This judgment was entered on 9/ /2016, and a copy mailed first class or placed in the appropriate attorney's box on 9/ /2016, to attorneys of record or to parties (when appearing pro se) as follows:

Erica Greer Lybrand PO Box 100200 Columbia, SC 29202

William H. Sloan Jr. PO Box 85 Summerville, SC 29484
William Jeff Barnes, Esquire 9350 Wilshire Blvd Beverly Hills, CA 90212

Order hand delivered to parties in court on 08/31/2016 by MIE.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

ELECTRONICALLY FILED - 2019 Oct 16 3:00 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

FILED - RECORDED
2016 AUG 31 PM 3:59
CHERYL CRAIG
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA) **COURT OF COMMON PLEAS**
DORCHESTER COUNTY)

CASE NO. 11-CP-18-871

US BANK, NA AS TRUSTEE FOR FRE 2011-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

ORDER ON MOTION TO COMPEL AND COMMANDING PRODUCTION OF DOCUMENTS, AND ORDER SETTING STATUS CONFERENCE

THIS CAUSE having come before the Court on Thursday, June 16, 2016 beginning at approximately 2:10 p.m. on the Motion of Defendant JAMIE SINGLETON to compel discovery and as to the status of discovery in view of a trial date, and on further argument on the Motion for Continuance filed by Plaintiff in which Defendant JAMIE SINGLETON joined, and the Court having reviewed the file, heard extensive argument of counsel, posed questions to counsel, reviewed certain documentation presented by counsel for JAMIE SINGLETON, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES as follows:

1. The Motion to Compel be the same and is hereby granted as set forth herein.

2. Counsel for Plaintiff shall produce to counsel for JAMIE SINGLETON (that being William Sloan, Esq. and Jeff Barnes, Esq.), in either charted or spreadsheet or table form, a definitive list of all parties, persons, or entities that owned the mortgage loan the subject of this action by name, address, and telephone number from the date of origination to the present, and also setting forth the identification, by name, address, and telephone number, of all servicers of the loan from origination to the present.

3. Counsel for the Plaintiff shall produce each and every document which actually served to transfer the mortgage loan the subject of this action, and all documents showing the date of

transfer, the transferor, the transferee, and the consideration for each such transfer, whether monetary or otherwise. If the loan was transferred with other loans as part of a pool, all documents shall be produced which identify the pool of loans which contained the mortgage loan the subject of this action and the consideration for such transfer, whether in dollars or otherwise.

4. Counsel for Plaintiff shall produce all documents, including correspondence, memoranda, electronic mails, faxes, or any other writing, relating to the mortgage loan the subject of this action including documents exchanged between any investment bank, investor, holder of any interest in the mortgage loan, or other person or entity which ever, at any time, claimed any interest in either the Note or the Mortgage the subject of this action.

5. If Plaintiff claims that there are any documents the subject of this Order which do not exist, Plaintiff shall file an Affidavit, under oath and subject to the penalties of perjury, that the documents compelled do not exist.

6. Counsel for the Plaintiff shall produce all items set forth in paragraphs 2, 3, 4, and 5 of this Order to counsel for JAMIE SINGLETON by no later than ~~July 29~~ Oct 15, 2016.

7. This Court shall hold a Status Conference at 2:00 p.m. on ~~August~~ Oct 31, 2016, at which counsel may appear via telephone, at which time counsel shall advise the Court of the status of the production identified above and any discrepancies therewith or documents or other items not produced, and as to good-faith efforts of counsel to resolve any such issues.

8. The Court shall, at the ~~August 31~~ Nov 30, 2016 Status Conference, also address the following matters:

(a) any Motion to Substitute the Plaintiff which may be filed;

(b) enter a Scheduling Order which shall set forth:

ELECTRONICALLY FILED - 2019 Oct 16 3:00 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

(i) the deadline to amend pleadings;

(ii) the deadline to disclose expert witnesses;

(iii) the deadline to disclose fact and rebuttal witnesses and documents sought to be introduced into evidence at trial;

(iv) the deadline to complete all discovery (written and any depositions);

(v) the deadline to file dispositive motions;

(vi) the date for the Final Pretrial Conference; and

(vii) a firm date for trial.

9. Counsel for the parties are to have their calendars ready at the ~~August 31~~ Nov 30, 2016 status conference and shall be prepared to notify the Court of any scheduling conflicts at that time.

10. No further Motions shall be entertained at the ~~August 31~~ Nov 30, 2016 Status Conference. If there are pending motions at that time, the Court will schedule a firm date and time for a hearing thereon at the ~~August 31~~ Nov 30, 2016 Status Conference.

11. The dates for the matters set forth in paragraph 8 above, once entered in the Scheduling Order, shall be firm and not subject to amendment by consent or stipulation, and may only be amended by Order of this Court and for good cause shown.

12. Counsel for the parties have read and reviewed the entire contents of this Order and have approved same prior to the submission thereof to this Court.

DONE AND ORDERED in St. George, Dorchester County, South Carolina on this 30 day of ~~July~~ Aug, 2016.

The Honorable James Chellis
Dorchester County Master in Equity

ELECTRONICALLY FILED - 2019 Oct 16 3:00 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2019 Oct 17 8:46 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

Wilmington Savings Fund Society, FSB,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

JAMIE SINGLETON'S MOTION TO CONTINUE TRIAL

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys, files and serves his Motion to Continue the trial of this cause which is presently scheduled for Thursday, November 21, 2019, and as grounds states:

1. The trial of this cause was scheduled at the request of the current Plaintiff in this case.

2. On or about October 3, 2019, an Atlanta, Georgia-based law Firm prepared a letter (copy attached hereto and incorporated herein by reference) directed to Mr. Singleton which claims that the alleged creditor is U.S. Bank, N.A. as Trustee for Waterfall Victoria Grantor Trust II, Series G, and that the servicer is Statebridge Company.

3. This claim is in direct contradiction to the claim of the current named Plaintiff that it is the alleged creditor.

4. Mr. Singleton has filed a Motion to Dismiss, the matters of which are incorporated herein by reference, as the October 3, 2019 letter demonstrates that there is at least a material issue as to whether the named Plaintiff is the real party in interest which may be entitled to seek the remedy of foreclosure.

5. As the issue of real party in interest has now been interjected by U.S. Bank, N.A. as Trustee for Waterfall Victoria Grantor Trust II, Series G and its counsel as of October 3, 2019,

the question of whether the current Plaintiff has any standing remains unresolved which precludes the advancement of the trial of this matter as the case is no longer "at issue".

6. This Court previously entered an Order (copy attached hereto and incorporated herein by reference) which granted Mr. Singleton's Motion to Compel, which Order required the Plaintiff to provide specific information as to each alleged transfer of the Note including date of transfer, parties involved in the transfer, identification of documentation as to the transfer, and the consideration paid for any such transfer. Plaintiff has failed to comply with the subject Order as to what appears to be yet another recent transfer of the Note to yet another new entity.

7. This case cannot proceed to trial until (a) Mr. Singleton's Motion to Dismiss has been decided; and (b) until a determination has been made as to who or what entity is the true real party in interest; and (c) discovery as to this recent alleged transfer of the Note and Mortgage has been had so that Mr. Singleton is afforded due process and an opportunity to defend the new claim of the new purported owner of the Note.

8. A continuance of the trial is thus legally warranted and required in the interest of due process and fairness to Mr. Singleton, who obviously had nothing to do with yet another alleged transfer of his Note and Mortgage.

9. SCRCP 40(i)(1) provides that a continuance (of trial) may be granted for good and sufficient cause. Mr. Singleton asserts that such good and sufficient cause for a continuance of the trial has been shown through (a) his just being advised, some time after October 3, 2019, that his loan is now allegedly owned by yet another entity which is not the named Plaintiff in this case, and (b) where, under the timing of this disclosure of yet another transfer of the loan now by an Atlanta, Georgia law Firm that he has not been able to obtain discovery as to this alleged

ELECTRONICALLY FILED - 2019 Oct 17 8:46 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

transfer and has thus not been afforded the opportunity to properly prepare for trial with a new party involved, and (c) where Plaintiff is in violation of this Court's discovery Order.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court enter and Order continuing the trial of this matter for the reasons set forth herein, and for any other and further relief which is just and proper.

Dated this 17th day of October, 2019.

s/William H. Sloan
William H. Sloan, Esq.
Attorney for Jamie Singleton
Post Office Box 85
Summerville, SC 29484
Tel: 843-873-7531
whs@sloanlawfirm.net

s/Jeff Barnes
Jeff Barnes, Esq.
W.J. Barnes, P.A.
PHV co-counsel for Jamie Singleton
1515 North Federal Highway, Suite 300
Tel: (561) 864-1067
jeff@wjbarneslaw.com

ELECTRONICALLY FILED - 2019 Oct 17 8:46 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2019 Oct 31 3:08 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,
Plaintiff,
v.

Jamie Singleton and Indigo Pointe Homeowners Association,
Defendants.

CONSENT MOTION TO SUBSTITUTE COUNSEL

Jamie Singleton ,
Counter-Plaintiff,
v.

Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc. and DOES 1-10,
Counter-Defendants.

The Plaintiff motions the Court to request that J. Pamela Price of McMichael Taylor Gray, LLC be substituted as counsel in the above-referenced action and that Stern & Eisenberg Southern, PC, be relieved as Plaintiff's counsel. Both counsel have noted their consent to this motion and no unreasonable delay or prejudice will accrue.

WE SO MOVE:

I SO MOVE:

October 30, 2019

s/ J. Pamela Price
January N. Taylor, SC Bar No. 80069
J. Pamela Price, SC Bar No. 14336
Alton P. Clark, SC Bar No. 76405
McMichael Taylor Gray, LLC
3550 Engineering Drive, Suite 260
Peachtree Corners, GA 30092
Telephone: (404) 474-7149
Facsimile: (404) 745-8121
Attorneys for Plaintiff

I SO CONSENT:

October 30, 2019

s/ Priti M . Patel
Priti M. Patel, SC Bar No. 79835
Stern & Eisenberg Southern, PC
1709 Devonshire Dr.
Columbia, SC 29204
Telephone: (803) 462-29204
Attorneys for Plaintiff

ELECTRONICALLY FILED - 2019 Dec 17 7:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association,
Defendant(s).

MOTION FOR EXTENSION OF TIME TO RESPOND TO DEFENDANT'S DISCOVERY REGARDING CONSIDERATION

PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S COMPLAINT

COMES NOW, Plaintiff, Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 ("Plaintiff"), by and through undersigned counsel, moves this Court for an extension of time to file a response to Defendant, Jamie Singleton's ("Defendant") Discovery Regarding Consideration, and states as follows:

1.

On or about October 28, 2019, this Court held a status conference amongst the parties to the action.

2.

At the status conference, it was discussed that outstanding discovery remained owed to Defendant from Plaintiff. To that end, the Judge ordered that an order be provided reflecting that Plaintiff has until December 16, 2019, to respond to the outstanding discovery. An order has been drafted and submitted to this Court for review and execution but as of this date, the order has not yet been entered.

ELECTRONICALLY FILED - 2019 Dec 17 7:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

3.

Plaintiff, along with its counsel, continues to gather the necessary information to properly respond to the court-ordered requests and requires additional time to respond. Therefore, it is respectfully requested that this Court allow for a short amount of additional time for Plaintiff to complete its responses.

4.

Undersigned counsel confirms that he or his firm has been in contact with Defendant's counsel via telephone and/or via e-mail regarding this request, and the outstanding proposed order that are to be entered.

5.

This extension request is not for the purpose of intentional delay and will not prejudice any party to the action or unreasonably delay the movement of this case.

6.

Plaintiff anticipates being able to file its response to discovery within ten (10) days from this request. As such, Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 seeks an order extending their deadline to respond to Defendant's Discovery Requests up and through December 26, 2019.

WHEREFORE, Plaintiff, Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1, respectfully requests that this Court enter an Order granting Plaintiff's motion extending the deadline for Plaintiff to respond to Defendant's Discovery, and for such other and further relief as is appropriate.

December 16, 2019

By: s/ J. Pamela Price

January N. Taylor, SC Bar No. 80069
J. Pamela Price, SC Bar No. 14336
Alton P. Clark, SC Bar No. 76405
McMichael Taylor Gray, LLC
3550 Engineering Drive, Suite 260
Peachtree Corners, GA 30092
Telephone: (404) 474-7149
Facsimile: (404) 745-8121
Attorneys for Plaintiff

ELECTRONICALLY FILED - 2019 Dec 17 7:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2020 Jan 16 6:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association,
Defendants.

PLAINTIFF'S RESPONSES TO DEFENDANT'S OUTSTANDING DISCOVERY REQUESTS

Plaintiff, by and through counsel, pursuant to Rule 33 and Rule 34 of the South Carolina Rules of Civil Procedure, serves Plaintiff, Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1's ("Plaintiff") Responses to Defendant, Jamie Singleton's ("Defendant") outstanding discovery requests, as ordered at the Status Conference in this mattered that occurred on October 28, 2019, as follows:

1. The name of the parties that are the current owners of the note and mortgage, including their address and telephone number.

   Ownership of the promissory note was recently transferred from *Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1* to *U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G.* An assignment of mortgage reflecting this transfer is currently pending execution and recordation. This transfer occurred after the commencement of this foreclosure lawsuit. The contact information for the party entitled to enforce the loan documents is: c/o Statebridge Company, LLC, 5680 Greenwood Plaza Blvd., Suite 100S, Greenwood Village, CO 80111

2. The document which actually served to transfer the mortgage loan showing the date of the transfer, the transferor, the transferee, and the consideration for the transfer, whether monetary or otherwise. If the loan was transferred as party of a pool, all documents shall be produced which identify the pool of loans which contained the mortgage loan and the consideration for such transfer, whether in dollars or otherwise.

Please find attached a copy of the Mortgage Loan Purchase Agreement and Schedule A to the Mortgage Loan Purchase Agreement. Plaintiff also intends to supplement this response upon recordation of the assignment of mortgage reflecting the transfer on the official records of Dorchester County, South Carolina.

3. All documents, including correspondence, memoranda, electronic mails, faxes, or other writing, relating to the transfer of the mortgage loan.

Please see Plaintiff's responses to Defendant's Requests Numbers 1 and 2. Also please find attached copy of previous assignments of mortgage up and through the current named Plaintiff.

January 16, 2020

By: *J. Pamela Price*, Esq.

J. Pamela Price, SC Bar No. 14336
McMichael Taylor Gray, LLC
3550 Engineering Drive, Suite 260
Peachtree Corners, GA 30092
Telephone: (404) 474-7149
Facsimile: (404) 745-8121
Attorneys for Plaintiff

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ELECTRONICALLY FILED - 2020 Jan 16 6:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Recording Date: 07/22/2008 Instrument: 84 Book: 6727 Page: 330-331

FILED-RECORDED
RMC / ROD

2008 Jul 22 PM 2:11:42

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 6.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

THIS PAGE IS HEREBY ATTACHED AND MADE PART OF THE PERMANENT RECORD OF THIS DOCUMENT. IT IS NOT TO BE DETACHED OR REMOVED AND MUST BE CITED AS THE FIRST PAGE OF THE RECORDED DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR RECORDING PURPOSES AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38

ELECTRONICALLY FILED - 2020 Jan 16 6:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

FILED/RECORDED
JULY 22, 2008
DORCHESTER COUNTY
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

ASSIGNMENT OF MORTGAGE
Mortgage Book 5142 at Page 168

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto GMAC Mortgage, LLC, GMAC Mortgage Corp., 500 Enterprise Road, Horsham, PA19044, its successors and assigns, all its rights, title and interest in and to a certain Mortgage, together with the Note executed by Jamie Singleton to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc. (MIN#100273900102812475) dated January 4, 2006, and duly recorded in the public records of Dorchester County, State of South Carolina, on January 12, 2006, in Mortgage Book 5142 at Page 168.

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc. (MIN#100273900102812475) has caused this instrument to be executed in its corporate name and behalf by Jeffrey Stephan as its VP, duly authorized, on this 14 day of July, 2008.

Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc. (MIN#100273900102812475)

Jamie Singleton
Witness No. 1.

By: _____

its: Jeffrey Stephan
Vice President

Witness No. 2

STATE OF Pennsylvania

COUNTY OF Montgomery

ACKNOWLEDGMENT
S.C. Code § 30-5-30
(Effective January 1, 1995)

I, the undersigned, Notary Public for the State of Pennsylvania, do hereby certify that Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc. (MIN#100273900102812475) by Jeffrey Stephan its VP, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 14 day of July, 2008.

Nikole Shelton
NOTARY PUBLIC FOR _____
My Commission Expires: _____

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Nikole Shelton, Notary Public
Horsham Twp., Montgomery County
My Commission Expires Aug. 11, 2010
Member, Pennsylvania Association of Notaries

RETURN TO:
Rogers, Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202
(008045-00946)

ELECTRONICALLY FILED - 2020 Jan 16 6:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Recording Date: 09/14/2011 Instrument: 78 Book: 8010 Page: 230-231

FILED-RECORDED
RMC / ROD

2011 Sep 14 PM 1:36:12

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 6.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

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REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA

ELECTRONICALLY FILED - 2020 Jan 16 6:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

6

GMAC#: 0359522979

FILED/RECORDED
September 14, 2011
DORCHESTER COUNTY
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

ASSIGNMENT OF MORTGAGE

Mortgage Book 5142 at Page 168

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto **50 by 50 REO, LLC**, c/o AMS Servicing, LLC, 3374 Walden Ave, Depew, NY 14043, its successors and assigns, all its rights, title and interest in and to a certain Mortgage, executed by Jamie Singleton to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., its successors and assigns (MIN 100273900102812475) dated January 4, 2006, and duly recorded in the public records of Dorchester County, State of South Carolina, on January 12, 2006, in Mortgage Book 5142 at Page 168.

IN WITNESS WHEREOF, GMAC Mortgage, LLC has caused this instrument to be executed in its corporate name and behalf by ELIZABETH FOUST as its AUTHORIZED OFFICER duly authorized, on this 31st day of August, 2011.

GMAC Mortgage, LLC

By: _____
ELIZABETH FOUST, AUTHORIZED OFFICER

Witness: VICKIE HICKSON

Witness: RACHEL MOORE

STATE OF IOWA

S.C. Code § 30-5-30
(Effective January 1, 1995)

COUNTY OF BLACK HAWK

I, the undersigned, Notary Public for the State of IOWA do hereby certify that GMAC Mortgage, LLC by ELIZABETH FOUST its AUTHORIZED OFFICER personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 31st day of August, 2011.

SALLY NELSON, Notary Public
My Commission Expires: 04/20/2014

00833

RETURN TO:

SALLY NELSON

ELECTRONICALLY FILED - 2020 Jan 16 6:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Recording Date: 10/02/2012 Instrument: 31 Book: 8483 Page: 135-136

FILED-RECORDED
RMC / ROD

2012 Oct 02 PM 12:43:52

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 6.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

THIS PAGE IS HEREBY ATTACHED AND MADE PART OF THE PERMANENT RECORD OF THIS DOCUMENT. IT IS NOT TO BE DETACHED OR REMOVED AND MUST BE CITED AS THE FIRST PAGE OF THE RECORDED DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR RECORDING PURPOSES AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY REGISTER

ELECTRONICALLY FILED - 2020 Jan 16 6:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

6

FILED/RECORDED
October 2, 2012
DORCHESTER COUNTY
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

ASSIGNMENT OF MORTGAGE
Mortgage Book 5142 at Page 168

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto **US Bank, N.A., as Trustee of the FRT 2011-1 Trust**, c/o AMS Servicing, LLC, 3374 Walden Ave, Depew, NY 14043,its successors and assigns, all its rights, title and interest in and to a certain Mortgage, executed by Jamie Singleton to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., its successors and assigns (MIN 100273900102812475) dated January 4, 2006, and duly recorded in the public records of Dorchester County, State of South Carolina, on January 12, 2006, in Mortgage Book 5142 at Page 168. This mortgage was subsequently assigned to GMAC Mortgage, LLC by assignment of mortgage dated July 14, 2008, and recorded July 22, 2008, in Mortgage Book 6727 at Page 331. This mortgage was subsequently assigned to 50 by 50 REO, LLC by assignment of mortgage dated August 31, 2011, and recorded September 14, 2011, in Mortgage Book 8010 at Page 230.

IN WITNESS WHEREOF, 50 by 50 REO, LLC has caused this instrument to be executed in its corporate name and behalf by Timothy R Haberman, as its Asst Vice President, duly authorized, on this 24th day of September, 2012.

50 by 50 REO, LLC

By: Timothy R Haberman

Its: Asst Vice President AMS Servicing, LLC
As Attorney in Fact

Witness No. 1 Richard Seeger

Witness No. 2 Suzie E. Lunsford

STATE OF New York

COUNTY OF Erie

ACKNOWLEDGMENT
S.C. Code § 30-5-30

I, the undersigned, Notary Public for the State of New York, do hereby certify that 50 by 50 REO, LLC by Timothy R. Haberman, its Assistant Vice President personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 25 day of September, 2012.

NOTARY PUBLIC FOR Erie County/NY State
My Commission Expires: 3/20/14

LISA J. COSTA
Notary Public, State of New York
No. 01CO6027784

RETURN TO:
Rogers, Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202
(514078.00009)

00835

ELECTRONICALLY FILED - 2020 Jan 16 6:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

MARGARET L BAILEY

DORCHESTER COUNTY

REGISTER OF DEEDS

201 Johnston Street ~ Saint George, SC 29477 (843) 563-0181

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

Instrument #:	2016905184		
Receipt Number:	1991	**Return To:**	ROGERS TOWNSEND THOMAS
Recorded As:	ASSIGNMENT		
Recorded On:	March 07, 2016		
Recorded At:	11:11:46 AM	**Received From:**	ROGERS TOWNSEND THOMAS
Recorded By:	NW	**Parties:**	
Book/Page:	RB 10126: 197 - 199		Direct- SINGLETON, JAMIE
Total Pages:	3		Indirect- US BANK NA

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$7.00
Tax Charge:	$0.00

Margaret Bailey

Margaret Bailey - Register of Deeds

ELECTRONICALLY FILED - 2020 Jan 16 6:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

after Recording Return to:
Firm/Company: Single Source Property Solutions
Address:2570 Boyce Plaza Road
Address 2: Bldg. III
City, State, Zip: Pittsburgh, PA 15241

Loan # 170954046

Assessor's Property Tax Parcel/Account Number:
181-10-06-037

FILED/RECORDED
March 7, 2016
DORCHESTER COUNTY
REGISTER OF DEEDS

Above This Line Reserved For Official Use Only

ASSIGNMENT OF MORTGAGE

Name and Address of Assignor:
US Bank, N.A, as Trustee of the FRT 2011-1 Trust
1345 Avenue of the Americas, 46th Floor
New York, NY 10105

Name and Address of Assignee:
Wilmington Savings Fund Soc for NNPL Trust Series 2012-1
500 Delaware Avenue, 11th Floor
Wilmington, Delaware 19801

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, the undersigned, US Bank, N.A, as Trustee of the FRT 2011-1 Trust , "Assignor", whose address is above, does hereby grant, sell, assign, transfer and convey to Wilmington Savings Fund Soc for NNPL Trust Series 2012-1, "Assignee," whose address is above, all interest of the undersigned Assignor in and to the following described mortgage:

Date of Mortgage: 01/04/2006, Executed by (Mortgagor(s)) Jamie Singleton, **To and in favor of (Mortgagee):** Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., **Filed of Record:** In Book 5142, page 168, in the Office of the Clerk Court of Dorchester County, South Carolina, on 01/12/2006.
Property: 5505 Rowsham Place, North Charleston, SC 29418 As described in the Mortgage.
Given: to secure a certain Promissory Note in the amount of $212,000.00 payable to Mortgagee.

Together with the note(s) and obligations therein described or referred to, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Mortgage.

TO HAVE AND TO HOLD the same unto Assignee and unto its successors and assigns forever, subject only to the terms and conditions of the above-described Mortgage.

Assignor is the present holder of the above-described Mortgage.

IN WITNESS WHEREOF, this assignment was executed by the undersigned Assignor on this the 8 day of Feb, 2016.

US Bank, N.A, as Trustee of the FRT 2011-1 Trust

BY: DEWAYNE CHIN
TITLE: AUTHORIZED SIGNATORY

ELECTRONICALLY FILED - 2020 Jan 16 6:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Signed, Sealed and Delivered
in the presence of:

Witness

Witness

STATE OF NY
COUNTY OF NY

The foregoing instrument was acknowledged before me this 2/8/16 (date) by Dewayne Chin (name of officer or agent, title of officer or agent) of US Bank, N.A, as Trustee of the FRT 2011-1 Trust (name of corporation acknowledging) a DE (state or place of incorporation) corporation, on behalf of the corporation.

Notary Public

Print Name: THOMAS SANTORA
Notary Public, State of New York
Qualified in New York County
No. 01SA6191079
My Commission Expires Aug. 4, 2016

My Commission Expires:

THOMAS SANTORA
Notary Public, State of New York
Qualified in New York County
No. 01SA6191079
My Commission Expires Aug. 4, 2016

Prepared by:
Single Source Property Solutions
2570 Boyce Plaza Road
Pittsburgh, PA 15241

ELECTRONICALLY FILED - 2020 Feb 06 11:10 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association,
Defendants.

MOTION TO SUBSTITUTE PLAINTIFF

The Plaintiff moves the Court to request that U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G, be substituted as Plaintiff and as the real party in interest pursuant to Assignment of Mortgage recorded in the Office of the Register of Deeds for Dorchester County on February 4, 2020 in Book 12313, Page 74. A copy of said Assignment of Mortgage is attached hereto and incorporated herein as Exhibit "A".

Plaintiff requests an Order to Substitute Plaintiff be entered in this action and that all pleadings and documents herein be amended to show U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G as Plaintiff in this action.

I SO MOVE:

February 5, 2020

By: s/ J. Pamela Price
January N. Taylor, SC Bar No. 80069
J. Pamela Price, SC Bar No. 14336
McMichael Taylor Gray, LLC
3550 Engineering Drive, Suite 260
Peachtree Corners, GA 30092
Telephone: (404) 474-7149
Facsimile: (404) 745-8121
Attorneys for Plaintiff

MARGARET L BAILEY

DORCHESTER COUNTY

REGISTER OF DEEDS

201 Johnston Street ~ Saint George, SC 29477 (843) 563-0181

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

***** ELECTRONICALLY RECORDED DOCUMENT *****

Instrument #:	2020002733		
Receipt Number:	80443	**Return To:**	
Recorded As:	EREC-MORTGAGE ASSIGNMENT		
Recorded On:	February 04, 2020		
Recorded At:	12:30:01 PM	**Received From:**	SIMPLIFILE
Recorded By:	NW	**Parties:**	
Book/Page:	RB 12313: 74 - 75		Direct- SINGLETON, JAMIE
Total Pages:	2		Indirect- WILMINGTON SAVINGS FUND SOCIETY FSB

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$10.00
Tax Charge:	$0.00

Margaret Bailey

Margaret Bailey - Register of Deeds

00840

ELECTRONICALLY FILED - 2020 Feb 06 11:10 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2020 Feb 06 11:10 AM - DORCHESTER - COMMON PLEAS - CASE# 20CP18800871

This instrument prepared by/return to:
McMichael Taylor Gray, LLC
3550 Engineering Drive, Suite 260
Peachtree Corners, GA 30092
Parcel Identification Number: 181-10-06-037-000

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, the undersigned, **Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1** ("Assignor"), does hereby transfer, assign, set over and convey to **U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G** ("Assignee"), c/o Statebridge Company, LLC, 5680 Greenwood Plaza Blvd., Suite 100S, Greenwood Village, CO 80111, all beneficial interest under that certain mortgage executed by Jamie Singleton in favor of Mortgage Electronic Registration Systems, Inc. as nominee for People's Choice Home Loan, Inc., its successors and assigns. Said mortgage dated January 4, 2006 in the amount of $212,000.00 was recorded on January 12, 2006 in **Mortgage Book 5142, Page 168**, Public Records of **Dorchester County, State of South Carolina**. The undersigned does hereby remise, release, quit claim, and convey to U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G all interest in the property conveyed by said mortgage.

PROPERTY ADDRESS: 5505 Rowsham Place, North Charleston, SC 29418

To have and to hold the same unto the Assignee, its heirs, legal representatives, successors and assigns, forever.

IN WITNESS WHEREOF, the undersigned on this 3rd day of February, 2020, has hereunto set its hand and seal.

Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1, by Westcor Land Title Insurance Company as attorney in fact. Power of attorney recorded 03/21/2019 in Maricopa County, AZ in Inst.# 20190196083.

By: _____

Print name: Sarah Premuroso

Title: Authorized Signatory

_____
Witness 1
Print name: Joseph Loftus

_____
Witness 2
Print name: Corinne Pike

00841

STATE OF Pennsylvania)

ELECTRONICALLY FILED - 2020 Jul 23 10:44 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,
Plaintiff,
v.
Jamie Singleton and Indigo Pointe Homeowners Association,
Defendants.

NOTICE OF MOTION HEARING

TO THE DEFENDANTS NAMED ABOVE:

YOU WILL PLEASE TAKE NOTICE that a motion hearing will be held in the within captioned matter before the Honorable James E. Chellis, Dorchester County Master in Equity, at Dorchester County Courthouse, 5200 East Jim Bilton Blvd., St. George, SC 29477 on July 29, 2020 at 10:00 am.

YOU ARE INVITED TO ATTEND.

July 18, 2020

By: s/ J. Pamela Price
January N. Taylor, SC Bar No. 80069
J. Pamela Price, SC Bar No. 14336
McMichael Taylor Gray, LLC
3550 Engineering Drive, Suite 260
Peachtree Corners, GA 30092
Telephone: (404) 474-7149
Facsimile: (404) 745-8121
Attorneys for Plaintiff

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE RECEIVED A DISCHARGE IN A CHAPTER 7 BANKRUPTCY, WE ARE AWARE YOU ARE NOT PERSONALLY OBLIGATED FOR THIS DEBT. PLEASE BE ADVISED THAT THIS NOTICE IS REQUIRED FOR FORECLOSURE IN THIS STATE.

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association,
Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the herein below listed pleadings were served upon the Defendants by depositing in the United States Mail, proper postage affixed thereto, a true and accurate copy thereof on July 18, 2020.

PLEADING: NOTICE OF MOTION HEARING

PARTIES SERVED:

William H. Sloan, Esquire
P.O. Box 85
Summerville, SC 29484
and
1055-F North Main St.
Summerville, SC 29484
Attorney for Jamie Singleton

Jeff Barnes, Esquire
1515 North Federal Hwy., Suite 300
Boca Raton, FL 33432
Attorney for Jamie Singleton

Indigo Pointe Homeowners Association
c/o Max Welch
1720 Cranbrook
Charleston, SC 29414

July 18, 2020

By: Andrei Ionescu
Andrei Ionescu, Paralegal

SC2019-00247

ELECTRONICALLY FILED - 2020 Jul 23 11:10 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but Solely in its capacity as Certificate Trustee for NNPA Trust Series 2012-1,

. Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

JAMIE SINGLETON'S RESPONSE TO PLAINTIFF'S MOTION TO SUBSTITUTE PLAINTIFF (filed February 6, 2020)

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys, files and serves his Response to the Plaintiff's Motion to Substitute Plaintiff filed February 6, 2020, and states:

A. Introduction

1. Plaintiff has filed yet another a one-page Motion to Substitute Plaintiff, as it previously did in its prior filing of a "Motion Substituting Plaintiff" which claimed that "US Bank Trust, National Association, not in its individual capacity but solely as owner trustee of Westvue NPL Trust Series 2014-1" allegedly "became the owner of the subject loan as indicated by the documents attached as Exhibit A".

2. The "new" Plaintiff the subject of the prior Motion was substituted with the present Plaintiff.

3. The present Motion requests that "U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G", be substituted for the current Plaintiff, and attaches an "Assignment of Mortgage" to the Motion.

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4. Thus, in the past four (4) years, the loan has allegedly been sold to U.S. Bank as "Trustee" for the Westvue NPL Trust Series 2014-1, then allegedly sold to the present Plaintiff Wilmington Savings Fund Society dba Christiana Trust; and has now allegedly been sold back to U.S. Bank as the claimed "Trustee" of yet another Trust. These transfers follow a series of prior alleged transfers of the loan which have repeatedly taken place since this action was filed as set forth below.

5. The Assignment of Mortgage attached as Exhibit "A" to the present Motion is the only document upon which the new Plaintiff bases its alleged interest in the loan as admitted in the Motion to Substitute which states: "...be substituted as Plaintiff and as the real party in interest pursuant to an Assignment of Mortgage".

6. There is no bill of sale, mortgage loan purchase agreement, or any other document attached to the Motion to Substitute Plaintiff which memorializes any sale of the mortgage loan the subject of this action from any entity to any particular entity at any time.

7. This Court has previously been made aware, on multiple occasions, of the tortured history of the alleged ownership of the mortgage loan the subject of this action and the alleged servicing rights thereto which have been claimed by numerous different entities since this action was filed nine (9) years ago (in 2011), which claims conflicted as well. That history is summarized here so that the Court is not put into the position of having to review the large court file and multitude of pleadings and motions filed in this case.

B. Procedural History

8. Mr. Singleton originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007.

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9. On January 15, 2009, Mr. Singleton received a letter from an entity styled Madison Home Loan Consulting Company ("MHLCC") which stated that the mortgage on the Property was owned by an entity styled DB50 2007-1 Trust. No notice was provided to Mr. Singleton that there had been any transfer of his loan out of the People's Choice bankruptcy to any other entity, or that there had been any sale or transfer of the loan from People's Choice to any entity prior to the filing of the Bankruptcy by People's Choice.

10. Mr. Singleton sought discovery as to, *inter alia*, the history of custody and transfer of his mortgage loan. After having to file a Motion to Compel discovery, Mr. Singleton was finally provided with documents from the then-Plaintiff which claimed that his mortgage loan had been the subject of several conflicting transfers.

11. One of the documents produced was a letter dated January 6, 2006 from Nomura Holdings (hereafter "Nomura") with an attached Mortgage Loan Purchase Agreement (hereafter "MLPA") which sets forth a sale of loans from People's Choice to Nomura. The MLPA required documentary proof in specific form as to the transfer of loans from People's Choice to Nomura, including interim assignments of mortgage and intervening endorsements for the Note. None of this documentation was produced.

12. The named Plaintiff at the time produced a "purchase agreement" whereby Nomura sold loans to an entity known as "50 By 50 REO LLC (hereafter "50 By 50")". There was also a Trust Agreement dated August 28, 2007 between LaSalle Bank and Wilmington Trust Company concerning some entity identified as the DB 50 2007-1 Trust. There is no loan schedule which sets forth that the loan the subject of this action was transferred to the DB 50 2007-1 Trust.

13. The named Plaintiff at the time had previously produced an Assignment of Mortgage by non-party Mortgage Electronic Registration Systems, Inc. (hereafter "MERS") dated July 14,

2008, which is 16 months after People's Choice filed Bankruptcy, whereby MERS claims to assign the Mortgage to GMAC, which itself filed for Bankruptcy on May 14, 2012. No document was produced which permitted MERS to act on behalf of an entity which had been bankrupt for 16 months preceding the date of the alleged "Assignment".

14. The named Plaintiff at the time also produced an Amended and Restated Trust Agreement dated October 31, 2011 involving an entity styled FRT 2001-1 Trust, Fort Asset Funding 2001-1 LLC, US Bank Trust National Association, and Wells Fargo, NA concerning the FRT 2011-1 Trust. No mortgage loan schedules were attached or provided.

15. A Sale and Administration Agreement dated October 31, 2011 was also produced by the named Plaintiff at the time which involved the FRT 2011-1 Trust, Fort Asset Funding 2011-1 LLC, numerous "Sellers" (all of whom were owned by the same individual), US Bank National Association as Indenture Trustee, and Montana Drive Mortgage Holdings LLC.

16. The named Plaintiff at the time previously produced a letter dated November 23, 2011 from an entity styled AMS Servicing, LLC which stated that "On October 31, 2011, FRT 2011-1 Trust acquired your mortgage loan". There is no evidence of any transfer of either the Note or the Mortgage from the bankrupt original lender (People's Choice) to the FRT 2011-1 Trust, or from either GMAC or the DB 50 2007-1 Trust back to anyone for later transfer to the FRT 2011-1 Trust.

17. There is a second "Assignment of Mortgage" which was filed in the public records by which 50 By 50 REO, LLC (the entity which was the original named Plaintiff in this case) purportedly assigned the Mortgage to the Plaintiff. This Assignment, dated September 24, 2012, contains no language as to any assignment of the Note, and is dated 4 years and 2 months after the prior Assignment of Mortgage from MERS as "nominee" for the bankrupt People's Choice to

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GMAC. There is no evidence of any re-transfer of the Mortgage from GMAC or any other prior transferee back to any entity for purposes of an assignment of the Mortgage to the Plaintiff.

18. There is no evidence of any assignment or lawful transfer of either the Mortgage or the Note from the bankrupt original lender, or the bankrupt GMAC, or the FRT 2001-1 Trust, to 50 By 50 or to the subsequent Plaintiffs.

19. If Nomura sold the loan to 50 By 50, there was nothing for MERS to assign to GMAC on July 14, 2008; conversely, if MERS did assign the mortgage to GMAC (which itself later filed for Bankruptcy), Nomura did not sell the loan to 50 By 50, and the loan remained in the inventory of People's Choice, which had filed bankruptcy.

20. If the loan was a retained asset within the inventory of People's Choice as of the time it filed Bankruptcy on March 20, 2007, there was nothing for Nomura to sell to 50 By 50 on September 27, 2007, and nothing for MERS to assign to GMAC on July 14, 2008.

21. If the loan was assigned to GMAC on July 14, 2008 or was in the DB50 2007-1 Trust as of January 15, 2009, the FRT 2011-1 Trust could not have acquired the loan on October 31, 2011.

22. One of the subsequent Plaintiffs in this case is U.S. Bank, National Association as Trustee for FRT-2011-1 (hereafter "USBTE"). The prior Plaintiff's "Motion Substituting Plaintiff" appeared to take the position that the loan has been either sold or transferred from one securitization trust to another, although the Motion did not actually make this claim and none of the documents attached to the Motion support or demonstrate any such sale or transfer.

23. By letter dated October 23, 2014, Shellpoint advised Mr. Singleton that the mortgage loan is being sold to an entity styled NNPL Trust Series 2012-1 (identified as the "New Owner") located in Wilmington, Delaware.

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24. However, by letter dated December 1, 2014 from Shellpoint, Shellpoint advised that the "new creditor to whom the debt is owed" is an entity styled New Penn Financial, LLC. No address for this new entity is provided in the letter. This directly conflicts with the letter from Shellpoint of October 23, 2014, and there is no document which states that the loan was sold from NNPL Trust Series 2012-1 to New Penn Financial, LLC.

25. This Court previously entered an Order, several years ago, which compelled and ordered the Plaintiff to produce specific documentation as to each and every sale or transfer of the loan, including but not limited to date of sale or transfer, consideration paid, and manner of sale or transfer. To date, the subject Order has not been complied with.

C. Law and Argument

26. The current Motion to Substitute Plaintiff claims that the Motion is made to substitute U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G, as the "real party in interest". Presumably, this is a generic reference to SCRCP 17(a), which is the "real party in interest" rule. The rule provides, in part, that "no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for...substitution of, the real party in interest;...".

27. Rule 17(a) simply mentions substitution; it does not provide the grounds or mechanism or requirements for such substitution.

28. SCRCP 25 governs the substitution of parties. This Rule is not mentioned in the Motion to Substitute Plaintiff. Subpart (c) of Rule 25 provides that in case of any transfer of interest, the action may be continued by or against the original party.

29. Rule 25(c) applies to the transfer of interest from one corporation to another with which the first merged. *Bryant v. Waste Management, Inc.* 342 S.C. 159, 164, 536 S.E.2d 380

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(S.C.App. 2000). There is no allegation in the Motion to Substitute Plaintiff that the alleged new owner of the loan "merged" with the prior owner, and no such merger appears to be possible as U.S. Bank National Association and Wilmington Savings Fund Society are distinct entities.

30. Even assuming that merger is not the only circumstance which may prompt a requested substitution of party, there is no evidence of the purchase of the loan by the new Plaintiff requested to be substituted.

31. This is a foreclosure action where numerous parties have, over the nine (9) years since this action was filed, sought to deprive Mr. Singleton of his home. These parties have produced conflicting and contradictory information, and the current Plaintiff is now taking the position that the loan has been transferred from a 2012 securitization trust to another (undated) Trust without any evidence of any such alleged transfer, and without any evidence that the present Plaintiff, like those before it, has any interest to transfer.

32. It is a legal maxim, and the law in South Carolina since at least 1881, that one cannot transfer something that one does not have. *Shuler v. Bull*, 15 S.C. 421, 423 (S.C. 1881)(husband cannot transfer a greater interest than his own).

33. Mr. Singleton has consistently taken the position in this case that none of the various Plaintiffs ever, at any time, had any legal interest in either the Note or the Mortgage and thus no right to foreclose. To date, none of the various Plaintiffs or alleged transferees have demonstrated, by any admissible evidence, a complete and legal chain of transfers of interest in either the Note or the Mortgage from the (bankrupt) original lender to any of the various Plaintiffs.

34. As such, there has been no proof that the current Plaintiff has or ever had any interest which it can "substitute" to another entity. The Motion to Substitute Plaintiff thus fails on the facts and the law, and is therefore properly denied.

35. Further and as set forth above, this Court entered an Order several years ago compelling the Plaintiff to provide documentation and specific information as to ALL transfers of the loan, including date of transfer, purchase price paid, and other information. To date, neither the present Plaintiff nor any of the prior Plaintiffs have complied with the Court's Order despite having years to do so.

36. Should this Court be inclined to grant the present Motion to Substitute Plaintiff, Mr. Singleton requests leave to amend his Answer and Affirmative Defenses and to propound discovery to the "new" Plaintiff including the taking of the deposition of the Rule 30(b)(6) representative of the new Plaintiff in order to be afforded the opportunity to prepare his continuing defense to this action.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court deny the Plaintiff's Motion to Substitute Plaintiff or, if the Court is inclined to grant the Motion to provide Mr. Singleton with leave to amend his Answer and Affirmative Defenses and seek discovery from the new Plaintiff for the reasons set forth, and for any other and further relief which is just and proper.

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s/William H. Sloan
William H. Sloan, Esquire
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484
Attorney for Jamie Singleton
843-873-7531
whs@sloanlawfirm.net
July 23, 2020

s/W. Jeffrey Barnes
Pro-Hac vice
1515 North Federal Highway
Suite 300
Boca Raton, FL 33432
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July 23, 2020
jeff@wjbarneslaw.com

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ELECTRONICALLY FILED - 2020 Sep 22 12:30 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association,
Defendants.

PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL

Jamie Singleton,
Counter-Plaintiff,

v.

Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc. and DOES 1-10,
Counter-Defendants.

Pursuant to S.C. R. Civ. P. 41(a)(2), Plaintiff moves the Court to enter an order voluntarily dismissing Plaintiff's foreclosure action without prejudice. In support, Plaintiff states as follows:

1. On April 25, 2011, Plaintiff filed the instant foreclosure action in the name of *50 by 50 REO, LLC*, the entity that was entitled to enforce the instrument at that time.
2. On September 25, 2012, because of a transfer of the instrument, Plaintiff moved this Court to substitute party plaintiff from *50 by 50 REO, LLC* to *U.S. Bank, N.A., as Trustee of the FRT 2011-1 Trust*.
3. Defendant, Jamie Singleton ("Borrower"), through counsel, consented to Plaintiff's motion and the entry of an order granting the substitution of party plaintiff substituting

U.S. Bank, N.A., as Trustee of the FRT 2011-1 Trust in as the Plaintiff on October 30, 2012, the date the consent order was entered by this Court.

4. On or about September 21, 2015, because of a second post-complaint transfer of interest, Plaintiff moved this Court to substitute party plaintiff from *U.S. Bank, N.A., as Trustee of the FRT 2011-1 Trust* to *U.S. Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of Westvue NPL Trust, Series 2014-1.*

5. On March 1, 2016, this Court granted Plaintiff's motion, substituting *U.S. Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of Westvue NPL Trust, Series 2014-1* in as the Plaintiff.

6. On or about September 22, 2017, because of a third post-complaint transfer of interest, Plaintiff moved this Court to substitute party plaintiff from *U.S. Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of Westvue NPL Trust, Series 2014-1* to *Wilmington Savings Fund, Society, FSB d/b/a Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1.*

7. Similar to Plaintiff's first Motion to Substitute Party Plaintiff, Borrower, through counsel, consented to the substitution, which ordered *Wilmington Savings Fund, Society, FSB d/b/a Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1* be substituted into the action as the real party in interest.

8. Most recently, on February 6, 2020, Plaintiff's final Motion to Substitute Party Plaintiff was filed wherein Plaintiff, because of a fourth post-complaint transfer in interest,

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sought that *U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G* be substituted in as the Plaintiff and real party in interest.

9. Unlike Plaintiff's first three attempts to substitute the party enforcing the instrument that were successful, the Court denied the substitution on Plaintiff's fourth attempt.

10. Subsequently, on August 5, 2020, this Court entered its Third Amended Scheduling Order for this case. The Order anticipates that a trial order will be entered on or before October 31, 2020, which will schedule a non-jury trial on a date and time which is available to the Court, counsel, and all witnesses.

11. Pursuant to S.C. R. Civ. P. 41(a)(2), Plaintiff hereby seeks the voluntary dismissal of its foreclosure action without prejudice.

12. Based on this Court's order denying Plaintiff's February 6, 2020, Motion to Substitute Party Plaintiff, any effort by Plaintiff to proceed to foreclosure judgment at this time is futile because the current Plaintiff is not the entity entitled to enforce the instrument sought to be foreclosed and the appropriate party has not been allowed substitution.

13. If a Plaintiff cannot voluntarily dismiss its case pursuant to S.C. R. Civ. P. 41(a)(1), S.C. R. Civ. P. 41(a)(2), in pertinent part, provides a remedy as follows:

> "By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper."

14. Plaintiff now seeks an order of the Court dismissing its foreclosure case[1] without prejudice because of the identity of Plaintiff. An order to this effect would result in no

[1] Pursuant to S.C. R. Civ. P. 41(a)(2), Borrower's counterclaim may stand because of its ability to be separately adjudicated.

legal prejudice to the Borrower. Dismissal of Plaintiff's action is the exact relief the Borrower has sought since the action's inception.

15. "The rule in [South Carolina] is that a plaintiff is entitled to a voluntary nonsuit without prejudice as a matter of right unless there is a showing of legal prejudice to the defendants." *Gulledge v. Young*, 242 S.C. 287, 290, 130 S.E.2d 695, 697 (1963).

16. Again, it is not possible for the Borrower to show legal prejudice or substantial prejudice considering the relief sought by the parties throughout the course of the action. Therefore, a voluntary dismissal without prejudice of Plaintiff's foreclosure action should be entered.

17. "The trial Judge has no discretion with respect to the granting of such a motion unless and until legal prejudice is shown. In that event, the matter becomes one of discretion for the trial Judge." *Id.*

18. The foregoing supports this Court's entry of a voluntary dismissal of Plaintiff's foreclosure action without prejudice.

I SO MOVE:

September 22, 2020

By: s/ John P. Fetner

January N. Taylor, SC Bar No. 80069
John P. Fetner, SC Bar No. 77460
J. Pamela Price, SC Bar No. 14336
McMichael Taylor Gray, LLC
3550 Engineering Drive, Suite 260
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Telephone: (404) 474-7149
Facsimile: (404) 745-8121
Attorneys for Plaintiff

ELECTRONICALLY FILED - 2020 Sep 22 12:30 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

_STATE OF SOUTH CAROLINA)	IN THE COURT OF EQUITY
COUNTY OF DORCHESTER)	CASE NO. 2011-CP-18-871
)	MOTION OF JAMIE SINGLETON
Wilmington Savings Fund Society, FSB)	TO DISMISS COMPLAINT WITH
DBA Christiana Trust, not in its individual)	PREJUDICE
capacity but solely in its capacity as)	
Certificate Trustee for NNPL)	
Trust Series 2012-1,)	
Plaintiff, v.)	
)	
Jamie Singleton and Indigo Pointe)	
Homeowners Association,)	
Defendants.)	
Jamie Singleton,)	
Counter-Plaintiff, v.)	
Nomura Holdings, Inc.; 50 by 50 REO LLC;)	
DB 50 2007-1 Trust;)	
Mortgage Electronic Registration Systems,)	
Inc.;)	
FCI Lender Services, Inc. and DOES 1-10,)	
Counter-Defendants.)	

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Comes now, Jamie Singleton, through his undersigned Attorneys, to file this Motion to dismiss this action with prejudice for the following reasons:

Defendant relies on Rule 41(a) and Rule 41(b), SCRCP, that the current Plaintiff is asking the Court to dismiss this case without prejudice. Defendant craves reference to the Legal arguments and facts proffered in his brief to be filed simultaneously with this Motion to ask this Court to dismiss this case with prejudice.

WHEREFORE, having completed this Motion, Defendant Jamie Singleton moves before this Court to dismiss this case with prejudice, attorney's fees and costs to be granted to him and any other such relief this Court deems equitable.

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Respectfully Submitted,

s/William H. Sloan

s/W. Jeffrey Barnes

William H. Sloan

W. Jeffrey Barnes

Sloan Law Firm, PA.

Post Office Box 85

Summerville, SC 29484

843-873-7531

whs@sloanlawfirm.net

November 6, 2020

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STATE OF SOUTH CAROLINA) COUNTY OF DORCHESTER)	IN THE COURT OF EQUITY CASE NO. 2011-CP-18-871
Wilmington Savings Fund Society, FSB) DBA Christiana Trust, not in its individual) capacity but solely in its capacity as) Certificate Trustee for NNPL) Trust Series 2012-1.) Plaintiff,)) v.)) Jamie Singleton and Indigo Pointe) Homeowners Association,)) Defendants;)	BRIEF OF JAMIE SINGLETON IN FAVOR OF DISMISSAL WITH PREJUDICE
Jamie Singleton,)) Counter-Plaintiff,)) v.)) Nomura Holdings, Inc.; 50 by 50 REO LLC;) DB 50 2007-1 Trust; Mortgage Electronic) Registration Systems, Inc.; FCI Lender) Services, Inc. and DOES 1-10,)) Counter-Defendants.)	

Jamie Singleton, Defendant and Third Party Plaintiff respectfully submits this Brief in support his Motion to Dismiss the Plaintiff's Foreclosure Complaint WITH prejudice, pursuant to S.C. R. Civ. P. Rule 41(b), or in the alternative pursuant to S.C. R. Civ. P. 41(a)(1), and for attorney fees and costs to either be assessed against Plaintiff or removed from the Defendant's loan account related to this foreclosure actions filed over almost nine (9) years ago and the previous foreclosure

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filed against him by a predecessor in interest to the Plaintiff. Documents mentioned hereinafter have been attached as exhibits to this memorandum in company with a procedural timeline.

PROCEDURAL AND FACTUAL BACKGROUND

SINGLETON I

The first plaintiff, GMAC Mortgage, LLC (hereinafter "GMAC"), filed its complaint on July 11, 2008, in the Court of Common Pleas, which alleged that Defendant, Jamie Singleton, defaulted on his mortgage. Judgement was entered against Mr. Singleton in the amount of $247,127.12. After Mr. Singleton filed bankruptcy, but before he received a discharge, this judgment was vacated on October 25, 2010 while Mr. Singleton was in a trial modification with 50 by 50 REO, LLC, but before Mr. Singleton and 50 by 50 were able to agree on a permanent modification.

Mr. Singleton made no appearance whatsoever in this case.

SINGLETON II

50 By 50 REO, LLC filed a second complaint for foreclosure on April 25, 2011, in the Court of Common Pleas, alleging the same "nucleus of facts" that GMAC did in the 2008 Complaint on the same Note and Mortgage in the GMAC Complaint. The Defendant retained the undersigned right away. These parties engaged in foreclosure intervention, but were unable to come to an agreement and 50 by 50 REO, LLC filed a Certificate of Compliance with the May 2, 2011 **Administrative Order RE: Mortgage Foreclosure Actions** from Chief Justice Toal.

This case has plodded along with numerous changes in servicers and in alleged owners of the Note and mortgage over the last nine years as outlined in the Plaintiff's Motion to Dismiss without prejudice. **Mr. Singleton does consent to dismissing this case with prejudice, but does not consent to the Plaintiff dismissing this case without prejudice.**

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Plaintiff filed a Motion on February 6, 2020 to substitute Plaintiff yet again, but the Court denied this Motion by Order on February 11, 2020. Plaintiff filed no Motion to Reconsider and did not file any appeal of this ruling. Plaintiff correctly states, in its present Motion, that it is not the real party in interest. Plaintiff is asking that this case in its Motion be dismissed per Rule 41(a)(1), SCRCP. The rule states that "**a notice of dismissal acts as an adjudication upon the merits by a Plaintiff who has once dismissed in any court of the United States or any state an actions based on or including the same claim.**"

The foreclosing party has now sought to dismiss this action twice and is thus bound to the terms of Rule 41(a)(1), SCRCP rendering the current dismissal an adjudication on the merits, warranting a dismissal with prejudice (and not without prejudice) to allow the Plaintiff, or any alleged successor in interest to file again.

ARGUMENT

I. The Court should dismiss the Plaintiff's current foreclosure action with prejudice pursuant to SCRCP Rule 41(b) because of the plaintiffs' failures to prosecute, their failure to comply with the rules, failure to comply with orders of the Court, and the substantial prejudice to the Defendant in addition to a previous dismissal of this case by GMAC for the same facts.

A defendant may move for dismissal of an action or of any claim against him for failure of the plaintiff to prosecute or to comply with these rules or any order of court. S.C. R. Civ. P. 41(b). A dismissal under this subdivision operates as an adjudication upon the merits. *Id.*

A. PLAINTIFF'S FAILURES TO PROSECUTE.

The trial court's power to dismiss a case for failure to prosecute with due diligence is considered to be inherent and independent of any statute or rule of court. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 212, 493 S.E.2d 826, 832 (1997). The Supreme Court of South Carolina has explained:

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> [T]he defendants, no less than the plaintiff, *had the right . . . to press for trial; but the duty to do so was the plaintiff's, not theirs.* While a defendant may bring about an expeditious trial of a case, he has no legal obligation to do so; except to meet such actions as are taken by the plaintiff, he may remain passive.

Thomas & Howard Co. v. Fowler, 238 S.C. 46, 52, 119 S.E.2d 97, 103 (1961) (emphasis added). The plaintiff has the burden of prosecuting its action, and the trial court may properly dismiss an action with prejudice for the plaintiff's unreasonable neglect in proceeding with his or her cause. *See McComas v. Ross*, 368 S.C. 59, 62, 626 S.E.2d 902, 905 (Ct. App. 2006). Dismissals with prejudice for failure to prosecute were imposed to maintain the orderly disposition of cases in the face of repeated warning to the offending party or multiple opportunities to proceed with trial, and only then, upon a finding of unreasonable neglect. *Id.* at 63. Additionally, a plaintiff must be given an abundant opportunity to litigate, and they must have also exceeded the limit beyond which the court should allow a litigant to consume the time of the court. *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 300 S.E.2d 16, 18 (Ct. App. 1990).

Each of the various plaintiffs, including GMAC, the current Plaintiff, the proposed Plaintiff in the Motion to Dismiss, and all of the Plaintiffs "in between" in this case, have not fulfilled their burden of prosecuting the case. The plaintiff has the burden of prosecuting its action, and the trial court may properly dismiss an action with prejudice for the plaintiff's unreasonable neglect in proceeding with his or her cause. *See McComas*, 368 S.C. at 62. In Singleton I, Plaintiff dismissed the case and vacated the judgment before the parties reached any permanent resolution to this case. In Singleton II, Plaintiffs have repeatedly changed much to the chagrin of the Court. This has caused, in significant part, this case being in a posture to be set for trial. Scheduling Orders have had to be repeatedly be modified and re-done as the direct and proximate result of the "plaintiff" constantly changing.. The various plaintiffs have failed to prosecute their case repeatedly over a period of nine years. Under these facts, and the plaintiff's failure to respond to this Court's Order

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denying their Motion to Substitute Plaintiff, the plaintiffs have demonstrated their unreasonable neglect in proceeding with their cause.

Dismissals with prejudice for failure to prosecute were imposed to maintain the orderly disposition of cases in the face of repeated warning to the offending party or multiple opportunities to proceed with trial. *Id.* at 63. The plaintiffs have had nine years to proceed with their case, and all have failed to do so.. There is no reason the Plaintiff in this case should be allowed to bring a third action when the Defendant has had to live in fear, for the past twelve years, of continuous litigation because of the plaintiffs' failure to fulfill their duty to prosecute their cases and his cost of over $100,000 in combined legal fees and costs.

B. PLAINTIFF'S WILLFUL AND BLATANT VIOLATIONS OF PROCEDURE AND COURT ORDERS.

In order for there to be a motion to dismiss for failure to prosecute WITH prejudice, there must be a willful and blatant violation of the expressed terms and conditions of a previous court order. *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 300 S.E.2d 16, 18 (Ct. App. 1990).

The Plaintiff was Ordered by this Court over two years ago to deliver to Defendant's attorneys documents showing consideration paid for transfers of the subject Note and Mortgage. Plaintiff still has failed to do so, including its Response filed with the Court on February 6, 2020.

Dismissal with prejudice is thus warranted under these facts. Plaintiffs <u>never</u> complied with the terms of this Court's Order, and did not provide the documentation ordered by the court despite having years to do so, which is a willful and blatant violation of the order. This case should thus be dismissed with prejudice in view of the various Plaintiffs' years-long failure to comply with their obligations in discovery and per this Court's prior Order.

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C. PREJUDICE TO THE DEFEDANT

In granting dismissal with prejudice for failure to prosecute, there must be a showing of indifference to the rights of the defendant. *See Orlando v. Boyd*, 320 S.C. 509, 511, 466 S.E.2d 353, 355 (1996). The ability of the court to dismiss a case WITH prejudice is within the discretion of the trial judge. *See Small v. Mungo*, 254 S.C. 438, 442, 175 S.E.2d 802, 804 (1970). The plaintiff is entitled to a voluntary dismissal without prejudice as a matter of right *unless there is a showing of legal prejudice to the defendant*. *See Gullege v. Young*, 242 S.C. 287, 291, 130 S.E.2d 695, 697 (1963) (emphasis added). If there is a showing of prejudice to the defendant, then the trial court has discretion to rule on the nature of the dismissal. *Id.*

In granting a dismissal with prejudice for failure to prosecute, there must be a showing of indifference to the rights of the defendant. *Orlando*, 320 S.C. at 511. In the present case, the Defendant has been required to litigate this case for nine years because of each plaintiffs' failure to prosecute this case, which has cost Mr. Singleton over $100,000 in attorney's fees and costs. Plaintiffs, by their inaction and indifferent negligence in each case, have taken away the Mr. Singleton's right to a hearing. Mr. Singleton has fulfilled his duty in each case by meeting actions taken by the plaintiffs, and these proceedings have spanned a total of twelve years, including the 2008 case and the bankruptcy that Mr. Singleton filed. Plaintiffs, in each case, have demonstrated their lack of respect to Mr. Singleton as well as to the Court. The case history demonstrates a clear indifference to the rights of Mr. Singleton including the plaintiffs' failure to respond to the defendant's motions; failure to comply with the Court order requiring disclosure of consideration paid for the many transfers in this case; and the failure over nine years to timely to prosecute this case.

South Carolina has not defined a set of concrete factors to be considered in dismissal with prejudice. This Court may thus look to the law of other jurisdictions for guidance and instruction. *State v. Williams*, 624 S.E.2d 443, 446, 367 S.C. 192 (S.C. 2006).

The Sixth Circuit Court of Appeals has stated that federal and state "double-dismissal" rules share many "common features" and are "similar enough that cases interpreting the federal two-dismissal rule are fully relevant" to interpreting state dismissal rules. *See Dempsey v. Dempsey*, 488 Fed. Appx. 1, 7 (6th Cir. 2012) (citing *Olynyk v. Scoles*, 114 Ohio St.3d 56, 868 N.E.2d 254, 256, 258-59 (2007)). The Fourth Circuit Court of Appeals has identified four factors to be considered in determining whether or not a motion to dismiss for failure to prosecute is warranted including: (1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused to the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal. *See Hillig v. C.I.R.*, 916 F.2d 171, 174 (4th Cir. 1990).

The first factor is clearly met because, as set forth above, the plaintiffs have been the sole cause of the dismissal in each case. Mr. Singleton has not one ounce of responsibility in each dismissal, and has properly responded in each case. The court orders in the prior dismissal and the current Plaintiff's slow response in prosecuting this case demonstrate that the plaintiff's failure to prosecute their case is the cause of dismissal.

Regarding the second factor, Mr. Singleton has been significantly prejudiced by these foreclosure actions. As stated before, the plaintiffs have still failed to comply for years with an Order of this Court to Compel documents as to consideration paid for transfers of the Note and Mortgage as previously stated, and have failed to prosecute their case for over nine years. As a direct and proximate result of the actions and inactions of the various Plaintiffs, Mr. Singleton has

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been mired in litigation for nine years and has spent over $100,000 in attorney's fees and costs over this time. Mr. Singleton has fulfilled his duty in responding to actions of the court, and has demonstrated his willingness to complete the case for nine years, either by settlement or trial. Mr. Singleton is a self-employed husband and father, and has been forced to live in fear of losing his home because of continuous litigation pending against him. The recurrence of litigation filed against Mr. Singleton has created an undue prejudice and a situation where Mr. Singleton has been lead to believe that he will be the subject of continual and never-ending litigation which has been caused by the repetitive alleged sale of the Note and Mortgage over which he has no control. This results in a severe diminution of Mr. Singleton's resources which is patently unfair.

The plaintiffs are seasoned filers of foreclosure actions and are familiar with the procedural rules that accompany such actions. The plaintiffs have demonstrated their disdain and disrespect for procedure, and their belief that no consequence shall befall them no matter how many times their cases are dismissed for the failure to prosecute and failure to timely prosecute the case. Further, the complaints filed were virtually identical to each other with some including default and interest dates in the exact same paragraph as others. Plaintiffs have acted as if they were oblivious to procedural rules of the court. The plaintiffs have had their chance to proceed with this case over a period of nine (9) years, and have failed to do so. Allowing a third foreclosure action to be brought against Mr. Singleton, who has fully cooperated with plaintiffs in this action for nine years notwithstanding the plaintiffs' continual failure to prosecute their case and failure to comply with court orders is detrimental to the goals of justice and equity, and bestows an unwarranted prejudice upon Mr. Singleton, who has been significantly prejudiced by the plaintiffs' willful and blatant violations of procedural rules, and Court Orders in these proceedings.

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The third factor is clearly met as well. The plaintiffs have brought foreclosure actions against the Defendant two times over a period of twelve years with this case pending for nine years. The plaintiffs have demonstrated their unhurried delay in proceeding with this case by their previous failures to prosecute, and an untimely response to the Court on denials of Motion. A clear presence of a drawn out history of litigation is present.

Finally, under the fourth factor, dismissal with prejudice is the right and proper action for this court to take. For this case lasting nine years, there is no reason that this case should not be dismissed with prejudice. Plaintiffs should not have the option of engaging in continued harassment of Mr. Singleton with repeated, incomplete litigation, without punishment. Dismissal with prejudice is warranted and proper under these facts. This Court should grant the Defendant's Motion to Dismiss WITH Prejudice.

II. The Plaintiffs' failure to prosecute their cases is equal to, at least, two voluntary dismissals because they voluntarily chose not to prosecute each action, which included the same underlying claims and facts, and therefore, pursuant to Rule 41(a)(1), this case is barred by the doctrine of res judicata.

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 any state an action based on or including the same claim.* S.C. R. Civ. P. Rule 41(a)(1) (emphasis added).

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. *Plum Creek Development Co., Inc. v. City of* Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit. *Id.* In order to establish res judicata, the defendant must prove the following elements: (1) identity of

the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *See Sealy v. Dodge*, 289 S.C. 543, 545, 347 S.E.2d 504, 506 (1986). Res Judicata ends litigation, promotes judicial economy and avoids the harassment of re-litigation of the same issues. *Plum Creek*, 334 S.C. at 34 (quoting James F. Flanagan, *South Carolina Civil Procedure* 642 (2d. 1996)).

The two-dismissal rule was intended to eliminate "the annoying of a defendant by being summoned into court in successive actions and then, if no settlement is arrived at, requiring him to permit the action to be dismissed and another one commenced at leisure." *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 397 (1990) (quoting 2 American Bar Association, Proceedings of the Institute on Federal Rules, Cleveland, Ohio, 350 (1938) (remarks of Judge George Donworth, member of the Advisory Committee on Rules of Civil Procedure)).

South Carolina case law has yet to apply the two-dismissal rule in foreclosure cases that were previously dismissed under the doctrine of res judicata, but the rule is identical to that of Ohio and Florida, which are included in the American Law Reports Mortgage and Foreclosure section regarding application of the two-dismissal rule. David J. Marchitelli, Annotation, *Construction and Application of Two-Dismissal Rule Under State Law*, 19 A.L.R. 7th Art. 8 § 41 (2017). The rules and case law of Vermont are also instructive because they are recent, and Vermont takes into consideration the rules of Ohio and Florida. The United States District Court for the Eastern District of Pennsylvania has stated that "the Vermont Supreme Court has staked about the middle ground between the Florida and Ohio approaches." *Hoffmann v. Wells Fargo Bank, N.A.*, 242 F. Supp. 3d 372, 384 (E.D. Penn. 2017). Since South Carolina's case law is insubstantial, it is helpful to examine the interpretations and rules of Ohio, Florida and Vermont.

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Again, this Court can look to the law of other jurisdictions in a case of first impression where South Carolina has no decisional law on the issue. *State v. Williams, supra.*

A. OHIO

1. APPLICATION OF TWO-DISMISSAL RULE IN OHIO

A notice of dismissal operates as an adjudication upon the merits of any claim that the plaintiff has once dismissed in any court. Ohio Civ. R. Rule 41(A)(1). Res judicata bars an action that is based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *See U.S. Bank Natl. Assn v. Gullotta*, 120 Ohio St.3d 399, 403, 899 N.E.2d 987, 991 (2008). A transaction is defined as a common nucleus of operative facts. *Id.*

An acceleration clause requires the maker, drawer or other obligor to pay part or all of the balance sooner than the date or dates specified for payment upon the occurrence of some event or circumstance described in the contract, such as a default by nonpayment. *Id* at 404. In a contract with an acceleration clause, a breach constitutes a breach of the entire contract, and therefore, does not give rise to a separate cause of action. *Id* at 405. The general rule that each missed payment in an installment loan gives rise to a separate cause of action does not hold true when there is an acceleration clause in the loan agreement. *Id* at 404.

The Supreme Court of Ohio has dealt with and applied the two-dismissal rule in foreclosure actions. In *U.S. Bank Natl. Assn v. Gullotta*, the Supreme Court held that each missed payment under a promissory note and mortgage containing an acceleration clause did not create a new claim, and was not exempt from the two-dismissal rule. *Id.* at 406; *see also Beneficial Ohio, Inc. v. LeMaster*, 2009 WL 2457710, ¶ 25 (5th Dist. Ct. App. 2009) (holding that all of the complaints arose from the same note, the same mortgage, and the same default, and that the entire principal became due as a result of the acceleration clause in the note, and thus, the two-dismissal rule

applied and the case was barred by res judicata). Given that the terms of the note and mortgage never changed, and were based upon the same default, the case involved the same nucleus of operative facts as the previous actions that had been dismissed. *U.S. Bank Natl.*, 120 Ohio St.3d at 406; *see also EMC Mtge. Corp. v. Jenkins*, 164 Ohio App. 3d 240, 250-52, 841 N.E.2d 855, 863-65 (10th Dist. Ct. App. 2014) (refusing to adopt the proposition that each missed payment under a promissory note and mortgage yields a new claim, such that any successive actions on the same note and mortgage involve different claims and are, thus, exempt from the two-dismissal rule). The court also noted that U.S. Bank, in an attempt to get around having its claim barred by res judicata, amended its third complaint to include a prayer for interest from April 1, 2005. *U.S. Bank Natl.*, 120 Ohio St.3d at 406. The court stated that this amendment was merely a change to the complaint, not a change in the common nucleus of operative facts supporting the claim. *Id.*

The Ohio Supreme Court has also held in several cases, for various reasons which are not present in this case, that the two-dismissal rule *did not bar subsequent actions under the doctrine of res judicata. Id.* (emphasis added); *see Aames Capital Corp. v. Wells*, 2002 WL 500320 1, 4-5 (9th Dist. Ct. App. 2002) (holding that in the first foreclosure action, the trial court had ruled against the mortgagee and required it to reinstate the note and mortgage, and that the second foreclosure action, when the mortgagee failed to make payments on the reinstated note, was not barred); *Midfed Sav. Bank v. Martin*, 1992 WL 165143 1, 1-3 (12th Dist. Ct. App. 1992) (holding that res judicata did not prevent the mortgagee from bringing a second foreclosure action on the same note because the mortgagor had paid the amount of the original delinquency and became current on the note); *Homecomings Financial Network, Inc. v. Oliver*, 2003 WL 21202732 1, 1 ¶ 7 (1st Dist. Ct. App. 2003) (holding the second foreclosure action differed from the first because

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the claims involved different acts of default by the mortgagors, as well as different rates of interest and different amounts of principal owed).

2. APPLICATION OF TWO-DISMISSAL RULE TO FACTS OF THIS CASE

In the present case, this case and the previous one filed by GMAC have contained the same nucleus of operative facts, and are thus, based upon the same transaction or occurrence. Each complaint alleges a default by the Defendant with the same default date. The present case is subject to the two dismissal rule because both complaints all arose out of the same common nucleus of operative facts, that is, the Defendant's default on her Note and Mortgage. Both complaints seek the same relief, namely the entire amount on the note, and each is based on the same breach of an agreement. Both complaints have different dates of default because Mr. Singleton made trial modification payments to 50 by 50 REO, LLC, in 2010, but did not reach a permanent modification of the loan. Even through the date of default is different in the Complaints, like in *U.S. Bank Natl. Assn v. Gullotta*, this case contains an instance where one complaint alleged a different interest date. The difference in the interest date of the one complaint does not change the fact that each of these complaints arose out of the same common nucleus of operative facts, and are subsequently barred by the two dismissal rule. *See U.S. Bank Natl.*, 120 Ohio St.3d at 406.

Further, this case is distinguishable from those cases wherein the Ohio Supreme Court held res judicata did not bar a subsequent action. Unlike *Aames*, there was no ruling against the mortgagor in this case, only an order of dismissal for each of the plaintiffs' failure to prosecute. Also, unlike in *Midfed*, the mortgagor in this case has not become current on the note, and has made no subsequent payments since litigation began in Singleton I other than trial modification payments in 2010. This case differs from *Homecomings* because each case involves the same default by the mortgagor, along with the same interest rate, and the same amount of principal owed.

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Because the two dismissal rule applies in this case, the prior plaintiffs' failure to pursue each of their cases by failing to comply with court orders, not responding to the defendant's motions or appearances; and ignoring their duty to prosecute, have demonstrated their disdain for the Defendant and the court, and their behavior and actions are the equivalent of, at least, voluntary dismissal without verbally stating so, and therefore, this action should be dismissed because it is barred by res judicata.

B. VERMONT

1. APPLICATION OF TWO-DISMISSAL RULE IN VERMONT

A court may, by its own motion, dismiss any action where all parties against whom a judgment for affirmative relief is sought have failed to plead or otherwise defend as provided by these rules and the plaintiff has failed to request or apply for a default judgment within six months of the filing of the action. *Deutsche Bank v. Pinette*, 202 Vt. 328, 335, 149 A.3d 479, 484 (2016). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision (b) and any dismissal not provided for in this rule, operates as an adjudication upon the merits. *Id.*; *Littlefield v. Town of Colchester*, 150 Vt. 249, 251, 552 A.2d 785, 786 (1988). Determining the preclusive effect of the dismissal with prejudice of the first action, and the trial court's ruling in the second action, requires application of the principles of claim preclusion. *Cenlar FSB v. Malenfant*, 203 Vt. 23, 34, 151 A.3d 778, 786 (2016). The rule of claim preclusion applies when the parties, subject matter, and causes of action are the same or substantially identical. *Id.*

A lender that accelerates a mortgage and then unsuccessfully brings a foreclosure action is barred by res judicata from subsequently attempting to collect on the entire outstanding principal balance. *See Malenfant*, 203 Vt. at 42. The attempt to accelerate the borrower's debt on a note effectively suspends the borrower's obligation to make monthly payments of principal and interest

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such that, until such monthly obligation was reinstated, the borrower cannot be found in default or otherwise penalized for failing to make the payments. *Id.*

In *Pinette*, lender initially filed its complaint for judgment on a promissory note, mortgage foreclosure, and a deficiency judgment because of default on payments. *Pinette*, 202 Vt. at 330. This case was dismissed by the superior court without prejudice because the second extension to discuss settlement had expired.[1] *Id.* at 331. The lender filed a second action with an identical complaint with the addition of an allegation of the modification and increased principal amount, which was subsequently dismissed.[2] *Id.* Borrower made no further payments, and lender filed a third action, which was identical to the prior complaints. *Id.* Borrower appeared and filed a motion to dismiss, which was granted because the third action was barred by the dismissal of the second action with prejudice.[3] *Id.* The Supreme Court held that the lender had seventy-five pending cases in the Vermont courts and that it was familiar with procedure, and that it had acted in this case and earlier ones as if it was oblivious to those rules. *Id.* at 339. The lender had numerous opportunities to avoid the "windfall" created by the dismissal with prejudice. The Court stated that while borrower in this instance is enriched, and has kept a benefit he would otherwise be bound to relinquish, it cannot override settled procedural rules, essential to the swift and efficient administration of justice, in order to force a contrary result. *Id.* The plaintiff's filing of a virtually identical complaint in each action transmits a message that it expected no consequences from its default, and the case was properly dismissed with prejudice. *Id.* at 339-40.

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[1] Following borrower's default, lender filed two motions seeking extensions of time to obtain a judgment because the parties were involved in settlement discussions. These were granted, but after the second extension expired, the superior court dismissed the action without prejudice on November 26, 2012. *Pinette*, 202 Vt. at 331.

[2] The borrower did not answer or appear and the court directed the lender to file a motion for default judgment within two weeks. *Id.* Lender failed to do so and the court dismissed the action without specifically stating whether dismissal was with or without prejudice.

[3] The superior court stated that the lender "willfully fail[ed] to heed the court's warning after having a prior cased dismissed," despite being a "sophisticated user of the court system." *Id.* at 332 (quotation omitted).

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2. APPLICATION OF TWO-DISMISSAL RULE TO FACTS OF THIS CASE

In the present case, two Plaintiffs have filed foreclosure and at least five Plaintiffs have maintained a foreclosure actions against the same Defendant, Mr. Singleton. Each Plaintiff alleged the same principal owed, and interest rate. Under the rules of Vermont, a subsequent foreclosure action would be barred by res judicata because it is attempting to collect the same entire outstanding principal balance remaining, which has been previously alleged twice by at least five different Plaintiffs.

Moreover, the facts of this case are practically identical to that of *Pinette*, where the court held that a subsequent action was barred by the two-dismissal rule because each prior action was dismissed, one without prejudice, and the other not specifying. In this case, the prior action was dismissed voluntarily by GMAC, where each plaintiff alleged the same default, same interest rate, and same dates of default and interest. Further, as in *Pinette*, the plaintiffs in the previous cases are accustomed to foreclosure actions and the procedural rules which accompany them. They have demonstrated that they expect no consequence from their failure to follow procedure by filing foreclosure actions continuously without pursuing their claims. The plaintiff has had nine years in this case to avoid the "windfall" of the two-dismissal rule and the Defendant has been prejudiced and burdened in two foreclosure actions over the last twelve years with each alleging identical default dates and interest dates.

The previous cases was dismissed voluntarily by the then -Plaintiff. In this case, the plaintiffs, although they are sophisticated filers of foreclosure actions, have failed to comply with court orders, and have willfully and wantonly neglected to follow procedure and prosecute each case. Their neglect and disdain for the Defendant's rights is equal to a voluntary dismissal in each

case, and therefore, the two-dismissal rule is applicable to the facts of this case, and thus the doctrine of res judicata should apply to the dismissal of this case, a dismissal with prejudice.

III. All of Mr. Singleton's Attorneys Fees and Costs Should be Assessed Against Plaintiff.

Upon dismissal of this action, Mr. Singleton is the "prevailing party" and is thus entitled to have all of his attorneys' fees and costs assessed against Plaintiff. S.C. Code of Laws sec. 15-37-10 (same rule as to costs applies as to cases in chancery) and 15-37-20 (costs awarded to party who succeeds in whole or in part as to his claim or defense unless otherwise directed by the judge hearing the cause). *Shirley v. Bishop*, No. 2017-001678 (S.C. App, April 22, 2020)(attorneys fees assessed against losing party where contract contained provision for payment of prevailing party's attorneys' fees, expenses, and costs of litigation).

CONCLUSION

The two-dismissal rule is applicable to this case, and the plaintiffs' actions, through their failure to adhere to court orders, failure to respond to the Defendant's motions, and failure to prosecute this case on four different occasions over a period of more than nine (9) years, are equal to that of a voluntary dismissal in each case, and thus, this case should be dismissed because it is barred by the doctrine of res judicata.

Mr. Singleton is also entitled to have all of his attorneys' fees and costs assessed against the Plaintiff, and demands such an assessment. Alternatively, Mr. Singleton requests the entry of an Order deducting all of his attorneys' fees and costs from the amount which the Plaintiff has claimed is allegedly owed, and any attorneys' fees and costs claimed by the Plaintiff should be disallowed.

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Respectfully Submitted,

s/William H. Sloan

s/W. Jeffrey Barnes

William H. Sloan

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November 6, 2020

ELECTRONICALLY FILED - 2020 Nov 06 10:35 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP180871

ELECTRONICALLY FILED - 2021 Feb 09 2:40 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA) COUNTY OF DORCHESTER)	IN THE COURT OF EQUITY CASE NO. 2011-CP-18-871
)	**JAMIE SINGLETON's MOTION FOR ATTORNEYS' FEES AND COSTS**
Wilmington Savings Fund Society, FSB) DBA Christiana Trust, not in its individual) capacity but solely in its capacity as) Certificate Trustee for NNPL) Trust Series 2012-1,)	
Plaintiff,))	
v.))	
Jamie Singleton and Indigo Pointe) Homeowners Association,))	
Defendants;)	

Jamie Singleton,))	
Counter-Plaintiff,))	
v.))	
Nomura Holdings, Inc.; 50 by 50 REO LLC;) DB 50 2007-1 Trust; Mortgage Electronic) Registration Systems, Inc.; FCI Lender) Services, Inc. and DOES 1-10,))	
Counter-Defendants.)	

Jamie Singleton, Defendant and Third-Party Plaintiff respectfully requests an award of attorneys' fees and costs against Plaintiff, and as grounds states:

1. Mr. Singleton previously filed a Motion to Dismiss this action with prejudice which was based on several grounds, including the Plaintiff's failure to prosecute; multiple prior dismissals; and as a sanction for Plaintiff's continuing violations of a prior Order of this Court.

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2. This Court declined to dismiss this action with prejudice, but did dismiss this action without prejudice after a hearing which was held on November 16, 2020.

3. Mr. Singleton had requested, in connection with his request for a dismissal with prejudice, that his attorneys' fees be assessed against Plaintiff. There was no ruling on this request at the subject hearing as no ruling as to the nature of the dismissal was made until the conclusion of the hearing.

4. Paragraph 22 of the Mortgage provides that the Lender shall be entitled to collect all expenses in pursuing any remedies provided in Section 22 including but not limited to reasonable attorneys' fees and costs of title evidence.

5. There is no South Carolina decisional law which is known to Mr. Singleton which provides that a borrower is entitled to have his attorneys' fees and costs assessed against a foreclosing party if the borrower is the prevailing party in litigation instituted by the foreclosing party, which action is by nature one based on a contract as the Note and Mortgage are contracts.

6. It is inequitable to provide that attorneys' fees and costs are assessible if a foreclosing party prevails but not if the borrower prevails in an action brought by the foreclosing party.

7. This Court stated from the bench that it would dismiss this action. There is thus no issue that Mr. Singleton is the "prevailing party" and is thus entitled to have all of his attorneys' fees and costs assessed against Plaintiff. S.C. Code of Laws sec. 15-37-10 (same rule as to costs applies as to cases in chancery) and 15-37-20 (costs awarded to party who succeeds in whole or in part as to his claim or defense unless otherwise directed by the judge hearing the cause). *Shirley v. Bishop*, No. 2017-001678 (S.C. App, April 22, 2020) (attorneys fees assessed against losing party where contract contained provision for payment of prevailing party's attorneys' fees, expenses, and costs of litigation).

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8. There is no issue that this longstanding foreclosure action impaired Mr. Singleton's title to his home and caused the title to be clouded. In *Solley v. Navy Federal Credit Union*, 397 S.C. 192, 723 S.E.2d 597 (S.C. App. 2012), the Court relied on *Huff v. Jennings* , 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct. App. 1995) and conducted a review of the case law of several other jurisdictions (including Utah, Tennessee, and Washington) in connection with a claim for attorneys' fees as special damages in a slander of title case, holding that special damages are recoverable as part of a slander of title claim as they are pecuniary losses that result "directly and immediately from the effect of the conduct of third persons, including impairment of vendability or value caused by disparagement and the expense of measures reasonably necessary to counteract the publication, including litigation." The Court of Appeals ultimately remanded the matter to the special referrer to determine attorneys' fees and costs.

9. There is no issue that this foreclosure action has resulted in a cloud on Mr. Singleton's property which has now been determined to be wrongful, as Plaintiff's foreclosure action has been dismissed. There is no issue that Mr. Singleton incurred significant expenses over the years that this action has been pending to "necessarily counteract" the disparagement to the title to his property which has been caused by the various Plaintiffs.

10. The other point to be taken from *Solley* is that the Courts of South Carolina will look to the law of other jurisdictions where there is little or no South Carolina law on a specific issue. This Court is thus permitted to look to the law of other jurisdiction for guidance in interpreting whether an otherwise unilaterally worded attorneys' fee provision in a mortgage is to nonetheless be construed as bilateral so that the prevailing party in foreclosure litigation is entitled to seek its attorneys' fees and costs from the non-prevailing party.

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11. The Courts of the State of Florida have considered the issue and have held that unilateral attorneys' fee provisions in contracts are to be read bilaterally and construed that the prevailing party in litigation is entitled to seek attorneys' fees and costs from the non-prevailing party. *Indemnity Ins. Co. of No. America v. Chambers*, 732 So.2d 1141, 1143 (Fla. 4th DCA 1999); *Holiday Square Owners Association, Inc. v. Tsetsenis*, 820 So.2d 450, 453 (Fla. 5th DCA 2002)(fee provision bilateral even through solely in a defensive posture); *Florida Hurricane Protection & Awning, Inc. v. Pastina*, 43 So.3d 893 (Fla. 4th DCA 2010)(affirming attorneys' fee award for defendant who prevailed in action on contract brought by plaintiff).

12. Mr. Singleton has been put through years of foreclosure with constantly changing Plaintiffs with none of these Plaintiffs ever proving its case. There is no reason for the Plaintiffs to be able to get away with slandering Mr. Singleton's title to his property for years on end and to escape attorneys' fee and cost liability for doing so.

13. Mr. Singleton thus requests that this Court grant this Motion and enter an Order that Mr. Singleton is entitled to recover his attorneys' fees and costs from Plaintiff, with amount to be determined at a separate evidentiary hearing absent any agreement between counsel to resolve the matter of amount without the necessity of an evidentiary hearing.

CONCLUSION

Mr. Singleton is the prevailing party in this specific litigation and is thus entitled to have all of his attorneys' fees and costs assessed against the Plaintiff, and demands such an assessment and Order of Entitlement to Attorneys' Fees and Costs with amount to be determined at a separate evidentiary hearing absent any agreement of counsel on amount.

Respectfully Submitted,

s/William H. Sloan

s/W. Jeffrey Barnes

William H. Sloan

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February 9, 2021

ELECTRONICALLY FILED - 2021 Feb 09 2:40 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2021 Mar 12 12:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners' Association,

Defendant(s).

PLAINTIFF'S RESPONSE and MOTION TO STRIKE JAMIE SINGLETON's MOTION FOR ATTORNEYS' FEES AND COSTS

PLAINTIFF'S RESPONSE AND MOTION TO STRIKE JAMIE SINGLETON'S MOTION FOR ATTORNEYS' FEES AND COSTS

COMES NOW, Plaintiff, Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 ("Plaintiff"), by and through undersigned counsel, and files its Response and Motion to Strike Defendant, Jamie Singleton's Motion for Attorneys' Fees and Costs, and in support states the following:

1.

On April 25, 2011, this foreclosure action was commenced by Plaintiff's predecessor-in-interest naming Jamie Singleton ("Defendant") as a defendant along with Indigo Pointe Homeowners' Association.

2.

On October 28, 2014, Defendant filed an Amended Answer and Counterclaim in response to Plaintiff's foreclosure action.

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3.

Throughout the course of the now nearly ten (10) year old case, the loan that was subject to foreclosure was transferred numerous times, thus the necessity of different Plaintiffs prosecuting the action as the real party in interest.

4.

Most recently, on February 6, 2020, the currently-named Plaintiff filed a Motion to Substitute Party Plaintiff seeking that the new note-holder, U.S. Bank Trust NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G, be substituted in as the real party in interest pursuant to an Assignment of Mortgage that was recorded on February 4, 2020, in Book 12313, Page 74 in the Office of the Register of Deeds for Dorchester County.

5.

This Court did not allow the relief of substitution of plaintiff sought by Plaintiff and denied Plaintiff's Motion to Substitute Party Plaintiff.

6.

Realizing that this denial would likely prove Plaintiff's foreclosure action futile, Plaintiff filed a Motion for Voluntary Dismissal pursuant to S.C. R. Civ. P. 41(a)(2).

7.

On November 6, 2020, in response to Plaintiff's Motion for Voluntary Dismissal, Defendant filed a Motion to Dismiss of their own along with a Brief in support … and for attorney fees and costs.

8.

On November 16, 2020, a remote hearing was held before the Honorable Judge James Chellis where each party argued the basis of each of their Motion to Dismiss. Neither party argued

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that the case should not be dismissed, but the difference was whether the dismissal should be with or without prejudice and whether or not attorney's fees should be awarded.

9.

At the conclusion of argument, this Court ruled that Plaintiff's motion be granted, Defendant's motion be denied, and that an order be submitted reflecting such.

10.

Plaintiff and Defendant could not reach an agreement on the substance of an order memorializing this Court's ruling. Therefore, Plaintiff submitted a proposed order, opposed by Defendant, which remains pending before this Court.

11.

In response to Plaintiff's filing of this proposed order, Defendant filed a Motion for Attorneys' Fees and Costs.

12.

Defendant's Motion for Attorney's Fees and Costs should be stricken by this Court as premature and improper, or in the alternative, denied as the Defendant has no claim under South Carolina to entitlement to attorney's fees.

13.

Defendant's motion is incorrect, or at least makes an incorrect inference, at the outset by stating that this Court granted the motion to dismiss based on "Plaintiff's failure to prosecute; multiple prior dismissals; and as a sanction for Plaintiff's continuing violations of a prior Order of this Court."

13.

First, it was the Plaintiff's Motion for Voluntarily Dismissal that this Court granted at the November 16, 2020 hearing, and not the Defendant's Motion for Dismissal with Prejudice and for

Attorney's Fees. In actuality, Plaintiff's Motion for Voluntary Dismissal was granted because Plaintiff sought relief that is allowable under S.C. R. Civ. P. 41(a)(2).

14.

Pursuant to S.C. R. Civ. P. 41(a)(2), an action may be dismissed upon order of the court and upon such terms and conditions as the court deems proper. Alleging no legal prejudice being shown or being able to be shown by Defendant, Plaintiff sought dismissal under this this rule and this Court allowed for such relief. The granting of Plaintiff's motion had nothing to do with conduct of Plaintiff as described in Paragraph 1 of Defendant's Motion for Attorney's Fees and Costs.

15.

Next, the conduct described in Defendant's Motion for Attorney's Fees and Costs is not accurate. A failure to prosecute warning was never even issued by this Court let alone dismissal occurring for that reason, the only prior dismissal of a foreclosure by Plaintiff regarding this loan was because of a loan modification, and Plaintiff has not been sanctioned by this Court.

16.

In addition to the mischaracterization of Plaintiff's voluntary dismissal, Defendant's motion is premature because this case is not yet dismissed. Not only has there not been a dismissal entered for the mischaracterized reasons set forth by Defendant, but there has been no dismissal at all. Therefore, Defendant's Motion for Attorney's Fees and Costs is not yet ripe for review and must be stricken.

17.

Of more significance, even if the Defendant's Motion for Attorney's Fees and Costs was ripe for review, it fails because the Defendants have no statutory or contractual basis to claim entitlement to attorney's fees.

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18.

In fact, the Defendant outright states this himself: "[t]here is no South Carolina law which is known to Mr. Singleton which provides that a borrower is entitled to have his attorneys' fees and costs assessed against a foreclosing party if the borrower is the prevailing party in litigation instituted by the foreclosing party..." See Def.'s Mot. For Atty. Fees ¶ 5.

19.

Yet, Defendant goes on to argue that it would be inequitable to allow the foreclosing party attorney's fees but not vice-a-versa.

20.

Specifically, Defendant points to a reciprocal fee-shifting provision that is available under Florida law under Fla. Stat. § 57.105(7). Florida Statute 57.105(7) provides that if a contractual provision allows one side with the right to attorney's fees if it prevails in litigation, then the other side is also entitled if they are the successful party in litigation. However, this is not the law in South Carolina.

21.

Courts throughout the States are split on whether or not a contractual right to attorney's fees is automatically reciprocal. Florida is on one side, where there is reciprocity, while South Carolina is on the other side where it isn't. And it is not like South Carolina is unique in this regard. This is the case in Colorado, Georgia, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Jeffrey C. Bright, Unilateral Attorney's Fees Clauses: a Proposal to Shift to the Golden Rule, 61 Drake Univ. 119-120 (2012).

22.

For these reasons, Defendant's Motion for Attorney's Fees and Costs must be stricken and/or denied as Defendant's motion is improper, not ripe, and does not state a contractual or statutory ground for entitlement.

WHEREFORE, Plaintiff, Wilmington Savings Fund Society, FSB, respectfully requests that this Court enter an Order striking Defendant, Jamie Singleton's Motion for Attorneys' Fees and Costs as improper and premature, or in the alternative, deny Defendant, Jamie Singleton's Motion for Attorney's Fees and Costs.

March 11, 2021.

By: s/ J. Pamela Price
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J. Pamela Price, SC Bar No. 14336
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Attorneys for Plaintiff

ELECTRONICALLY FILED - 2021 Mar 12 12:03 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2021 May 10 7:42 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA) COUNTY OF DORCHESTER)) Wilmington Savings Fund Society, FSB) DBA Christiana Trust, not in its individual) capacity but solely in its capacity as) Certificate Trustee for NNPL) Trust Series 2012-1,) Plaintiff,)) v.)) Jamie Singleton and Indigo Pointe) Homeowners Association,)) Defendants;)	IN THE COURT OF EQUITY CASE NO. 2011-CP-18-871 **JAMIE SINGLETON's MOTION TO COMPEL**
Jamie Singleton,)) Counter-Plaintiff,)) v.)) Nomura Holdings, Inc.; 50 by 50 REO LLC;) DB 50 2007-1 Trust; Mortgage Electronic) Registration Systems, Inc.; FCI Lender) Services, Inc. and DOES 1-10,)) Counter-Defendants.)	

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys, files and serves his Motion for Ruling on Plaintiff's objections to certain Requests for Production served upon Plaintiff by Mr. Singleton, and states:

1. Plaintiff was recently substituted (again). In connection with this Court's prior Order requiring Plaintiff to provide specific details and information and documentation as to each transfer of the loan, Mr. Singleton served a Request for Production of Documents (copy attached hereto).

2. Plaintiff filed objections and some responses to the subject Request for Production, a copy of which is attached hereto.

3. On May 7, 2021, counsel for the parties engaged in a telephone discussion in a good-faith attempt to resolve the objections. Counsel were not able to resolve the objections to Requests numbers 7, 8, and 9, and agreed to present the matter to this Court for rulings on the objections.

4. The discovery sought is material to Mr. Singleton's defense of this matter and is otherwise relevant on the issues of standing and the claimed transfers of the loan from the bankrupt original lender to the current named Plaintiff.

5. Mr. Singleton thus requests that this Court overrule Plaintiff's objections to Requests number 7, 8, and 9 and to compel Plaintiff to both serve a complete response thereto together with all documents responsive to these requests which are within Plaintiff's possession, custody, and control.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court overrule Plaintiff's objections to Request for Production numbers 7, 8, and 9 and to compel the Plaintiff to provide all documents in Plaintiff's possession, custody, and control which are responsive to said Requests for the reasons set forth, and for any other and further relief which is just and proper.

(signature blocks for Sloan and Barnes; Certificate of Service)

ELECTRONICALLY FILED - 2021 May 10 7:42 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Respectfully Submitted,

s/William H. Sloan

s/W. Jeffrey Barnes

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May 7, 2021

ELECTRONICALLY FILED - 2021 May 10 7:42 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2021 May 10 7:42 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

McMichael Taylor Gray, LLC

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Office: 404-474-7149 | Fax: 404-745-8121

April 30, 2021

William H. Sloan, Esq.
c/o Jamie Singleton
5505 Rowsham Place
North Charleston, SC 29418

RE: C/A 2011-CP-18-00871 Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 v. Jamie Singleton and Indigo Pointe Homeowners Association, et al.
Our File Number: SC2019-00247

Dear Mr. Singleton:

Enclosed and served upon you are Plaintiff's Responses and Objections to Defendant's Second Request for Production in the above-referenced foreclosure action.

Sincerely,

McMichael Taylor Gray, LLC

ELECTRONICALLY FILED - 2021 May 10 7:42 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association,
Defendants.

PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANT'S SECOND REQUEST FOR PRODUCTION

Plaintiff, by and through counsel, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, serves Plaintiff, Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1's ("Plaintiff") Responses and Objections to Defendant, Jamie Singleton's ("Defendant") Second Request for Production, as follows:

1. All Assignments, Allonges, and the like which purport to assign any interest in the mortgage or Note the subject of this action to any person or party including but not limited to U.S. Bank Trust N.A. as Trustee for Waterfall Victoria Granter Trust II Series G (hereafter "Waterfall"), and all documents providing evidence of any authority of anyone to execute any Assignment, Allonge, or other document which purports to transfer any interest in the Note or the Mortgage.

   Plaintiff objects to this request as overbroad and not reasonably calculated to lead to the discovery of admissible evidence inasmuch as the request seeks documentation regarding the authority on behalf of the assignor. Without waiving said objections, please see attached copy of the blank indorsed Note and Assignment of Mortgage into the Plaintiff.

2. All documents concerning any consideration exchanged between any persons or parties in connection with the assignment or sale of any part of, or right under, or right incident to the mortgage loan the subject of this action (e.g. assignment or sale of mortgage, assignment or sale of Note, assignment or sale of servicing rights, assignment or sale of right to income stream from borrower payments, assignment to a mortgage pool, assignment to any SIV, CMO, COO, MBS, or CDS, [as defined herein *infra*], and the like).

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Plaintiff objects to this request as overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

3. All documents evidencing the recording of any assignment of the Note or mortgage the subject of this action.

Please see attached.

4. All documents setting forth the assignment of either the mortgage or note the subject of this action to any particular Specialized Investment Vehicle (SIV), Collateralized Mortgage Obligation (CMO), Collateralized Debt Obligation (CDO), series of mortgage-backed securities or certificates (MBS), or collateral default swap (CDS), including but not limited to any such entity associated with Waterfall.

Please see attached Assignments of Mortgage reflecting the chain of ownership.

5. All documents setting forth the full name, current address, and telephone number of each holder of or investor in any SIV, CMO, COO, MBS, or CDS which is collateralized in whole or in part by either the mortgage or Note the subject of this action or any right incident thereto or thereunder..

Please see attached Assignment of Mortgage to Plaintiff.

6. All documents which identify any transfer or assignment of any foreclosure rights to any party.

Please see attached Assignment of Mortgage to Plaintiff.

7. All documents related to any trust (e.g. trust indenture, trust document, etc.) or trustee (e.g. appointment and powers of trustee for trust) of any trust created incident to the securitization of the mortgage loan the subject hereof, including but not limited to Waterfall.

Plaintiff objects to this request as overbroad, vaguely stated and not reasonably calculated to lead to the discovery of admissible evidence.

8. All documents demonstrating the compliance of the REMIC into which the mortgage loan the subject hereof was assigned or passed through with Internal Revenue Code section 860.

Plaintiff objects to this request as vaguely stated and not reasonably calculated to lead to the discovery of admissible evidence.

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9. All documents demonstrating compliance by the REMIC or any Trustee with all REMIC qualification guidelines.

Plaintiff objects to this request as overbroad, vaguely stated and not reasonably calculated to lead to the discovery of admissible evidence.

10. All documents setting forth any physical transfer of the mortgage loan the subject of this action (that being the Note, Mortgage, any Assignments or Allonges, and the remainder of the Collateral File) from any party, including the original lender, to Waterfall or any other party or entity.

Please see attached copy of the blank indorsed Note and Assignment of Mortgage into the Plaintiff.

11. All documents required by the Court's prior discovery Order including but not limited to those which evidence the date of any transfer of the Note and Mortgage, the identity of the parties to any such transfer, the consideration paid for any such transfer, and the manner of transfer (e.g. assignment, etc.)

Plaintiff objects to this request as duplicative as Plaintiff has complied with any outstanding discovery orders issued by this Court.

April 30th 2021

By: /s/ J. Pamela Price
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Attorneys for Plaintiff

ELECTRONICALLY FILED - 2021 May 11 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 2011-CP-18-871

US BANK TRUST NA TRUSTEE FOR WATERFALL VICTORIA GRANTOR TRUST II, SERIES G,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

BRIEF IN SUPPORT OF JAMIE SINGLETON'S MOTION FOR RULING ON PLAINTIFF'S OBJECTIONS TO CERTAIN REQUESTS FOR PRODUCTION AND TO COMPEL

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys, files and serves his Brief in Support of his Motion for Ruling on Plaintiff's objections to certain Requests for Production served upon Plaintiff by Mr. Singleton (hereafter the "Motion to Compel") , and states:

1. This Memorandum in Support of the Motion to Compel is in addition to and supplements the arguments made in the Motion to Compel.

2. Former Plaintiff Wilmington Savings Fund Society Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but Solely in its capacity as Certificate Trustee for NNPA Trust Series 2012-1 (hereafter "Wilmington") filed a Motion to Substitute Wilmington with U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G. This Court originally denied the Motion to Substitute but later reversed that decision (Order attached hereto as Exhibit "A"). As such, the present Plaintiff is now U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G.

4. Thus, in the past four (4) years, the loan the subject of this action has allegedly been sold to U.S. Bank as "Trustee" for the Westvue NPL Trust Series 2014-1, then allegedly sold to

Wilmington, and has allegedly been sold back to U.S. Bank again, now as the claimed "Trustee" of yet another Trust. These transfers follow a series of prior alleged transfers of the loan which have repeatedly taken place since this action was filed, including another prior transfer by which U.S. Bank National Association as Trustee for FRT-2011-1, claimed to have inherited the Note and Mortgage as an alleged downline transferee of the bankrupt original lender.

5. Mr. Singleton has requested documentation from the current Plaintiff, that being U.S. Bank as Trustee for Waterfall, as to the subject Trusts of which U.S. Bank claimed to be the trustee in connection with the multiple transfer of the loan to the various Trusts. Plaintiff has objected to the requests for documents as being "irrelevant" in addition to other form objections.

6. There is no issue that the mortgage loan the subject of this action has been claimed to have been transferred to several mortgage securitization trusts including three (3) involving U.S. Bank. The transfers to the Trusts are known as MBS transactions as the term "Series 2014-1", "Series G", etc. denote classes of mortgage-backed securities which are collateralized, in part, by the assets of the Trusts which assets consist of mortgage loans allegedly transferred to the various Trusts.

7. U.S. Bank has admitted in writing to the world that "the borrower" is involved in any MBS transaction, and "the borrower" is in fact listed as the first party so involved on pages 1 and 4 of the attached brochure of U.S. Bank which brochure constitutes a non-hearsay admission against interest and is thus admissible.

8. The subject brochure also admits that "While trustees are listed on mortgages, and therefore in legal documents as well, as the owner of record, its interest is solely for the benefit of investors. The trustee does not have an economic or beneficial interest in the loans and has no authority to manage or otherwise take action on the loans which is reserved for the investor."

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9. Further, this Court's prior Order required all Plaintiffs to document each alleged transfer of the Note and Mortgage including date of the transfer, identity of the parties involved in the transfer, consideration paid in connection with the transfer, and other information which necessarily involves documentation of the securitization Trusts which were involved in the claimed transfers **filed with this case on August 31, 2016.**

10. U.S. Bank's objections to the production of Trust-related documents per Requests numbers 7, 8, and 9 of Mr. Singleton's Request for Production are thus without merit and should be overruled, and Plaintiff should be compelled to produce all responsive documents without objection forthwith.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court overrule Plaintiff's objections to Request for Production numbers 7, 8, and 9 and to compel the Plaintiff to provide all documents in Plaintiff's possession, custody, and control which are responsive to said Requests for the reasons set forth, and for any other and further relief which is just and proper.

ELECTRONICALLY FILED - 2021 May 11 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP180871

Respectfully Submitted,

s/William H. Sloan

s/W. Jeffrey Barnes

William H. Sloan

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May 11, 2021

ELECTRONICALLY FILED - 2021 May 11 11:41 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871