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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Presiding Judge, Ninth Judicial Circuit

73593

Case No. 2012-CP-10-01844

Deutsche Bank National Trust Company, as Trustee of the IndyMac IMJA Mortgage Trust 2007-A2, Mortgage Pass-Through Certificates, Series 2007-A2 Under the Pooling and Servicing Agreement dated August 1, 2007,

Appellants,

v.

Thomas C. Stevenson, III and Irven M. Stevenson, National Bank of South Carolina n/k/a Synovus Bank, South Carolina Department of Revenue, and OneWest Bank FSB, including its division known as Indy Mac Mortgage Services,

Defendants,

Of which Thomas C. Stevenson, III and Irven M. Stevenson are the Respondents.

**RESPONDENTS' MOTION TO DISMISS APPEAL**

Respondents Thomas C. Stevenson, III and Irven M. Stevenson ("the Stevensons"), by and through their undersigned counsel, hereby move to dismiss the above-captioned appeal for lack of appellate jurisdiction because the Order from which Appellants appeal is interlocutory and not immediately appealable. The Court should grant the Stevensons' Motion based on the following:

1. Appellants originally filed a non-jury mortgage foreclosure action against The Stevensons in the Charleston County Court of Common Pleas on March

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16, 2012. When the Stevensons Answered, Counterclaimed, Demanded a Jury Trial and added Indy Mac Mortgage Services, a Division of One West Bank FSB, as a Third Party Defendant, Indy Mac removed the case to federal court. District Judge C. Weston Houck remanded the case to Common Pleas Court on January 30, 2013. (See Exhibit A: Houck Order). After remand, Appellant moved to amend its foreclosure Complaint, the Stevenson's moved to amend their Answer, add additional Counterclaims and add One West Bank FSB as an additional party Defendant. Both Motions were granted by Order of the Circuit Court. (See Exhibit B: November 13, 2013 Order). Appellants subsequently filed an amended non-jury mortgage foreclosure action against the Stevensons on November 21, 2013. (See Exhibit C: Amended Summons and Complaint). The Stevensons answered and counterclaimed for violation of the South Carolina Unfair Trade Practices Act, breach of duty of good faith, negligence and conspiracy on December 6, 2013, demanded a jury trial on their mandatory counterclaims and cross complained against One West Bank FSB. (See Exhibit D: Answer to Amended Complaint Amended Counterclaims, Cross-Claims and Demand for Jury Trial on Counterclaims).

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2. On May 6, 2014, the Stevensons moved to transfer their counterclaims to the jury roster. (See Exhibit E: Motion to Transfer).

3. By order entered August 14, 2014, the Circuit Court granted the Stevensons' motion to transfer their legal counterclaims to the jury roster. (See Exhibit F: August 14, 2014 Order). Appellants appeal this Order.

4. Because the Order affects no substantial rights of the Appellants, the Order is interlocutory and not immediately appealable. "When a trial court's order

deprives a party of a mode of trial *to which it is entitled as a matter of right*, such order is immediately appealable.” Hagood v. Sommerville, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005) (emphasis in original); see also Senter v. Piggly Wiggle Carolina Co., 341 S.C. 74, 78, 533 S.E.2d 575, 577 (2000) (“The majority of cases requiring immediate appeal involve review of denials of trial by jury and are based on the public policy consideration of advancing the constitutional mandate to preserve the right to trial by jury inviolate”).

5. While a party may have a right to a jury trial, a party does not have a right to a non-jury trial.

6. The South Carolina Constitution provides “[t]he right of trial by jury shall be preserved inviolate.” S.C. Const. art. I, § 14. “The right to a trial by jury is guaranteed in every case in which the right to a jury was secured at the time of the adoption of the Constitution in 1868.” Mims Amusement Co. v. S.C. Law Enforcement Div., 366 S.C. 141, 149, 621 S.E.2d 344, 348 (2005) (citation omitted).

7. Our courts have not held that that a right to a non-jury trial exists. Further, our courts have not held that an order granting a motion to transfer counterclaims to the jury roster affects any right to a non-jury trial and have not held that an order granting a motion to transfer counterclaims to the jury roster is immediately appealable. Rather, our courts have held that “[o]rders of the trial judge *denying* a request for a jury trial involve the mode of trial, affect substantial rights under section 14-3-330(2) . . . and are immediately appealable.” Bateman v. Rouse, 358 S.C. 667, 674, 596 S.E.2d 386, 389-90 (Ct. App. 2004) (emphasis added).

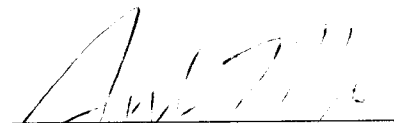
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8. Even when a party has failed to make a timely motion for a jury trial, the Supreme Court has held such failure does not create a right to a non-jury trial that renders a trial court's ruling on such a motion immediately appealable. See Hannah v. United Refrigeration Servs., Inc., 305 S.C. 394, 394, 409 S.E.2d 360, 361 (1991) (“A party's failure to make a timely demand for a jury trial does not mean the opposing party acquires a right to have, as a matter of law, a non-jury trial”).

9. Because the trial court's Order granting the Stevensons' motion to transfer their counterclaims is interlocutory, this Court does not have jurisdiction over this action. See Brown v. Greenwood School Dist. 50 Bd. of Trustees, 344 S.C. 522, 524-25, 544 S.E.2d 642, 643 (Ct. App. 2001) (dismissing an appeal because “[w]here an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to the [appellate] [c]ourt . . .”). Thus, the Stevensons' Motion should be granted and this appeal should be dismissed for lack of appellate jurisdiction.

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Respectfully submitted,

  
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*Counsel for the Respondents*

September 19, 2014  
Charleston, South Carolina

# Exhibit A

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Deutsche Bank National Trust Company, )  
as Trustee of the IndyMac IMJA Mortgage )  
Trust 2007-A2, Mortgage Pass-Through )  
Certificates, Series 2007-A2 under the )  
Pooling and Servicing Agreement dated )  
August 1, 2007, )

Plaintiff, )

v. )

Thomas C. Stevenson III, Irven M. )  
Stevenson, National Bank of South Carolina )  
n/k/a Synovus Bank and South Carolina )  
Department of Revenue, )

Defendants. )

Civil Action No. 2:12-1854-CWH

**ORDER**

Thomas C. Stevenson III and Irven M. )  
Stevenson, )

Third-Party Plaintiffs, )

v. )

Indy Mac Mortgage Services, a Division )  
of OneWest Bank FSB<sup>1</sup>, )

Third-Party Defendant. )

**I. FACTS**

On July 6, 2007, the defendants, Thomas C. Stevenson III and Irven M. Stevenson (collectively, "the Stevensons"), gave a promissory note ("Note") in the amount of \$975,000 to IndyMac Bank FSB, the repayment of which was secured by a mortgage ("Mortgage") on their

<sup>1</sup> OneWest Bank FSB claims that it is erroneously being sued in the name of its division, Indy Mac Mortgage Services.

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CWH.

real property located at 173 Tradd Street, Charleston County, South Carolina, which is their primary residence (“the Property”). (Compl. ¶¶ 11-13.) The current owner of the Note and Mortgage is the plaintiff, Deutsche Bank National Trust Company, as Trustee of the IndyMac IMJA Mortgage Trust 2007-A2, Mortgage Pass-Through Certificates, Series 2007-A2 under the Pooling and Servicing Agreement dated August 1, 2007 (“Deutsche Bank”). (Compl. ¶ 17). IndyMac Mortgage Services (“IndyMac”), a Division of OneWest Bank FSB<sup>2</sup> (“OneWest”), services the Stevensons’ loan on behalf of Deutsche Bank.

The Stevensons defaulted on their loan by failing to make the payment due under the Note for April 1, 2011 (Answer, Countercls. & Third-Party Compl. ¶ 23). As alleged in the complaint, there were several other liens against the Property, including liens of National Bank of South Carolina (“NBSC”) and the South Carolina Department of Revenue.<sup>3</sup>

On June 15, 2011, as part of a written settlement agreement with NBSC, the Property was listed for sale. Then, in February 2012, the Stevensons received their first and only offer from a buyer to purchase the Property for \$1,125,000. On or about February 23, 2012, a contract was signed to purchase the home, provided all liens were satisfied. (ECF No. 9-2). Upon the signing of the contract, negotiations took place with NBSC, the South Carolina Department of Revenue, and the real estate agents. The negotiated proposal stated that the following would be paid out upon the closing of the sale: (1) \$57,500 to the South Carolina Department of Revenue for the partial lien balance of \$36,239.19; (2) \$200,000 to NBSC for Full Release; (3) \$750,000 to IndyMac payment for the first mortgage lien; (4) \$67,500 to Real Estate Commission; (5)

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<sup>2</sup> In July 2008, the federal government took over IndyMac in what was deemed at the time as being the second largest bank failure in United States history. On July 11, 2008, the FDIC was appointed Conservator. On March 19, 2009, the FDIC sold IndyMac Bank to OneWest. (Mem. in Supp. of Mot. to Remand 4).

<sup>3</sup> In April 2012, there were three lien holders on 173 Tradd Street: (1) IndyMac’s first mortgage lien in the amount of \$934,292.47 as of April 1, 2011, NBSC’s \$250,000 lien as a result of an earlier settlement, and the South Carolina Department of Revenue’s tax lien for \$360,239.19.

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CWH.

\$37,331.24 for attorney's fees to Duffy & Young; and (6) \$211,233.12 for various other closing costs. (Mem. in Supp. of Mot. to Remand 5). However, IndyMac did not reduce its lien to \$750,000, and the sale was terminated.

## II. PROCEDURAL HISTORY

On March 16, 2012, Deutsche Bank filed this foreclosure action against the Stevensons in the Court of Common Pleas for the Ninth Judicial Circuit. In response, on May 18, 2012, the Stevensons filed a counterclaim against Deutsche Bank for violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 et seq. and filed a third-party complaint against OneWest for violations of the South Carolina Unfair Trade Practices Act and for breach of its duty of good faith and fair dealing in servicing the loan. On July 3, 2012, the third-party defendant, OneWest, removed this action to federal court pursuant to 28 U.S.C. §§ 1331, 1441(c), and 1446.

On January 16, 2013, this matter came before the Court for a hearing on the Stevensons' motion to remand this case to the Court of Common Pleas for Charleston County, South Carolina pursuant to 28 U.S.C. § 1447(c) (ECF No. 9). In addition to the motion to remand, the following motions were pending at the time of the hearing: (1) Deutsche Bank's motion to dismiss the Stevensons' counterclaim with prejudice on the grounds that the counterclaim fails to state a valid claim for relief under the South Carolina Unfair Trade Practices Act (ECF No. 5); and (2) OneWest's motion to dismiss the third-party complaint with prejudice on the grounds that the claims asserted against OneWest are not based on derivative liability, making it an improper third-party claim (ECF No. 6). However, according to this Court's Order dated July 31, 2012, the Court granted the Stevensons an additional fifteen days from the date of this Court's ruling on the motion to remand to respond to the other pending motions. (ECF No. 11). Despite the

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July 31, 2012 Order, because the third-party defendant was the party that removed the case, this Court must first analyze whether the third-party defendant is a proper party to this action in order to determine if federal jurisdiction exists. The holding set forth on the record at the hearing is memorialized in this Order.

### III. MOTION TO DISMISS THE THIRD-PARTY COMPLAINT

#### A. Standard of Review

Federal Rule of Civil Procedure 14(a)(1) provides that “[a] defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.”<sup>4</sup> Fed. R. Civ. P. 14(a)(1). “However, [a] third-party defendant’s liability under Rule 14 must be secondary or derivative to the defendant’s liability to the plaintiff.” Mitsubishi Motors Credit of Am., Inc. v. Suzuki Outlet of Myrtle Beach, SC, LLC, No. 4:08-cv-3393-TLW-TER, 2010 WL 680339, at \*3 (D.S.C. Feb. 23, 2010) (quoting Deutsche Bank Nat’l Trust Co. v. Tyner, 233 F.R.D. 460 (D.S.C. 2006) & citing Scott v. PPG Indus. Inc., 1990 WL 200655, at \*3 (4th Cir. Dec. 13, 1990) (internal quotation marks omitted)). As Judge Duffy explained:

The third-party statute does not contemplate an institution of a new cause of action against a third-party defendant in which the third-party defendant is liable to the defendant on a cause of action independent of the original cause of action; rather, the statute intends that the third-party defendant be liable to the defendant for such damages for which the defendant may be liable to the plaintiff.

Laughlin v. Dell Fin. Servs., L.P., 465 F. Supp. 2d 563, 566 (D.S.C. 2006).

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<sup>4</sup> South Carolina Rule of Civil Procedure 14(a) uses almost identical language to this federal rule as to when a defendant may bring in a third party. The South Carolina rule specifically states: “At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff’s claim against him.” S.C. R. Civ. P. 14.

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CWH

A third-party claim exists only where a “third party plaintiff says, in effect, ‘[i]f I am liable to plaintiff, then my liability is only technical or secondary or partial, and the third party defendant is derivatively liable and must reimburse me for all or part . . . of anything I must pay plaintiff.’” Mitsubishi Motors Credit, 2010 WL 680339, at \*3 (internal quotation marks and citation omitted). In other words, “[t]he crucial characteristic of a Rule 14 claim is that defendant is attempting to transfer to the third-party defendant the liability asserted against defendant by the original plaintiff.” 6 Wright, Miller, & Kane, Federal Practice and Procedure § 1446 (2010). “Thus, [d]erivative liability is central to the operation of Rule 14, and the rule cannot be used as a device to bring into a controversy matters which merely happen to have some relationship to the original action.” Mitsubishi Motors Credit, 2010 WL 680339, at \*3 (internal quotation marks and citation omitted).

There are two elements this Court should consider when determining whether a third-party claim is permissible: (1) “the non-party [OneWest] must be potentially liable to the third-party plaintiff [the Stevensons]”; and (2) “the non-party’s [OneWest’s] liability must relate to the plaintiff’s [sic] [Deutsche Bank’s] claim against the defendant/third-party plaintiff [the Stevensons] such that the third-party defendant’s [OneWest’s] liability arises only if the defendant/third-party plaintiff [the Stevensons] is first held liable to plaintiff [Deutsche Bank]”. Tetra Tech EC/Tesoro Joint Venture v. Sam Temples Masonry, Inc., No. 3:10-cv-1597-CMC, 2011 WL 1048964, at \*3 (D.S.C. Mar. 21, 2011) (emphasis omitted).

#### **B. Discussion**

In their third-party complaint against OneWest, the Stevensons bring two causes of action—(1) violation of the South Carolina Unfair Trade Practices Act (Answer, Countercls. & Third-Party Compl. ¶¶ 53-62); and (2) breach of duty of good faith (Answer, Countercls. &

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Third-Party Compl. ¶¶ 63-66). The Stevensons claim that “[p]ursuant to HUD regulations and FHA guidance, mortgage lenders and their servicers are required to engage in loss-mitigation efforts to avoid the foreclosure of single family residential mortgages[,]” and that because “OneWest . . . failed and refused to engage in meaningful loss-mitigation efforts with [the Stevensons], . . . [the Stevensons] were not able to refinance [or modify] their loan . . . .” (Answer, Countercls. & Third-Party Compl. ¶¶ 57-58). In turn, the Stevensons claim that they “were sued in a foreclosure action while they were making good faith attempts to mitigate” losses by selling the Property. (Answer, Countercls. & Third-Party Compl. ¶ 58). In addition, the Stevensons claim that OneWest breached its duty of good faith and fair dealing “by failing to enter into good faith loan mitigation negotiations with [them] . . . , resulting in damage . . . that include[s] loss of the contract to sell their home and being subjected to foreclosure and deficiency judgments by other lien holders . . . .” (Answer, Countercls. & Third-Party Compl. ¶ 66).

OneWest argues that the Stevensons’ third-party complaint does not satisfy the second element stated above—the non-party’s liability must relate to the plaintiff’s claim against the defendant/third-party plaintiff such that the third party defendant’s liability arises only if the defendant/third-party plaintiff is first held liable to the plaintiff. (OneWest’s Mot. to Dismiss Third-Party Compl. 5). OneWest argues that “[t]he outcome of Deutsche Bank’s foreclosure claim would not impact the liability of OneWest.” (*Id.*). The Stevensons admit they defaulted under the Note and Mortgage, but at no place in the pleading do they claim that OneWest is derivatively liable for their own default. (*Id.*). OneWest contends that “the Stevensons assert independent claims against OneWest for violation of [the South Carolina Unfair Trade Practices Act] and breach of duty of good faith and fair dealing relating to alleged post-default conduct of

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OneWest.” (OneWest’s Mot. to Dismiss Third-Party Compl. 5) (emphasis added). Therefore, the Stevensons’ two causes of action brought in their third-party complaint against OneWest are not derivative type claims.

The Court finds that the Stevensons have not alleged a valid third-party complaint. The third-party complaint seeks no indemnification, and there is no relationship to the plaintiff’s claim against the third-party plaintiff. The Stevensons asserted independent claims against the third-party defendant OneWest. These third-party claims are separate causes of action entirely. Therefore, the Stevensons’ claims cannot be asserted against OneWest pursuant to Federal Rule of Civil Procedure 14.

**IV. CONCLUSION**

Because Federal Rule of Civil Procedure 14 does not permit the Stevensons’ third-party complaint, the motion to dismiss the third-party complaint (ECF No. 6) is granted, and the case is remanded to the Court of Common Pleas for Charleston County, South Carolina.<sup>5</sup> Due to this Court’s lack of jurisdiction, this Order does not dispose of all other pending motions.

**AND IT IS SO ORDERED.**

  
C. WESTON HOUCK  
UNITED STATES DISTRICT JUDGE

January 29 2013  
Charleston, South Carolina

<sup>5</sup> In light of the ruling above, the Court will not address the law that a third-party defendant cannot remove a civil action. See Brashear v. Baligian, No. 9:03-1796-23, 2003 WL 22717748, at \*2 (D.S.C. Oct. 28, 2003) (stating removal by a third party is not proper). See also Lawyers Title Ins. Corp. v. Pioneer Nat’l Title Ins. Corp., 600 F. Supp. 402, 404-05 (D.S.C. 1984) (holding “[t]he court is of the opinion that removal is improper [even when the third-party claims are separate and independent from the main suit] under § 1441(c) when the only removable claim is asserted by cross-claimants”).

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# Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Deutsche Bank National Trust Company, as  
Trustee of the IndyMac IMJA Mortgage Trust  
2007-A2, Mortgage Pass-Through Certificates,  
Series 2007-A2 under the Pooling and Servicing  
Agreement dated August 1, 2007,

Plaintiff,

vs.

Thomas C. Stevenson, III, Irven M. Stevenson,  
National Bank of South Carolina nka Synovus  
Bank and South Carolina Department of  
Revenue,

Defendants.

(014773-00976 JJH)

IN THE COURT OF COMMON PLEAS  
OF THE NINTH JUDICIAL CIRCUIT

DOCKET NO.: 2012-CP-10-1844

ORDER

BY

JULIE J. ARTHUR  
CLERK OF COURT

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*JCH*  
This matter came before me at a hearing on November 5, 2013, at 10:30 a.m. on the following motions:

- Defendants Thomas C. Stevenson, III and Irven M. Stevenson's Motion to Amend Answer, Add Additional Counterclaims, and Add OneWest Bank FSB as an Additional Party Defendant;
- Plaintiff's Motion to Amend Complaint; and
- Plaintiff's Motion for Continuance.

After hearing arguments of counsel and reviewing the Motions and Responses filed, the Court rules as follows:

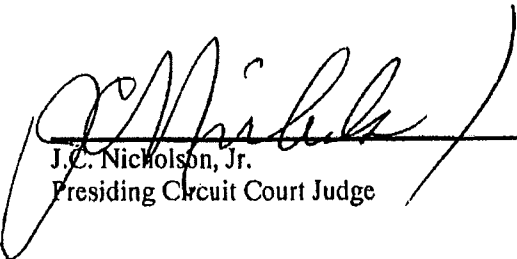
Plaintiff's Motion for Continuance is denied for lack of good and sufficient cause shown.

Defendants Thomas C. Stevenson, III and Irven M. Stevenson's Motion to Amend Answer, Add Additional Counterclaims, and Add OneWest Bank FSB as an Additional Party Defendant is granted over Plaintiff's vigorous objection.

Plaintiff's Motion to Amend Complaint is granted by consent of the Defendant.

Plaintiff shall have seven (7) days from its receipt of notice of entry of this Order to file and serve its amended complaint. Defendants Thomas C. Stevenson, III and Irven M. Stevenson shall have fifteen (15) days their receipt of the amended complaint to file and serve their amended answer, counterclaim and crossclaim. Plaintiff and cross-claim defendant One West Bank, FSB shall have thirty (30) days from their receipt of the amended answer, counterclaim and crossclaim to file and serve their respective responsive pleadings.

IT IS SO ORDERED.

  
\_\_\_\_\_  
J.C. Nicholson, Jr.  
Presiding Circuit Court Judge

November 13, 2013

# Exhibit C

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Deutsche Bank National Trust Company, as  
Trustee of the IndyMac IMJA Mortgage Trust  
2007-A2, Mortgage Pass-Through Certificates,  
Series 2007-A2 under the Pooling and Servicing  
Agreement dated August 1, 2007,

Plaintiff,

vs.

Thomas C. Stevenson, III, Irven M. Stevenson,  
National Bank of South Carolina nka Synovus  
Bank and South Carolina Department of  
Revenue ,

Defendants,

IN THE COURT OF COMMON PLEAS  
OF THE NINTH JUDICIAL CIRCUIT

DOCKET NO.: 2012-CP-10-1844

AMENDED SUMMONS AND NOTICE  
(NON-JURY)  
FORECLOSURE OF REAL ESTATE  
MORTGAGE  
Deficiency Judgment Demanded

(014773 – 00976 JJH)

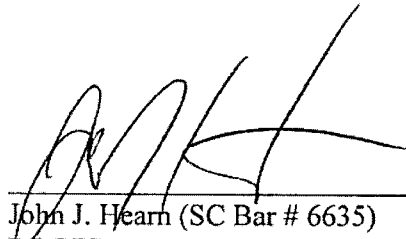
TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Amended Complaint in this action and to serve a copy of your Answer on counsel at their offices, 220 Executive Center Drive (29210), Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

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

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a  
guardian ad litem within thirty (30) days after the service of this Amended Summons and Notice  
upon you. If you fail to do so, application for such appointment will be made by Deutsche Bank  
National Trust Company, as Trustee of the IndyMac IMJA Mortgage Trust 2007-A2, Mortgage  
Pass-Through Certificates, Series 2007-A2 under the Pooling and Servicing Agreement dated  
August 1, 2007.



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John J. Hearn (SC Bar # 6635)  
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ATTORNEYS FOR THE PLAINTIFF

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

November 21, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Deutsche Bank National Trust Company, as  
Trustee of the IndyMac IMJA Mortgage Trust  
2007-A2, Mortgage Pass-Through Certificates,  
Series 2007-A2 under the Pooling and Servicing  
Agreement dated August 1, 2007,

Plaintiff,

vs.

Thomas C. Stevenson, III, Irven M. Stevenson,  
National Bank of South Carolina nka Synovus  
Bank and South Carolina Department of  
Revenue ,

Defendants,

IN THE COURT OF COMMON PLEAS  
OF THE NINTH JUDICIAL CIRCUIT

DOCKET NO.: 2012-CP-10-1844

AMENDED COMPLAINT  
(NON-JURY)  
FORECLOSURE OF REAL ESTATE  
MORTGAGE  
Deficiency Judgment Demanded

(014773 – 00976 JJH)

The Plaintiff above named, complaining of the Defendant(s) herein, alleges:

1. The Plaintiff is a corporation or other legal entity organized and existing under the laws of one of the states of the United States and claims an interest in the real estate which is described hereafter.
2. Upon information and belief, no Defendant is serving, or has served, in the military service of the United States of America as contemplated under the Service Members' Civil Relief Act.
3. Plaintiff is the holder of the Note referenced in this action and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

FOR A FIRST CAUSE OF ACTION  
(REFORMATION OF DEED)

4. Paragraphs 1-3 are incorporated herein by reference.
5. Upon information and belief, due to inadvertence and/or scrivener's error, the legal description attached to the Deed recorded on April 29, 2003, in Book G-446 at Page 660 incorrectly refers to the second plat reference as "attached to Deed at Book P-145 Page 79."

However, the correct reference should be Book P-145 at Page 479. A copy of the Deed in question is attached as "Exhibit A" and is incorporated by reference.

6. The Plaintiff is informed and believes that it is entitled to a reformation of the above referenced Deed to correct the legal description to reflect the correct plat as attached to Deed at Book P-145 at Page 479 to conform with the intention of the parties and the public records.

FOR A SECOND CAUSE OF ACTION  
(REFORMATION OF DEED)

7. Paragraphs 1-6 are incorporated herein by reference.

8. Upon information and belief, due to inadvertence and/or scrivener's error, the legal description attached to the Deed recorded April 16, 2007, in Book F-622 at Page 242 incorrectly refers to the second plat reference as "attached to Deed at Book P-145 Page 79." However, the correct reference should be attached to Deed at Book P-145 at Page 479. A copy of the Deed in question is attached as "Exhibit B" and is incorporated by reference.

9. The Plaintiff is informed and believes that it is entitled to a reformation of the above referenced Deed to correct the legal description to reflect the correct plat as attached to Deed at Book P-145 Page 479 to conform with the intention of the parties and the public records.

FOR A THIRD CAUSE OF ACTION  
(FORECLOSURE OF MORTGAGE)

10. Paragraphs 1-9 are incorporated herein by reference.

11. On or around July 6, 2007, for value received Thomas C. Stevenson III and Irven M. Stevenson ("Mortgagor(s)") made, executed and delivered unto IndyMac Bank, F.S.B. a certain Note ("Note") in the principal sum of \$975,000.00 together with an interest rate of 6.750%. A copy of the note is attached as "Exhibit C" and is incorporated by reference.

12. To secure payment of the Note according to the terms and conditions thereof, the Mortgagor(s) made, executed and delivered unto Mortgage Electronic Registration Systems, Inc. as nominee for IndyMac Bank, F.S.B. a certain real estate Mortgage ("Mortgage") covering the following described real property (the "property"):

All that parcel of land in Charleston County, State of South Carolina, as more fully described in Deed Book F622, Page 242, ID # 4571101063, being known and designated as Lot 90, Tradd Street, filed in Plat Book C, Page 094, Charleston County Registry.

Irven M. Stevenson as to one half interest by Fee Simple Deed from Thomas C. Stevenson III as set forth in Book F622 at Page 242 dated 04/13/2007 and recorded 04/16/2007, Charleston County Records, State of South Carolina.

TMS No.: 4571101063

Property Address: 173 Tradd Street, Charleston, SC 29401

13. The property secured by the Mortgage is residential property.

14. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for a modification as the loan amount exceeds the HMP program limit of \$729,750.

15. The Mortgage was signed, witnessed, probated and thereafter recorded in the office of the Register of Deeds/Clerk of Court for Charleston County on July 20, 2007, in Mortgage Book A633 at Page 892. A copy of the mortgage is attached as "Exhibit D" and is incorporated by reference.

16. The Mortgage was subsequently assigned to the Plaintiff herein by an Assignment of Mortgage dated February 15, 2012, and recorded on February 22, 2012, in Book 0234 at page 773 in the Office of the RMC for Charleston County, South Carolina.

17. Plaintiff is informed and believes that the title holder of record of the subject property as of the filing of the Lis Pendens in this action was Irven M. Stevenson.

18. The Mortgage evidences and secures the repayment of money advanced by the Plaintiff to, or on behalf of, the Mortgagor(s) and constitutes a purchase money mortgage or first mortgage lien on the mortgaged premises.

19. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set herein, or some part thereof, but Plaintiff alleges that such interest or liens are junior or subordinate to the lien of the Plaintiff's Mortgage, or do not attach to the property which is the subject of this action, or have been paid in full and not satisfied of record. The liens or interests are of record in the Register of Deeds or Clerk of Court and are described as follows:

a. The Defendant, South Carolina Department of Revenue, is made a party hereto because the Plaintiff is informed and believes that said Defendant may claim a tax lien against the subject real estate by virtue of a tax lien in the sum of \$217,383.43. This tax lien was

filed in the Office of the Register of Deeds/Clerk of Court for Charleston County on July 7, 2009 as File Number 13271.

b. The Defendant, National Bank of South Carolina nka Synovus Bank, is made a party hereto because the Plaintiff is informed and believes that said Defendant holds mortgage liens against the subject real estate:

1. Mortgage not to exceed the amount of \$1,015,000.00 and recorded September 18, 2009 in Book 81 at Page 881 in the Office of the Register of Deeds/Clerk of Court for Charleston County.

2. Mortgage not to exceed the amount of \$335,000.00 and recorded June 30, 2009, in Book 64 at Page 828 in the Office of the Register of Deeds/Clerk of Court for Charleston County.

20. The National Bank of South Carolina nka as Synovus Bank may be the holder of a prior mortgage recorded October 13, 2000, in Book S-356 at Page 176. The Plaintiff is informed and believes the prior mortgage has been paid of record. A copy of the Partial Release is attached as "Exhibit E" and is incorporated by reference.

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

22. The monthly payments on the Note and Mortgage are in default since April 1, 2011, although demand for payment thereof has been made and the Plaintiff, as the holder of the Note and Mortgage, after providing all required notices, elects to, and does declare the balance of the indebtedness due and payable, and that there is due on the Note and Mortgage as of April 1, 2011, the sum of \$934,292.47, plus interest at 6.750% pursuant to the terms of the Note, together with the costs and disbursements of this action, including attorney fees.

23. Pursuant to Section 37-3-105, South Carolina Code of Laws (1976 as amended), the mortgage lien, which is the subject of this action, is a first lien on real estate and is not a '*consumer loan*' for the purposes of the South Carolina Consumer Protection Code. Copies of the demand letters generated for this loan are attached as "Exhibit F" and are incorporated by reference.

24. The Plaintiff demands a deficiency judgment against Thomas C. Stevenson III and Irven M. Stevenson in the event any sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto the Plaintiff, including costs and attorney's fees.

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

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

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

3. The mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

**First**, to the costs and expenses of this action and sale.

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

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

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

5. An Order be entered for the ejectment of the Defendants in possession herein and all persons claiming there under and the remove there from all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the subject property by placing the property on the public street or highway or by any other means.

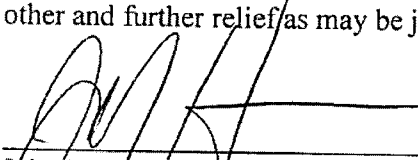
6. An Order be entered for reimbursements of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

7. An Order be entered to reform the Deed recorded on April 29, 2003, in Book G-446 at Page 660 to correct the legal description to reference the plat is attached to Deed at Book P-145 Page 479 to conform with the intention of the parties and the public records.

8. An Order be entered to reform the Deed recorded April 16, 2007 in Book F-622 at Page 242 to correct the legal description to reference the plat as attached to Deed at Book P-145 Page 479 to conform with the intention of the parties and the public records.

9. An Order be entered awarded Plaintiff a personal judgment against the Thomas C. Stevenson III and Irven M. Stevenson for any deficiency which remains owing to the Plaintiff after applying the proceeds from the sale of the Mortgage premises.

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



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John J. Hearn (SC/Bar # 6635)  
ROGERS TOWNSEND & THOMAS, PC  
220 Executive Center Drive (29210)  
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Columbia, South Carolina 29202-3200  
(803)771-7900  
john.hearn@rtt-law.com  
ATTORNEYS FOR PLAINTIFF

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

November 21, 2013

# Exhibit D

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2012-CP-10-1844

Deutsche Bank National Trust Company, as  
Trustee of the IndyMac IMJA Mortgage  
Trust 2007-A2, Mortgage Pass-Through  
Certificates, Series 2007-A2 under the  
Pooling and Servicing Agreement dated  
August 1, 2007,

Plaintiff,

vs.

Thomas C. Stevenson III, Irven M.  
Stevenson, National Bank of South Carolina  
nka Synovus Bank and South Carolina  
Department of Revenue, and OneWest Bank  
FSB, including its division known as Indy  
Mac Mortgage Services,

Defendants.

WRIT OF SUMMONS

DEFENDANTS DEMAND A  
TRIAL BY JURY

FILED  
2013 DEC -5 PM 3:16  
JULIE J. ADJUSTING  
CLERK OF COURT  
BY \_\_\_\_\_

TO ONEWEST BANK FSB, including its division known as INDY MAC  
MORTGAGE SERVICES:

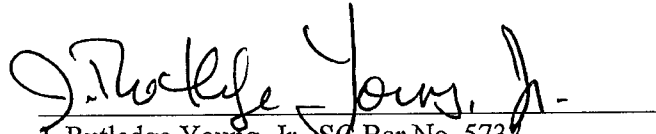
YOU ARE HEREBY SUMMONED and required to answer the Cross-claims in this  
action, a copy of which is served upon you herewith, and to serve a copy of your answer to said  
Cross-claims on the subscribers at their offices, DUFFY & YOUNG, LLC, 96 Broad Street,  
Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of  
the day of such service. If you fail to answer the Cross-claims within the time aforesaid, Thomas  
C. Stevenson III and Irven M. Stevenson will apply to the Court for judgment by default to be  
rendered against you for the relief demanded in the Cross-claims.

D:Y  
/

[signature on following page]

This 6<sup>TH</sup> day of December, 2013 at Charleston, South Carolina.

D:Y  
Z



J. Rutledge Young, Jr., SC Bar No. 5737

jry@duffyandyoung.com

Julie L. Moore, SC Bar No. 78677

jmoore@duffyandyoung.com

DUFFY & YOUNG, LLC

96 Broad Street

Charleston, South Carolina 29401

(843) 720-2044 (phone)

(843) 720-2047 (fax)

*Attorneys for the Stevenson Defendants*

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2012-CP-10-1844

Deutsche Bank National Trust Company, as Trustee of the IndyMac IMJA Mortgage Trust 2007-A2, Mortgage Pass-Through Certificates, Series 2007-A2 under the Pooling and Servicing Agreement dated August 1, 2007,

Plaintiff,

vs.

Thomas C. Stevenson III, Irven M. Stevenson, National Bank of South Carolina nka Synovus Bank and South Carolina Department of Revenue, and OneWest Bank FSB, including its division known as Indy Mac Mortgage Services,

Defendants.

DEFENDANTS THOMAS C. STEVENSON,  
III AND IRVEN M. STEVENSON'S  
ANSWER TO AMENDED COMPLAINT  
AND AMENDED COUNTERCLAIMS AND  
CROSS-CLAIMS

DEFENDANTS DEMAND A  
TRIAL BY JURY

2013 DEC -6 PM 3:19  
FILED  
CLERK OF COURT

COME NOW Defendants, Thomas C. Stevenson, III and Irven M. Stevenson (the "Stevensons"), by and through counsel, and in answer to Plaintiff's Amended Complaint and as a Counterclaim against the Plaintiff and a Cross Complaint against OneWest Bank FSB, including its division known as Indy Mac Mortgage Services state the following Answer and Amended Counterclaims and Cross-claims.

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/

**GENERAL DENIAL**

The Stevensons deny all allegations of Plaintiff's Amended Complaint not specifically admitted herein.

1. Deutsche Bank, as the alleged owner of the Stevensons' loan at the time this action was commenced, is the alter ego or agent of OneWest Bank, successor to Indy Mac Bank.

2. Indy Mac Bank, the original residential lender to the Stevensons, failed in July 2008. Thereafter, the Federal government took it over in what was deemed at the time as being the second largest bank failure in US Banking History.

3. On July 11, 2008, the FDIC took over as Conservator of Indy Mac Bank.

4. On March 19, 2009, the FDIC sold Indy Mac Bank to OneWest Bank, FSB which had acted as a servicer for many of Indy Mac's loans.

5. This court has personal jurisdiction over all the parties and over the subject matter of this action.

**FIRST DEFENSE AND ANSWER TO THE PLAINTIFF'S COMPLAINT**

1. The Stevensons admit so much of the allegation of Paragraph 1, upon information and belief as alleged that Plaintiff is a foreign corporation but denies that the Plaintiff, at the time of the commencement of this action, had an interest in the real estate which is the subject matter of this complaint and demands strict proof thereof.

D:Y  
Z

2. The Stevensons lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and therefore deny the same.

3. The Stevensons admit the allegations of Paragraph 3 upon information and belief as to the Note, but demand strict proof as to whether the Plaintiff owned the Mortgagee which it seeks to foreclose upon at the time of the commencement of this action.

4. Responding to Paragraph 4 of the Plaintiff's First Cause of Action, the Stevensons restate their responses to the allegations of Paragraphs 1 through 3 as if fully set forth herein.

5. The Stevensons lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Plaintiff's First Cause of Action, and therefore deny the same and demand strict proof thereof.

6. The Stevensons lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Plaintiff's First Cause of Action, and therefore deny the same and demand strict proof thereof.

7. Responding to Paragraph 7 of the Plaintiff's Second Cause of Action, the Stevensons restate their responses to the allegations of Paragraphs 1 through 6 as if fully set forth herein.

8. The Stevensons lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Plaintiff's Second Cause of Action and therefore deny the same.

9. The Stevensons lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Plaintiff's Second Cause of Action and therefore deny the same.

10. Responding to Paragraph 10 of the Plaintiff's Third Cause of Action, the Stevensons restate their responses to the allegations of Paragraphs 1 through 9 as if fully set forth herein.

11. Responding to Paragraph 11 of the Plaintiff's Third Cause of Action, the Stevensons admit that they executed a promissory note and state that the note is a document that speaks for itself. The Stevensons deny all inconsistent allegations.

12. Responding to Paragraph 12 of the Plaintiff's Third Cause of Action, the Stevensons admit that they executed a mortgage in favor of MERS as nominee for Indy Mac Bank and state that the mortgage is a document that speaks for itself. The mortgage defines Mortgage Electronic Registration Systems, Inc. as the mortgagee and IndyMac Bank, F.S.B. as the lender. The Stevensons deny all inconsistent allegations.

D:Y  
3

13. The Stevensons admit the allegations of Paragraph 13 of the Plaintiff's Third Cause of Action.

14. The Stevensons deny the allegations of Paragraph 14 of the Plaintiff's Third Cause of Action.

15. The Stevensons admit the allegations of Paragraph 15 of the Plaintiff's Third Cause of Action and crave reference to the mortgage, which speaks for itself.

16. The Stevensons deny the allegations of Paragraph 16 of the Plaintiff's Third Cause of Action.

17. The Stevensons admit the allegations of Paragraph 17 of the Plaintiff's Third Cause of Action.

18. The Stevensons admit the allegations of Paragraph 18 of Plaintiff's Third Cause of Action and state that the mortgage is a document that speaks for itself.

19. The Stevensons admit the allegations of all subparagraphs of Paragraph 19 of Plaintiff's Third Cause of Action.

D:Y  
4

20. The Stevensons admit the allegations of Paragraph 20 of Plaintiff's Third Cause of Action.

21. The Stevensons admit the allegations of Paragraph 21 of Plaintiff's Third Cause of Action and crave reference to the mortgage, which speaks for itself. The Stevensons deny any inconsistent allegations of Paragraph 21.

22. The Stevensons admit the allegations of Paragraph 22 of Plaintiff's Third Cause of Action and further admit monthly payments have not been paid since April 1, 2011.

**FURTHER ANSWERING THE COMPLAINT AND BY WAY OF COUNTERCLAIM  
AGAINST THE PLAINTIFF AND A CROSS-CLAIM AGAINST DEFENDANT  
ONEWEST BANK, THE STEVENSONS ALLEGE AS FOLLOWS:**

30. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein to the extent consistent with this counterclaim.

31. Plaintiff allegedly owns the Stevensons' Note and mortgage (which ownership the Stevensons deny and demand strict proof thereof) and OneWest Bank FSB services the Stevensons' loan. OneWest Bank, which is doing business in South Carolina, is a federally chartered insured savings bank owned by OneWest Bank Group, LLC.

32. Plaintiff in this action, Deutsche Bank National Trust Company, as Trustee of the Indy Mac IMJA Mortgage Trust 2007-A2, Mortgage Pass-Through Certificates, Series 2007-A2 under the Pooling and Servicing Agreement dated August 1, 2007 ("Indy Mac Mortgage Trust") has alleged that it was assigned the note and mortgage at issue in this case "by assignment to be recorded," and subsequently filed this foreclosure suit. Plaintiff denies that the assignment was properly completed before this action was commenced.

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33. The Stevensons are informed and believe that Plaintiff and OneWest Bank are, and at all material times have been, partners, counterparts, *alter egos*, co-conspirators and the agents, servants or employees with and of each other, purporting and conspiring to act in concert within the scope of these relationships in performing the acts and omitting to act as averred herein.

34. On or about July 6, 2007, the Stevensons signed a note secured by a mortgage on 173 Tradd Street. The lender was Indy Mac Bank, F.S.B. ("Indy Mac Bank").

35. The closing of the loan that is the subject of the Complaint in this action was closed on July 6, 2007, and on information and belief the Stevensons' signatures were not properly notarized.

36. Sometime thereafter, the Stevensons' Note and mortgage was allegedly assigned to the Plaintiff.

37. As a federally insured loan, the Stevensons' loan is subject to various Federal Laws, Regulations and Policies.

38. The federal government took control of IndyMac Bank in July 2008. On July 11, 2008, IndyMac Bank was closed by the Office of Thrift Supervision and the FDIC was named Conservator.

39. On March 19, 2009, the FDIC sold IndyMac Bank to OneWest.

40. On information and belief, OneWest Bank became the loan servicer of the Stevensons' Indy Mac loan after March 19, 2009, when the FDIC as conservator sold Indy Mac Bank to OneWest Bank.

41. In calendar year 2010, the Stevensons suffered severe financial reversals and difficulty and were unable to pay any of their monthly mortgage payments on their primary residence at 173 Tradd Street (the "Property").

42. According to the Complaint in this action, the Note and mortgage on 173 Tradd Street were assigned to the Plaintiff "by assignment to be recorded."

43. The Stevenson's deny that Plaintiff was properly assigned the note and mortgage, but if that did occur, Deutsche Bank National Trust Company and Indy Mac IMJA Mortgage Trust 207-A2 are, and have at all material times been, the agent of OneWest Bank, which is the successor by purchase of Indy Mac Bank, and Plaintiff and One West Bank have been assigned

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in purchasing the Stevensons' loan under the PSA dated August 1, 2007, all of the liabilities of Indy Mac and OneWest associated with the Stevenson Note and mortgage handling and servicing.

44. As alleged in the Plaintiff's Complaint, there are several other liens against the Property including liens of National Bank of South Carolina ("NBSC") and the South Carolina Department of Revenue ("SCDOR").

45. The Property was listed for sale on June 15, 2011, as part of a written Settlement Agreement with NBSC, which had a second lien and third lien on the property, in related litigation.

46. For six months, no offers were made on the property and the listing price was subsequently reduced to \$1,295,000 in January of 2012.

47. In February 2012, the Stevensons received the first and only offer to purchase the Property for \$1,125,000 from Rebekah Unger, a pre-qualified and willing buyer.

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48. The Stevensons entered into a written Agreement to Buy and Sell Residential Real Estate with the buyer on February 29, 2012, which Agreement was contingent on approval of the sale by the holder of all of the liens on the property.

49. Indy Mac Mortgage Trust subsequently filed this foreclosure action 16 days later, on March 16, 2012.

50. The Stevensons negotiated with the other lien holders NBSC and the SCDOR and the real estate agents and were able to work out a way to have all other liens released and pay out reduced real estate commissions for the total sum of \$375,000, leaving a total of \$750,000 available to be paid to the Plaintiff to whom the Indy Mac loan had allegedly been assigned. The servicer of the Stevenson loan, IndyMac Mortgage Services, a division of One West Bank, FSB,

was the agent for and alter ego of the Plaintiff in negotiating a modification to the Stevenson loan so that the settlement could be consummated. The closing was scheduled to occur before May 16, 2012. (See Seller's HUD-1 attached as Exhibit A).

51. After extensive and intense negotiations with IndyMac Mortgage Services, a division of Cross Defendant OneWest Bank, and the other lien holders to mitigate everyone's losses, which Plaintiff as owner of and investor in the Stevensons' loan was made aware of by IndyMac Mortgage Services, a division of Cross Defendant OneWest Bank, the loan servicer or its counsel, all of the other lien holders agreed to take substantial discounts on their liens in order to mitigate their and the Stevensons' losses and damages and to allow the Unger sale to close.

52. Even though Plaintiff, as Trustee of the Indy Mac IMJA Mortgage Trust 2007-A2 and its partner, counterpart, *alter ego*, co-conspirator and agent OneWest Bank knew their refusal to negotiate a settlement would result in the real estate contract being terminated by the buyer, OneWest and Indy Mac Mortgage Trust and Plaintiff as its partner, counterpart, *alter ego*, co-conspirator and agent refused to negotiate in good faith and refused to agree to accept a reduced amount on the Stevensons' first lien so that the sale could be closed.

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53. Plaintiff, OneWest Bank and Indy Mac Trust have failed to engage in mandatory loss mitigation efforts and failed to comply with South Carolina Supreme Court Order 2011-05-02-01.

54. This mortgage is subject to modification under several federally funded programs, such as RESPA, HAMP 1 and HAMP 2.

55. Plaintiff, by and through and its partner, counterpart, *alter ego*, co-conspirator and agent OneWest Bank, failed to respond in a timely fashion to the Stevensons' efforts to sell their home and pay off or get releases from all the other lien holders.

**FIRST COUNTERCLAIM AGAINST PLAINTIFF**  
**(Unfair Trade Practices Act)**

56. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein.

57. This cause of action is brought pursuant to the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10.

58. Plaintiff and OneWest Bank committed unfair and deceptive acts and practice in the conduct of trade or commerce which are offensive to public policy, immoral, unethical and oppressive.

59. Pursuant to HUD regulations, FHA guidance and South Carolina law, mortgage lenders and their servicers, including Plaintiff, Indy Mac IMJA Mortgage Trust 2007-A2 and OneWest Bank, are required to engage in loss-mitigation efforts to avoid the foreclosure of single family residential mortgages. Lenders and servicers are required to refrain from foreclosing on any FHA insured mortgage where a default could be addressed by modifying the terms of the mortgage or other less-costly alternatives to foreclosure were available.

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60. Plaintiff, OneWest Bank, and Indy Mac IMJA Mortgage Trust 2007-A2 failed and refused to engage in meaningful loss-mitigation efforts with the Stevensons and as a result the Stevensons were not able to refinance their loan, modify their loan, had their attempts at loan modification denied and were sued in a foreclosure action while they were making good faith attempts to mitigate their and the lien holder's losses by selling the property.

61. The actions described above had the effect or tendency to deceive.

62. The actions of Plaintiff, Indy Mac IMJA Mortgage Trust 2007-A2 and OneWest Bank impact the public interest because they have taken similar acts in the past and their acts are capable of repetition.

63. Furthermore, Plaintiff, OneWest Bank and Indy Mac IMJA Mortgage Trust 2007-A2 actions were willful, unfair and deceptive.

64. As a direct and proximate result of the deceptive and unfair trade practices of Plaintiff, OneWest Bank and Indy Mac IMJA Mortgage Trust 2007-A2, the Stevensons have suffered damages and are entitled to an award of actual damages, treble damages, attorneys' fees and costs and such other relief as the Court deems just or proper.

**SECOND COUNTERCLAIM AGAINST PLAINTIFF**  
**(Count Two – Breach of Duty of Good Faith)**

65. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein.

66. According to the Plaintiff's Complaint, the note and mortgage were assigned to the Plaintiff.

67. Plaintiff is the partner, counterpart, *alter ego*, co-conspirator and agent with and of OneWest Bank.

68. In every contract in South Carolina, the parties are charged with a duty of good faith and fair dealing.

69. Plaintiff and OneWest enjoyed substantial discretionary power affecting the rights of the Stevensons during the events alleged here. They were required to exercise such power in good faith.

70. If the Stevensons' note and mortgage were validly and properly assigned to the Plaintiff, Plaintiff has breached its duty of good faith and fair dealing with the Stevensons by failing to enter into good faith loan mitigation negotiations with the Stevensons, resulting in damage to the Stevensons that include loss of the contract to sell their home and being subjected

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to foreclosure and deficiency judgments by other lien holders, damage to their credit and other damages to be proven at trial.

**THIRD COUNTERCLAIM AGAINST PLAINTIFF**  
**(Count Three – Negligence)**

71. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein.

72. Plaintiff and Indy Mac IMJA Mortgage Trust 2007-A2 acting as the Stevensons' lender and its partner, counterpart, *alter ego*, co-conspirator and agent OneWest Bank as the loan servicer owed to the Stevensons a duty to exercise reasonable care and skill to engage in loss-mitigation efforts to avoid the foreclosure of single family residential mortgages.

73. Lenders and servicers are required to refrain from foreclosing on any FHA insured mortgage where a default could be addressed by modifying the terms of the mortgage or other less-costly alternatives to foreclosure were available.

74. Lenders and servicers are required to have in place Loss Mitigation Policies and Procedures for dealing with problem loans, which the Stevensons' loan became in April 2010.

75. Lenders and Servicers are required to have properly trained and qualified employees and contractors involved with dealing with loss mitigation efforts.

76. Lenders and Servicers are required to properly supervise and oversee the actions of their employees engage in loss mitigation and loan modification efforts.

77. In taking the actions alleged above and in failing to take the actions as alleged above, and by having unqualified and poorly trained employees and contractors processing the Stevenson's loan mitigation efforts, and by failing to properly supervise its loss mitigation programs, Plaintiff negligently breached its duty of care and skill to the Stevensons and in doing so acted with reckless disregard and conscious indifference to the Stevensons' rights.

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78. Plaintiff's negligent breach of these duties has proximately caused the Stevensons to suffer damage to their financial condition and credit, as well as other actual and punitive damages to be proven at trial.

**FIRST CROSS-CLAIM AGAINST ONEWEST BANK FSB**  
**(Unfair Trade Practices in Violation of SC Code § 39-5-10)**

79. Stevensons incorporate by reference all the above paragraphs as though fully set forth herein to the extent consistent with this Cross-claim

80. OneWest Bank FSB services the Stevensons' loan. OneWest Bank, which is doing business in South Carolina, is a federally chartered insured savings bank owned by OneWest Bank Group, LLC.

81. This cause of action is brought pursuant to the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10.

82. Plaintiff and OneWest Bank committed unfair and deceptive acts and practice in the conduct of trade or commerce which are offensive to public policy, immoral, unethical and oppressive.

83. Pursuant to HUD regulations and FHA guidance, mortgage lenders and their servicers, including Plaintiff, Indy Mac and OneWest Bank, are required to engage in loss-mitigation efforts to avoid the foreclosure of single family residential mortgages. Lenders and servicers are required to refrain from foreclosing on any FHA insured mortgage where a default could be addressed by modifying the terms of the mortgage or other less-costly alternatives to foreclosure were available.

84. Plaintiff, OneWest Bank, and Indy Mac Mortgage Trust failed and refused to engage in meaningful loss-mitigation efforts with the Stevensons and as a result the Stevensons were not able to refinance their loan, modify their loan, had their attempts at loan modification

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denied and were sued in a foreclosure action while they were making good faith attempts to mitigate their and the lien holders losses by selling the property.

85. The actions described above had the effect or tendency to deceive.

86. The actions of Plaintiff, Indy Mac Trust and OneWest Bank impact the public interest because they have taken similar action in the past and their acts are capable of repetition.

87. Furthermore, Plaintiff, OneWest Bank and Indy Mac Mortgage Trust's actions were willful, unfair and deceptive.

88. As a direct and proximate result of the deceptive and unfair trade practices of Plaintiff, OneWest Bank and Indy Mac Mortgage Trust, the Stevensons have suffered damages and are entitled to an award of actual damages, treble damages, attorneys' fees and costs and such other relief as the Court deems just or proper.

**SECOND CROSS-CLAIM AGAINST ONEWEST BANK**  
**(Count Two – Breach of Duty of Good Faith)**

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89. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein.

90. Indy Mac Bank was the predecessor of OneWest Bank and Indy Mac Bank was the original mortgage lender on the Stevensons' residence at 173 Tradd St in Charleston, SC.

91. According to the Plaintiff's Complaint, the note and mortgage were assigned to the Plaintiff.

92. OneWest Bank FSB is the "servicer" of the Loan which Plaintiff is the Investor in and has had assigned to it.

93. OneWest Bank is the partner, counterpart, *alter ego*, co-conspirator and agent with and of the Plaintiff and Indy Mac IMJA Mortgage Trust 2007-A2 in servicing the Stevensons' loan.

94. In every contract in South Carolina, the parties are charged with a duty of good faith and fair dealing.

95. The Plaintiff and OneWest enjoyed substantial discretionary power affecting the rights of the Stevensons during the events alleged here. They were required to exercise such power in good faith.

96. OneWest Bank, as the Stevensons' loan servicer, has breached its duty of good faith and fair dealing with the Stevensons by failing to enter into good faith loan mitigation negotiations with the Stevensons, resulting in damage to the Stevensons that include loss of the contract to sell their home and being subjected to foreclosure and deficiency judgments by other lien holders, damage to their credit and other damages to be proven at trial.

**THIRD COUNTERCLAIM AGAINST PLAINTIFF**  
**(Count Three – Negligence)**

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15

97. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein.

98. OneWest Bank, acting as the Stevensons' loan servicer and as the partner, counterpart, *alter ego*, co-conspirator and agent of the Plaintiff, which owned the Stevensons' loan, owed to the Stevensons a duty to exercise reasonable care and skill to engage in loss-mitigation efforts to avoid the foreclosure of single family residential mortgages.

99. Lenders and servicers are required to refrain from foreclosing on any FHA insured mortgage where a default could be addressed by modifying the terms of the mortgage or other less-costly alternatives to foreclosure were available.

100. Lenders and servicers are required to have in place Loss Mitigation Policies and Procedures for dealing with problem loans, which the Stevensons' loan became in April 2010.

101. Lenders and Servicers are required to have properly trained and qualified employees and contractors involved with dealing with loss mitigation efforts.

102. Lenders and Servicers are required to properly supervise and oversee the actions of their employees engage in loss mitigation and loan modification efforts.

103. By having unqualified and poorly trained employees and contractors processing the Stevenson's loan mitigation efforts, One West Bank has breached its duty of care to the Stevensons.

104. In taking the actions alleged above and in failing to take the actions as alleged above, OneWest Bank negligently breached its duty of care and skill to the Stevensons and in doing so acted with reckless disregard and conscious indifference to the Stevensons' rights.

105. OneWest Bank's negligent breach of these duties has proximately caused the Stevensons to suffer damage to their financial condition and credit, as well as other actual and punitive damages to be proven at trial.

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**COUNTER CLAIM AND CROSS-CLAIM AGAINST**  
**PLAINTIFF AND CROSS DEFENDANT**  
**(Conspiracy)**

106. The Stevensons repeat and reallege everything set forth above verbatim.

107. The tort of civil conspiracy in South Carolina contains three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) causing plaintiff special damage.

108. Plaintiff and Cross Defendant have engaged in a civil conspiracy, for the purpose of using their size, superior financial strength and huge resources to beat the Stevensons down and force them into accepting an unfair result to their good faith attempts to mitigate their, the

Plaintiff's and the Cross Defendant's losses, thereby specially injuring and damaging the Stevensons.

109. The Stevensons have been specially damaged by the loss of the contract to sell their home, being subjected to foreclosure and deficiency judgments by other lien holders, damage to their credit, the incurring of legal fees to combat the conspiracy and other actual and punitive damages to be proven at trial.

110. As a direct and proximate of this civil conspiracy, the Stevensons are entitled to damages and relief as set forth below

**PRAYER FOR RELIEF**

**WHEREFORE**, the Stevensons pray the Court to enter an Order:

- i. Declaring that the Plaintiff shall have and recover nothing from the Stevensons;
- ii. Awarding all appropriate damages to the Stevensons, to include treble damages and attorney's fees under the SCUTPA against the Plaintiff and the Cross Defendant OneWest Bank FSB;
- iii. Awarding all appropriate damages to the Stevensons for breach of the duty of good faith and fair dealing under the loan and servicing contracts against the Plaintiff and the Cross Defendant OneWest Bank FSB;
- iv. Awarding all appropriate actual and punitive damages to the Stevensons under their negligence claims against the Plaintiff and the Cross Defendant OneWest Bank FSB;
- v. Awarding all appropriate actual and punitive damages to the Stevensons under their civil conspiracy claims against the Plaintiff and the Cross Defendant OneWest Bank FSB;
- vi. Providing such other relief as may be just and proper.

DiY  
17

This <sup>12/</sup>6 day of December, 2013.

*J. Rutledge Young, Jr.*

J. Rutledge Young, Jr., SC Bar No. 5737

[jry@duffyandyoung.com](mailto:jry@duffyandyoung.com)

Julie L. Moore, SC Bar No. 78677

[jmoore@duffyandyoung.com](mailto:jmoore@duffyandyoung.com)

DUFFY & YOUNG, LLC

96 Broad Street

Charleston, South Carolina 29401

(843) 720-2044 (phone)

(843) 720-2047 (fax)

*Attorneys for the Stevenson Defendants*

D:Y  
18

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **DEFENDANTS THOMAS C. STEVENSON, III AND IRVEN M. STEVENSON'S ANSWER TO AMENDED COMPLAINT AND AMENDED COUNTERCLAIMS AND CROSS-CLAIMS** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

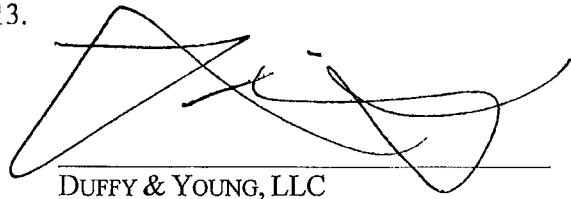
John J. Hearn, Esq.  
Rogers Townsend & Thomas, PC  
PO Box 100200  
Columbia, SC 29202  
*Attorneys for Plaintiff*

Tara E. Naful, Esq.  
Haynsworth Sinkler Boyd, PA  
PO Box 340  
Charleston, SC 29402  
*Attorneys for NBSC*

Milton G. Kimpson, Esq.  
SC Department of Revenue  
Office of General Counsel for Litigation  
PO Box 12265  
Columbia, SC 29211  
*Attorney for SC Dept. of Revenue*

FILED  
2013 DEC -6 PM 3:19  
JULIE L. ANDERSON  
CLERK OF COURT  
BY \_\_\_\_\_

This 6<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
DUFFY & YOUNG, LLC

# **EXHIBIT A**



### A. Settlement Statement (HUD-1)

#### B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input checked="" type="checkbox"/> Conv. Unins.	6. File Number: 029840.5	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)\* were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower: Rebekah H. Unger 10 Halsey Street Charleston, SC 29401	E. Name and Address of Seller: Iven M. Stevenson	F. Name and Address of Lender: Caliber Funding, LLC 603 N. Wilmot Tucson, AZ 85711
--	---	---

G. Property Location: 173 Tradd Street Charleston, SC 29401 Charleston County, South Carolina TMS: 457-11-01-083	H. Settlement Agent: Moore & Van Allen, PLLC 40 Calhoun Street, Suite 300 Charleston, SC 29401 Place of Settlement: 40 Calhoun Street, Suite 300 Charleston, SC 29401	I. Settlement Date: May 1, 2012
--	---	------------------------------------

J. Summary of Borrower's transaction		K. Summary of Seller's transaction	
100. Gross Amount Due from Borrower:		400. Gross Amount Due to Seller:	
101. Contract sales price	1,125,000.00	401. Contract sales price	1,125,000.00
102. Personal property		402. Personal property	
103. Settlement Charges to Borrower (Line 1400)	2,780.00	403.	
104.		404.	
105.		405.	
Adjustments for Items paid by Seller in advance		Adjustments for Items paid by Seller in advance	
106. City/Town Taxes	to	406. City/Town Taxes	to
107. County Taxes	to	407. County Taxes	to
108. Assessments	to	408. Assessments	to
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due from Borrower	1,127,780.00	420. Gross Amount Due to Seller	1,125,000.00
200. Amounts Paid by or In Behalf of Borrower		500. Reductions in Amount Due Seller:	
201. Deposit or earnest money	5,000.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	417,000.00	502. Settlement charges to Seller (Line 1400)	110,598.59
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Funds from 2nd	75,000.00	504. Payoff First Mortgage to IndyMac Bank	750,000.00
205.		505. Payoff Second Mortgage to NBSC	200,000.00
206.		506. Dep. retained (\$5,000.00)	5,000.00
207.		507. Payoff SC DOR to SC DOR	57,500.00
208.		508.	
209.		509.	
Adjustments for Items unpaid by Seller		Adjustments for Items unpaid by Seller	
210. City/Town Taxes	to	510. City/Town Taxes	to
211. County Taxes	01/01/12 to 05/02/12	511. County Taxes	01/01/12 to 05/02/12
212. Assessments	to	512. Assessments	to
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid by/for Borrower	498,901.41	520. Total Reduction Amount Due Seller	1,125,000.00
300. Cash at Settlement from/to Borrower		600. Cash at settlement to/from Seller	
301. Gross amount due from Borrower (line 120)	1,127,780.00	601. Gross amount due to Seller (line 420)	1,125,000.00
302. Less amount paid by/for Borrower (line 220)	(498,901.41)	602. Less reductions due Seller (line 520)	(1,125,000.00)
303. Cash <input checked="" type="checkbox"/> From <input type="checkbox"/> To Borrower	628,888.59	603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller	0.00

\* Paid outside of closing by borrower(s), seller(s), lender(s), or third party(s)  
The undersigned hereby acknowledge receipt of a completed copy of this statement & any attachments referred to herein

Borrower: Rebekah H. Unger Seller: Iven M. Stevenson

The Public Reporting Burden for this collection of information is estimated to average 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. If no control number is shown, this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

**L. Settlement Charges**

700. Total Real Estate Broker Fees		\$ 87,500.00		
Division of commission (line 700) as follows:				
701.	\$ 33,750.00 to William Means Company			
702.	\$ 33,750.00 to Carolina One			
703. Commission paid at settlement				
704.	Deposit Ret'd By Listing Agent	to William Means Company	\$5000.00 (POC)	62,500.00
705.				
<b>800. Items Payable In Connection With Loan</b>				
801. Our origination charge				
802.	Your credit or charge (points) for the specific interest rate chosen		(from GFE #1)	
803.	Your adjusted origination charges		(from GFE #A)	0.00
804.	Appraisal fee	to	(from GFE #3)	
805.	Credit Report	to	(from GFE #3)	
806.	Tax service	to	(from GFE #3)	
807.	Flood certification	to	(from GFE #3)	
808.				
809.				
810.				
811.				
<b>900. Items Required by Lender to Be Paid in Advance</b>				
901.	Daily interest charges from 05/01/12 to 06/01/12	31 @ \$/day	(from GFE #10)	
902.	Mortgage insurance premium for	months to	(from GFE #3)	
903.	Homeowner's insurance for	years to	(from GFE #11)	
904.				
905.				
<b>1000. Reserves Deposited With Lender</b>				
1001. Initial deposit for your escrow account (from GFE #9)				
1002.	Homeowner's insurance	months @ \$	per month	\$
1003.	Mortgage insurance	months @ \$	per month	\$
1004. Property taxes				
County Taxes				
1005.		months @ \$	per month	\$
1006.		months @ \$	per month	\$
1007.		months @ \$	per month	\$
1008.		months @ \$	per month	\$
1009. Aggregate Adjustment				
1100. Title Charges				
1101. Title services and lender's title insurance (from GFE #4)				
1102.	Settlement or closing fee	to Moore & Van Allen, PLLC/RMC	\$	495.00
1103.	Owner's title insurance to Chicago Title Insurance Company		(from GFE #5)	15.00
1104.	Lender's title insurance to Chicago Title Insurance Company		\$ 100.00	2,295.00
1105.	Lender's title policy limit	\$ 417,000.00		
1106.	Owner's title policy limit	\$ 1,125,000.00		
1107.	Agent's portion of the total title insurance premium	to Moore & Van Allen, PLLC	\$ 1,437.00	
1108.	Underwriter's portion of the total title insurance premium	to Chicago Title Insurance Company	\$ 958.00	
1109.				
1110.				
1111.				
1112.				
1113.				
<b>1200. Government Recording and Transfer Charges</b>				
1201. Government recording charges (from GFE #7)				
1202.	Deed \$	Mortgage \$	Releases \$	Other \$
1203. Transfer taxes (from GFE #8)				
1204.	City/County tax/stamps	Deed \$ 4,162.50	Mortgage \$	
1205.	State tax/stamps	Deed \$	Mortgage \$	4,162.50
1206.				
1207.				
<b>1300. Additional Settlement Charges</b>				
1301. Required services that you can shop for (from GFE #8)				
1302.	2011 Taxes	to Charleston County Delinquent Tax	\$	6,589.05
1303.	Seller Legal Fees	to Duffy & Young, LLC	\$	37,331.24
1304.				
1305.				
1400. Total Settlement Charges (enter on line 103, Section J and 502, Section K)			2,790.00	110,698.59

\* Paid outside of closing by borrower(s), seller(s), lender(s), or third party(ies)  
 By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of pages 2 & 3 of this three page statement.  
 Substantia Form 1099-S

**SELLER'S TAX ID SOLICITATION:** THE INFORMATION IN BLOCKS E, G, H, I AND ON LINES 401, 406, 407 and 408 IS IMPORTANT TAX INFORMATION AND IS BEING FURNISHED TO THE INTERNAL REVENUE SERVICE. IF YOU ARE REQUIRED TO FILE A RETURN, A NEGLIGENCE PENALTY OR OTHER SANCTION MAY BE IMPOSED ON YOU IF THIS ITEM IS REQUIRED TO BE REPORTED AND THE IRS DETERMINES THAT IT HAS NOT BEEN REPORTED. YOU ARE REQUIRED BY LAW TO PROVIDE THE SETTLEMENT AGENT WITH YOUR CORRECT TAXPAYER IDENTIFICATION NUMBER. IF YOU DO NOT PROVIDE THE SETTLEMENT AGENT WITH YOUR CORRECT TAXPAYER IDENTIFICATION NUMBER, YOU MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES IMPOSED BY LAW.

For sales or exchanges of certain real estate, the person responsible for closing a real estate transaction must report the real estate proceeds to the Internal Revenue Service and must furnish this statement to you. To determine if you have to report the sale or exchange of your main home on your tax return, see the 2012 Schedule D (Form 1040) Instructions. If the real estate was not your main home, report the transaction on Form 1099-S (copy a) You received a loan provided from the proceeds of a qualified mortgage bond or you received a mortgage credit certificate; b) Your original mortgage loan was provided after 1/99, and c) You sold or disposed of your home at a gain during the first 8 years after you received the Federal mortgage subsidy. This will increase your tax. See Form 8328, Recapture of Federal Mortgage Subsidy, and Pub. 523, Selling Your Home.

If you have already paid the real estate tax for the period that includes the sale date, subtract the amounts on Lines 406, 407 & 408 from the amount already paid to determine your deductible real estate tax. But if you have already deducted the real estate tax in a prior year, generally report this amount as income on the "Other Income" line of Form 1040. For more information, see Pub. 523.

For Paperwork Reduction Act Notice, see the 2012 Instructions for Forms 1099, 1098, 6458, and W-9Z.  
 Department of the Treasury - Internal Revenue Service

UNDER PENALTIES OF PERJURY, I CERTIFY THAT THE NUMBER SHOWN BELOW ON THIS STATEMENT IS MY CORRECT TAXPAYER IDENTIFICATION NUMBER.

Seller's Signature \_\_\_\_\_  
 Seller's Signature \_\_\_\_\_  
 Seller's Signature \_\_\_\_\_  
 Seller's Signature \_\_\_\_\_

**HUD-1 Attachment**

**Borrower(s):** Rebekah H. Unger  
 10 Halsey Street  
 Charleston, SC 29401  
**Lender:** Caliber Funding, LLC  
**Settlement Agent:** Moore & Van Allen, PLLC  
**Place of Settlement:** 40 Calhoun Street, Suite 300  
 Charleston, SC 29401  
**Settlement Date:** May 1, 2012  
**Property Location:** 173 Tradd Street  
 Charleston, SC 29401  
 Charleston County, South Carolina  
 TMS: 457-11-01-063

**Seller(s):** Iven M. Stevenson

**Seller Loan Payoff Details**

<b>Payoff First Mortgage</b>	to IndyMac Bank		
Loan Payoff	As of	days @	Per Diem
Total Additional Interest			
<b>Total Loan Payoff</b>	<u>750,000.00</u>		
<b>Payoff Second Mortgage</b>	to NBSC		
Loan Payoff	As of	days @	Per Diem
Total Additional Interest			
<b>Total Loan Payoff</b>	<u>200,000.00</u>		

**Title Services and Lender's Title Insurance Details**

	BORROWER	SELLER
Title Abstract to Abstracting Co., LLC	295.00	
Title Binder to Moore & Van Allen, PLLC	100.00	
Lender's Title Insurance to Chicago Title Insurance Company	100.00	
<b>Total</b>	<u>\$ 495.00</u>	<u>\$ 0.00</u>

**Settlement or Closing Fee Details**

	BORROWER	SELLER
Satisfaction Handling Fee to Moore & Van Allen, PLLC/RMC		15.00
<b>Total</b>	<u>\$ 0.00</u>	<u>\$ 15.00</u>

**Owner's Title Insurance**

	BORROWER	SELLER
Owner's Policy Premium to Chicago Title Insurance Company	2,295.00	
<b>Total</b>	<u>\$ 2,295.00</u>	<u>\$ 0.00</u>

**WARNING:** It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

Lender's Title Insurance		BORROWER	SELLER
<small>*fees also shown above in Title Services and Lender's Title Insurance Details</small>			
Lender's Policy Premium to Chicago Title Insurance Company		100.00	
Total		\$ 100.00	\$ 0.00

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

# Exhibit E

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2012-CP-10-1844

Deutsche Bank National Trust Company, as  
Trustee of the IndyMac IMJA Mortgage  
Trust 2007-A2, Mortgage Pass-Through  
Certificates, Series 2007-A2 under the  
Pooling and Servicing Agreement dated  
August 1, 2007,

Plaintiff,

vs.

Thomas C. Stevenson III, Irven M.  
Stevenson, National Bank of South Carolina  
nka Synovus Bank and South Carolina  
Department of Revenue, and OneWest Bank  
FSB, including its division known as Indy  
Mac Mortgage Services,

Defendants.

DEFENDANTS THOMAS C. STEVENSON,  
III'S AND IRVEN M. STEVENSON'S  
MOTION TO TRANSFER CASE TO JURY  
ROSTER

FILED  
CLERK OF COURT  
NINTH JUDICIAL CIRCUIT  
SOUTH CAROLINA  
2013 DEC 11 AM 10:00

COME NOW Defendants Thomas C. Stevenson, III and Irven M. Stevenson ("the Stevenson Defendants"), by and through counsel, will move at such a time and place as the Court may determine, notice of which will be given to Plaintiff and cross-claim Defendant, OneWest Bank FSB, for an Order transferring the Stevenson Defendants' counterclaims to the jury roster.<sup>1</sup>

As evidenced by the Answer to Amended Complaint and Amended Counterclaims and Cross-Claims of the Stevenson Defendants filed December 6, 2013 and attached hereto as Exhibit A, the Stevenson Defendants have demanded a jury trial with respect to their compulsory, legal counterclaims. Pursuant to South Carolina Rule of Civil Procedure 13(a), a defendant is required to plead as a counterclaim any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim. In such instances, a defendant "is

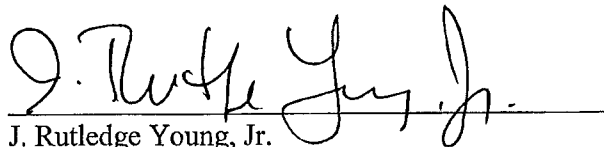
<sup>1</sup> The Stevenson Defendants' counsel has attempted to confer with Plaintiff's and OneWest Bank FSB's counsel and will withdraw this motion in the event Plaintiff's and OneWest Bank FSB's counsel consents to transferring this action to the jury roster.

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entitled to a jury trial on these compulsory counterclaims if legal in nature even though asserted in an equitable action.” C & S Real Estate Servs., Inc. v. Messengale, 209 S.C. 299, 301, 350 S.E.2d 191, 192 (1986); Johnson v. South Carolina Nat’l Bank, 292 S.C. 51, 55-56, 354 S.E.2d 895, 897 (1987) (supporting holding that compulsory legal counterclaims are entitled to jury trial). The Stevenson Defendants’ counterclaims for Plaintiff’s unfair trade practices act, breach of duty of good faith, negligence, and conspiracy are both legal and compulsory. For these reasons, the Stevenson Defendants respectfully requests this Court grant their instant motion and transfer the Stevenson’s compulsory counterclaims to the jury trial roster and ordering that these legal and compulsory counterclaims be heard before Plaintiff’s foreclosure claim and the Stevenson’s permissive cross-claims.

D:Y  
Z

This 6<sup>th</sup> day of May, 2014 at Charleston, South Carolina.



J. Rutledge Young, Jr.  
Julie L. Moore  
DUFFY & YOUNG, LLC  
96 Broad Street  
Charleston, South Carolina 29401  
(843) 720-2044 (phone)  
(843) 720-2047 (fax)  
*Attorneys for the Stevenson Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **DEFENDANTS THOMAS C. STEVENSON, III'S AND IRVEN M. STEVENSON'S MOTION TO TRANSFER CASE TO JURY ROSTER** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

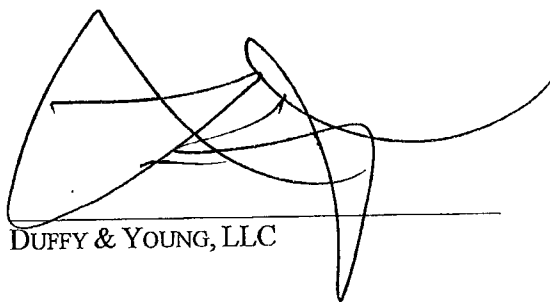
Sean A. O'Connor, Esq.  
Finkel Law Firm, LLC  
PO Box 41489  
Charleston, SC 29423  
*Attorneys for Plaintiff*

John J. Hearn  
Rogers Townsend & Thomas, PC  
PO Box 100200  
Columbia, SC 29202  
*Attorneys for OneWest Bank FSB*

Tara E. Nauful, Esq.  
Adams and Reese, LLP  
1501 Main Street, 5<sup>th</sup> Floor  
Columbia, SC 29201  
*Attorneys for NBSC*

Milton G. Kimpson, Esq.  
SC Department of Revenue  
Office of General Counsel for Litigation  
PO Box 12265  
Columbia, SC 29211  
*Attorney for SC Dept. of Revenue*

This 6<sup>th</sup> day May, 2014.

  
DUFFY & YOUNG, LLC

BY \_\_\_\_\_  
OFFICE OF THE CLERK OF COURT  
1501 MAIN STREET  
COLUMBIA, SC 29201

**EXHIBIT A**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2012-CP-10-1844

Deutsche Bank National Trust Company, as  
Trustee of the IndyMac IMJA Mortgage  
Trust 2007-A2, Mortgage Pass-Through  
Certificates, Series 2007-A2 under the  
Pooling and Servicing Agreement dated  
August 1, 2007,

Plaintiff,

vs.

Thomas C. Stevenson III, Irven M.  
Stevenson, National Bank of South Carolina  
nka Synovus Bank and South Carolina  
Department of Revenue, and OneWest Bank  
FSB, including its division known as Indy  
Mac Mortgage Services,

Defendants.

FILED  
2013 DEC -6 PM 3:18  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

WRIT OF SUMMONS

DEFENDANTS DEMAND A  
TRIAL BY JURY

TO ONEWEST BANK FSB, including its division known as INDY MAC  
MORTGAGE SERVICES:

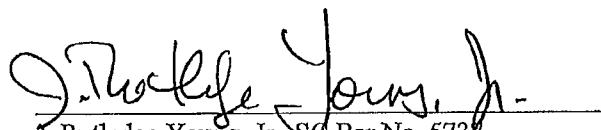
YOU ARE HEREBY SUMMONED and required to answer the Cross-claims in this  
action, a copy of which is served upon you herewith, and to serve a copy of your answer to said  
Cross-claims on the subscribers at their offices, DUFFY & YOUNG, LLC, 96 Broad Street,  
Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of  
the day of such service. If you fail to answer the Cross-claims within the time aforesaid, Thomas  
C. Stevenson III and Irven M. Stevenson will apply to the Court for judgment by default to be  
rendered against you for the relief demanded in the Cross-claims.

D:4  
/

[signature on following page]

This 6<sup>th</sup> day of December, 2013 at Charleston, South Carolina.

D:Y  
Z



J. Rutledge Young, Jr., SC Bar No. 5737

[jry@duffyandyoung.com](mailto:jry@duffyandyoung.com)

Julie L. Moore, SC Bar No. 78677

[jmoore@duffyandyoung.com](mailto:jmoore@duffyandyoung.com)

DUFFY & YOUNG, LLC

96 Broad Street

Charleston, South Carolina 29401

(843) 720-2044 (phone)

(843) 720-2047 (fax)

*Attorneys for the Stevenson Defendants*

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2012-CP-10-1844

Deutsche Bank National Trust Company, as Trustee of the IndyMac IMJA Mortgage Trust 2007-A2, Mortgage Pass-Through Certificates, Series 2007-A2 under the Pooling and Servicing Agreement dated August 1, 2007,

Plaintiff,

vs.

Thomas C. Stevenson III, Irven M. Stevenson, National Bank of South Carolina nka Synovus Bank and South Carolina Department of Revenue, and OneWest Bank FSB, including its division known as Indy Mac Mortgage Services,

Defendants.

DEFENDANTS THOMAS C. STEVENSON,  
III AND IRVEN M. STEVENSON'S  
ANSWER TO AMENDED COMPLAINT  
AND AMENDED COUNTERCLAIMS AND  
CROSS-CLAIMS

DEFENDANTS DEMAND A  
TRIAL BY JURY

FILED  
2013 DEC - 6 PM 3:19  
CLERK OF COURT

COME NOW Defendants, Thomas C. Stevenson, III and Irven M. Stevenson (the "Stevensons"), by and through counsel, and in answer to Plaintiff's Amended Complaint and as a Counterclaim against the Plaintiff and a Cross Complaint against OneWest Bank FSB, including its division known as Indy Mac Mortgage Services state the following Answer and Amended Counterclaims and Cross-claims.

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**GENERAL DENIAL**

The Stevensons deny all allegations of Plaintiff's Amended Complaint not specifically admitted herein.

1. Deutsche Bank, as the alleged owner of the Stevensons' loan at the time this action was commenced, is the alter ego or agent of OneWest Bank, successor to Indy Mac Bank.

2. Indy Mac Bank, the original residential lender to the Stevensons, failed in July 2008. Thereafter, the Federal government took it over in what was deemed at the time as being the second largest bank failure in US Banking History.

3. On July 11, 2008, the FDIC took over as Conservator of Indy Mac Bank.

4. On March 19, 2009, the FDIC sold Indy Mac Bank to OneWest Bank, FSB which had acted as a servicer for many of Indy Mac's loans.

5. This court has personal jurisdiction over all the parties and over the subject matter of this action.

**FIRST DEFENSE AND ANSWER TO THE PLAINTIFF'S COMPLAINT**

1. The Stevensons admit so much of the allegation of Paragraph 1, upon information and belief as alleged that Plaintiff is a foreign corporation but denies that the Plaintiff, at the time of the commencement of this action, had an interest in the real estate which is the subject matter of this complaint and demands strict proof thereof.

D:Y  
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2. The Stevensons lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and therefore deny the same.

3. The Stevensons admit the allegations of Paragraph 3 upon information and belief as to the Note, but demand strict proof as to whether the Plaintiff owned the Mortgagee which it seeks to foreclose upon at the time of the commencement of this action.

4. Responding to Paragraph 4 of the Plaintiff's First Cause of Action, the Stevensons restate their responses to the allegations of Paragraphs 1 through 3 as if fully set forth herein.

5. The Stevensons lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Plaintiff's First Cause of Action, and therefore deny the same and demand strict proof thereof.

6. The Stevensons lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Plaintiff's First Cause of Action, and therefore deny the same and demand strict proof thereof.

7. Responding to Paragraph 7 of the Plaintiff's Second Cause of Action, the Stevensons restate their responses to the allegations of Paragraphs 1 through 6 as if fully set forth herein.

8. The Stevensons lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Plaintiff's Second Cause of Action and therefore deny the same.

9. The Stevensons lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Plaintiff's Second Cause of Action and therefore deny the same.

10. Responding to Paragraph 10 of the Plaintiff's Third Cause of Action, the Stevensons restate their responses to the allegations of Paragraphs 1 through 9 as if fully set forth herein.

11. Responding to Paragraph 11 of the Plaintiff's Third Cause of Action, the Stevensons admit that they executed a promissory note and state that the note is a document that speaks for itself. The Stevensons deny all inconsistent allegations.

12. Responding to Paragraph 12 of the Plaintiff's Third Cause of Action, the Stevensons admit that they executed a mortgage in favor of MERS as nominee for Indy Mac Bank and state that the mortgage is a document that speaks for itself. The mortgage defines Mortgage Electronic Registration Systems, Inc. as the mortgagee and IndyMac Bank, F.S.B. as the lender. The Stevensons deny all inconsistent allegations.

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13. The Stevensons admit the allegations of Paragraph 13 of the Plaintiff's Third Cause of Action.

14. The Stevensons deny the allegations of Paragraph 14 of the Plaintiff's Third Cause of Action.

15. The Stevensons admit the allegations of Paragraph 15 of the Plaintiff's Third Cause of Action and crave reference to the mortgage, which speaks for itself.

16. The Stevensons deny the allegations of Paragraph 16 of the Plaintiff's Third Cause of Action.

17. The Stevensons admit the allegations of Paragraph 17 of the Plaintiff's Third Cause of Action.

18. The Stevensons admit the allegations of Paragraph 18 of Plaintiff's Third Cause of Action and state that the mortgage is a document that speaks for itself.

19. The Stevensons admit the allegations of all subparagraphs of Paragraph 19 of Plaintiff's Third Cause of Action.

20. The Stevensons admit the allegations of Paragraph 20 of Plaintiff's Third Cause of Action.

21. The Stevensons admit the allegations of Paragraph 21 of Plaintiff's Third Cause of Action and crave reference to the mortgage, which speaks for itself. The Stevensons deny any inconsistent allegations of Paragraph 21.

22. The Stevensons admit the allegations of Paragraph 22 of Plaintiff's Third Cause of Action and further admit monthly payments have not been paid since April 1, 2011.

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23. Paragraph 23 states a conclusion of law to which no response is required. To the extent a response is required, the Stevensons deny the allegations of Paragraph 23 of Plaintiff's Third Cause of Action.

24. The Stevensons deny the allegations of Paragraph 24 of Plaintiff's Third Cause of Action, said paragraph being the remaining allegation of the Plaintiff's Amended Complaint.

25. The Stevensons deny the allegations of the WHEREFORE paragraph and all its subparts.

**SECOND DEFENSE**  
**(Unclean Hands)**

26. Plaintiff's claims are barred by the equitable doctrine of unclean hands.

**THIRD DEFENSE**  
**(Waiver and Estoppel)**

27. Plaintiff's claims are barred by the equitable doctrines of estoppel and waiver.

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**FOURTH DEFENSE**  
**(Failure to Mitigate)**

28. Plaintiff's claims are barred, in whole or in part, by its failure to mitigate its and the Stevensons' losses or damages or to follow its own internal mitigation policies, HUD regulations, FHA guidance, HAMP 1 and HAMP 2 and/or South Carolina Supreme Court Order 2011-05-02-01.

**FIFTH DEFENSE**  
**(Reservation of Rights for Additional Defenses)**

29. The Stevensons reserve the right to amend their Answer and Counterclaim after discovery has transpired.

**FURTHER ANSWERING THE COMPLAINT AND BY WAY OF COUNTERCLAIM  
AGAINST THE PLAINTIFF AND A CROSS-CLAIM AGAINST DEFENDANT  
ONEWEST BANK, THE STEVENSONS ALLEGE AS FOLLOWS:**

30. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein to the extent consistent with this counterclaim.

31. Plaintiff allegedly owns the Stevensons' Note and mortgage (which ownership the Stevensons deny and demand strict proof thereof) and OneWest Bank FSB services the Stevensons' loan. OneWest Bank, which is doing business in South Carolina, is a federally chartered insured savings bank owned by OneWest Bank Group, LLC.

32. Plaintiff in this action, Deutsche Bank National Trust Company, as Trustee of the Indy Mac IMJA Mortgage Trust 2007-A2, Mortgage Pass-Through Certificates, Series 2007-A2 under the Pooling and Servicing Agreement dated August 1, 2007 ("Indy Mac Mortgage Trust") has alleged that it was assigned the note and mortgage at issue in this case "by assignment to be recorded," and subsequently filed this foreclosure suit. Plaintiff denies that the assignment was properly completed before this action was commenced.

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33. The Stevensons are informed and believe that Plaintiff and OneWest Bank are, and at all material times have been, partners, counterparts, *alter egos*, co-conspirators and the agents, servants or employees with and of each other, purporting and conspiring to act in concert within the scope of these relationships in performing the acts and omitting to act as averred herein.

34. On or about July 6, 2007, the Stevensons signed a note secured by a mortgage on 173 Tradd Street. The lender was Indy Mac Bank, F.S.B. ("Indy Mac Bank").

35. The closing of the loan that is the subject of the Complaint in this action was closed on July 6, 2007, and on information and belief the Stevensons' signatures were not properly notarized.

36. Sometime thereafter, the Stevensons' Note and mortgage was allegedly assigned to the Plaintiff.

37. As a federally insured loan, the Stevensons' loan is subject to various Federal Laws, Regulations and Policies.

38. The federal government took control of IndyMac Bank in July 2008. On July 11, 2008, IndyMac Bank was closed by the Office of Thrift Supervision and the FDIC was named Conservator.

39. On March 19, 2009, the FDIC sold IndyMac Bank to OneWest.

40. On information and belief, OneWest Bank became the loan servicer of the Stevensons' Indy Mac loan after March 19, 2009, when the FDIC as conservator sold Indy Mac Bank to OneWest Bank.

41. In calendar year 2010, the Stevensons suffered severe financial reversals and difficulty and were unable to pay any of their monthly mortgage payments on their primary residence at 173 Tradd Street (the "Property").

42. According to the Complaint in this action, the Note and mortgage on 173 Tradd Street were assigned to the Plaintiff "by assignment to be recorded."

43. The Stevenson's deny that Plaintiff was properly assigned the note and mortgage, but if that did occur, Deutsche Bank National Trust Company and Indy Mac IMJA Mortgage Trust 207-A2 are, and have at all material times been, the agent of OneWest Bank, which is the successor by purchase of Indy Mac Bank, and Plaintiff and One West Bank have been assigned

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in purchasing the Stevensons' loan under the PSA dated August 1, 2007, all of the liabilities of Indy Mac and OneWest associated with the Stevenson Note and mortgage handling and servicing.

44. As alleged in the Plaintiff's Complaint, there are several other liens against the Property including liens of National Bank of South Carolina ("NBSC") and the South Carolina Department of Revenue ("SCDOR").

45. The Property was listed for sale on June 15, 2011, as part of a written Settlement Agreement with NBSC, which had a second lien and third lien on the property, in related litigation.

46. For six months, no offers were made on the property and the listing price was subsequently reduced to \$1,295,000 in January of 2012.

47. In February 2012, the Stevensons received the first and only offer to purchase the Property for \$1,125,000 from Rebekah Unger, a pre-qualified and willing buyer.

48. The Stevensons entered into a written Agreement to Buy and Sell Residential Real Estate with the buyer on February 29, 2012, which Agreement was contingent on approval of the sale by the holder of all of the liens on the property.

49. Indy Mac Mortgage Trust subsequently filed this foreclosure action 16 days later, on March 16, 2012.

50. The Stevensons negotiated with the other lien holders NBSC and the SCDOR and the real estate agents and were able to work out a way to have all other liens released and pay out reduced real estate commissions for the total sum of \$375,000, leaving a total of \$750,000 available to be paid to the Plaintiff to whom the Indy Mac loan had allegedly been assigned. The servicer of the Stevenson loan, IndyMac Mortgage Services, a division of One West Bank, FSB,

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was the agent for and alter ego of the Plaintiff in negotiating a modification to the Stevenson loan so that the settlement could be consummated. The closing was scheduled to occur before May 16, 2012. (See Seller's HUD-1 attached as Exhibit A).

51. After extensive and intense negotiations with IndyMac Mortgage Services, a division of Cross Defendant OneWest Bank, and the other lien holders to mitigate everyone's losses, which Plaintiff as owner of and investor in the Stevensons' loan was made aware of by IndyMac Mortgage Services, a division of Cross Defendant OneWest Bank, the loan servicer or its counsel, all of the other lien holders agreed to take substantial discounts on their liens in order to mitigate their and the Stevensons' losses and damages and to allow the Unger sale to close.

52. Even though Plaintiff, as Trustee of the Indy Mac IMJA Mortgage Trust 2007-A2 and its partner, counterpart, *alter ego*, co-conspirator and agent OneWest Bank knew their refusal to negotiate a settlement would result in the real estate contract being terminated by the buyer, OneWest and Indy Mac Mortgage Trust and Plaintiff as its partner, counterpart, *alter ego*, co-conspirator and agent refused to negotiate in good faith and refused to agree to accept a reduced amount on the Stevensons' first lien so that the sale could be closed.

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53. Plaintiff, OneWest Bank and Indy Mac Trust have failed to engage in mandatory loss mitigation efforts and failed to comply with South Carolina Supreme Court Order 2011-05-02-01.

54. This mortgage is subject to modification under several federally funded programs, such as RESPA, HAMP 1 and HAMP 2.

55. Plaintiff, by and through and its partner, counterpart, *alter ego*, co-conspirator and agent OneWest Bank, failed to respond in a timely fashion to the Stevensons' efforts to sell their home and pay off or get releases from all the other lien holders.

**FIRST COUNTERCLAIM AGAINST PLAINTIFF**  
**(Unfair Trade Practices Act)**

56. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein.

57. This cause of action is brought pursuant to the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10.

58. Plaintiff and OneWest Bank committed unfair and deceptive acts and practice in the conduct of trade or commerce which are offensive to public policy, immoral, unethical and oppressive.

59. Pursuant to HUD regulations, FHA guidance and South Carolina law, mortgage lenders and their servicers, including Plaintiff, Indy Mac IMJA Mortgage Trust 2007-A2 and OneWest Bank, are required to engage in loss-mitigation efforts to avoid the foreclosure of single family residential mortgages. Lenders and servicers are required to refrain from foreclosing on any FHA insured mortgage where a default could be addressed by modifying the terms of the mortgage or other less-costly alternatives to foreclosure were available.

60. Plaintiff, OneWest Bank, and Indy Mac IMJA Mortgage Trust 2007-A2 failed and refused to engage in meaningful loss-mitigation efforts with the Stevensons and as a result the Stevensons were not able to refinance their loan, modify their loan, had their attempts at loan modification denied and were sued in a foreclosure action while they were making good faith attempts to mitigate their and the lien holder's losses by selling the property.

61. The actions described above had the effect or tendency to deceive.

62. The actions of Plaintiff, Indy Mac IMJA Mortgage Trust 2007-A2 and OneWest Bank impact the public interest because they have taken similar acts in the past and their acts are capable of repetition.

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63. Furthermore, Plaintiff, OneWest Bank and Indy Mac IMJA Mortgage Trust 2007-A2 actions were willful, unfair and deceptive.

64. As a direct and proximate result of the deceptive and unfair trade practices of Plaintiff, OneWest Bank and Indy Mac IMJA Mortgage Trust 2007-A2, the Stevensons have suffered damages and are entitled to an award of actual damages, treble damages, attorneys' fees and costs and such other relief as the Court deems just or proper.

**SECOND COUNTERCLAIM AGAINST PLAINTIFF**  
**(Count Two – Breach of Duty of Good Faith)**

65. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein.

66. According to the Plaintiff's Complaint, the note and mortgage were assigned to the Plaintiff.

67. Plaintiff is the partner, counterpart, *alter ego*, co-conspirator and agent with and of OneWest Bank.

68. In every contract in South Carolina, the parties are charged with a duty of good faith and fair dealing.

69. Plaintiff and OneWest enjoyed substantial discretionary power affecting the rights of the Stevensons during the events alleged here. They were required to exercise such power in good faith.

70. If the Stevensons' note and mortgage were validly and properly assigned to the Plaintiff, Plaintiff has breached its duty of good faith and fair dealing with the Stevensons by failing to enter into good faith loan mitigation negotiations with the Stevensons, resulting in damage to the Stevensons that include loss of the contract to sell their home and being subjected

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to foreclosure and deficiency judgments by other lien holders, damage to their credit and other damages to be proven at trial.

**THIRD COUNTERCLAIM AGAINST PLAINTIFF**  
**(Count Three – Negligence)**

71. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein.

72. Plaintiff and Indy Mac IMJA Mortgage Trust 2007-A2 acting as the Stevensons' lender and its partner, counterpart, *alter ego*, co-conspirator and agent OneWest Bank as the loan servicer owed to the Stevensons a duty to exercise reasonable care and skill to engage in loss-mitigation efforts to avoid the foreclosure of single family residential mortgages.

73. Lenders and servicers are required to refrain from foreclosing on any FHA insured mortgage where a default could be addressed by modifying the terms of the mortgage or other less-costly alternatives to foreclosure were available.

74. Lenders and servicers are required to have in place Loss Mitigation Policies and Procedures for dealing with problem loans, which the Stevensons' loan became in April 2010.

75. Lenders and Servicers are required to have properly trained and qualified employees and contractors involved with dealing with loss mitigation efforts.

76. Lenders and Servicers are required to properly supervise and oversee the actions of their employees engage in loss mitigation and loan modification efforts.

77. In taking the actions alleged above and in failing to take the actions as alleged above, and by having unqualified and poorly trained employees and contractors processing the Stevenson's loan mitigation efforts, and by failing to properly supervise its loss mitigation programs, Plaintiff negligently breached its duty of care and skill to the Stevensons and in doing so acted with reckless disregard and conscious indifference to the Stevensons' rights.

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78. Plaintiff's negligent breach of these duties has proximately caused the Stevensons to suffer damage to their financial condition and credit, as well as other actual and punitive damages to be proven at trial.

**FIRST CROSS-CLAIM AGAINST ONEWEST BANK FSB**  
**(Unfair Trade Practices in Violation of SC Code § 39-5-10)**

79. Stevensons incorporate by reference all the above paragraphs as though fully set forth herein to the extent consistent with this Cross-claim

80. OneWest Bank FSB services the Stevensons' loan. OneWest Bank, which is doing business in South Carolina, is a federally chartered insured savings bank owned by OneWest Bank Group, LLC.

81. This cause of action is brought pursuant to the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10.

82. Plaintiff and OneWest Bank committed unfair and deceptive acts and practice in the conduct of trade or commerce which are offensive to public policy, immoral, unethical and oppressive.

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83. Pursuant to HUD regulations and FHA guidance, mortgage lenders and their servicers, including Plaintiff, Indy Mac and OneWest Bank, are required to engage in loss-mitigation efforts to avoid the foreclosure of single family residential mortgages. Lenders and servicers are required to refrain from foreclosing on any FHA insured mortgage where a default could be addressed by modifying the terms of the mortgage or other less-costly alternatives to foreclosure were available.

84. Plaintiff, OneWest Bank, and Indy Mac Mortgage Trust failed and refused to engage in meaningful loss-mitigation efforts with the Stevensons and as a result the Stevensons were not able to refinance their loan, modify their loan, had their attempts at loan modification

denied and were sued in a foreclosure action while they were making good faith attempts to mitigate their and the lien holders losses by selling the property.

85. The actions described above had the effect or tendency to deceive.

86. The actions of Plaintiff, Indy Mac Trust and OneWest Bank impact the public interest because they have taken similar action in the past and their acts are capable of repetition.

87. Furthermore, Plaintiff, OneWest Bank and Indy Mac Mortgage Trust's actions were willful, unfair and deceptive.

88. As a direct and proximate result of the deceptive and unfair trade practices of Plaintiff, OneWest Bank and Indy Mac Mortgage Trust, the Stevensons have suffered damages and are entitled to an award of actual damages, treble damages, attorneys' fees and costs and such other relief as the Court deems just or proper.

**SECOND CROSS-CLAIM AGAINST ONEWEST BANK**  
**(Count Two – Breach of Duty of Good Faith)**

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89. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein.

90. Indy Mac Bank was the predecessor of OneWest Bank and Indy Mac Bank was the original mortgage lender on the Stevensons' residence at 173 Tradd St in Charleston, SC.

91. According to the Plaintiff's Complaint, the note and mortgage were assigned to the Plaintiff.

92. OneWest Bank FSB is the "servicer" of the Loan which Plaintiff is the Investor in and has had assigned to it.

93. OneWest Bank is the partner, counterpart, *alter ego*, co-conspirator and agent with and of the Plaintiff and Indy Mac IMJA Mortgage Trust 2007-A2 in servicing the Stevensons' loan.

94. In every contract in South Carolina, the parties are charged with a duty of good faith and fair dealing.

95. The Plaintiff and OneWest enjoyed substantial discretionary power affecting the rights of the Stevensons during the events alleged here. They were required to exercise such power in good faith.

96. OneWest Bank, as the Stevensons' loan servicer, has breached its duty of good faith and fair dealing with the Stevensons by failing to enter into good faith loan mitigation negotiations with the Stevensons, resulting in damage to the Stevensons that include loss of the contract to sell their home and being subjected to foreclosure and deficiency judgments by other lien holders, damage to their credit and other damages to be proven at trial.

**THIRD COUNTERCLAIM AGAINST PLAINTIFF**  
**(Count Three – Negligence)**

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97. The Stevensons incorporate by reference all the above paragraphs as though fully set forth herein.

98. OneWest Bank, acting as the Stevensons' loan servicer and as the partner, counterpart, *alter ego*, co-conspirator and agent of the Plaintiff, which owned the Stevensons' loan, owed to the Stevensons a duty to exercise reasonable care and skill to engage in loss-mitigation efforts to avoid the foreclosure of single family residential mortgages.

99. Lenders and servicers are required to refrain from foreclosing on any FHA insured mortgage where a default could be addressed by modifying the terms of the mortgage or other less-costly alternatives to foreclosure were available.

100. Lenders and servicers are required to have in place Loss Mitigation Policies and Procedures for dealing with problem loans, which the Stevensons' loan became in April 2010.

101. Lenders and Servicers are required to have properly trained and qualified employees and contractors involved with dealing with loss mitigation efforts.

102. Lenders and Servicers are required to properly supervise and oversee the actions of their employees engage in loss mitigation and loan modification efforts.

103. By having unqualified and poorly trained employees and contractors processing the Stevenson's loan mitigation efforts, One West Bank has breached its duty of care to the Stevensons.

104. In taking the actions alleged above and in failing to take the actions as alleged above, OneWest Bank negligently breached its duty of care and skill to the Stevensons and in doing so acted with reckless disregard and conscious indifference to the Stevensons' rights.

105. OneWest Bank's negligent breach of these duties has proximately caused the Stevensons to suffer damage to their financial condition and credit, as well as other actual and punitive damages to be proven at trial.

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**COUNTER CLAIM AND CROSS-CLAIM AGAINST**  
**PLAINTIFF AND CROSS DEFENDANT**  
**(Conspiracy)**

106. The Stevensons repeat and reallege everything set forth above verbatim.

107. The tort of civil conspiracy in South Carolina contains three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) causing plaintiff special damage.

108. Plaintiff and Cross Defendant have engaged in a civil conspiracy, for the purpose of using their size, superior financial strength and huge resources to beat the Stevensons down and force them into accepting an unfair result to their good faith attempts to mitigate their, the

Plaintiff's and the Cross Defendant's losses, thereby specially injuring and damaging the Stevensons.

109. The Stevensons have been specially damaged by the loss of the contract to sell their home, being subjected to foreclosure and deficiency judgments by other lien holders, damage to their credit, the incurring of legal fees to combat the conspiracy and other actual and punitive damages to be proven at trial.

110. As a direct and proximate of this civil conspiracy, the Stevensons are entitled to damages and relief as set forth below

**PRAYER FOR RELIEF**

WHEREFORE, the Stevensons pray the Court to enter an Order:

- i. Declaring that the Plaintiff shall have and recover nothing from the Stevensons;
- ii. Awarding all appropriate damages to the Stevensons, to include treble damages and attorney's fees under the SCUTPA against the Plaintiff and the Cross Defendant OneWest Bank FSB;
- iii. Awarding all appropriate damages to the Stevensons for breach of the duty of good faith and fair dealing under the loan and servicing contracts against the Plaintiff and the Cross Defendant OneWest Bank FSB;
- iv. Awarding all appropriate actual and punitive damages to the Stevensons under their negligence claims against the Plaintiff and the Cross Defendant OneWest Bank FSB;
- v. Awarding all appropriate actual and punitive damages to the Stevensons under their civil conspiracy claims against the Plaintiff and the Cross Defendant OneWest Bank FSB;
- vi. Providing such other relief as may be just and proper.

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This <sup>12</sup>6 day of December, 2013.

*J. Rutledge Young, Jr.*

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(843) 720-2047 (fax)

*Attorneys for the Stevenson Defendants*

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **DEFENDANTS THOMAS C. STEVENSON, III AND IRVEN M. STEVENSON'S ANSWER TO AMENDED COMPLAINT AND AMENDED COUNTERCLAIMS AND CROSS-CLAIMS** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

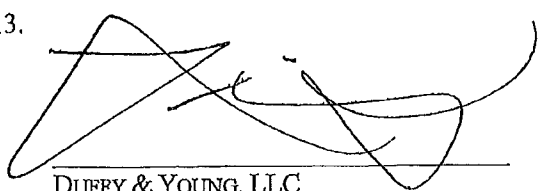
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SC Department of Revenue  
Office of General Counsel for Litigation  
PO Box 12265  
Columbia, SC 29211  
*Attorney for SC Dept. of Revenue*

FILED  
2013 DEC -6 PM 3:19  
JULIE J. ARMSTRONG  
CLERK OF COURT  
RY \_\_\_\_\_

This 6<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
DUFFY & YOUNG, LLC

**EXHIBIT A**



### A. Settlement Statement (HUD-1)

#### B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input checked="" type="checkbox"/> Conv. Unins.	6. File Number: 029840.6	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower: Rebekah H. Unger 10 Halsey Street Charleston, SC 29401	E. Name and Address of Seller: Iven M. Stevenson	F. Name and Address of Lender: Caliber Funding, LLC 609 N. Wilmot Tucson, AZ 85711
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G. Property Location: 173 Tradd Street Charleston, SC 29401 Charleston County, South Carolina TMS: 467-11-01-083	H. Settlement Agent: Moore & Van Allen, PLLC 40 Calhoun Street, Suite 300 Charleston, SC 29401 Place of Settlement: 40 Calhoun Street, Suite 300 Charleston, SC 29401	I. Settlement Date: May 1, 2012
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J. Summary of Borrower's transaction		K. Summary of Seller's transaction	
100. Gross Amount Due from Borrower:		400. Gross Amount Due to Seller:	
101. Contract sales price	1,125,000.00	401. Contract sales price	1,125,000.00
102. Personal property		402. Personal property	
103. Settlement Charges to Borrower (Line 1400)	2,790.00	403.	
104.		404.	
105.		405.	
Adjustments for items paid by Seller in advance		Adjustments for items paid by Seller in advance	
106. City/Town Taxes to		406. City/Town Taxes to	
107. County Taxes to		407. County Taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due from Borrower	1,127,790.00	420. Gross Amount Due to Seller	1,125,000.00
200. Amounts Paid by or in Behalf of Borrower		500. Reductions in Amount Due Seller:	
201. Deposit or earnest money	5,000.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	417,000.00	502. Settlement charges to Seller (Line 1400)	110,588.69
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Funds from 2nd	75,000.00	504. Payoff First Mortgage to IndyMac Bank	750,000.00
205.		505. Payoff Second Mortgage to NBSO	200,000.00
206.		506. Dep. retained (\$5,000.00)	5,000.00
207.		507. Payoff 8C DOR to 8D DOR	57,600.00
208.		508.	
209.		509.	
Adjustments for items unpaid by Seller		Adjustments for items unpaid by Seller	
210. City/Town Taxes to		510. City/Town Taxes to	
211. County Taxes 01/01/12 to 05/02/12	1,901.41	511. County Taxes 01/01/12 to 05/02/12	1,901.41
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid by/for Borrower	498,901.41	520. Total Reduction Amount Due Seller	1,125,000.00
300. Cash at Settlement from/to Borrower		600. Cash at settlement to/from Seller	
301. Gross amount due from Borrower (line 120)	1,127,790.00	601. Gross amount due to Seller (line 420)	1,125,000.00
302. Less amount paid by/for Borrower (line 220)	(498,901.41)	602. Less reductions due Seller (line 520)	1,125,000.00
303. Cash <input checked="" type="checkbox"/> From <input type="checkbox"/> To Borrower	628,888.59	603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller	0.00

\* Paid outside of closing by borrower(s), seller(s), lender(s), or third party(ies)  
 The undersigned hereby acknowledge receipt of a completed copy of this statement & any attachments referred to herein  
 Borrower: Rebekah H. Unger Seller: Iven M. Stevenson

The Public Reporting Burden for this collection of information is estimated to average 33 minutes per response for collection, review, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The confidentiality of this information is assured. This disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

**L. Settlement Charges**

700. Total Real Estate Broker Fees: \$ 67,600.00			
Division of commission (line 700) as follows:			
701. \$ 33,760.00	to	William Means Company	
702. \$ 33,760.00	to	Carolina One	
703. Commission paid at settlement			
704. Deposit Ref'd By Listing Agent	to	William Means Company	\$5000.00 (POC)
705.			\$2,600.00
<b>800. Items Payable In Connection With Loan</b>			
801.	Our origination charge	\$	(from GFE #1)
802.	Your credit or charge (points) for the specific interest rate chosen	\$	(from GFE #2)
803.	Your adjusted origination charges		(from GFE #A)
804.	Appraisal fee	to	(from GFE #3)
805.	Credit Report	to	(from GFE #3)
806.	Tax service	to	(from GFE #3)
807.	Flood certification	to	(from GFE #3)
808.			(from GFE #3)
809.			(from GFE #3)
810.			(from GFE #3)
811.			(from GFE #3)
<b>900. Items Required by Lender to Be Paid in Advance</b>			
901.	Daily interest charges from 05/01/12 to 08/01/12	31 @ \$/day	(from GFE #10)
902.	Mortgage insurance premium for months to		(from GFE #3)
903.	Homeowner's insurance for years to		(from GFE #11)
904.			(from GFE #11)
905.			(from GFE #11)
<b>1000. Reserves Deposited With Lender</b>			
1001.	Initial deposit for your escrow account		(from GFE #8)
1002.	Homeowner's insurance	months @ \$ per month	\$
1003.	Mortgage insurance	months @ \$ per month	\$
1004.	Property taxes		\$
	County Taxes	months @ \$ per month	\$
1005.			\$
1006.		months @ \$ per month	\$
1007.		months @ \$ per month	\$
1008.			\$
1009.	Aggregate Adjustment		\$
1100.	Other charges		\$
<b>1100. Title Charges</b>			
1101.	Title services and lender's title insurance		(from GFE #4)
1102.	Settlement or closing fee	to Moore & Van Allen, PLLC/RMO	\$ 495.00
1103.	Owner's title insurance to Chicago Title Insurance Company		\$ 15.00
1104.	Lender's title insurance to Chicago Title Insurance Company		\$ 2,295.00
1105.	Lender's title policy limit	\$ 417,000.00	\$ 100.00
1106.	Owner's title policy limit	\$ 1,125,000.00	
1107.	Agent's portion of the total title insurance premium	to Moore & Van Allen, PLLC	\$ 1,497.00
1108.	Underwriter's portion of the total title insurance premium	to Chicago Title Insurance Company	\$ 958.00
1109.			\$
1110.			\$
1111.			\$
1112.			\$
1113.			\$
<b>1200. Government Recording and Transfer Charges</b>			
1201. Government recording charges (from GFE #7)			
1202.	Deed \$	Mortgage \$	Releases \$ Other \$
1203.	Transfer taxes		(from GFE #8)
1204.	City/County tax/stamps	Deed \$ 4,162.50	Mortgage \$ 4,162.50
1205.	State tax/stamps	Deed \$	Mortgage \$
1206.			
1207.			
<b>1300. Additional Settlement Charges</b>			
1301. Required services that you can shop for (from GFE #6)			
1302.	2011 Taxes	to Charleston County Delinquent Tax	\$ 6,689.85
1303.	Seller Legal Fees	to Duffly & Young, LLC	\$ 37,331.24
1304.			\$
1305.			\$
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)			\$ 2,790.00
			\$ 410,688.69

\* Paid to date of closing by borrower(s), seller(s), lender(s), or third party(ies).  
 By signing page 1 of this statement, the signatory acknowledges receipt of a completed copy of pages 2 & 3 of this three page statement.  
 SELLER'S TAX ID SOLICITATION: THE INFORMATION IN BLOCKS E, O, H, I AND ON LINES 401, 406, 407 AND 408 IS IMPORTANT TAX INFORMATION AND IS BEING FURNISHED TO THE INTERNAL REVENUE SERVICE. IF YOU ARE REQUIRED TO FILE A RETURN, A RECEIVING PENALTY OR OTHER SANCTION MAY BE IMPOSED ON YOU IF THIS INFORMATION IS NOT REPORTED AND THE IRS DETERMINES THAT IT HAS NOT BEEN REPORTED. YOU ARE REQUIRED BY LAW TO PROVIDE THE SETTLEMENT STATEMENT WITH YOUR CORRECT TAXPAYER IDENTIFICATION NUMBER. IF YOU DO NOT PROVIDE THE INFORMATION, YOU MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES IMPOSED BY LAW.  
 For rules of exchanges of certain real estate, the person responsible for closing a real estate transaction must report the real estate proceeds to the Internal Revenue Service and mail Form 1099-B to you. To determine if you have to report the sale of your home, see the 2012 Schedule D (Form 1041) instructions. If a real estate sale proceeds are reported to the IRS, you must also report the sale on Form 1099-B. If you received a loan proceeds from the proceeds of a qualified mortgage loan or you received a mortgage credit certificate, you should also report the sale on Form 1099-B. If you sold your home at a gain during the last 8 years after you received the Federal mortgage subsidy, this will increase your tax. See Form 8929, Repayment of Federal Mortgage Subsidy, and Pub. 623, Selling Your Home.  
 If you have already paid the real estate tax for the period that includes the sale date, subtract the amounts on lines 406, 407 & 408 from the amount already paid to determine your deductible real estate tax. But if you have already deducted the real estate tax in a prior year, generally report this amount as income on the "Other Income" line of Form 1041. For more information, see Pub. 623.  
 For Payment Reduction Act Notice, see the 2012 Instructions for Forms 1099, 1041, 941, and 942.  
 Department of the Treasury - Internal Revenue Service  
 UNDER PENALTY OF PERJURY, I CERTIFY THAT THE NUMBER SHOWN BELOW ON THIS STATEMENT IS MY CORRECT TAXPAYER IDENTIFICATION NUMBER.

Seller's Signature \_\_\_\_\_ Seller's Signature \_\_\_\_\_ Seller's Signature \_\_\_\_\_ Seller's Signature \_\_\_\_\_

**HUD-1 Attachment**

Borrower(s): Rebekah H. Unger  
 10 Halsey Street  
 Charleston, SC 29401  
 Lender: Callber Funding, LLC  
 Settlement Agent: Moore & Van Allen, PLLC  
 Place of Settlement: 40 Calhoun Street, Suite 300  
 Charleston, SC 29401  
 Settlement Date: May 1, 2012  
 Property Location: 173 Tradd Street  
 Charleston, SC 29401  
 Charleston County, South Carolina  
 TMS: 467-11-01-063

Seller(s): Irven M. Stevenson

**Seller Loan Payoff Details**

Payoff First Mortgage	to IndyMac Bank		
Loan Payoff	As of	days @	Per Diem
Total Additional Interest			
Total Loan Payoff	<u>750,000.00</u>		
Payoff Second Mortgage	to NBSC		
Loan Payoff	As of	days @	Per Diem
Total Additional Interest			
Total Loan Payoff	<u>200,000.00</u>		

Title Services and Lender's Title Insurance Details	BORROWER	SELLER
Title Abstract to Abstracting Co., LLC	295.00	
Title Binder to Moore & Van Allen, PLLC	100.00	
Lender's Title Insurance to Chicago Title Insurance Company	100.00	
Total	\$ <u>495.00</u>	\$ <u>0.00</u>

Settlement or Closing Fee Details	BORROWER	SELLER
Satisfaction Handling Fee to Moore & Van Allen, PLLC/RMG		15.00
Total	\$ <u>0.00</u>	\$ <u>15.00</u>

Owner's Title Insurance	BORROWER	SELLER
Owner's Policy Premium to Chicago Title Insurance Company	2,295.00	
Total	\$ <u>2,295.00</u>	\$ <u>0.00</u>

**WARNING:** It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

Lender's Title Insurance <small>*fees also shown above in Title Services and Lender's Title Insurance Details</small>	BORROWER	SELLER
Lender's Policy Premium to Chicago Title Insurance Company	100.00	
Total	\$ 100.00	\$ 0.00

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

# Exhibit F

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2012-CP-10-1844

FILED  
2014 AUG 14 AM 10:28  
BY \_\_\_\_\_  
CLERK OF COURT

Deutsche Bank National Trust Company, as  
Trustee of the IndyMac IMJA Mortgage  
Trust 2007-A2, Mortgage Pass-Through  
Certificates, Series 2007-A2 under the  
Pooling and Servicing Agreement dated  
August 1, 2007,

Plaintiff,

vs.

Thomas C. Stevenson III, Irven M.  
Stevenson, National Bank of South Carolina  
nka Synovus Bank and South Carolina  
Department of Revenue, and OneWest Bank  
FSB, including its division known as Indy  
Mac Mortgage Services,

Defendants.

ORDER GRANTING MOTION TO  
TRANSFER LEGAL COUNTERCLAIMS TO  
JURY ROSTER

Thomas C. Stevenson III and Irven M. Stevenson (“Stevenson Defendants”) filed a Motion to Transfer their counterclaims in this action to the jury roster. This matter came before the Court on July 30, 2014, and the Court heard oral arguments and considered all memoranda of law filed. The Stevenson Defendants were represented by J. Rutledge Young, Jr. and Julie Moore Rode of Duffy & Young, LLC. The Plaintiff was represented by Sean A. O’Conner of The Finkel Law Firm, LLC.

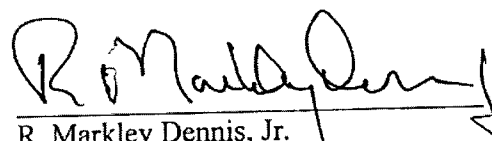
A mortgage foreclosure is an action in equity. See U.S. Bank Trust Nat’l. Ass’n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). When a complaint is equitable and a counterclaim is legal and compulsory, the defendant has the right to a jury trial on the counterclaim. C & S Real Estate Servs., Inc. v. Massengale, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986), modified by Johnson v. S.C. Nat’l Bank, 292 S.C. 51, 354 S.E.2d 895 (1987).

In North Carolina Federal Savings and Loan Ass'n v Dav Corp, et al, 298 S.C. 514, 381S.E. 2d 903 (1989), our Supreme Court set forth the test to be followed to determine a counterclaiming defendants right to jury trial, to wit: Is the counterclaim legal in nature and is the counterclaim compulsory under Rule 13 (a) , SCRCVP. The parties agree and the Court finds that the Stevenson Defendants' counterclaims for unfair trade practices act, breach of duty of good faith, negligence, and conspiracy are legal in nature.

Using the logical relation test set forth in North Carolina Federal, *supra*, and for the reasons expressed on the record at the hearing on July 30, 2014, the Court finds that the counterclaims are compulsory and the Defendants have a right to a jury trial on their counterclaims. See Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997); Johnson v. S.C. Nat'l Bank, 292 S.C. 51, 354 S.E.2d 895 (1987). The Court further holds that the legal counterclaims are to be tried first. See Plantation Fed. Bank v. Gray, 401 S.C. 507, 510, 737 S.E.2d 515, 517 (Ct. App. 2013) (reversing the master's decision to allow a foreclosure action to proceed prior to a jury trial on legal counterclaims) and Wachovia Bank National Association v Blackburn, et.al., 407 S.C. 321, 755 S.E. 2d 437 (2014).

The Court hereby **GRANTS** Defendants' motion and orders that Defendants' counterclaims be transferred to the jury roster and tried before the foreclosure action is scheduled for trial.

**AND IT IS SO ORDERED.**

  
R. Markley Dennis, Jr.  
Presiding Judge, Ninth Judicial Circuit

Charleston, SC  
August 14, 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Presiding Judge, Ninth Judicial Circuit

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Case No. 2012-CP-10-01844

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Deutsche Bank National Trust Company, as Trustee of the IndyMac IMJA Mortgage Trust 2007-A2, Mortgage Pass-Through Certificates, Series 2007-A2 Under the Pooling and Servicing Agreement dated August 1, 2007,

Appellants,

v.

Thomas C. Stevenson, III and Irven M. Stevenson, National Bank of South Carolina n/k/a Synovus Bank, South Carolina Department of Revenue, and OneWest Bank FSB, including its division known as Indy Mac Mortgage Services,

Defendants,

Of which Thomas C. Stevenson, III and Irven M. Stevenson are the Respondents.

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**PROOF OF SERVICE**

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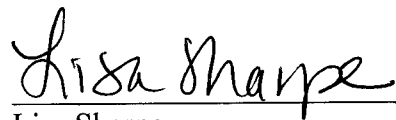
I, Lisa Sharpe, paralegal with Duffy & Young, LLC, certify that I have served **RESPONDENTS' MOTION TO DISMISS APPEAL** on Appellants by U.S. mail on September 19, 2014 by depositing a copy of it to their attorneys of record as shown below:

Sean A. O'Connor, Esq.  
Finkel Law Firm, LLC  
PO Box 41489  
Charleston, SC 29423  
*Attorney for Appellants*

**RECEIVED**  
SEP 22 2014  
**SC Court of Appeals**

Tara E. Nauful, Esq.  
Adams and Reese, LLP  
1501 Main Street, 5<sup>th</sup> Floor  
Columbia, SC 29201  
*Attorney for Defendant National Bank of South  
Carolina n/k/a Synovus Bank*  
(not an Appellant or Respondent to this appeal)

Milton G. Kimpson, Esq.  
SC Department of Revenue  
Office of General Counsel for Litigation  
PO Box 12265  
Columbia, SC 29211  
*Attorney for Defendant SC Department of Revenue*  
(not an Appellant or Respondent to this appeal)



---

Lisa Sharpe  
Paralegal  
DUFFY & YOUNG, LLC  
96 Broad Street  
Charleston, South Carolina 29401  
(843) 720-2044 (phone)  
(843) 720-2047 (fax)

September 19, 2014  
Charleston, South Carolina

# DUFFY & YOUNG LLC

96 BROAD STREET, CHARLESTON SC 29401

telephone 843-720-2044 facsimile 843-720-2047

ATTORNEYS AT LAW

September 19, 2014

**VIA FEDEX**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1205 Pendleton Street  
Columbia, South Carolina 29201

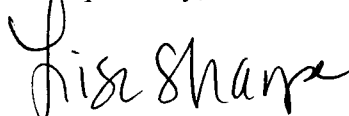
RE: Deutsche Bank v. Thomas Stevenson III  
Civil Aciton No.: 2012-CP-10-01844  
Appellate No.: 2014-001791

Dear Ms. Kitchings:

Enclosed herewith for filing in the above-referenced matter, please find the original and seven (7) copies of Respondents' Motion to Dismiss Appeal and accompanying Proof of Service for same. Kindly return one (1) file-stamped copy of same in the enclosed self-addressed stamped envelope provided. Also enclosed is our firm's check in the amount of \$25.00, which represents your filing fee for same.

Should you have any questions or concerns, please do not hesitate to contact our office.

Respectfully,



Lisa Sharpe  
*Paralegal*

Enclosures (as stated)

cc: Sean A. O' Connor, Esq. (w/enc.)  
Tara E. Nauful, Esq. (w/enc.)  
Milton G. Kimpson, Esq. (w/enc.)

**RECEIVED**

SEP 22 2014

**SC Court of Appeals**