

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

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

Diane Shafer Goodstein, Circuit Court Judge

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Case No. 2014-001683

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Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

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**RECORD ON APPEAL**

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July 17, 2015

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SC Court of Appeals

## PREPARATION

### VOLUME I OF V & THE MASTER INDEX TO VOLUMES I-V

A. My Record on Appeal has been prepared pursuant to the following rules of the Appellate Court – Rules 210(c) and (e)-(g), SCACR

1. Rule 210(c), SCACR clearly states in pertinent parts; “[T]he Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. **Each page of the Record on Appeal shall be numbered consecutively beginning with the index.**” [Boldness added for emphasis]

2. Rule 210(e), SCACR, clearly states in pertinent parts; “[E]very Record on Appeal shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pretrial matters, opening statements, testimony, motions, closing arguments, jury charges, post-trial motions and exhibits.”

3. Rule 210(f), SCACR, Re: **Exhibits**. “[P]hotographs, plats and diagrams, and other paper exhibits shall be inserted in the Record on Appeal where they can reasonably be reduced or drawn to a size which permits them to be printed and inserted in the Record on Appeal, without folding more than one time.”

4. Rule 210(g), SCACR, Re: **Certificate of Counsel**. “[A]ppellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.”

B. My financial situation was never substantial or even good and it has continued to deteriorate since Civil Action Case No. 2008-CP-38-1024 began in June of 2008. The cost associated with this case is a financial hardship that has gotten worst in 2014. I underestimated the cost of this appeal and cannot afford it financially. Therefore....

1. I cannot include all my Pleadings in the Record on Appeal because of insufficient financial resources.

2. I cannot include all my Exhibits in the Record on Appeal for the same reason – insufficient financial resources.

3. Many of my filed responses to Attorney James H. Burns’ and/or Elizabeth Scott Moise’s Case Status Updates during the Stay/TRO cannot be included; as well as Exhibits that verify my filed **Statements of Fact** and **Material Facts**.

4. Whatever happens – happens. I have done the best that I can do and the best that I can afford to do.

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**Note:** MMF means “Massive Filing Fraud” - RTFF means “Response to Filing Fraud”.

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**Exhibit 358 -** Not included. Proves Statements of Fact.

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**2008-2014**

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Wells Fargo Bank, NA,

Plaintiff,

ORDER OF REFERENCE

Deficiency Judgment Waived

v.

Dorothy Sistrunk;

Defendant(s).

(011784-06909)

Pursuant to Rules 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled case is an action for foreclosure and may be referred to a Master in Equity or Special Referee in the above-entitled county by order of a circuit court judge or the clerk of court.

IT IS HEREBY ORDERED, that this action is referred to the Honorable O. Davie Burgdorf, as Master in Equity to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRPC, and all matters arising from or reasonably related to such action. The Master in Equity shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, the Master in Equity shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including but not limited to Rule 60(b). Judicial sales will be conducted pursuant to S.C. Code Section 15-39-680 or on any other convenient sale's date as may be determined by the Master in Equity/Special Referee.

The hearing shall be held in the Office of the Honorable O. Davie Burgdorf, Master in Equity for Orangeburg County, located at:

Orangeburg County Courthouse  
190 Gibson Street, Room 305  
Orangeburg, SC 29115

\_\_\_\_\_  
Circuit Court Judge for Orangeburg County or  
\_\_\_\_\_  
Clerk of Court for Orangeburg County

Orangeburg, South Carolina

\_\_\_\_\_, 2008.

STATE OF SOUTH CAROLINA  
-COUNTY OF ORANGEBURG

Wells Fargo Bank, NA,

Plaintiff,

Dorothy Sistrunk;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-38-1024

MEMO IN SUPPORT OF PROPOSED ORDER  
OF REFERENCE

(011784-06909)

The South Carolina Rules of Civil Procedure, specifically Rule 71, provides that “[a]ctions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53.” Rule 53(b) clearly states that “[i]n an action ... for foreclosure, some or all of the causes of action may be referred to a master or special referee by order of a circuit judge or the clerk of court.” Rule 53(b) goes on to state that “[a]ny party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon filing of a jury demand, the matter shall be returned to the circuit court.” No defendant has stated a single legal compulsory counterclaim which would entitle them to a trial by jury or require the circuit court to retain jurisdiction over the matter. Accordingly, in the interests of judicial economy and administrative efficiency, the Plaintiff requests that the court, upon its own motion, refer this case to the Honorable O. Davie Burgdorf, Master in Equity for Orangeburg County.

#### CASE HISTORY

This is an action for the foreclosure of a mortgage upon certain real estate located in Orangeburg County, South Carolina. Plaintiff is a company doing business in the State of South Carolina and is the mortgagee and owner and holder of the Note and Mortgage which are the subject of this litigation. On or about December 21, 2007, Defendant(s) Dorothy Sistrunk made, executed and delivered to Plaintiff’s predecessor in interest a certain Fixed Rate Note (“Note”) in the principal sum of \$75,000.00, payable in monthly installments of principal and interest of \$505.29, beginning on February 1, 2008. Contemporaneously with the execution of the Note,

**Exhibit 91**

Defendant(s) Dorothy Sistrunk made, executed and delivered to the lender a certain real estate mortgage ("Mortgage"), which constitutes a purchase money first lien on the real property. The account with the Plaintiff has been in default since March 1, 2008, and Plaintiff, after proper notice, elected to accelerate the loan and to file the Lis Pendens, Summons and Complaint in this action on or about June 27, 2008.

Defendant Dorothy Sistrunk filed a response on or about July 21, 2008.

### ARGUMENT

Plaintiff's Motion should be granted because the South Carolina Rules of Civil Procedure do not require consent of the parties for a foreclosure action to be referred to the Master-in-Equity. Rule 71 provides that "[a]ctions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53." Moreover, Rule 53(b) clearly states that "[i]n an action where the parties consent, in a default case, **or an action for foreclosure**, some or all of the causes of action may be referred to a master or special referee by order of a circuit judge or the clerk of court." (Emphasis added.) The language of Rule 53 specifically designates a foreclosure as an action for which consent is not necessary for reference to be made to a court of equity. Thus, Plaintiff's foreclosure action should be referred to the Master in Equity irrespective of whether Defendant consented to the reference.

Furthermore, reference to the Master in Equity is proper despite Defendant's filing an Answer in this action. There is no condition precedent in Rules 53 or 71 to a foreclosure action being referred, nor is there any prohibition to doing so based on any party having answered in the case. While Rule 53(b) provides a mechanism for returning a previously-referred case back to the circuit court, the procedure set forth in the Rule is only available to a party who has properly requested a jury trial under Rule 38. Rule 38(b) states that "[a]ny party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefore in writing at any time after the commencement of the action and *not later than 10 days after the service of the last pleading* directed to such issue." (Emphasis added.) Section (d) of Rule 38 further provides that "[t]he failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury." Defendant's July 21, 2008 Answer made no jury demand and no such demand was made within the time frame set

forth in Rule 38. Consequently, Defendant has no grounds to object to the reference and this matter should be referred accordingly.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court refer this case to the Master in Equity.

Respectfully Submitted,

---

**Rogers Townsend & Thomas, PC**  
**ATTORNEYS FOR PLAINTIFF**

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)  
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)  
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)  
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220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)  
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina  
August 1, 2008



STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

Wells Fargo Bank, N. A.

Plaintiff,

v.

Dorothy Sistrunk;

Defendant(s).

(011784-06909)

THE COURT OF COMMON PLEAS  
DOCKET NO

**2008-CP-38-1024**

**DEMAND FOR TRIAL BY JURY**

*Proof for Demand for Trial by Jury  
Filed on August 12, 2008*

*5/23/2014*

*ND*

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**DEFENDANT DOROTHY SISTRUNK DEMANDS A JURY TRIAL**

**WHEREFORE;** the Defendant Dorothy Sistrunk hereby DEMANDS A TRIAL BY JURY for reasons to be stated hereafter and gives the following response to the ORDER OF REFERENCE and MEMO IN SUPPORT OF ORDER OF REFERENCE:

**Response to  
ORDER OF REFERENCE**

1. The Defendant alleges that the Plaintiff attorney's filing of an "ORDER OF REFERENCE is an attempt by the Plaintiff and/or the Plaintiff's attorneys to deprive the Defendant of Constitutional Rights guaranteed by the 14<sup>th</sup> Amendment to the Constitution so as to defraud or swindle the Defendant out of property and as much money as possible by perpetuating a Predatory Lending Scheme in which falsified documents were used and are still being used to Inflate Value, Establish Value and Maintain Value for the Note and Mortgage in question.

2. By ordering the Court to refer this case to a Master in Equity without providing evidence or proof to the Court that the Value of the Note and Mortgage are not

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*FILED*  
*CLERK OF COURT*  
*ORANGEBURG COUNTY*

fraudulent would be a miscarriage of justice. The Referenced South Carolina Rules of Civil Procedure (hereafter SCRPC) and actions pursuant to S.C. Code Section 15-39-680 cited in the ORDER OF REFERENCE were not written to aid and abet the Plaintiff and/or the Plaintiff's attorneys in a criminal act. The Defendant asserts the Plaintiff and the Plaintiff's attorneys must prove in a Court of Law that these Sections of the Civil and Legal Codes were written to address the issues of Fraud, Attempt to Defraud, the Falsification of Documents and/or Mortgages and Notes with Falsified and/or Fraudulent Values.

3. The Defendant further asserts no American Judge or Court, including the Master in Equity would knowingly use the Court to aid and abet the Plaintiff in the commission of and/or the execution of an act and/or actions that are considered criminal under existing federal and/or state law. Consequently, the Plaintiff attorneys' ORDER OF REFERENCE should be DISMISSED with prejudice because of the Plaintiff's and the Plaintiff attorneys' brazen attempt to violate the Defendant's rights that are inviolate, thus deceiving the Court and furthering the alleged Predatory Lending Scheme of the Plaintiff.

**Response To  
MEMO IN SUPPORT OF PROPOSED ORDER OF REFERENCE**

4. The Plaintiff and/or the Plaintiff's attorneys stated in the MEMO IN SUPPORT OF PROPOSED ORDER OF REFERENCE that under Rule 71, "[a]ctions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53." The Defendant asserts the "Key word under SCRPC Rule 53 is "ordinarily". Since the issues raised in the Defendant's Counterclaims and Affirmative Defenses are not ordinary, Rule 71 does not and can not apply until the legitimacy of the Value of the Mortgage and Note have been established.

5. The Plaintiff and/or the Plaintiff's attorneys' go on to state in the 4<sup>th</sup> sentence of paragraph [1] that "No Defendant has stated a single legal compulsory counterclaim

which would entitle them to a trial by jury or require the circuit court to retain jurisdiction over the matter.” {End of Quote} This statement by the Plaintiff’s attorneys’ clearly illustrates the depth of the deception being perpetrated and perpetuated by the Plaintiff and now the Plaintiff’s attorneys on the Court of Common Pleas. The Defendant’s entitlement to a “Trial by Jury” is a Constitutional Right not a privilege granted by the Plaintiff or the Plaintiff’s attorneys. The Right to a “Trial by Jury” is guaranteed under the 7<sup>th</sup> Amendment to the Constitution and by SCRCR Rule 38(a) . Equal protection “Under the Law” is guaranteed by the 14<sup>th</sup> Amendment. To request the Court upon its own motion violate the Constitution “[i]n the interests of judicial economy and administrative efficiency”, {End of Quote} is unconscionable.

6. To even suggest that the Honorable O. Davie Burgdorf, Master in Equity for Orangeburg County, presides over a “Kangaroo Court” where the rule of law, equal protection under the law and Constitutional Rights are ignored or suppressed for the sake of expediency is an insult to the Court of Common Pleas and the Master in Equity for Orangeburg County. These statements by the Plaintiff’s attorneys – Rogers Townsend & Thomas, PC – demonstrate legal arrogance and epitomizes the willingness of the Plaintiff and the Plaintiff’s attorneys to ignore the legitimate and Constitutional Rights of the Defendant to “Equal Protection Under the Law” for the alleged purpose of perpetuating the illegal lending scheme of the Plaintiff. The Defendant further asserts that these statements written and presented to and in an American Court of Law should be treated with the utter contempt they deserve and this entire matter DISMISSED with prejudice.

7. The Defendant requests the Court admonishes the Law Firm of Rogers Townsend & Thomas, PC, for this brazen disregard for judicial etiquette, the rule of law and the Constitutional Rights afforded to every American citizen. Guaranteed Constitutional Rights cannot be bought or sold for \$100.00.

**Response to  
CASE HISTORY**

8. The Defendant asserts the Plaintiff’s attorneys in their rush to judgment without

due process, failed to mention in the “Case History” the Value of the Note and Mortgage have been in dispute for quite sometime. It is this disputed Value and the Plaintiff’s consistent failure to deal with the issue of Fraud (the art of deliberate deception for financial gain) that gave life to this case, bred this case and matured this case as a matter to be resolved in the Court of Common Pleas.

9. The Defendant reminds the Court and the Plaintiff that the reasons why the Defendant suspended payments were because of:

- I. Suspected Mortgage Fraud
- II. Suspected Predatory Lending
- III. Suspected Insurance Fraud

The Plaintiff consistently failed to seriously investigate the Defendants allegations of Fraud. The Plaintiff consistently used falsified documents as reference material and has repeatedly stated the Plaintiff stands behind the alleged falsified appraisal that was used to Inflate, Establish and Maintain the Value of the Note and Mortgage. The Plaintiff had every opportunity to have payments resumed. All the Plaintiff had to do was seriously investigate the Defendant’s allegation and complaint concerning the falsified documents that were used to obtain loan #0174072777. The Plaintiff did not, has not and the Defendant alleges will not seriously investigate the Defendant’s allegations of Fraud and has chosen instead to perpetuate an illegal lending scheme in which falsified documents were used and are still being used by the Plaintiff.

### **Response to ARGUMENT**

10. The Defendant asserts the Plaintiff and the Plaintiff’s attorneys misconstrued the Defendant’s intentions. Until recently, the Defendant only had access to the Federal Rules of Civil Procedure and not the State of South Carolina’s, the Defendant did not know whether or not “last pleading” was included in the SCRCF and had to wait for a response from the Plaintiff’s attorneys. The Defendant assumed the Summons and Complaint filed by the Plaintiff’s attorneys were not the “last pleading directed to the

issue.” Since the attorneys for the Plaintiff filed an ORDER OF REFERENCE and a MEMO IN SUPPORT OF ORDER OF REFERENCE, the Defendant can assume this action by the Plaintiff’s attorneys can be considered as a “last pleading directed to the issue served.”

WHEREFORE; pursuant to SCRCR Rule 38(b) the Defendant DEMANDS A JURY TRIAL for the following reasons.

11. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the Value of the Note and Mortgage in possession of the Plaintiff is fraudulent and therefore has no legitimacy.

12. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the appraisal used to Inflate the Value, Establish the Value and Maintain the Value of the Note and Mortgage is falsified.

13. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the “Satisfaction Completion Certificate” used by the Plaintiff is also a falsified document.

14. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the Plaintiff and personnel employed by the Plaintiff knowingly participated in and perpetuated a Predatory Lending Scheme in which falsified documents were used and are still being used.

15. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the foreclosure proceeding initiated by the Plaintiff is based on a fraudulent “Cause of Action” because the \$75,000.00 Value of the Note and Mortgage in possession of the Plaintiff and cited by the Plaintiff’s attorneys in documents presented to the Court of Common Pleas can not be verified, substantiated or proven.

16. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the documents in question were in the Plaintiff's possession as of December 22, 2007.

17. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the property described in the appraisal does not exist in actuality or fact. Subsequently, on this point and on the dates referenced by and used by the Plaintiff, the property described by the Plaintiff in the Plaintiff's lending decision does not exist. Therefore, the Value ascribed is to an imaginary property because the real property that was and still is 423 Bayne Street has not, did not, cannot, and will not support the Plaintiff's imaginary and fraudulent Value.

18. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the Defendant did not perform the Appraisal and therefore has no liability for it. Consequently, the Plaintiff should be seeking restitution from the Appraiser.

19. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the Defendant did not submit the Appraisal to the Plaintiff and has no liability for it. Consequently, the Plaintiff should be seeking restitution from the broker.

20. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the Defendant did not falsified the "Sales Contract" that was based on the \$75,000.00 appraised Value of the property with the improvements that are cited and stated on the appraisal and has no liability for it. Consequently, the Plaintiff should be seeking restitution from the Seller.

21. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the Plaintiff was notified in writing on February 5, 2008 concerning suspected Fraud and the Plaintiff failed to take

reasonable steps to investigated the Defendant's allegations of Fraud.

22. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the Fraudulent Value of the Note and Mortgage in possession of the Plaintiff existed prior to any alleged default by the Defendant, and since fraudulent documents can not be in default as a matter of law and legal precedent whether the documents are signed or not, the alleged default does not exist and therefore any loss the Plaintiff has incurred is due to the Plaintiff's negligence, incompetence and to the Plaintiff's own detriment. The Defendant has no liability for the Plaintiff's errors in judgment.

23. The Defendant intends to prove by the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt that the Plaintiff has and still is violating Federal and State laws and the Defendant's COUNTERCLAIMS against the Plaintiff.....

**COUNTERCLAIM I**  
(Violation of the Fair Credit Reporting Act)

**COUNTERCLAIM II**  
(Unjust Enrichment)

**COUNTERCLAIM III**  
(Willful Intent to Participate in & Perpetuate Mortgage/Bank/Insurance/Securities Fraud or a Predatory Lending Scheme in Which Falsified Documents were Used)

**COUNTERCLAIM IV**  
(Gross Negligence & Inherent Negligence)

**COUNTERCLAIM V**  
(Failed to Exercise Due Diligence)

**COUNTERCLAIM VI**  
(Concealment of a Material Fact & Cover Up)

**COUNTERCLAIM VII**  
(Failed to Exercise a Fiduciary Responsibility as a Bank)

**COUNTERCLAIM VIII**  
(Unfair Lending & Banking Practice)

**COUNTERCLAIM IX**  
(Failed to Safeguard the Financial Interest of Customers, Clients & Investors by  
Accepting, Using, Defending or Basing Decisions Upon Falsified Documents After the  
Facts are Known)

**COUNTERCLAIM X**  
(Infliction of Emotional Stress)

will be proven true by the "Weight of the Evidence".

WHEREFORE; pursuant to SCRPC Rule 38(b) on any issue triable of right by a jury the Defendant demands a JURY TRIAL on all issues so triable which includes all matters relative to the Defendant's request for rulings on Points of Law, AFFIRMATIVE DEFENSES and CAUSE OF ACTION. Therefore, the Defendant enters the following COUNTER ARGUMENT into the record.

**COUNTER ARGUMENT**

24. As stated previously, the Defendant alleges the Plaintiff's corporate arrogance, negligence, incompetence and the signed alleged Fraudulent Note and Mortgage led to errors in judgment by the Plaintiff. The Plaintiff's errors in judgment were further complicated by the Plaintiff's failure to exercise due diligence in the performance of duties essential to limiting the Plaintiff's exposure to Fraud and exposure to legal violations. By not acting in a reasonable and prudent manner the Plaintiff failed to consider the impact and the manifestations of negligence and/or incompetence.

25. The Defendant alleges because of the Plaintiff's failure to investigate seriously the Defendant's allegations of Fraud and document falsification, the Plaintiff failed to recognize the Plaintiff is in violation of Section 37-23-40 of the South Carolina Code of Laws. Pursuant to Section 37-23-40 (1) "The lender of a high-cost home loan may not make a high-cost home loan without first receiving a written certification from a counselor approved by the State Housing Finance and Development Authority that the borrower has received counseling on the advisability of the loan transaction and the

appropriate loan for the borrower. The Department of Consumer Affairs shall specify the information that must be provided by the lender and reviewed by the consumer credit counselor.” The Plaintiff failed to comply with this section of law.

26. Section 37-23-40 (2) Goes on to state, “The lender of a high-cost home loan may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, is able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources other than the borrower’s equity in the dwelling that secures repayment of the loan. An obligor is presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor’s total monthly debts, including amounts owed pursuant to the loan, do not exceed fifty percent of the obligor’s monthly gross income as verified by the credit application, the obligor’s financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or another authoritative means. A presumption of inability to make the scheduled payments to repay the obligation does not arise solely from the fact that, at the time the loan is consummated, the obligor’s total monthly debts, including amounts owed under the loan, exceed fifty percent of the obligor’s monthly gross income.” The irregularities associated with loan #0174072777 should have alerted the Plaintiff to re-evaluate and reassess the Defendant’s loan to meet the requirements and comply with this section of law. The Plaintiff’s failed to do so.

27. The Defendant alleges the Plaintiff’s failures, negligence and errors in judgment led the Plaintiff to ignore Section 37-23-50. (A) “If a lender, or party charged with a violation, when making a high-cost home loan violates the provisions of this article, the borrower has a right in action, other than a class action, to recover from the lender or party charged with the violation actual damages and also a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars for each loan transaction. No borrower may bring a class action for a violation of this article. No borrower may bring an action for a

violation of this article more than six years after the violation occurred and after the original scheduled maturity date of the debt. This section does not bar a borrower from asserting a violation of this article in an action to collect a debt which was brought more than six years from the date of the occurrence of the violation and after the original scheduled maturity date of the debt as a matter of defense by recoupment or set-off in such action;

(B)(1) If the court finds as a matter of law that the agreement or transaction violates the provisions of this article at the time it was made, the court may, in an action other than a class action:

- (a) refuse to enforce the agreement, or a term, or part of the agreement or transaction that the court determines to have been unlawful at the time it was made;
- (b) enforce the remainder of the agreement without the unlawful term or part, or limit the application of the unlawful term or part to avoid an unlawful result;
- (c) rewrite or modify the agreement to eliminate an unlawful term, part, or result and enforce the new agreement; or
- (d) award either one of the following:
  - (i) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge; or
  - (ii) not more than double the amount of excess loan finance charge or other charges or fees actually received by the creditor or paid by the debtor to a third party.”

28. The Defendant omits subsection (B)(2) because it does not apply to the Defendant’s case and continues with subsection C of 37-23-50. Pursuant to subsection (C), “In an action in which it is found that a lender or party charged with a violation has violated this chapter, the court shall award to the debtor the costs of the action and to his attorneys their reasonable fees. In determining attorney’s fees, the amount of the recovery on behalf of the debtor is not controlling.

(D) This article establishes specific consumer protections in consumer home loans in addition to other consumer protections that may be otherwise available by law.”

(E) The provisions of this article apply to a person who in bad faith attempts to avoid the application of this article by: {Note: Subsections (E)(1) & (2) have been omitted because they do not apply to the Defendant's case.}

(3) other subterfuge.” The Defendant alleges that subterfuge is defined as any unlawful act. Knowingly participating in an alleged Predatory Lending Scheme in which falsified documents were used and are still being used is an unlawful act.

29. Subsection F of 37-23-50 goes on to state: (F) “The Administrator of the Department of Consumer Affairs, the Attorney General, the Commissioner of Banking, the Director of the Consumer Finance Division or any party to a high-cost home loan may enforce the provisions of this article. The penalties and remedies provided in this article are in addition to and cumulative of penalties and remedies available pursuant to other provisions of law.”

30. Section 37-23-60 addresses the Plaintiff's failures, errors in judgment and negligence by stating; “A lender of a high-cost home loan who acts in good faith but through a bona fide unintentional error, notwithstanding the maintenance of procedures reasonably adapted to avoid errors, fails to comply with this article must make restitution to the borrower. Within forty-five days after the discovery of the compliance failure or receipt of written notice of the compliance failure, the lender must notify the borrower and make the necessary adjustments to the loan to make the high-cost home loan satisfy the requirements of Sections 37-23-30, 37-23-40, and 37-23-45. If the harm to the borrower cannot be remedied by compliance with the high-cost loan requirement of Sections 37-23-30, 37-23-40, and 37-23-45, the lender must change the terms of the loan in a manner beneficial to the borrower so that the loan is no longer considered a high-cost home loan subject to the provisions of this article. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations pursuant to this article is not a bona fide error.”

31. As the Defendant stated in a letter to Janet Frotscher at the Plaintiff's office in Des Moines, Iowa on page 3, paragraph 5, Exhibit 57 dated June 9, 2008, "There are enough inconsistencies that would have led any seasoned investigator to realize loan #0174072777 had some serious problems that needs a thorough investigation." {End of Quote} These problems even included a violation of 37-23-70 (D) by the mortgage broker. Accordingly, "(D) At the time of application for a mortgage loan, the mortgage broker, originator, or employee shall provide the borrower with a document specifying the agency designated to receive complaints or inquiries about the origination and making of the loan, with the telephone number and address of the agency. The consumer shall sign a copy of the document acknowledging receipt of this disclosure and the copy must be maintained in the files of the mortgage broker or originator.

32. The Defendant asserts actions for violating provisions of this section of 37-23-70 are clearly stated in subsection (F thru I). Accordingly, "(F) The making of a consumer home loan that violates this section is a violation of the provisions of this article and the borrower has a right in action, other than a class action, to recover from the lender or party charged with the violation actual damages and also a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars for each transaction. No borrower may bring a class action for a violation of this article. No borrower may bring an action for a violation of this article more than six years after the violation occurred and after the original scheduled maturity date of the debt. This subsection does not bar a borrower from asserting a violation of this article in an action to collect a debt which was brought more than six years from the date of the occurrence of the violation and after the original scheduled maturity date of the debt as a matter of defense by recoupment or set-off in such action.

(G)(1) If the court finds as a matter of law that the agreement or transaction violates the provisions of this article at the time it was made, the court may, in an action other than a class action:

(a) refuse to enforce the agreement, or a term, or part of the agreement

or transaction that the court determines to have been unlawful at the time it was made;

(b) enforce the remainder of the agreement without the unlawful term or part, or limit the application of the unlawful term or part to avoid an unlawful result;

(c) rewrite or modify the agreement to eliminate an unlawful term, part, or result and enforce the new agreement; or

(d) award either one of the following:

(i) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge; or

(ii) not more than double the amount of excess loan finance charge or other charges or fees actually received by the lender or paid by the borrower to a third party.

[Subsection (2) has been omitted because it does not apply to the Defendant's case.]

(H) In an action in which it is found that a lender has violated this chapter, the court shall award to the borrower the costs of the action and to his attorneys their reasonable fees. In determining attorney's fees, the amount of the recovery on behalf of the borrower is not controlling.

(I) This article establishes specific consumer protections in consumer home loans in addition to other consumer protections that may be otherwise available by law."

33. The Defendant asserts pursuant to subsection 623. Responsibilities of furnishers of information to consumer reporting agencies the Plaintiff is in violation of [15 U.S.C. § 1681s-2] because the Plaintiff consistently failed to report to Credit Reporting Agencies the aforementioned reasons why the Defendant suspended payments and that the Value of the Note and Mortgage are in dispute and have been in dispute since February 5, 2008. Under the Federal Statutes.....

"(a) Duty of Furnishers of Information to Provide Accurate Information.

(1) Prohibition:

(A) *Reporting information with actual knowledge of errors.* A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

(B) *Reporting information after notice and confirmation of errors.* A person shall not furnish information relating to a consumer to any consumer reporting agency if...

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and (ii) the information is, in fact, inaccurate.

(C) *No address requirement.* A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(D) *Definition.* For purposes of subparagraph (A), the term "reasonable cause to believe that the information is inaccurate" means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

(2) *Duty to correct and update information.* A person who

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate, shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) *Duty to provide notice of dispute.*

If the completeness or accuracy of any information furnished by any

person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.”

Subsection (8) goes on to state: “Ability of Consumer to Dispute Information Directly with Furnisher.

(A) *In general.* The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer.

Subsection (B) *Considerations* - has been omitted because it does not apply to the Defendant’s case.

(C) *Applicability.* Subparagraphs (D) through (G) shall apply in any circumstance identified under the regulations promulgated under subparagraph (A).

(D) *Submitting a notice of dispute-* A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

- (i) identifies the specific information that is being disputed;
- (ii) explains the basis for the dispute; and
- (iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

(E) *Duty of person after receiving notice of dispute.* After receiving a notice of dispute from a consumer pursuant to subparagraph (D), the person that provided the information in dispute to a consumer reporting agency shall-

- (i) conduct an investigation with respect to the disputed information;
- (ii) review all relevant information provided by the consumer with the notice;
- (iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under

section 611(a)(1) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

(iv) if the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.”

(b) Duties of Furnishers of Information upon Notice of Dispute

(1) *In general.* After receiving notice pursuant to section 611(a)(2) [§ 1681i] of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2) [§ 1681i];

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly-

(i) modify that item of information;

(ii) delete that item of information; or

(iii) permanently block the reporting of that item of information.

(2) *Deadline.* A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer

reporting agency, before the expiration of the period under section 611(a)(1) [§ 1681i] within which the consumer reporting agency is required to complete actions required by that section regarding that information.”

34. The Defendant asserts if the Defendant’s allegations are proven true by trial, the Defendant can seek appropriate relief under 621(c). Administrative enforcement [15 U.S.C. § 1681s] for this alleged violation by the Plaintiff.

WHEREFORE; the Defendant asserts, that since the Plaintiff staunchly defends, the practice of accepting, using, relying upon and basing decisions upon the alleged falsified documents, the Defendant Demands the following of the Plaintiff...

#### **Proof and/or Evidence**

35. The Defendant asserts the Plaintiff must provide proof and/or evidence that..

(A) The Plaintiff verified repairs were completed at the property according to the Satisfaction Completion Certificate dated September 14, 2007, before rendering an underwriting decision.

(B) The Plaintiff verified the improvements itemized on page 1 of 6 of the appraisal were actually completed before rendering an underwriting decision dated October 9, 2007.

(C) The Plaintiff verified there is no deferred maintenance at the property as cited and stated on the appraisal dated October 9, 2007 before rendering an underwriting decision.

(D) The Plaintiff worked with the Defendant in “Good Faith” to resolve the allege claims of fraud concerning the Defendant’s Note and Mortgage before filing a Summons and Complaint for foreclosure in order for the Defendant to resume payments after March 1, 2008.

(E) The Plaintiff conducted and completed an onsite investigation and/or inspection of the property to address the Defendant’s concerns and allegations about falsification and fraud that would have allowed the Defendant to resume payments prior to or after March 1, 2008.

(F) The Plaintiff findings verified the Value of the Note and Mortgage are not Fraudulent based on the Plaintiff’s investigation and/or inspection relative to the

Defendant's allegations of falsification and fraud and independently of the appraisal prior to and shortly after March 1, 2008.

36. The Defendant asserts pursuant to SCRCPC, subsection 5, Rules 26-37, the Plaintiff is free to depose any witness(es) known to the Defendant.

#### **Venue and Jurisdiction**

37. The Defendant acknowledges, affirms and admits the Venue and Jurisdiction is proper for a "Trial by Jury".

38. The Defendant asserts the Supreme Court has ruled that where both equity and law are involved, the jury must first decide the legal issues, followed by a determination of equitable issues by the judge. *Beacon Theatres v. Westover, 359 U.S. 500 (1959)*

WHEREFORE; the Defendant concludes the reasons why the Defendant DEMANDS A JURY TRIAL and accordingly seeks the following relief from the Court if any one, some or all the allegations and/or complaints against the Plaintiff are proven true by Jury Verdict and/or Court Order, this is addition to the Relief sought in the Defendant's ANSWER TO COMPLAINT and FIRST AMENDMENT TO ANSWER TO COMPLAINT and any other ruling, finding or judgment of law.

#### **Prayer for Relief**

39. Judgment in the Defendant's favor to DISMISS the Plaintiff's Summons and Complaint in their entirety and permanently enjoin the Plaintiff from any relief relative to the Defendant's property or other assets.

40. Judgment in favor of the Defendant for whatever monetary damages the Court deems as just, fair and proper including restitution of all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense.

41. Injunctive Relief if needed and any other relief the Court deems as just, fair and

proper.

42. Substantive Relief if needed and any other relief the Court deems as just, fair and proper.

43. Judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper and removal of all derogatory information sent to CRAs that did not include the real reason why the Defendant suspended payments.

44. Judgment for the Defendant and a refund of any and all monies paid on the Fraudulent Note and Mortgage.

45. Any other relief as the Court deems just, fair and proper.

\*\*\*\*\*

*IN WITNESS WHEREOF*, The undersigned has signed and sealed these attestations this 12<sup>th</sup> day of Aug in the year 2008 in City of Orangeburg, State of South Carolina.

*Signed, sealed and delivered in the presence of:*

Print Name: Dorothy Sistrunk

Signature: Dorothy Sistrunk

Notary Witness (1): George Watson  
(Signature)

**STATE OF SOUTH CAROLINA**

**COUNTY OF ORANGEBURG**

On 12<sup>th</sup> of Aug before me appeared Dorothy Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument presents this document. WITNESS my hand and official seal.

Notary George Watson  
(Signature)

Commission Expires Sept 17, 2017

(Seal)

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Wells Fargo Bank, NA,

Plaintiff,

v.

Dorothy Sistrunk;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-38-1024

ORDER SUBSTITUTING COUNSEL

(011784-06909)

THIS MATTER is before the Court on Motion of Jennifer W. Rubin of Rogers Townsend & Thomas seeking an Order of this Court authorizing Rogers Townsend & Thomas' withdrawal as counsel for the Plaintiff in this matter and substituting as counsel for the said Plaintiff, Elizabeth Scott Moise of Nelson Mullins Riley & Scarborough, L.L.P. After consideration of the Motion and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Jennifer W. Rubin of Rogers Townsend & Thomas be and hereby is relieved as counsel for the Plaintiff; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Elizabeth Scott Moise of Nelson Mullins Riley & Scarborough, L.L.P. be and hereby is substituted as counsel for said Plaintiff.

AND IT IS SO ORDERED.

*O. Davie Burgdorf*  
O. Davie Burgdorf

O. Davie Burgdorf  
Master in Equity for Orangeburg County

Orangeburg, South Carolina

August 27, 2008.

ATTEST: TRUE COPY  
*L. Williams*  
CLERK OF COURT  
ORANGEBURG COUNTY, SOUTH CAROLINA

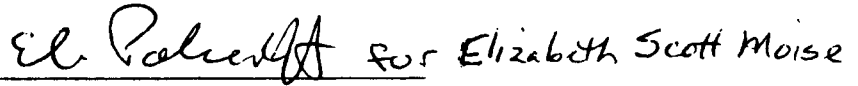
**Exhibit 93**

ON MOTION OF:



Jennifer W. Rubin  
ROGERS TOWNSEND & THOMAS, PC  
Post Office Box 100200  
Columbia, SC 29202-3200  
(803) 744-4444

I CONSENT:



Elizabeth Scott Moise  
NELSON MULLINS RILEY &  
SCARBOROUGH, L.L.P.  
Post Office Box 1806  
Charleston, SC 29402  
(843) 720-4382

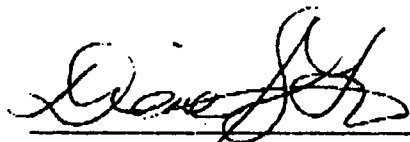
**Exhibit 93**

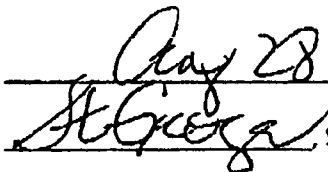
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
Wells Fargo Bank, N.A.,	)	Civil Action No. 2008-CP-38-1024
	)	
Plaintiff,	)	
	)	
vs.	)	ORDLR TOLLING TIME TO
	)	ANSWER DFFENDANTS COUNTERCLAIMS
Dorothy Sistrunk,	)	
	)	
Defendant.	)	
_____	)	

There has been a request for additional time to answer defendant's counterclaims. A hearing on the request will be scheduled during the week of September 3rd in Orangeburg County.

The time to answer for the plaintiff in said case is tolled and extended to allow for a hearing on the matter.

AND IT IS SO ORDERED.

  
 \_\_\_\_\_  
 The Honorable Diane S. Goodstein  
 Chief Administrative Judge  
 First Judicial Circuit

  
 \_\_\_\_\_, 2008  
 St. George South Carolina

**Exhibit 95**

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

Wells Fargo Bank, N.A., ) Civil Action No. 2008-CP-38-1024  
 )

Plaintiff, )

PROTECTIVE ORDER

vs. )

Dorothy Sistrunk, )

Defendant. )

*Needed thousands of Request for Admission  
from Wells Fargo to get to the truth*

Upon motion by Plaintiff Wells Fargo Bank, N.A., for good cause shown, and pursuant to Rules 26(c) and 36(c) of the South Carolina Rules of Civil Procedure, it is hereby

*Unfairly Limit Admissions*

ordered that Defendant Dorothy Sistrunk's Requests for Admission are limited to twenty in number, that Plaintiff Wells Fargo Bank, N.A. is required to answer only the first twenty

*5/23/2014  
DD*

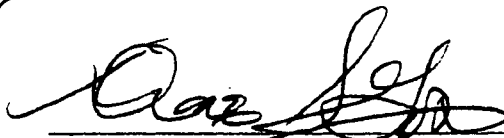
Requests for Admission that have been served, and Defendant Dorothy Sistrunk is enjoined

from serving additional Requests for Admission. This determination is based on the written

matters submitted by both parties, oral arguments at the hearing held on November 13, 2008,

and other matters considered by the Court.

IT IS SO ORDERED.



Honorable Diane S. Goodstein

11-18-08, 2008

ATTEST: TRUE COPY  
*Winnifred B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

**Exhibit 303**

2009-05-22-01

# The Supreme Court of South Carolina

RE: Mortgage Foreclosures and the Home Affordable Modification Program (HMP)

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## ADMINISTRATIVE ORDER

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On March 4, 2009, the United States Treasury Department (Treasury) issued Guidelines on mortgage loan modifications under the Home Affordable Modification Program (HMP) for residential loans owned, securitized or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).[1] The HMP is part of the Making Home Affordable Program (MHAP).

Subsequently on April 6, 2009, Treasury issued Supplemental Directive 09-01,[2] which provided additional guidance to servicers for adoption and implementation of the HMP for residential mortgage loans that are not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. For this latter category, the HMP is only applicable if the servicer has agreed to participate in the HMP.[3]

If applicable, the HMP requires the temporary suspension of foreclosure actions.[4] The HMP is scheduled to expire on December 31, 2012, and has no application to a mortgage originated after January 1, 2009.

On May 4, 2009, I issued a temporary restraining order (TRO) based on a motion filed by Fannie Mae.[5] This TRO had to be issued on an ex parte basis, and it was anticipated that it would be replaced by a subsequent order.

To insure that eligible homeowners have been afforded the benefits available under the HMP, the procedures for handling issues relating to the HMP are handled uniformly throughout the State, and mortgage foreclosure actions are not unnecessarily dismissed or delayed while HMP issues are resolved, I direct the following:

(1) Actions Filed After May 4, 2009. In all mortgage foreclosure actions filed after May 4, 2009, the complaint (or amended complaint) seeking foreclosure shall contain "a short and plain statement of the facts"[6] regarding the applicability of the HMP to the matter. For mortgages involving commercial property, the complaint may simply allege that the property is commercial and that the HMP is inapplicable.[7]

For mortgages involving residential property, the complaint shall state if the mortgage is owned, securitized or guaranteed by Fannie Mae or Freddie Mac, or if the servicer is participating in the HMP. If so as to either, the complaint shall state the facts showing that the loan is not subject to modification under the HMP,[8] or state the facts showing that the HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification.[9] If these allegations are contested by the

**Exhibit 96**

answer or the judge allows the issue to become contested at some later stage of the proceeding, any dispute regarding the eligibility of the mortgage loan for modification under the HMP or the satisfaction of the requirements of the HMP if it applies, shall be resolved like any other contested issue in a mortgage foreclosure case. Sections (3) and (4) of this order relate to the effect of the HMP determinations made by the judge.

**(2) Actions Pending on May 4, 2009.** In all mortgage foreclosure actions pending on May 4, 2009, the party seeking foreclosure should have served the affidavit required by the TRO by May 15, 2009. If the affidavit was timely served under the TRO, any counter affidavit asserting that the loan is subject to modification under the HMP or that the requirements of the HMP have not been met, should be served by May 22, 2009.

If the party seeking a foreclosure did not serve the affidavit by May 15, 2009, as required by the TRO, the matter will be stayed until the party seeking foreclosure serves and files an affidavit regarding the applicability of the HMP to the matter. For mortgages involving commercial property, the affidavit may simply allege that the property is commercial and that the HMP is inapplicable.

For residential mortgages, the affidavit shall state if the mortgage loan is owned, securitized or guaranteed by Fannie Mae or Freddie Mac, or if the servicer is participating in the HMP. If so as to either, the affidavit shall state the facts showing that the mortgage loan is not subject to modification under the HMP, or state the facts showing that the HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification. In the alternative, the affidavit may concede that the matter should be stayed until the HMP modification process is completed. If the affidavit is not served within ninety (90) days of the date of this order, the foreclosure action may be dismissed. If the affidavit is served, any other party to the action shall have ten (10) days to serve a counter affidavit.

\* A copy of any affidavit or any counter affidavit (whether served before or after this order), along with proof of service, shall immediately be filed with the court where the action is pending.

The judge shall consider the affidavit and any counter affidavit that may be filed to determine if there is any contested issue that must be resolved regarding the eligibility of the loan for modification under the HMP or satisfaction of the requirements of the HMP if it applies. If so as to either, the judge shall resolve this issue like any other contested issue in a mortgage foreclosure action. If a counter affidavit is not timely served, the determination of whether there are HMP issues which need to be resolved before foreclosure is ordered or the sale is commenced shall be based on the affidavit alone unless the judge allows the late service and filing of the counter affidavit or allows the issue to become contested at some later stage of the proceeding. Sections (3) and (4) of this order relate to the effect of the HMP determinations made by the judge.

**(3) Determination that the HMP is Applicable But the HMP Process Has Not Been Completed.**

If a judge determines that the HMP is applicable but that the process to determine if a modification will be made under the HMP has not been completed, the foreclosure action shall not be dismissed but shall be stayed until the HMP process is completed (including any trial period before a modification becomes effective). If the action is stayed, the party seeking foreclosure will advise the court of the status of the matter every thirty (30) days; the failure to do so may result in dismissal of the action. If the loan is modified under the HMP, the parties shall immediately notify the judge so that the mortgage foreclosure action can be dismissed. Nothing in this order shall be construed as preventing the party seeking foreclosure from voluntarily dismissing the foreclosure action.[10]

**Exhibit 96**

(4) **Determination that Mortgage Loan is Not Subject to Modification under the HMP.** If a judge determines that the HMP is either inapplicable to the mortgage loan or that the HMP requirements have been satisfied without resulting in a modification, the foreclosure action may continue. This includes the consummation of any sales conducted on or prior to May 4, 2009.

(5) **TRO Rescinded.** The TRO previously issued by me on May 4, 2009, is hereby rescinded. Instead, the provisions of this Administrative Order shall govern foreclosure actions potentially affected by the HMP.[11]

(6) **Judicial Sales in Mortgage Foreclosure Cases.** Nothing in this order shall be construed as preventing a judge from setting additional sales days under S.C. Code Ann. §15-39-680 (2005). Further, where an order of foreclosure was issued on or before May 4, 2009, nothing in this order shall be construed as preventing the judge from directing the advertising of the property for sale so long as any issue regarding the HMP is resolved before the sale occurs.

For the purpose of this order, the term "judge" shall include a circuit court judge, master-in-equity and special referee. If this order requires service of an affidavit or counter affidavit upon a party, service shall be accomplished as provided by Rule 5(b)(1), SCRPC, and service shall be made on all parties to the action.

IT IS SO ORDERED.

s/Jean Hofer Toal  
Jean H. Toal  
Chief Justice

Columbia, South Carolina  
May 22, 2009

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[1] The guidelines are available at [www.ustreas.gov/press/releases/reports/modification\\_program\\_guidelines.pdf](http://www.ustreas.gov/press/releases/reports/modification_program_guidelines.pdf). In addition to contacting the servicer to determine if the loan is owned or guaranteed by Fannie Mae and Freddie Mac, homeowners can also use the links on the following website to determine if their loans are owned or guaranteed by Fannie Mae or Freddie Mac: [http://makinghomeaffordable.gov/loan\\_lookup.html](http://makinghomeaffordable.gov/loan_lookup.html).

[2] Available at [www.hmpadmin.com/docs/Supplemental\\_Directive\\_09-01.pdf](http://www.hmpadmin.com/docs/Supplemental_Directive_09-01.pdf).

[3] A list of those servicers who have agreed to participate may be found at [http://makinghomeaffordable.gov/contact\\_servicer.html](http://makinghomeaffordable.gov/contact_servicer.html).

[4] The Guidelines state:

Any foreclosure action will be temporarily suspended during the trial period, or while borrowers are considered for alternative foreclosure prevention options. In the event that the Home Affordable Modification or alternative foreclosure prevention options fail, the foreclosure action may be resumed.

In relevant part, the Supplemental Directive states:

**Exhibit 96**

To ensure that a borrower currently at risk of foreclosure has the opportunity to apply for the HMP, servicers should not proceed with a foreclosure sale until the borrower has been evaluated for the program and, if eligible, an offer to participate in the HMP has been made. Servicers must use reasonable efforts to contact borrowers facing foreclosure to determine their eligibility for the HMP, including in-person contacts at the servicer's discretion. Servicers must not conduct foreclosure sales on loans previously referred to foreclosure or refer new loans to foreclosure during the 30-day period that the borrower has to submit documents evidencing an intent to accept the Trial Period Plan offer. Except as noted herein, any foreclosure sale will be suspended for the duration of the Trial Period Plan, including any period of time between the borrower's execution of the Trial Period Plan and the Trial Period Plan effective date.

**[5]** This order and the motion are available at [www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=526](http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=526).

**[6]** Rule 8(a), SCRPC.

**[7]** For example, the complaint could simply state: "Since this foreclosure action involves a mortgage on a commercial office building, the Home Affordable Modification Program is inapplicable."

**[8]** Despite the fact that the loan is owned, securitized or guaranteed by Fannie Mae or Freddie Mac, or the servicer is participating in the HMP, there are numerous other requirements that may prevent the loan from being eligible for modification under HMP. For example, modification under HMP is not available if the property is not a single family 1 - 4 unit property, the property is not the primary residence of the homeowner, the mortgage originated after January 1, 2009, the unpaid principal balance exceeds certain specified amounts, the property is vacant or condemned, or the loan has been previously modified under the HMP. For specifics on these and other requirements, the Guidelines and Supplemental Directive should be consulted. For homeowners, there is an interactive website to assist them in determining if the mortgage loan is potentially subject to modification under the HMP: [http://makinghomeaffordable.gov/modification\\_eligibility.html](http://makinghomeaffordable.gov/modification_eligibility.html).

**[9]** If the HMP is applicable and the modification process has not been completed, the action should not be filed.

**[10]** I am concerned that there may be a significant number of actions that may be stayed while the HMP process is completed. I expect the party seeking foreclosure to complete the process and make a determination if the mortgage loan will be modified in a prompt and diligent manner. If this is not done and the number of cases stayed reaches an unacceptable level, this order may be modified to allow for the dismissal of actions which are stayed and not resolved in a reasonable period of time.

**[11]** In response to the TRO, six law firms (the Scott Law Firm, P.A.; Rogers, Townsend, Thomas, P.C.; the Finkel Law Firm, L.L.C.; Fleming & Whitt, P.A.; the Korn Law Firm, P.A.; and the Weston Adams Law Firm) have filed a motion seeking a state-wide scheduling order. The South Carolina Department of Consumer Affairs, South Carolina Legal Services, the law firm of Harrison & Radeker, P.A., and the South Carolina Appleseed Legal Justice Center have filed returns to the motion. In addition, the six law firms have filed a reply and an amended reply. These filings have been considered in issuing this order.

In its return, Consumer Affairs points out that, in addition to HMP, other parts of the

**Exhibit 96**

provide relief to homeowners. This includes Fannie Mae and Freddie Mac allowing refinancing of mortgage loans that they own or that they placed in mortgage backed securities where homeowners are current on their loans, Short Sales/Deeds-in-Lieu Program and the Home Price Decline Protection Incentives. While these programs are beyond the scope of this order, the following links provide information about those programs:

[www.freddiemac.com/sell/factsheets/relief\\_refi.html](http://www.freddiemac.com/sell/factsheets/relief_refi.html);

[www.efanniemae.com/sf/mha/mharefi/pdf/refinancefaqs.pdf](http://www.efanniemae.com/sf/mha/mharefi/pdf/refinancefaqs.pdf);

[http://makinghomeaffordable.gov/refinance\\_eligibility.html](http://makinghomeaffordable.gov/refinance_eligibility.html);

[www.treas.gov/press/releases/docs/05142009FactSheet-MakingHomesAffordable.pdf](http://www.treas.gov/press/releases/docs/05142009FactSheet-MakingHomesAffordable.pdf).

**Exhibit 96**

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

Wells Fargo Bank, N.A., ) Civil Action No. 08-CP-38-1024  
 )

Plaintiff, )  
 )

vs. )

ORDER OF STAY

Dorothy Sistrunk, )  
 )

Defendant. )  
 )

IT APPEARS, pursuant to the Supreme Court of South Carolina's Administrative Order of May 22, 2009, and the Affidavit of Plaintiff Wells Fargo Bank, N.A., the underlying mortgage loan in this action is subject to possible modification in accordance with the Home Affordable Modification Program.

IT IS THEREFORE ORDERED that this matter is stayed indefinitely pending a loan modification determination by Plaintiff Wells Fargo Bank, N.A.

IT IS THEREFORE ORDERED that all discovery activities will be postponed during the stay.

IT IS THEREFORE ORDERED that Plaintiff Wells Fargo Bank, N.A. will provide the Court with a case status update every thirty (30) days consistent with the Supreme Court of South Carolina's Administrative Order of May 22, 2009.

IT IS SO ORDERED.



The Honorable Edgar W. Dickson  
Presiding Judge, ~~Thirteenth~~ Judicial Circuit

FIRST

June 24, 2009

Orangeburg, South Carolina

**Exhibit 97**

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

Wells Fargo Bank, N.A., ) Civil Action No. 2008-CP-38-1024  
 )

Plaintiff, )

vs. )

Dorothy Sistrunk, )

Defendant. )  
 )

**ORDER GRANTING PLAINTIFF'S  
MOTION TO COMPEL  
DISCOVERY, ISSUING STAY, AND  
GRANTING MOTION FOR  
CONTINUANCE**

This matter comes before the Court upon the following motions made by Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo"): (1) motion to compel discovery from the Defendant Dorothy Sistrunk (Defendant) and third-party witness George M. Sistrunk (Witness) and (2) motion for continuance.


The Court conducted a hearing on December 6, 2011 to address and consider Wells Fargo's motions and the objections filed by Defendant and Witness. Counsel for Wells Fargo and the pro se Defendant appeared. After hearing the arguments and considering the filings and arguments made by the parties, the Court hereby grants Wells Fargo's motion to compel discovery and motion for continuance, for good cause shown.


Accordingly, IT IS ORDERED that Defendant Dorothy Sistrunk and Witness George M. Sistrunk must submit to and attend their depositions by oral examination scheduled by Wells Fargo for a date on which a room for the depositions is available at the Circuit Court for Orangeburg, South Carolina. Furthermore, at the scheduled time for the deposition, the Witness George M. Sistrunk shall produce for inspection and copying by Wells Fargo's counsel all documents in his possession that concern any claims raised in Wells Fargo's complaint and any defenses raised in Defendant's answer.

**Exhibit 255**

AND IT IS FURTHER ORDERED that this case is stayed until further order of the Court because Plaintiff Wells Fargo has served a Third Notice of Right to Foreclosure Intervention Pursuant to S.C. Supreme Court Administrative Order No. 2011-05-02-01 on Defendant Dorothy Sistrunk pursuant to this Court's direction. During the stay, however, the parties may pursue discovery from each other or any other persons pursuant to and consistent with the South Carolina Rules Civil Procedure and any other applicable South Carolina law.

AND IT IS FURTHER ORDERED that the motion for continuance is granted because of the stay issued by the Court under this order.

  
~~St. George~~, South Carolina  
March, 2012

  
The Hon. Diane Schafer Goodstein  
South Carolina Circuit Court Judge

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2011 JAN 15 AM 11:50

FILED FOR RECORDED  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

Wells Fargo Bank, N.A., )  
 )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Dorothy Sistrunk, )  
 )  
Defendant. )

Civil Action No. 2008-CP-38-1024

**CONSENT SCHEDULING ORDER**

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") and *pro se* Defendant Ms. Dorothy Sistrunk ("Defendant") bring this Motion requesting this matter, now scheduled for trial on December 16, 2013, be continued until a future term of Court and that the agreed upon Scheduling Order be entered.

The basis for the parties' Motion is that the Plaintiff's Motion for Summary Judgment was heard by Judge Diane Goodstein September 3, 2013. Judge Goodstein has taken Plaintiff's Motion for Summary Judgment under advisement. However, the parties wish to attempt to resolve this matter through mediation. The parties will mediate the matter in Orangeburg with a local mediator, and if mediation is not successful, the parties will be prepared to go to trial as designated below.

ATTEST: TRUE COPY  
*Wingja B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

**Exhibit 349**

*1/3*

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, and with the consent of the parties, the Court hereby enters this Consent Scheduling Order as follows:

1. Mediation shall be held on or before January 31, 2014.
2. This action shall not be called for trial before February 28, 2014.

**AND IT IS SO ORDERED.**



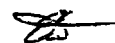
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Edgar W. Dickson  
Chief Administrative Judge  
First Judicial Circuit

Orangeburg, South Carolina

12/6, 2013

**Exhibit 349**

2/3 

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

Wells Fargo Bank, N.A., ) Civil Action No. 2008-CP-38-1024  
 )  
 Plaintiff, )  
 )  
 vs. ) **ORDER GRANTING PARTIAL**  
 ) **SUMMARY JUDGMENT**  
 Dorothy Sistrunk, )  
 )  
 Defendant. )

FILED FOR RECORD  
 2014 APR -7 PM 4:12

**BEFORE THE COURT** is Plaintiff Wells Fargo Bank, N.A.'s ("Wells Fargo") Motion for Summary Judgment as to Wells Fargo's Complaint of Foreclosure and Defendant Dorothy Sistrunk's numerous counterclaims predicated on alleged fraud by parties other than Wells Fargo.<sup>1</sup> A hearing was held on this matter on September 3, 2013, at which James H. Burns appeared on behalf of Wells Fargo and Defendant appeared *pro se*. After consideration of the pleadings, the parties' written submissions, and oral argument of the parties, the Court finds as follows:

*Violation of Rule 30(b)(2), SCRPC  
 Page 6 # 26 April 3, 2014 Dorothy Sistrunk*

*My Defense 5/23/2014 DA*

Defendant's Answer to Complaint with Counterclaims and First Amendment to Answer to Complaint with Counterclaims are all based upon the allegation that the mortgage loan between the parties is unenforceable because of alleged malfeasance by the seller and appraiser. The counterclaims include the following: Violation of the Fair Credit Reporting Act ("FCRA"); Unjust enrichment; Willful intent to participate in and perpetuate mortgage, bank, insurance, and securities fraud or a predatory lending scheme advanced through falsified documents; Gross negligence and inherent negligence; Failure to exercise due diligence; Concealment of a material fact and cover up; Failure to exercise fiduciary responsibility as a bank; Unfair lending and banking practices; Failure to safeguard the financial interest of customers, clients and investors by accepting, using, or basing decisions upon falsified documents after alleged facts are known; Infliction of emotional distress; and Rescission of the loan contract under the Truth in Lending Act ("TILA") and money damages.

ATTEST: TRUE COPY  
 Winnie B. Clark  
 CLERK OF COURT  
 ORANGEBURG COUNTY  
**Exhibit 329**

## BACKGROUND

1. Misrepresentations 5/23/2014 D.D.  
Around early October 2007, Defendant and her family needed new housing because they did not want to be responsible for costs associated with yard work for a home that Defendant and her family rented at 574 Coburg Lane, Orangeburg, South Carolina. Defendant and her family also needed to move because their landlord was planning to sell the property that Defendant rented.

\* 2. In response to an advertisement in a local newspaper, Defendant's husband contacted Thomas Jacobs ("Jacobs" or sometimes "seller") to inquire about various properties that he had for sale.

\* 3. After Defendant's husband looked at several houses with Jacobs, her husband decided to purchase a home located at 423 Bayne Street in Orangeburg, South Carolina ("423 Bayne Street").

\* 4. In the month prior to closing, Defendant and her family moved into 423 Bayne Street and began cleaning and making repairs.

\* 5. Defendant alleges that during negotiations for purchasing 423 Bayne Street, Jacobs advised that he would make various repairs to 423 Bayne Street before closing, and if such repairs were not made, then the purchase price for that property would be lowered at closing.

\* 6. Defendant admits that neither she nor her husband advised Wells Fargo of any of the representations that Jacobs made to them. Further, Defendant has no evidence of Jacobs or Jim H. Austin, III ("Austin" or sometimes "appraiser") notifying Wells Fargo of Jacobs's representations to Defendant and her husband.

Th  
\* 7. Prior to closing, on November 26, 2007, Defendant signed a Notice of Right to Receive a Copy of Appraisal. Defendant also signed a contract for sale, as a buyer, for 423 Bayne Street. The contract of sale is countersigned by the seller, Thomas Jacobs.

8. Austin authored an appraisal that listed the value for 423 Bayne Street at \$75,000.00.

\* 9. Defendant admits that she did not rely on Austin's appraisal, and she has no evidence that Wells Fargo made or played any role in creating the appraisal authored by Austin.

10. Defendant contests the sales price listed on the sales contract that she signed with the seller, and she believes that various alterations to the sales contract were made after she signed it.

\* 11. Defendant admits that she does not know who altered the sales contract, and she does not accuse anyone at Wells Fargo for being responsible for any alterations.

\* 12. The loan closed on December 21, 2007, and Defendant and her lawyer attended the closing.

13. At the loan closing, Defendant signed a Fixed-Rate Note ("Note") in the principal sum of \$75,000.00. In pertinent part, the Note states as follows:

In return for a loan that I have received, I promise to pay U.S. \$75,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is WELLS FARGO BANK, N.A.

14. Defendant secured her repayment obligations under the Note by executing a thirty-year Mortgage ("Mortgage") that encumbers 423 Bayne Street.

\* 15. Although her husband negotiated all aspects of purchasing 423 Bayne Street with the seller, Defendant attended and participated in the closing on December 21, 2007, without her husband's attendance at the closing because she trusted the seller.

16. On January 9, 2008, Defendant requested a copy of the appraisal for 423 Bayne Street from both her closing attorney and mortgage broker David Terrell of Golden Gate Mortgage.

\* 17. Defendant received the appraisal on January 12, 2008, and she believed it was incorrect.

18. Plaintiff alleges Defendant defaulted on her payment obligations under the Note, and Defendant has never paid the taxes and insurance on 423 Bayne Street.

19. On June 27, 2008, Wells Fargo filed a Lis Pendens, Summons, and Complaint of Foreclosure due to Defendant's default on the Note and to seek foreclosure of the Mortgage.

20. On July 18, 2008, Defendant filed an Answer to Complaint with Counterclaims, and on July 31, 2008, Defendant filed a First Amendment to Answer to Complaint with Counterclaims alleging as referenced above and predicated on alleged fraud that arose from the actions of the seller and appraiser.

\* 21. Defendant admits she has no evidence linking Wells Fargo to the actions of the seller or appraiser, and Defendant believes Wells Fargo was also victimized by the seller and appraiser.

#### ANALYSIS AND CONCLUSIONS

22. Summary judgment is warranted when no material facts are in contest and the movant is entitled to a judgment as a matter of law. *McNaughten-McKay Elec. v. Andrich*, 324 S.C. 275, 279, 482 S.E.2d 564, 566 (Ct. App. 1997). On summary judgment motions, evidence and factual inferences are viewed in a light most favorable to the non-movant. *Bankers Trust Co. v. Braten*, 317 S.C. 547, 551, 455 S.E.2d 199, 201 (Ct. App. 1995). The movant must initially assert the basis for the motion but is not required to negate his opponent's claim; the

burden may be discharged by demonstrating a lack of evidence supporting a particular issue in the non-movant's case. *Richardson v. The State Record Co., Inc.*, 330 S.C. 562, 566, 499 S.E.2d 822, 824-25 (Ct. App. 1994). When a summary judgment motion is properly made and supported under Rule 56, S.C. R. Civ. P., the non-movant must demonstrate the existence of a triable issue of fact. *Peterson v. West American Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610-11 (Ct. App. 1999). If the evidence submitted by the non-movant is merely colorable, summary judgment should be granted. *Thompkins v. Festival Centre Grp.*, 306 S.C. 193, 194, 410 S.E.2d 593, 593-94 (Ct. App. 1991).

23. All of Defendant's counterclaims are based on alleged fraud in which Defendant admits Wells Fargo had no participation.

24. To prevail on a claim against Wells Fargo for actual fraud, Defendant must prove the following elements by clear and convincing evidence: (1) a representation by Wells Fargo; (2) its falsity; (3) its materiality; (4) Wells Fargo's knowledge of its falsity or a reckless disregard for its truth or falsity; (5) Wells Fargo's intent that Defendant act upon the representation; (6) Defendant's ignorance of its falsity; (7) Defendant's reliance on its truth; (8) Defendant's right to rely thereon; and (9) Defendant's consequent and proximate injury. *See McLaughlin v. Williams*, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008) (affirming summary judgment on fraud claim because no reliance). "Failure to prove any element of fraud is fatal to the action." *Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 348, 565 S.E.2d 309, 314 (Ct. App. 2002).

25. South Carolina law provides that no claim for fraud can be maintained against a party not involved in the fraud. *See Moseley v. All Things Possible*, 388 S.C. 31, 47, 694 S.E.2d 43, 46 (Ct. App. 2010) (reversing trial court's finding that corporate officer of seller of real

property was guilty of fraud in sale based on falsified plat when there was no evidence that he personally committed fraud); *see also Gordon v. Busbee*, 397 S.C. 119, 134-35, 723 S.E.2d 822, 831 (Ct. App. 2012) (affirming directed verdict for certain defendants when plaintiff presented no evidence of fraud by those defendants).

Violation of Rule 30(b)(2), SCRPC  
April 3, 2014  
N.D.

Misrepresentations 5/23/2014 D.D.

26. All of the counterclaims that Defendant has pleaded are based upon the allegation that the Note and Mortgage are unenforceable because of alleged malfeasance by the seller and appraiser. Wells Fargo attached portions of Defendant's deposition in support of its motion. In her deposition, Defendant admits that she does not know who altered the sales contract as she alleges, and she does not accuse anyone at Wells Fargo for being responsible for the alterations. Furthermore, Defendant admits that before she closed her mortgage loan, she had no communications or dealings with Wells Fargo, and she has no evidence linking Wells Fargo to the actions of the seller or appraiser. In fact, Defendant stated that she believes that Wells Fargo was also victimized by the seller and appraiser. *Dewberry Dintch*

27. Because Defendant has no evidence linking Wells Fargo to this alleged act of fraud, the Court finds there are no material facts that are in contest, and Wells Fargo is entitled to judgment as a matter of law with respect to Defendant's counterclaims. Defendant's claims fail because there is no material issue of fact revealing misrepresentation or fraud by Wells Fargo. Therefore, Wells Fargo's Motion for Summary Judgment on all of Defendant's counterclaims is GRANTED.

28. Wells Fargo has also moved for summary judgment on its Complaint of Foreclosure. At this point, Wells Fargo has presented no evidence in its summary judgment motion demonstrating compliance with the South Carolina Supreme Court's Administrative

Order Re: Mortgage Foreclosure Actions (“Supreme Court Order”), which is dated May 2, 2011.

29. The Supreme Court Order discusses efforts that homeowners and lender-servicers need to make towards loan modification or other loss mitigation efforts in foreclosure actions pending in South Carolina. The Supreme Court Order identifies the steps that must be taken in order “to insure that the procedures for handling issues related to such efforts are handled uniformly throughout the State.” S.C. Admin. Order No. 2011-05-02-01.

30. In Wells Fargo’s Motion for Summary Judgment, Wells Fargo seeks summary judgment in the foreclosure action because Defendant has failed to repay amounts owed under the Note and Mortgage. However, Wells Fargo did not present specific evidence—either in writing or by way of oral argument—that demonstrates compliance with the Supreme Court Order. The Court is not making a finding of whether Wells Fargo has in fact complied with the Supreme Court Order; rather, the Court finds that there was no evidence presented to the Court upon which it can make a summary judgment determination. Therefore, Wells Fargo’s Motion for Summary Judgment on the underlying Complaint of Foreclosure is DENIED.

31. The foreclosure action will proceed, and if summary judgment is appropriate at some time in the future, the South Carolina Rules of Civil Procedure do not prohibit such a motion.

**NOW, THEREFORE**, based on the foregoing, the Court hereby **GRANTS** Plaintiff Wells Fargo Bank, N.A.’s Motion for Summary Judgment on all of Defendant’s counterclaims, which are **DISMISSED** with prejudice. The Court hereby **DENIES** Plaintiff Wells Fargo Bank, N.A.’s Motion with respect to its Complaint of Foreclosure, and the foreclosure action shall proceed.

AND IT IS SO ORDERED!

3-27-2014

7



**Exhibit 329**

STATE OF SOUTH CAROLINA )  
 COUNTY OF ORANGEBURG )  
 Wells Fargo Bank, N.A. )  
 Plaintiff, )  
 vs. )  
 Dorothy Sistrunk, )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIRST JUDICIAL CIRCUIT  
 CASE No. 2008-CP-38-1024

**ORDER DENYING MOTION TO  
 ALTER OR AMEND**

FILED FOR RECORD  
 CLERK OF COURT  
 ORANGEBURG, SC  
 2014 APR 11 AM 11:59  
 AM

This matter is before the Court by way of Defendant Dorothy Sistrunk's Motion to Alter or Amend brought forth pursuant to South Carolina Civil Procedure Rule 59(e). This Court has had the opportunity to review the Defendant's Motion and has determined that oral argument would not assist the Court in ruling on this Motion. Because the Defendant's Motion does not raise any novel issues for the Court's consideration, the Defendant's Motion to Alter or Amend is denied.

**AND IT IS SO ORDERED.**

ATTEST: TRUE COPY  
*Winnie B. Clark*  
 CLERK OF COURT  
 ORANGEBURG COUNTY, SC

*Diane Schaefer Goodstein*  
 The Honorable Diane Schaefer Goodstein  
 First Judicial Circuit  
 CLERK OF COURT  
 ORANGEBURG COUNTY

April 1, 2014

July 4, 2014

*Judge Goodstein's statement is not true. There was a novel or new issue that was raised for the first time in 6 years of litigation - Notary Fraud.*

**Exhibit 354**

*Dorothy Sistrunk*

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

Wells Fargo Bank, N.A., ) Civil Action No. 2008-CP-38-1024  
 )

Plaintiff, )

vs. )

Dorothy Sistrunk, )

Defendant. )

ORDER OF REFERENCE TO  
MASTER IN EQUITY

FILED FOR RECORD  
 WITNESSED BY CLERK  
 CLERK OF COURT  
 ORANGEBURG COUNTY, SC

2014 MAY -5 AM 11:11

Upon motion of Plaintiff's Wells Fargo Bank, N.A., it appears that this foreclosure action is a proper matter to refer to the Honorable James B. Jackson, Jr., Master-in-Equity for Orangeburg County, South Carolina. Having reviewed Plaintiff's motion, it further appears to the Court that good cause has been shown for a reference of the above matter to the Master-in-Equity for ~~Charleston~~ *Orangeburg* County, as the only issue remaining in the case is Plaintiff's foreclosure complaint. *ruB by hrb*

NOW, THEREFORE, IT IS ORDERED, that the above-entitled case is hereby referred to the Honorable James B. Jackson, Jr., Master-in-Equity for Orangeburg County, to take the testimony and other evidence offered, and to issue a Final Order pursuant to Rule 53 of the South Carolina Rules of Civil Procedure; to make findings of fact and conclusions of law; to dispose of any and all issues; and enter a final judgment. Any appeal from the final judgment entered by the Master-in-Equity shall be directed to the Court of Appeals pursuant to South Carolina Code Ann. § 14-11-85.

*[Signature]*  
 Presiding Judge  
 First Judicial Circuit

*[Signature]*  
 W. B. Clark  
 CLERK OF COURT  
 ORANGEBURG COUNTY, SC

ATTEST: TRUE COPY

*Orangeburg*, South Carolina  
*May 5*, 2014

*Trid set for June 16, 2014 @ 9:30 a.m.*

**Exhibit 109**

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

Wells Fargo Bank, N.A., )  
Plaintiff, )

Civil Action Case No. 2008-CP-38-1024

v. )

ORDER DENYING MOTION FOR  
A NEW TRIAL AND MOTION TO  
VACATE PLAINTIFF'S PARTIAL  
SUMMARY JUDGMENT ORDER

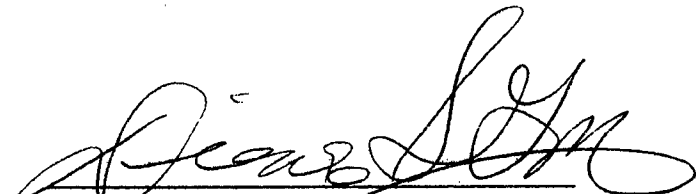
Dorothy Sistrunk, )  
Defendant, )

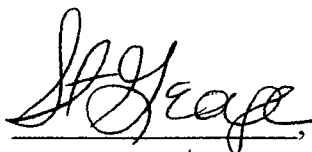
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WINNIE A. B. CLARK  
CLERK OF COURT  
ORANGEBURG, SC  
2014 JUL 17 AM 11:36

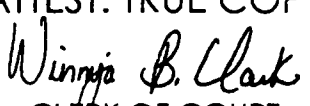
This matter is before the Court on a motion for a new trial based on SCRC ~~38(a)~~(a)-(d), 59(a)(2) and (60)(b)(1), and a motion to vacate Plaintiff's partial summary judgment order based on SCRC 60(b) filed by Dorothy Sistrunk ("Defendant").

After careful consideration, the Court finds that oral argument would be of no assistance in the furtherance of this case. Accordingly, the motion for a new trial and motion to vacate Plaintiff's partial summary judgment order are respectfully **DENIED**.

**AND IT IS SO ORDERED.**

  
DIANE S. GOODSTEIN  
Chief Administrative Judge  
First Judicial Circuit

  
\_\_\_\_\_, South Carolina  
7-11, 2014

ATTEST: TRUE COPY  
  
Winnie B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

RECEIVED  
8/14/14

# The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Appellate Case No. 2014-001683

The Honorable The Honorable Diane Schafer Goodstein  
Orangeburg County  
Trial Court Case No. 2008CP3801024

---

## ORDER

---

Respondent has filed a motion for substitution of counsel. The motion is Granted. Please be advised our records have now been amended to show that Elizabeth Scott Moise, Esquire, James H. Burns, Esquire, and Michael J. Anzelmo, Esquire are now counsel of record for Respondent in the above mentioned case on appeal. Jason David Wyman, Esquire, is no longer counsel of record and will not be copied on any future correspondence regarding this matter.

Appellant must notify the Court of the status of the transcript within ten (10) days of the date of this order.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

**FILED**  
*J.C. 13 Aug 2014*

**Exhibit 365**

Columbia, South Carolina

cc:

Dorothy Sistrunk

Jason David Wyman, Esquire

Elizabeth Scott Moise, Esquire

James H. Burns, Esquire

Michael J. Anzelmo, Esquire

**Exhibit 365**

# The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

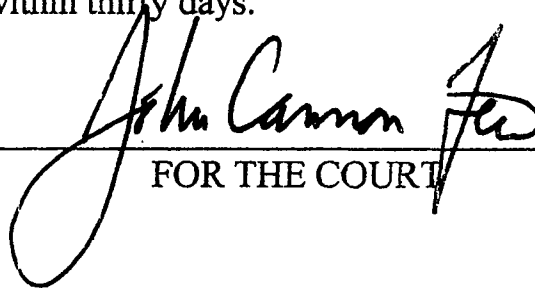
Appellate Case No. 2014-001683

---

## ORDER

---

After careful consideration, Respondent's motion to dismiss is denied. Appellant shall serve and file her initial brief within thirty days.

  
FOR THE COURT

Columbia, South Carolina

cc:  
Dorothy Sistrunk  
Elizabeth Scott Moise, Esquire  
James H. Burns, Esquire  
Michael J. Anzelmo, Esquire

**FILED**  
10/24/14

**Exhibit 371**

# The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Appellate Case No. 2014-001683

The Honorable Diane Schafer Goodstein  
Orangeburg County  
Trial Court Case No. 2008CP3801024

---

## ORDER

---

Respondent has filed a motion to allow James H. Burns to withdraw as counsel on the ground he no longer represents the respondent as he has resigned from Nelson Mullins law firm. The motion is Granted. Please be advised our records have now been amended to show that Elizabeth Scott Moise, Esquire, and Michael J. Anzelmo, Esquire, are now counsel of record for Respondent in the appeal. James H. Burns, Esquire, is no longer counsel of record and will not be copied on any future correspondence regarding this matter.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina  
cc: Dorothy Sistrunk  
Jason David Wyman, Esquire  
Elizabeth Scott Moise, Esquire  
James H. Burns, Esquire  
Michael J. Anzelmo, Esquire

**FILED**

1 Dec 2014

**Exhibit 380**

12/5/14

# The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Appellate Case No. 2014-001683

The Honorable Diane Schafer Goodstein  
Orangeburg County  
Trial Court Case No. 2008CP3801024

---

ORDER

---

The time for serving and filing the respondent's initial brief and designation of matter is hereby extended until January 2, 2015.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc:  
Dorothy Sistrunk  
Elizabeth Scott Moise, Esquire  
Michael J. Anzelmo, Esquire

**FILED**  
4 Dec 2014  
CC

# The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Appellate Case No. 2014-001683

The Honorable Diane Schafer Goodstein  
Orangeburg County  
Trial Court Case No. 2008CP3801024

---

## ORDER

---

The time for serving and filing the respondent's initial brief and designation of matter is hereby extended until February 2, 2015.

No further extensions will be granted absent extraordinary circumstances.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc:

Dorothy Sistrunk

Elizabeth Scott Moise, Esquire

Michael J. Anzelmo, Esquire

**FILED**

**Exhibit 381** Jan 2015  
cc

# The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Appellate Case No. 2014-001683

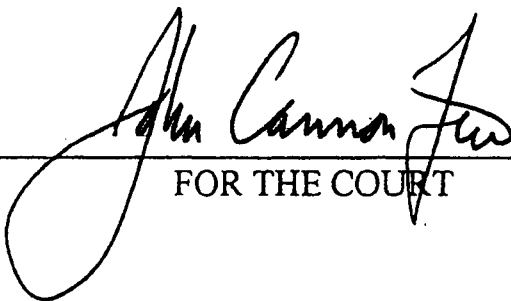
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## ORDER

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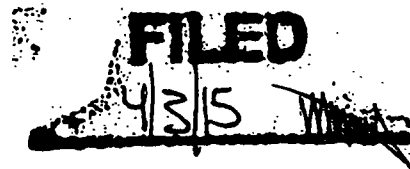
Respondent has filed a motion to strike Appellant's initial reply brief and the eighteen appendices submitted with the brief. Appellant has filed a return opposing the motion, and Respondent has filed a reply.

After careful consideration, this Court grants the motion to strike as follows. We accept Appellant's twenty-four page initial reply brief but reject the eighteen appendices. Appellant must remove the eighteen appendices within twenty days of the filing date of this order.

  
FOR THE COURT

Columbia, South Carolina

cc: Dorothy Sistrunk  
Elizabeth Scott Moise, Esquire  
Michael J. Anzelmo, Esquire



**Exhibit 390**

# The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Appellate Case No. 2014-001683

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## ORDER

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Appellant has filed a motion to remand this appeal to the circuit court "to obtain rulings on the issues raised in her pleadings." Respondent has filed a return. After careful consideration of the parties' filings, Appellant's motions are denied. Appellant shall serve the record on appeal within twenty days of the date of this order.

  
FOR THE COURT

Columbia, South Carolina

cc: Dorothy Sistrunk  
Elizabeth Scott Moise, Esquire  
Michael J. Anzelmo, Esquire

**FILED**  
7/1/15

**NOTICE OF APPEAL IN A CIVIL CASE**

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

**APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas**

**Diane Shafer Goodstein, Circuit Court Judge**

**Case No. 2008-CP-38-1024**

**Wells Fargo Bank, N. A.,**

**Respondent,**

**v.**

**Dorothy Sistrunk,**

**Appellant.**

**NOTICE OF APPEAL**

Dorothy Sistrunk appeals the Order Denying Motion For A New Trial And To Vacate Plaintiff's Partial Summary Judgment Order dated July 11, 2014, date stamped, July 17, 2014 and the Appellant received the written notice of entry of this Order on July 23, 2014. *{See Attached Exhibits 359 & 360}*

July 30, 2014

*/s/ Dorothy Sistrunk*  
\_\_\_\_\_  
Dorothy Sistrunk  
423 Bayne Street  
Orangeburg, South Carolina 29115  
(803) 268-0716  
*Pro Se*

Other Counsel of Record:  
Rogers Townsend & Thomas, PC  
Jason D. Wyman  
POB 100200  
Columbia, South Carolina 29202  
Attorney for Respondent  
(803) 771-7900

**CERTIFICATE THAT NO TRANSCRIPT WILL  
BE ORDERED BY APPELLANT FOR THE APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

Diane Shafer Goodstein, Circuit Court Judge

Case No. 2008-CP-38-1024

Wells Fargo Bank, N. A.,

Respondent,

v.

Dorothy Sistrunk,

Appellant.

**CERTIFICATE THAT NO  
TRANSCRIPT WILL BE ORDERED BY APPELLANT**

Dorothy Sistrunk, Appellant, files this Certificate certifying that no transcript will be ordered for the Appeal in a Civil Case; i.e., Wells Fargo Bank, N. A., Respondent v. Dorothy Sistrunk, Appellant - Case 2008-CP-38-1024, for the following reasons:

(1) *Rule 10(b)(1)(B), F. R. App. P.*, clearly allows me to “[f]ile a certificate stating that no transcript will be ordered.”

(2) *Rule 52, SCRPC*, provides that “[f]indings of facts and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56.” Judge Goodstein did not refer to any evidence during any hearing and relied on the representations and/or arguments of Wells Fargo’s attorneys Elizabeth Scott Moise and James H. Burns and under the rule, did not have to engage in fact finding.

(3) *Rule 56(c), SCRPC*; clearly states in pertinent parts, summary judgment is based on “[t]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any...” My Verified Pleadings, depositions, answers to interrogatories, admissions and affidavits on file are sufficient evidentiary materials for review. Since I am *Pro Se* and have no experience in law, if the Appellate Court believes, in the interest of justice, that I should order them, I will ask for leave to do so. {See also Quail Hill, L.L.C. v. Cnty. of Richland, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010)}

(stating appellate courts apply the same standard as the trial court under Rule 56(c), SCRCP); *Porter*, 372 S.C. at 568, 643 S.E.2d at 100 (stating that “not all situations require a detailed order, and the circuit court's form order may be sufficient if the appellate court can ascertain the basis for the circuit court's ruling from the record on appeal”)} In addition, since all my pleadings are verified, in accordance with...

(a) *Dawkins v. Fields*, 580 S.E.2d 433 (S.C. 2003) (“...a verified pleading is equivalent to an affidavit, provided it meets the requirements of Rule 56(e). Under Rule 56(e), an affidavit or verified complaint must meet three criteria to be considered by the court: (1) it must be made upon personal knowledge; (2) it must set forth facts admissible in evidence; (3) it must show that the affiant is competent to testify to the matters stated therein.”)

(b) *State v. Colf*, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998) (noting that federal interpretation of the rules of civil procedure is persuasive when there is no South Carolina interpretation).

(c) *Moore v. Goldome Credit Corp.*, 370 S.E.2d 843 (Ga. 1988) (holding a properly verified pleading containing specific factual allegations must be considered in opposition to affidavits filed in support of a motion for summary judgment)

(d) *Hladczuk v. Epstein*, 470 N.Y.S.2d 211 (App. Div. 1983) (stating that a verified pleading is the equivalent of an affidavit for purposes of summary judgment)

(e) *Fidelity Financial Services, Inc. v. Hicks*, 214 Ill.App.3d 398, 574 N.E.2d 15, 158 Ill.Dec. 221 (1st Dist. 1991) (admissions in [a] verified pleading that are not product of mistake or inadvertence become binding judicial admissions)

(f) *U.S. Bank National Ass'n v. Clark*, 216 Ill.2d 334, 837 N.E.2d 74, 297 Ill.Dec. 294 (2005). *Winnetka Bank v. Mandas*, 202 Ill.App.3d 373, 559 N.E.2d 961, 147 Ill.Dec. 621 (1st Dist. 1990) (provision that verified allegations constitute evidence by way of admission refers to admissions of fact, not legal conclusions or admissions of law). See also *Robins v. Lasky*, 123 Ill.App.3d 194, 462 N.E.2d 774, 78 Ill.Dec. 655 (1st Dist. 1984).

(g) *Pinnacle Corp. v. Village of Lake in the Hills*, 258 Ill.App.3rd 205, 209, 196 Ill.Dec. 567, 630 N.E.2d 502 (1994) “[w]hen a pleading is verified, every subsequent pleading must also be verified unless verification is excused by the court. There is no allegation that verification was excused by the court. When a subsequent pleading is not verified, it is as if the unverified pleading was never filed; it must be disregarded.” (*Charter Bank v. Eckert*, (1992), 223 Ill.App.3d 918, 924, 166 Ill.Dec. 282, 585 N.E.2d 1304; *Florsheim v. Travelers Indemnity Co.* (1979), 75 Ill.App.3d 298, 308, 30 Ill.Dec. 876, 393 N.E.2d 1223.) “[C]onsequently, we must ignore the allegations in Crystal Lake's unverified answer. Moreover, a failure to file an answer results in well-pleaded facts being deemed admitted. (*Florsheim*, 75 Ill.App.3d at 309, 30 Ill.Dec. 876, 393 N.E.2d 1223.) *Estate of Rennick*, 181 Ill.2d 395, 407, 692 N.E.2d 1150, 1156 (1998)

"[A] judicial admission binds the party who made the admission. If the admission is merely an evidentiary admission (instead of a judicial admission), the party may contradict or explain it." Williams Nationalease, Ltd. v. Motter, 271 Ill.App.3d 594, 597, 207 Ill.Dec. 914, 648 N.E.2d 614, 616-17 (1995).

(h) From West v. Gladney, 533 S.E.2d 334, 337 (S.C. May 8, 2000) ("[G]ladney produced no evidence to refute West's statements... this court ordinarily will not consider statements of fact presented only in an attorney's argument in determining whether a genuine issue of material fact exists sufficient to preclude summary judgment." Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180 (Ct.App.1986)

(4) In Woodson v. DLI Props., Op. No. 2011-UP-291 (S.C. Ct. App. filed on June 14, 2011 and decided on January 8, 2014 in Case No. 27344), the Supreme Court stated the following; "[I]n the presence of a written order, the court of appeals erred in affirming summary judgment on the basis that Petitioners did not provide the hearing transcript as part of the Record. See Ford, 344 S.C. at 645-646, 545 S.E.2d at 823; see also Rule 56(c), SCRPC (listing the factual material that is reviewable for purposes of deciding whether to grant a motion for summary judgment)."

(a) "Summary judgment cannot be granted unless the pleadings, depositions, answers to interrogatories, and admissions on file together with affidavits, if any, conclusively show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Frost v. Regions Bank, 15 So. 3d 905, 906 (Fla. 4th DCA 2009).

(b) "[a] summary judgment should not be granted where there are issues of fact raised by [the] affirmative defense[s] which have not been effectively factually challenged and refuted." Cufferi v. Royal Palm Dev. Co., 516 So. 2d 983, 984 (Fla. 4th DCA 1987). Thus, "[i]n order for a plaintiff . . . to obtain a summary judgment when the defendant asserts affirmative defenses, the plaintiff must either disprove those defenses by evidence or establish the legal insufficiency of the defenses." *Id.* (quoting Burner v. Fla. Coast Bank of Coral Springs, N.A., 390 So. 2d 126, 127 (Fla. 4th DCA 1980)). In such instances, "[t]he burden is on the plaintiff, as the moving party, to demonstrate that the defendant could not prevail. *Id.*"

(c) The Fourth DCA reversed summary judgment where Wells Fargo did not refute affirmative defenses raised in an affidavit in opposition to summary judgment. Woodrum v. Wells Fargo Mortgage Bank, 73 So. 3d 873 (Fla. 4<sup>th</sup> DCA 2011). (holding there is no case law supporting Wells Fargo's position that affirmative defenses raised in an affidavit cannot be considered.)

(d) Stop & Shoppe Mart, Inc. v. Mehdi, 854 So. 2d 784, 786 (Fla. 5th DCA 2003) ("Furthermore, the moving party must disprove the affirmative defenses or establish that they are insufficient as a matter of law. Where the movant merely denies the affirmative defenses and the affidavit in support of summary judgment only supports the allegations of the complaint and does not address the affirmative defenses, the burden of disproving the affirmative defenses has not been met." (citations

omitted)). The entry of summary judgment where affirmative defenses are extant is error. Stop & Shoppe Mart, Inc., 854 So. 2d at 787; Wendt v. Laske, 760 So. 2d 1125 (Fla. 5th DCA 2000), (reversing summary judgment where affirmative defenses were raised that were not addressed in trial court's order); Fla. Dep't of Agric. v. Go Bungee, Inc., 678 So. 2d 920, 921 (Fla. 5th DCA 1996) (holding trial court's failure to address affirmative defenses before granting summary judgment was error)."

(e) "[I]n interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes." Maxwell v. Genez, 356 S.C. 617, 591 S.E.2d 26 (2003); Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 443 S.E.2d 906 (1994). "[I]f a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced. See Maxwell, 356 S.C. at 617, 591 S.E.2d at 26"

(f) *U.S. Const. art. IV, § 1* ("Full Faith and Credit shall be given in each State to the public acts, records, and judicial proceedings of every other State.")

(g) The *United States Supreme Court* defines a **Court Record** as "[A] written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case."

(5) Finally, other than the Plaintiff's forged, falsified, altered, unauthorized and uncertified documents, referred to by Wells Fargo's attorneys; as well as, what I was supposed to believe, Judge Goodstein never referred to or considered any of my evidence, any of my objections or any statement of fact in any one of my Verified Pleadings, affidavits, exhibits, the witness' deposition and/or affidavits, interrogatories and/or admissions on file in any hearing or Court Order, therefore, there is no real need for me to order any transcript. In addition, the transcript for December 6, 2011, verifies my sworn statement of fact that Wells Fargo did not substantially comply with Administrative Order #2009-05-22-01. Attorney Brian A. Calub admitted this in Judge Goodstein's Courtroom. However, these are matters for the Appellate Court to decide, not me. Since I am *Pro Se* and have no experience in law, if the Appellate Court believes, in the interest of justice, that I should order them, I will ask for leave to do so.

July 30, 2014

*/s/ Dorothy Sistrunk*  
Dorothy Sistrunk  
423 Bayne Street  
Orangeburg, South Carolina 29115  
(803) 268-0716  
*Pro Se*

Other Counsel of Record:  
Rogers Townsend & Thomas, PC  
Jason D. Wyman  
POB 100200  
Columbia, South Carolina 29202  
Attorney for Respondent  
(803) 771-7900

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Wells Fargo Bank, NA,

Plaintiff,

v.

Dorothy Sistrunk;

Defendant(s).

(011784-06909)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2008 - CP - 38 - 1024

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE  
MORTGAGE

Deficiency Judgment Waived

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Orangeburg County, South Carolina.

2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.

3. Plaintiff is the owner and holder of the Note and Mortgage described hereafter and the subject of this action.

4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.

6. Heretofore, on or about December 21, 2007, Dorothy Sistrunk made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$75,000.00, payable in monthly installments.

7. In order to secure the payment of the Note according to the terms and conditions thereof, Dorothy Sistrunk made, executed and delivered unto Wells Fargo Bank, NA a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

ORANGEBURG COUNTY, SOUTH CAROLINA

Exhibit 105

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the City of Orangeburg, County of Orangeburg, South Carolina, more particularly shown and delineated as Lot 33 on a plat by S.D. Moss, Reg. C.E. and recorded in the Office of the Clerk of Court for Orangeburg County in Plat Book 4, Page 128. Reference made to said plat for a more complete and accurate description.

This being the identical property conveyed to Dorothy Sistrunk by deed of Thomas D. Jacobs dated December 21, 2007 and recorded December 28, 2007 in Deed Book 1244 at Page 63.

Property Address: 423 BAYNE STREET  
ORANGEBURG, SC 29115

TMS# 0173-19-10-006.000

8. The Mortgage was signed, witnessed and probated December 21, 2007; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Orangeburg County on December 28, 2007, in Mortgage Book 1914 at Page 221.

9. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a purchase money first lien on the mortgaged premises.

10. Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable Defendant(s) prior to the commencement of this action.

11. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for March 1, 2008, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of March 1, 2008, the sum of \$74,940.02, with interest at the rate of 7.125% per annum from February 1, 2008, and also for the costs and disbursements of this action, including attorney's fees.

12. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

13. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

14. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

15. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests

**Exhibit 105**

the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

16. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. None.

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

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a purchase money first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

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

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

First, to the costs and expenses of the within action and sale;

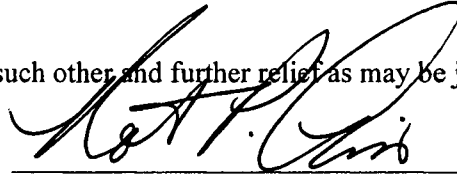
Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Orangeburg County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

**Exhibit 105**

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



---

Rogers Townsend & Thomas, PC  
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)  
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)  
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)  
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)  
Robert P. Davis (SC Bar # 74030) Timothy B. Killen (SC Bar #72501)  
William S. Koehler (SC Bar# 74935)  
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)  
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina  
June 26, 2008

**Exhibit 105**

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Wells Fargo Bank, NA,

Plaintiff,

v.

Dorothy Sistrunk;

Defendant(s).

(011784-06909)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2008-CP-38-1024

LIS PENDENS  
Deficiency Judgment Waived

FILED  
2008  
3-21

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Dorothy Sistrunk to Wells Fargo Bank, NA dated December 21, 2007, and recorded in the Office of the RMC/ROD for Orangeburg County on December 28, 2007, in Mortgage Book 1914 at Page 221.

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

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the City of Orangeburg, County of Orangeburg, South Carolina, more particularly shown and delineated as Lot 33 on a plat by S.D. Moss, Reg. C.E. and recorded in the Office of the Clerk of Court for Orangeburg County in Plat Book 4, Page 128. Reference made to said plat for a more complete and accurate description.

This being the identical property conveyed to Dorothy Sistrunk by deed of Thomas D. Jacobs dated December 21, 2007 and recorded December 28, 2007 in Deed Book 1244 at Page 63.

ATTEST: TRUE COPY  
*[Signature]*  
CLERK OF COURT  
ORANGEBURG COUNTY, SOUTH CAROLINA

Property Address: 423 BAYNE STREET  
ORANGEBURG, SC 29115

TMS# 0173-19-10-006.000



---

Rogers Townsend & Thomas, PC  
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)  
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)  
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)  
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)  
✓ Robert P. Davis (SC Bar # 74030) Timothy B. Killen (SC Bar #72501)  
William S. Koehler (SC Bar# 74935)  
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)  
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina  
June 26, 2008

STATE OF SOUTH CAROLINA )

COUNTY OF ORANGEBURG )

Wells Fargo Bank, N. A. )

Plaintiff, )

v. )

Dorothy Sistrunk; )

Defendant(s). )

(011784-06909)

IN THE COURT OF COMMON PLEAS

DOCKET NO

2008-CP-38-1024

ANSWER TO COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE

MORTGAGE

Deficiency Judgment, Waived

FILED  
JUL 19 2 34 PM '08  
CLERK OF COURT  
ORANGEBURG COUNTY  
SOUTH CAROLINA

Defendant alleges:

1. That this action for the foreclosure of a mortgage upon certain real estate in Orangeburg County, South Carolina is an attempt by the Plaintiff to perpetuate a Predatory Lending Scheme in which a falsified appraisal was used to inflate the value of the real estate identified in this complaint. I have refused to participate in this scheme. Therefore, the Plaintiff has filed a foreclosure proceeding in an attempt to coerce or force me to participate in this scheme by accepting terms that will only extend the scheme and in due course defraud or swindle me out of \$75,000.00 plus interest one month at a time, one payment at a time. Either I accept the terms or lose my home by foreclosure.

2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a

Exhibit 297

-1-

TRUE COPY  
D. [Signature]  
CLERK OF COURT  
ORANGEBURG COUNTY, SOUTH CAROLINA  
Exhibit 297

corporation or other legal entity doing business in the State of South Carolina.

3. Plaintiff is the owner and holder of the Note and Mortgage that was allegedly obtained by fraud and deception and has a falsified value.

4. The lien on or interest in the real estate, the subject of this action by the Plaintiff, cannot be validated, substantiated or otherwise proven because the appraisal used to establish the value for the Note and Mortgage is suspected of being falsified. Copies of which are attached hereto marked Exhibit 3. To wit...

5. The Plaintiff, herein described, has designated their attorney as the agent of process under the provisions of South Carolina Code Section 15-35-840.

6. On or about December 21, 2007, the Defendant was lured and deceived into executing and delivering a certain Fixed Rate Note ("Note") in the principal sum of \$75,000.00, payable in monthly installments, by the seller of the real estate (Thomas Jacobs). The seller assured the Defendant adjustments to the \$75,000.00 price would take place during the closing at the Player Law Firm, located at 1415 Broad River Road in Columbia, South Carolina because major repairs to 423 Bayne Street that would validate the \$75,000.00 asking price had not been completed as agreed. Within 35 minutes or less, the closing ended without any adjustments being made to the price. The seller has not contacted the Defendant since December 21, 2007, nor has the Defendant seen the seller.

Since no adjustments were made to the price during the closing as promised, the Defendant decided to cancel. On December 22, 2007, the Defendant's husband, George M. Sistrunk called the Plaintiffs office in Raleigh, North Carolina to

cancel the loan. No one answered the phone; therefore, a message was left on the answering machine.

On December 24, the Defendant called the Plaintiff's office in Raleigh, North Carolina to cancel the loan. Based on the actual condition of 423 Bayne Street, the Defendant knew, the property was not worth the \$75,000.00 asking price. Therefore, the key to the value of the Note and Mortgage had to be the appraisal.

On December 27, 2007, the Defendant tried to fax the Plaintiff's office in Raleigh, North Carolina with a "Notification of Intent to Cancel". The fax did not go through. Copy attached hereto marked Exhibit 1. By December 28, 2007, it was obvious to the Defendant that Loan #0174072777, the Note and the Mortgage could not be cancelled by traditional means.

On January 9, 2008, the Defendant sent a fax to Player Law Firm and Golden Gate Mortgage/David Terrell (the broker that sent her loan application and supporting documents to the Plaintiff), demanding signed copies of her closing documents and a copy of her appraisal. Copy attached hereto marked Exhibit 2. The appraisal and signed closing documents arrived on January 12, 2008.

The appraisal revealed misstatements, inaccurate reporting, misrepresentation of facts, omissions, non-existing items and outright lies. The Defendant's husband called the Plaintiff's office in Des Moines, Iowa immediately to inform the Plaintiff that the appraisal with file number 7-59 was falsified. The appraisal also contained a forgery. Sistrunk was listed as the property owner on October 9, 2007 and Thomas Jacobs was listed as the borrower. Copy of this appraisal is attached hereto with the markings Loan #0174072777 - SCDCA Case #08-0237-B2 - OCC Case

#785593.

Further evidence of the Plaintiff's scheme to defraud or swindle the Defendant out of money and/or property has been provided by the Plaintiff's own agents, attorneys for the Plaintiff, Rogers Townsend & Thomas PC, in the Complaint filed in the Court of Common Pleas. In sections 7 & 8 of the Complaint, the attorneys state the property was conveyed to Dorothy Sistrunk by Deed of Thomas D. Jacobs dated December 21, 2007 and recorded December 28, 2007 in Deed Book 1244 at page 63. Therefore, the Defendant could not have been the property Owner of record on October 9, 2007, the date of the appraisal and identified as the property owner. Refer to Docket Number 2008-CP-38-1024 Complaints #7 & #8.

The appraisal for the Defendant; if ordered, was never sent to the Plaintiff. The Plaintiff received the falsified appraisal that was prepared for Thomas Jacobs and a person(s) substituted the Defendant's name on the falsified appraisal and Golden Gate Mortgage/David Terrell sent the falsified appraisal with file number 7-59 to the Plaintiff. This is the probable reason why it was imperative for the seller to lure and deceive the Defendant into believing adjustments to the price would take place during the actual closing of the loan; Otherwise the Defendant would not close the loan.

This fraud was discovered because the seller, the appraiser and the broker did not change the dates or the file number on the appraisal sent to the Plaintiff. On February 5, 2008, the Defendant notified the Plaintiff in writing concerning possible Mortgage Fraud, Bank Fraud, Insurance Fraud and/or a Predatory Lending Scheme in which a falsified appraisal was used to inflate the value and misrepresent the actual condition of 423 Bayne Street.

On February 7, 2008, the Defendant sent copies of the appraisal that were received from the Plaintiff and itemized the false statements, misrepresentations, omissions and outright lies stated on the appraisals with file number 7-59. Copies of which are attached hereto marked as Exhibits 8, 9, 10, 11, 12, 13 & 14. The Plaintiff was also notified that the value of the Note and Mortgage were fraudulent because a falsified and inflated appraisal was used to establish value.

The Plaintiff chose to perpetuate the fraud and lending scheme and defraud or swindle the Defendant out of \$75,000.00 plus interest, one month at a time, one payment at a time. The Plaintiff even used a Federal Law as a means to coerce and intimidate the Defendant into participation. Refer to Janet Frotscher's Letter dated February 21, 2008 paragraph 6 (an authorized representative of the Plaintiff). Copy attached hereto marked as Exhibit 45. The section of Federal Law referenced is for purchase money loans that are lawfully obtained, not loans that are obtained by fraud, deceit, deception, misstatements or misrepresentation of facts.

Authorized representatives of the Plaintiff, knew the appraisal was falsified and inflated as of February 5, 2008 and February 7, 2008 and still chose to perpetuate the fraud. In subsequent letters to the Plaintiff, the Defendant informed the Plaintiff that she will not knowingly participate in or perpetuate the fraud or Insurance Fraud. Copies of which are attached hereto marked as Exhibits 4, 51 & 52.

Each payment would only extend the fraud, mislead state and/or federal regulators and defraud any person or entity that invested in the note or a mortgage backed security that contained the Note and Mortgage. The only action the

Defendant could use was to suspend payments, not stop payments, until the Plaintiff initiates, conducts and completes a thorough investigation into her allegation and complaint of Fraud and a Predatory Lending Scheme in which a falsified appraisal was used to inflate the value of 423 Bayne Street in Orangeburg, South Carolina and establish the value of the Note and Mortgage.

Further evidence of the Plaintiff's desire to perpetuate this fraud and lending scheme can be seen in Janet Frotscher's letter dated June 2, 2008, in which she accuses the Defendant of being the borrower that met Jim H. Austin III (the appraiser) on September 14, 2007. Copy of which is attached hereto marked as Exhibit 47. The Defendant desires the Court of Common Pleas to include in the public record that the Defendant has never met or seen Jim H. Austin III or David Terrell, her alleged broker. For the public record, Golden Gate Mortgage/David Terrell is the broker by law only and for no other reason, real or imagined.

The Defendant alleges the Plaintiff is now using the Court of Common Pleas in the State of South Carolina to further the scheme and coerce compliance to fraud. This additional evidence is provided by the Plaintiff's own agents, Rogers Townsend & Thomas, PC refer to Complaint numbers 9, 10, 11, 12, 13, 14, 15 and 16 filed under Docket Number 2008-CP-38-1024. The Defendant enters as evidence of the Plaintiff's alleged desire to perpetuate this lending scheme and defraud the Defendant out of \$75,000.00 by whatever means necessary or lose her home, the Complaint filed in the Court of Common Pleas with Docket Number 2008-CP-38-1024 marked as Exhibit 5. This desire to swindle the Defendant out of money or property

even includes allegedly failing to inform their agents and the Court of Common Pleas that the value of the alleged fraudulent Note and Mortgage are based upon a falsified document and the alleged value of the Note and Mortgage are inflated and suspected of being involved a Predatory Lending Scheme in which an alleged falsified appraisal is being used to inflate the value beyond their actual or verifiable worth in the Orangeburg housing market.

Prior to July 1, 2008, the defendant did everything possible to Resolve this matter without court proceedings or experiencing the financial hardship, personal embarrassment and pressure of foreclosure. The Plaintiff would not cooperate. For 6 months, the Defendant did everything within reason to persuade the Plaintiff to end the fraud. The Defendant urged the Plaintiff to legitimize her loan, the alleged fraudulent Note and the alleged fraudulent Mortgage. The Plaintiff refused. The Defendant alleges the Plaintiff decided to once again force acceptance and compliance by using laws and the legal system to further its aim to defraud or swindle.

On July 1, 2008, the Defendant realized, the appraisals, the alleged fraudulent Note and the alleged fraudulent Mortgage were falsified beyond remedy. The Defendant believes the appraisals will be included as evidence of alleged fraud and The alleged fraudulent Note and and the alleged fraudulent Mortgage as an attempt to defraud or swindle the Defendant out of money and/or home. Therefore, the Defendant herein affirms, admits, denies and alleges as follows:

## **Answers To Allegations**

1. The Defendant, answering the allegations of Paragraph 1 denies each and every allegation contained in said Paragraph 1 for reasons heretofore stated. The Defendant alleges the foreclosure is an illegal seizure of real property initiated to force acceptance of terms to perpetuate fraud or a Predatory Lending Scheme in which an alleged falsified document is being used to establish and maintain a value that cannot be validated, substantiated or verified.

2. The Defendant, answering the allegations of Paragraph 2 affirms each and every allegation contained in said Paragraph 2.

3. The Defendant, answering the allegations of Paragraph 3 alleges the Plaintiff is the owner and holder of an alleged fraudulent Note and an alleged fraudulent Mortgage obtained with and based upon an alleged falsified document for reasons heretofore stated.

4. The Defendant, answering the allegations of Paragraph 4 affirms each and every allegation contained in said Paragraph 4.

5. The Defendant, answering the allegations of Paragraph 5 affirms each and every allegation contained in said Paragraph 5.

6. The Defendant, answering the allegations of Paragraph 6 alleges The fraudulent Fixed Rate Note (“Note”) in the principle sum of \$75,000.00, payable in monthly Installments is based on unreliable and falsified information and for reasons heretofore stated.

7. The Defendant, answering the allegations of Paragraph 7 alleges

The fraudulent Mortgage does not cover the described property because the appraisal describes a property that does not exist in fact or reality. The Defendant only affirms the address, tax map stamp number, the deed of conveyance dated December 21, 2007 and the documented entry on December 28, 2007 in the Deed Book 1244 at Page 63.

8. The Defendant, answering the allegations of Paragraph 8 only affirms the fraudulent Mortgage was signed, witnessed and probated December 21, 2007; thereafter the fraudulent Mortgage was recorded in the Office of the RMC/ROD for Orangeburg County on December 28, 2007, in Mortgage Book 1914 at page 221.

9. The Defendant, answering the allegations of Paragraph 9 denies The alleged fraudulent Mortgage evidences and secures the repayment of money advanced by the Plaintiff or its predecessors in interest to, or on behalf of, the mortgagor(s) and constitutes a purchase money first lien on the mortgaged premises.

10. The Defendant, answering the allegations of Paragraph 10 denies any notice required in the terms of the alleged fraudulent Mortgage or by state or federal law has been given to the applicable Defendant(s) prior to the commencement of this action for reasons heretofore stated.

11. The Defendant, answering the allegations of Paragraph 11 denies each and every allegation contained in said Paragraph 11. A fraudulent or illegally obtained cannot be in default because it has no legitimacy under federal and or state law. The Plaintiff may elect to, but cannot declare the entire balance of said indebtedness due and payable, and that there is due on the alleged fraudulent Note and the alleged fraudulent Mortgage as of March 1, 2008, the sum of \$74,940.02, with interest at the rate

of 7.125% per annum from February 1, 2008, and also for the costs and disbursements of this action, including attorney fees. Demanding payment on an alleged fraudulent Note and an alleged Mortgage may be construed as a criminal act. Consequently, the Plaintiff forfeits any rights or protection under the Laws of the State of South Carolina and the United States of America and its Territories or legal assistance to defraud or swindle the Defendant.

12. The Defendant, answering the allegations of Paragraph 12 affirms each and every allegation contained in said Paragraph 12.

13. The Defendant, answering the allegations of Paragraph 13 affirms the Plaintiff has employed counsel, but denies the Plaintiff's right to seek restitution from the Defendant by using the Court of Common Pleas as a surrogate.

14. The Defendant, answering the allegations of Paragraph 14 denies The Plaintiff's allegation that the Plaintiff may be forced to pay sums for taxes and insurance and cost for securing the property. The Defendant denies the Plaintiff's allegation that this sum should be added to the debt. The Plaintiff clearly desires to swindle the Defendant out of as much money as possible in the Plaintiff's willful intent to perpetuate the lending scheme and defraud or swindle the Defendant.

15. The Defendant, answering the allegations of Paragraph 15 denies The Plaintiff has any rights enforceable under the Laws of the State of South Carolina or the United States of America to aid and abet the Plaintiff in a criminal act. Using an alleged fraudulent mortgage to defraud and swindle the Defendant by foreclosure is a crime and the Plaintiff would be actively engaged in the activity of soliciting

unsuspecting others to participate in the Plaintiff's crime by selling the illegally seized property at auction. There are no laws or legal remedies that will allow the Plaintiff to steal property from the Defendant without due process or any process that is based on morals, principles, justice and law.

16. The Defendant, answering the allegations of Paragraph 16 affirms each and every allegation contained in said Paragraph 16.

### **AFFIRMATIVE DEFENSE**

The Defendant, answering the allegations in Paragraphs 1-16 of the Plaintiff's Complaint Affirms..

#### **FIRST AFFIRMATIVE DEFENSE**

(Willful Intent to Perpetuate a Predatory Lending Scheme In Which a Falsified Document Was Used and Is Still Being Used. The Plaintiff failed to Show a Legitimate and Legal Cause for Action )

1. The Defendant alleges that the Plaintiff's willful intent to perpetuate a Predatory Lending Scheme in which a falsified and inflated appraisal was used and is still being used, failed to demonstrate a legal cause for action. The Plaintiff by filing a foreclosure with an alleged fraudulent mortgage based upon an alleged falsified and inflated appraisal has allegedly demonstrated the depth of the Plaintiff's desire to defraud and swindle the Defendant before, during and after the facts are known and has failed to show a legitimate and legal cause for action. The Plaintiff has also allegedly misinformed its own agents concerning the alleged fraudulent nature of the Note and Mortgage. The Defendant alleges, the Plaintiff now endeavors to mislead the Court that the Note and Mortgage are not suspected of being fraudulent. Therefore, due to the deceptive nature and the alleged criminal intent the Plaintiff has demonstrated, the

Defendant MOTIONS FOR DISMISSAL of the Complaints and SUSPEND or END FORECLOSURE PROCEEDINGS until at such time, the appraisals with file number 7-59 are proven true or false. The Defendant prays the court fines the Plaintiff appropriately for its willful intent to mislead and reimburses the Defendant for expenses, duress, anxiety, stress and all cost relative to answering the Plaintiff's Complaints. The Defendant request the Court of Common Pleas place the burden of proof on the Plaintiff to prove the appraisals with file number 7-59 do not contain misstatements, falsified information, misrepresentation of facts and do not include items that do not exist at 423 Bayne Street in Orangeburg, South Carolina.

**SECOND AFFIRMATIVE DEFENSE**  
(Unclean Hands)

2. The Defendant alleges the Plaintiff's conduct and willful intent to perpetuate an alleged Predatory Lending Scheme, defraud or swindle the Defendant, mislead the Court, customers, clients and investors concerning the validity of the alleged fraudulent Fixed Rate Note and fraudulent Mortgage and its own agents, demonstrates unclean hands and bars the Plaintiff from proceeding with any foreclosure because the value (\$75,000.00) of the Note and Mortgage are based on a falsified document. The Defendant MOTIONS FOR DISMISSAL of the Complaints and SUSPEND or END FORECLOSURE PROCEEDINGS until at such time, the appraisals with file number 7-59 are proven true or false.

**THIRD AFFIRMATIVE DEFENSE**  
(Waiver)

3. The Defendant alleges that the conduct and willful intent the Plaintiff has demonstrated by filing the Complaint and using a fraudulent Note and fraudulent

Mortgage to illegally seize real property constitutes a waiver of the Plaintiff's right(s) under the alleged fraudulent Mortgage contract and the Defendant further alleges the Plaintiff by reason of said waiver, the Defendant is excused from further performance of the obligations under the alleged fraudulent Fixed Rate Note and fraudulent Mortgage. The Defendant MOTIONS FOR COMPLETE DISMISSAL and CANCELLATION of fraudulent Fixed Rate and the fraudulent Mortgage.

**Fourth Affirmative Defense**  
(Inherent Negligence & Gross Negligence)

4. The Defendant alleges if documents the Plaintiff's underwriters use to make decisions cannot be verified, validated or substantiated and are filled with lies, half truths, misrepresentation of fact, omissions and/or misleading information what good are they? How can the Defendant trust the banking system or any system that will knowingly accept a lie, rather than truth? Or knowingly accept a falsified document to substantiate value, rather than one that can be verified? How can the Defendant ever trust the Plaintiff if its personnel defend the practice, acceptance and use of falsified documents? Any lack of truth and integrity or disregard for truth and integrity in the mortgage and/or banking industry threatens our entire financial system and every American citizen.

The Defendant alleges the Plaintiff's underwriting department was inherently negligent and grossly negligent by not verifying repairs were actually completed at 423 Bayne Street. Jim H. Austin III (the appraiser that did the appraisal with file number 7-59), clearly states his report was subject to repairs. There is no apparent evidence the Plaintiff investigated to make sure repairs were completed before

rendering an underwriting decision. The Defendant alleges the Plaintiff's personnel are also inherently negligent because they did not and have not thoroughly investigated; by an onsite inspection, claims and allegations that a falsified document was used to obtain loan #0174072777, the alleged fraudulent Fixed Rate Note and the alleged fraudulent Mortgage.

The 423 Bayne Street described in appraisals with file number 7-59 does not exist in actuality or fact. Because of alleged inherent negligence and gross negligence by the Plaintiff's employees or personnel, a falsified document entered the lending process. This alleged falsified document was eventually used to establish value for loan #0174072777. If the Plaintiff had not been allegedly inherently negligent and grossly negligent, the Plaintiff would have verified the information on the appraisal before acceptance by requiring proof the improvements cited on page 1 of 6 of the appraisal were actually completed. The Plaintiff further demonstrates an alleged willful intent to deceive and perpetuate an illegal lending scheme by using the alleged fraudulent Fixed Rate Note and the alleged fraudulent Mortgage to initiate a foreclosure proceeding.

The Defendant MOTIONS FOR COMPLETE DISMISSAL and CANCELLATION of the alleged fraudulent Fixed Rate Note and the alleged fraudulent Mortgage. The Defendant alleges the Plaintiff and/or its authorized agents, personnel and/or employees bear sole responsibility for this alleged falsified document being in possession of the Plaintiff. The Plaintiff cannot legally deny appraisals 7-59 is/are not in its possession.

## **FIFTH AFFIRMATIVE DEFENSE**

(Release)

5. The Defendant alleges that the Plaintiff's alleged actions constitutes a full release and waiver by the Plaintiff of any and all claims which the Plaintiff may have against the Defendant and the Defendant's property. The Defendant MOTIONS FOR COMPLETE DISMISSAL and CANCELLATION of the alleged fraudulent Fixed Rate Note and the alleged fraudulent Mortgage.

## **SIXTH AFFIRMATIVE DEFENSE**

(In Pari Delicto)

6. The Defendant alleges that the Plaintiff herein and each and every purported Cause of Action by the Plaintiff and authorized representatives, personnel and/or employees have engaged in acts and courses of conduct which rendered them in pari delicto. The Defendant MOTIONS FOR COMPLETE DISMISSAL and CANCELLATION of the alleged fraudulent Fixed Rate Note and the alleged fraudulent Mortgage.

## **SEVENTH AFFIRMATIVE DEFENSE**

(Equitable Estoppel)

7. The Defendant alleges that the Plaintiff, and each and every Cause of Action contained in the Complaint is barred from pursuing an illegal foreclosure by reason of acts, omissions, representations, courses of conduct and by using an allegedly fraudulent Fixed Rate Note and an allegedly Fraudulent Mortgage which values are based and supported by an allegedly falsified appraisal, therefore the Plaintiff's reliance upon allegedly falsified documents and documentation is to the Plaintiff's own detriment, thereby barring, under the doctrine of equitable estoppel, any Causes of Action asserted

by the Plaintiff. The Defendant MOTIONS FOR COMPLETE DISMISSAL and CANCELLATION of the alleged fraudulent Fixed Rate Note and the alleged fraudulent Mortgage.

### **EIGHTH AFFIRMATIVE DEFENSE**

(Statute of Frauds)

8. The Defendant alleges that the Plaintiff is barred by the provisions of the Statute of Frauds from using an alleged fraudulent Fixed Rate Note and an alleged Fraudulent Mortgage in a legal foreclosure proceedings; consequently, the use of the alleged falsified appraisal to determine the lending capacity of the Plaintiff and establish value constitutes fraud, thus rendering the alleged fraudulent Fixed Rate Note and its inflated value and the alleged fraudulent Mortgage with its inflated value null and void. The Defendant MOTIONS FOR COMPLETE DISMISSAL and CANCELLATION of the alleged fraudulent Fixed Rate Note and the alleged fraudulent Mortgage.

WHEREFORE, the Defendant prays the complaint has been sufficiently answered and defended and the Defendant is entitled to recover costs of suit herein incurred, and such other relief as the court may deem proper.

DATED: July 18, 2008

### **VERIFICATION**

I, Dorothy Sistrunk am the Defendant identified in the Complaint. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Orangeburg, South Carolina.

DATED: July 18, 2008

  
\_\_\_\_\_  
Dorothy Sistrunk

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Wells Fargo Bank, N. A.

Plaintiff,

v.

Dorothy Sistrunk;

Defendant(s).

(011784-06909)

THE COURT OF COMMON PLEAS

DOCKET NO

2008-CP-38-1024

FIRST AMENDMENT TO  
ANSWER TO COMPLAINT  
WITH COUNTERCLAIMS

(NON-JURY)

FORECLOSURE OF REAL ESTATE  
MORTGAGE

Deficiency Judgment Waived

FILED  
CLERK OF COURT  
ORANGEBURG COUNTY  
SOUTH CAROLINA  
2008 JUL 31 P 12:2

**DEFENDANT DOROTHY SISTRUNK FILES A FIRST AMENDMENT TO ANSWER TO COMPLAINT WITH COUNTERCLAIMS**

WHEREFORE; the Defendant Dorothy Sistrunk hereby amends the original "Answer to Complaint" by this FIRST AMENDMENT TO ANSWER TO COMPLAINT WITH COUNTERCLAIMS for the following reasons:

**New Acts of Willful Intent To Defraud**

1. The Defendant alleges that new acts by the Plaintiff gives the Defendant additional evidence to present to the Court concerning the Plaintiff's alleged desire to defraud or swindle the Defendant out of property and as much money as possible by perpetuating a Predatory Lending Scheme in which falsified documents were used and are still being used.

2. The Defendant alleges the Plaintiff did not notify the Defendant concerning

-1-

**Exhibit 298**

ATTEST TRUE  
*[Signature]*  
CLERK OF COURT  
ORANGEBURG COUNTY  
SOUTH CAROLINA  
**Exhibit 298**

foreclosure until weeks after Rogers Townsend & Thomas, PC, had already initiated foreclosure proceedings. A letter dated June 18, 2008 did not arrive until July 11, 2008. The Defendant alleges there is no excuse for this misconduct by the Plaintiff. {the letter is attached hereto marked as Exhibit 25 with the notation "Received 7/11/08"}.

### **Additional Allegations of Unclean Hands**

3. The Defendant informs the Court and the Plaintiff that additional evidence exist concerning the Defendant's allegation that the Plaintiff has (Unclean Hands). Even though the Defendant alleges the Plaintiff is endeavoring to deceive the Court into believing the Value of the Fixed Rate Note ("Note") and Mortgage are not being disputed, the Defendant asserts the Value of the Note and Mortgage have been disputed for months. The Plaintiff failed to mention this fact in the Plaintiff's Complaint.

4. In the filed Complaint, the Defendant alleges the Plaintiff failed to inform the Court that the Value of the Note and Mortgage were not only disputed, but both were suspected of being involved in a Predatory Lending Scheme in which a falsified appraisal was used and is still being used to Inflate, Establish and Maintain the Value of the Note and Mortgage.

5. The Defendant alleges that nowhere in the language of the Complaint has the Plaintiff or the Plaintiff's Agents of Process revealed to the Court the disputed nature of the Value of the Note and Mortgage or that the Value of the Note and Mortgage are suspected of being fraudulent.

6. The Defendant alleges that after February 21, 2008 and prior to June 26, 2008, the Plaintiff failed to take any appropriate action to investigate allegations of suspected fraud or initiate an onsite investigation or inspection of 423 Bayne Street in Orangeburg, South Carolina (hereafter the property) to determine the validity of the Complaint concerning the falsification of the appraisal with file number 7-59 (hereafter the appraisal).

7. The Defendant alleges the Plaintiff has not provided the Court with any verifiable evidence that the Plaintiff has informed bank regulators, law enforcement or the Court concerning the suspected falsified nature of the appraisal and the suspected fraudulent and Inflated Value of the Note and Mortgage.

8. The Defendant alleges this failure by the Plaintiff clearly provides additional evidence to support the Defendant's allegation of (Unclean Hands) and demonstrates to the Court that the Plaintiff continues to mislead customers, clients, investors and the Court concerning the suspected fraudulent nature of the Value of the Note and Mortgage by not disclosing that the Value of the Note and Mortgage are based upon and supported by falsified documents {the Defendant directs the Court to "Answer to Complaint" page 12, SECOND AFFIRMATIVE DEFENSE}

### **Ruling On Points Of Law**

9. The Defendant did not ask the Court to rule on points of law. The Defendant alleges the Plaintiff did not provide the Court or the Defendant with any verifiable evidence that the appraisal used to establish the Value of the Note and Mortgage is not falsified.

10. Therefore, the Defendant asserts that under the "Equal Protection Clause" of the 14<sup>th</sup> Amendment to the Constitution and Rules governing "Causes of Action", the Plaintiff must provide evidence that the appraisal is not falsified and the Value of the Note and Mortgage are not fraudulent.

11. The Defendant alleges the Plaintiff did not provide the Court or the Defendant with any credible evidence concerning the Plaintiff's investigation into the Defendant's claim that the appraisal is falsified, prior to filing a Complaint in the Court of Common Pleas and initiating foreclosure proceedings.

12. Therefore, the Defendant asserts that under the "Equal Protection Clause" of the 14<sup>th</sup> Amendment to the Constitution and Rules governing "Causes of Action", the

Plaintiff is required to present credible evidence that the Plaintiff thoroughly investigated the Defendant's claim and allegation of fraud by conducting an onsite investigation or inspection of the property that would have determined the validity of the Defendant's allegation and claim of fraud.

13. The Defendant alleges the Plaintiff cannot use the Court of Common Pleas to further an illegal Predatory Lending Scheme in which falsified documents were used and are still being used to Inflate Value, Establish Value and Maintain Value. The Defendant alleges without documented and verifiable evidence, this action by the Plaintiff constitutes an illegal seizure of the property.

14. The Defendant knows of no law or ruling that would allow the Plaintiff to seize real estate with fraudulent documents, Notes or Mortgages. The Defendant further alleges the Plaintiff is also barred from receiving any relief because the Plaintiff's failure to act was to the Plaintiff's own detriment.

### **Substantive Relief**

15. The Defendant did not properly inform the Court that the Defendant does not have any legal training or expertise and therefore needs Substantive Relief to obtain adequate and competent counsel. Therefore, the Defendant openly admits and declares the following.....

### **ADMISSIONS & DECLARATIONS**

**A)** The Defendant admits and declares to the Court that the Defendant is not an attorney.

**B)** The Defendant admits and declares to the Court that the Defendant has no knowledge of proper Court procedure or how to write legal documents for presentation to the Court.

**C)** The Defendant admits and declares to the Court that the Defendant cannot afford adequate and competent legal counsel to assist in legal preparation and defense and is therefore at a legal disadvantage.

**D)** Since the Defendant desires to successfully argue the case against the

Plaintiff and keep the property, the Defendant needs and requires adequate and competent legal counsel.

E) The Defendant's defines adequate and competent legal counsel as any attorney or law firm that has successfully argued a case in the Supreme Court of the United States of America and won.

F) The Defendant asserts that this definition of adequate and competent legal defense is reasonable considering the Defendant's case may end up in the Supreme Court. In order to win the Defendant's case; not only for the Defendant but also others who are experiencing illegal property seizures, the Defendant would need the expertise and knowledge of adequate and competent legal counsel at the highest possible skill level.

G) The Defendant declares the City of Orangeburg, South Carolina does not have a "Law Library" or sufficient public legal resources in the County's Library for the Defendant to use that would help the Defendant mount an adequate and competent defense without paid legal counsel.

H) The Defendant declares to the Court, as of the date of this filing, the County of Orangeburg, South Carolina does not have online forms the Defendant can use to properly prepare "Answer to Complaint", "Amendments to Answer to Complaint" and/or "Counterclaims" or "Complaints". Therefore, the Defendant is at the mercy of attorneys whose only interest in the Defendant's case is for personal financial gain and therefore may not provide a proper or suitable defense.

### **Injunctive Relief**

16. The Defendant did not ask the Court for Injunctive Relief. In order for the Defendant to prevent a miscarriage of justice, the Defendant requires Injunctive Relief until at such time the Defendant can save the money to obtain the services of adequate and competent legal counsel.

17. The Defendant's current "Best Effort" defense will become insufficient if the Plaintiff engages in legal maneuvers that are beyond the Defendant's existing knowledge and skill to respond to or defend.

18. Consequently, a "Best Effort" personal defense may not be appropriate, advisable or desirable for a Jury Trial, pleadings, discovery, depositions, motions or arguing points of law before a Judge or Jury. Therefore, without adequate and competent legal counsel the Defendant's rights under the Constitution may be compromised because

of the Defendant's lack of legal knowledge and skill.

19. Adequate and competent legal defense may cost the Defendant \$25,000.00, \$50,000.00 or more. The Defendant acknowledges that luck and chance may afford the Defendant adequate and competent legal counsel. However, the Defendant prefers and desires to rely upon a proven track record of success within America's courts and legal system.

20. The Defendant alleges that unlike the Plaintiff, the Defendant does not have substantial financial resources. Consequently, the Defendant must save the money out of existing income. Such income is already inadequate to meet the rising cost of living and the rising cost of fuel, food and other necessities. The only way the Defendant can acquire the financial resources is by saving. Therefore, based on present needs and obligations the Defendant can save \$1.00 (one dollar) a month for the Defendant's legal defense.

### **Background I**

21-I. The Defendant did not provide sufficient Background Information for the Court to consider. The Defendant's dispute with the Plaintiff actually began on December 22, 2007.

22-I. Since the Plaintiff would not allow the Defendant to cancel the loan, the official date of the Defendant's dispute began on January 14, 2008 when the Defendant called the Plaintiff's Office in Des Moines, Iowa and notified the Plaintiff's personnel that the appraisal used to obtain the Defendant's loan (#0174072777) is falsified. The Value of the Note and Mortgage are inflated because the repairs needed to justify the \$75,000.00 price were never completed.

23-I. Written notification was sent to the Plaintiff on February 5, 2008 and the evidence of falsification was sent on February 7, 2008 {refer to Exhibits 4 & 8-14}.

24-I. The Defendant alleges the letter and the documented evidence of falsification of

the appraisal were received by the Plaintiff's personnel and acknowledged in a letter written to the Defendant by Janet Frotscher {refer to Janet Frotscher's letter dated February 21, 2008 Marked as Exhibit 45}.

25-I. The Defendant alleges the Plaintiff has accepted, is using, protecting, defending and basing decisions upon a falsified document.

26-I. The Defendant can show by the PHYSICAL EVIDENCE – that the house described in the appraisal is not the property located at 423 Bayne Street in Orangeburg, South Carolina.

27-I. The Defendant alleges the Plaintiff bears sole responsibility for this document being in the Plaintiff's possession.

28-I. The Defendant alleges the Plaintiff was and still is inherently negligent, grossly negligent and has consistently failed to exercise due diligence in the performance of the Plaintiff's duties.

29-I. The Defendant alleges the aforementioned allegations can be traced to the Plaintiff's acceptance, use and reliance upon a falsified document to substantiate value for a purchase money mortgage loan.

30-I. Because of this document, the Defendant alleges the Plaintiff with intent and knowledge, is engaging in Mortgage, Bank, Insurance and/or Securities Fraud and is perpetuating a Predatory Lending Scheme in which a falsified document was used and is still being used to Inflate Value, Establish Value and Maintain Value for the Note and Mortgage in question.

31-I. The Defendant alleges this is an illegal foreclosure proceeding because the documents in question are falsified. The Defendant alleges the evidence will show the appraisal used to obtain loan #0174072777 is falsified {refer to Exhibits 8, 9, 10, 11, 12, 13 & 14}. The Defendant alleges the Plaintiff has known since January 12, 2008 when

George M. Sistrunk – the Defendant’s husband - called the Plaintiff’s office in Des Moines, Iowa and since January 14, 2008 (when the Defendant called the Plaintiff’s office) that this document is falsified.

32-I. The Defendant alleges the Plaintiff was notified in writing on February 5, 2008 concerning this falsified document and given a brief history of the events that led to its discovery {refer to the Defendant’s letter dated February 5, 2008 Marked as Exhibit 4}. Continuous written contact with the Plaintiff’s Office has been maintained since this date.

33-I. Prior to June 26, 2008, the Defendant alleges the Plaintiff has consistently failed to take any meaningful steps or action that will verify the appraisal is not falsified. The Defendant has clear and convincing evidence that it is {refer to Janet Frotscher’s letters marked as Exhibits 25, 38-41 & 45-48}.

34-I. The Defendant alleges that even though the Plaintiff received copies of exhibits 8-14 and a detailed explanation, the Plaintiff has refused to conduct an onsite inspection or investigation or adequately address the issues of falsification and fraudulent value.

35-I. The Defendant alleges the Plaintiff’s refusal to investigate an allegation or complaint of fraud implies consent and willful intent to participate in Bank, Mortgage, Insurance or Securities Fraud or a Predatory Lending Scheme in which alleged falsified documents were used and are still being used to Inflate, Establish and Maintain Value.

36-I. The Defendant alleges since the Value of the Note and Mortgage are supported by information taken from the falsified appraisal, the potential for fraud and deception exist in everything in which and to which the Note and/or Mortgage are attached.

37-I. The Defendant alleges that as long as this Note and Mortgage or any other asset the Plaintiff has is based upon falsified documents, the Plaintiff will be misleading investors, the general public, the State of Iowa, the State of South Carolina, the federal government and the Court about the true nature of the fraudulent Value of this Note and Mortgage.

38-I. The Defendant alleges that if documents the Plaintiff relies upon to make decisions cannot be verified, validated or substantiated and are filled with lies, half truths, misrepresentation of fact, omissions and/or misleading information, the Plaintiff accepted such documents to the Plaintiff's own detriment and is therefore barred from seeking any relief from the Defendant. {The Defendant request the Court review BONHIVER vs. GRAFF, Supreme Court of Minnesota, 1976.}

39-I. The Defendant is not responsible for the Plaintiff's errors in judgment or bad decisions. The Defendant alleges the Plaintiff should have filed lawsuits against the broker and the appraiser, rather than maliciously prosecute the Defendant.

40-I. The Defendant alleges if the Plaintiff knowingly accepts a lie, rather than truth, or knowingly accepts a falsified document to substantiate value, rather than one that can be verified, then the Plaintiff does so at the Plaintiff's own detriment and is barred from receiving any relief from the Defendant.

41-I. The Defendant alleges the Defendant has presented the Court sufficient credible evidence that the Plaintiff has accepted and used a falsified document to establish the Value of the Note and Mortgage. Should the Plaintiff defend the practice, acceptance and use of falsified documents, the Defendant alleges the Plaintiff (being a bank) has the potential to defraud millions of people. The Defendant further alleges that the South Carolina Attorney General's Office, the Justice Department, the Securities and Exchange Commission and U.S. House and Senate should investigate the practices, policies and procedures of the Plaintiff.

42-I. The issue in this case is not whether the Defendant signed the alleged Fraudulent Note and Mortgage Security Instrument for \$75,000. The Defendant's signature does not give the alleged Fraudulent Note and Mortgage immunity from the Laws of Contract or the legal standards of the State of South Carolina or the United States of America. The Defendant's signature does not make the alleged Fraudulent Note

and Mortgage exempt from the Department of Justice or the Federal Bureau of Investigation's definition of Fraud.

43-I. If the Defendant had not been lied to and deceived that adjustments to the price would take place during the closing, the Value of the Note and Mortgage would not exist in its current form or value. The Defendant alleges the Plaintiff has not adequately addressed the issue of adjustments to the \$75,000.00 Note and Mortgage Value of the property. Did the Plaintiff receive adjustments to the price and failed to send them to the closing attorney? Since the Defendant cannot supply closing documents and since the Defendant cannot close the loan, the Defendant demands the Plaintiff provide proof and evidence to the Court and the Defendant that the Plaintiff did not receive a lower Sales Price and Mortgage Value and withheld this information from the Defendant.

44-I. The Defendant alleges the issue in this case is the falsified document that was used to determine the Value of the Note and Mortgage. If the actual condition of 423 Bayne Street on October 9, 2007 and the current physical condition of the property do not support this Value or if the document used to establish Value has false statements or misleading information, the Value of the Note and Mortgage are also fraudulent since the Note's and Mortgage's Value are inseparable from the Note and Mortgage.

45-I. If the seller in this transaction had honored his obligation/s, the Defendant never would have known the appraisal is falsified. When the Defendant discovered it, the Defendant took immediate action. This cannot be said for the Plaintiff or the Plaintiff's personnel. The Defendant alleges since the Plaintiff has been reluctant to report suspected fraud, the Plaintiff must be concealing information from the Defendant. Therefore, the Defendant demands the Plaintiff provide proof and evidence to the Court that the appraisal is not falsified and the Satisfaction Completion Certificate is not falsified.

46-I. The Defendant alleges there must be a reason why the Plaintiff still uses, relies upon and defends the alleged falsified appraisal with its Inflated and Unverifiable Value.

The Defendant alleges that since the Defendant's actions and the Plaintiff's actions are based on the appraisal, then, the issue in this case is the appraisal – the appraisal with file number 7-59. Either this appraisal is true and verifiable or it is not.

## **Background II**

47-II. The Defendant alleges that if documents the Plaintiff's underwriters use to make lending decisions are false or misleading, then the Plaintiff makes the lending decision to the Plaintiff's own detriment and not to the Defendant's and is therefore barred from seeking any relief, monetary or otherwise, from the Defendant.

48-II. The Defendant asserts the Plaintiff did not rely upon the Defendant's judgment of Value. If the Value the Plaintiff is relying upon is false and misleading and the Plaintiff fails to take appropriate or reasonable action to remedy Value after facts are known, then the Plaintiff is engaged in willful intent to mislead.

49-II. The Defendant alleges if the Value of the Note and Mortgage were sold to another individual and this information were withheld, then the Plaintiff would be engaged in willful intent to defraud.

50-II. The Defendant alleges the Plaintiff has foreclosed on a Mortgage that was allegedly obtained with and is still based upon an alleged falsified document.

51-II. The Defendant did not stop payments, the Defendant suspended payments until the Plaintiff investigated the Defendant's allegation(s) of fraud.

52-II. The Defendant absolutely will not knowingly participate in fraud or pay on a mortgage that was obtained by misrepresenting facts or deception.

53-II. The Defendant alleges if the Plaintiff had initiated, conducted and completed an onsite inspection and discovered the appraisal were true and verifiable, the Defendant would still be making mortgage payments to the Plaintiff, rather than depositing them in

a credit union account (documentation available upon request by the Court).

54-II. The Defendant merely suspended payments to the Plaintiff because the Plaintiff refused to verify the accuracy of the appraisal that was used to obtain the loan. {refer to Janet Frotscher's letter dated February 21, 2008 Exhibit 45}.

55-II. The Defendant alleges Janet Frotscher's team reviewed the falsified appraisal and did not conduct an onsite investigation to verify it is or is not falsified. Instead of investigating allegations and claims of fraud by an onsite inspection, the Plaintiff's personnel refused to cooperate and decided to hire Rogers Townsend & Thomas, PC to foreclose instead.

### **Background III – Alleged Violation of the Fair Credit Reporting Act**

56-III. The Defendant alleges personnel employed by the Plaintiff have violated the "Fair Credit Reporting Act". After being duly notified, about suspected fraud, personnel employed by the Plaintiff still would not give Credit Reporting Agencies the real reason why the Defendant suspended mortgage payments. This failure may damage the Defendant's credit worthiness even further and cause unnecessary grief.

57-III. The Defendant alleges that once a customer notifies a bank of potential fraud, immediate action should be taken to investigate the complaint. Steps should have been taken to update any reporting to CRAs to include the real reason why the Defendant suspended payments.

58-III. The Defendant alleges personnel employed by the Plaintiff did not do this {refer to Janet Frotscher's letter dated June 2, 2008 Exhibit 47}. The Defendant alleges the Plaintiff has a duty and responsibility under the Fair Credit Reporting Act to investigate complaints to determine their validity, so that accurate information concerning the Defendant's account is included in the public record.

59-III. The reasons why the Defendant suspended payments are:  
1. Suspected Mortgage Fraud  
2. Predatory Lending and.....

### 3. Potential Insurance Fraud

60-III. The Defendant alleges if the Plaintiff or personnel employed by the Plaintiff will not act voluntarily to investigate alleged fraudulent accounts in its records, then law enforcement, the Justice Department or the FBI must act not only to protect the interest of the Defendant, action must also be taken to protect the public's interest as well. Bank, Mortgage, Securities, Insurance Fraud and illegal Predatory Lending Schemes involving the use of falsified documents are crimes, not consumer complaints or disputes.

### **Background IV - Unjust Enrichment**

61-IV. The Defendant alleges that in addition to not filing accurate credit reports after notification of potential Mortgage Fraud and failing to authorize an onsite investigation of the property to determine the legitimacy and validity of the appraisal used for the Defendant's loan, the Plaintiff personnel insisted and still insist the Defendant make monthly payments on the alleged fraudulent Note and Mortgage after the Plaintiff received sufficient credible evidence to suspect the Value of the Note and Mortgage are inflated and are based upon an alleged falsified document {refer to Exhibits 5, 25, 38-41 and 45-48}.

62-IV. Since the Plaintiff failed to remedy this situation, the Defendant alleges the Plaintiff knowingly engaged in Unjust Enrichment. The Plaintiff would be knowingly and illegally defrauding and swindling the Defendant out of \$75,000 plus interest because the document (Appraisal 7-59) used to obtain the loan is allegedly falsified.

63-IV. The Defendant alleges the 423 Bayne Street described in appraisal 7-59 does not exist in fact or reality and the Plaintiff should have voluntarily suspended payments until after an onsite investigation was initiated, conducted and completed.

64-IV. Prior to June 26, 2008, the Defendant alleges the Plaintiff did not show any indication that the Plaintiff was willing to act in good faith to remedy the claims and/or allegations concerning the Defendant's Note and Mortgage and the alleged falsified document upon which they are based.

65-IV. The Defendant alleges that instead of helping the Defendant resolve the issues concerning the alleged falsified appraisal and the alleged fraudulent Value of the Note and Mortgage, the Plaintiff proceeded with foreclosure.

66-IV. The Defendant urged the Plaintiff to validate the appraisal, thus legitimizing it. The Defendant alleges the Plaintiff did not offer a remedy for validation, therefore, the Defendant offered several courses of action that could be taken:

- (A) Suspend payments until an onsite investigation is completed.
- (B) Repair the property according to the appraisal.
- (C) Send the Defendant the money to repair the property according to the appraisal.
- (D) Reduce the Defendant's Note and Mortgage by the estimated cost of repairs.
- (E) Reappraise the property to a verifiable and documented value.

67-IV. The Defendant also asked for reasonable compensation because the value of the property was increased because of genuine repairs, not the alleged imaginary repairs stated on the falsified appraisal dated October 9, 2007 and referred to on the "Satisfaction Completion Certificate" dated September 14, 2007.

68-IV. The Defendant asserts this request is no longer valid because the Defendant realized on July 1, 2008 that the alleged falsified appraisal and the alleged fraudulent Note and Mortgage were falsified beyond remedy and the Note and Mortgage had to be rewritten. The Defendant alleges the personnel employed by the Plaintiff refused to accept any remedy {refer to Janet Frotscher's letter dated June 2, 2008 Exhibit 47}.

**Background V - Willful Intent To Participate In & Perpetuate  
Mortgage/Bank /Insurance/Securities/Fraud or a Predatory Lending  
Scheme in Which Falsified Documents Were Used**

69-V. The Defendant alleges by Janet's Frotscher's own admission {refer to Janet Frotscher's letter dated February 21, 2008 Exhibit 45}, the Plaintiff's Home Mortgage Retail Executive Resolution Team (which indicates more than one), reviewed.....}. The Defendant alleges the evidence is clear more than one person is involved in or has knowledge of this scheme.

70-V. The Defendant alleges if the members of this team reviewed and received information concerning suspected Mortgage Fraud or Banking Fraud or a Predatory Lending Scheme in which an alleged falsified appraisal was used and this team failed to take action by requesting an immediate onsite investigation to determine if these allegations were true, their failure to act...., implies consent and approval to continue the fraud or scheme.

71-V. The Defendant alleges the Plaintiff's personnel chose to knowingly perpetuate this fraud, engage in fraud and unjustly enrich the Plaintiff by swindling the Defendant, slowly, systematically and without conscious out of \$75,000 plus interest one month at a time and one payment at a time. The Defendant refused to participate in this scheme. The Defendant asserts this alleged fraudulent Note and Mortgage must be closed or cancelled.

72-V. The Defendant alleges this fraud came into existence because the Defendant's name was substituted on an appraisal that was originally done for the seller -Thomas Jacobs – and the perpetrators of this fraud and/or Predatory Lending Scheme unwittingly used the same dates and file number {the Defendant refers the Court to Exhibit 3 and the appraisal with the markings Loan # 0174072777 – SCDCA Case # 08-0237-B2 – OCC Case #785593}. The Defendant performed the Defendant's obligation to the Plaintiff on January 14, 2008 by calling the Plaintiff and notifying the Plaintiff that the appraisal used to obtain the Defendant's loan is suspected of being falsified.

73-V. The Defendant discovered this after the Defendant received the appraisal from Golden Gate Mortgage/David Terrell by threatening Golden Gate Mortgage/David Terrell and Player Law Firm with legal action if they did not send the Defendant signed copies of the Defendant's closing documents and a copy of the appraisal that was used to obtain the loan {the Defendant refers the Court to Exhibit 2}.

74-V. Not knowing what to do after notifying the Plaintiff, the Defendant waited a reasonable period of time for the Plaintiff to respond. When no response came, the

Defendant notified the Plaintiff in writing on February 5, 2008 that Golden Gate Mortgage/David Terrell used and submitted a falsified appraisal to obtain the loan. The Defendant also contacted SCDCA, OCC and the Better Business Bureau.

75-V. The Defendant alleges by demanding payment on an alleged fraudulently obtained note and mortgage that the Plaintiff's personnel already know are inflated and cannot be verified or substantiated, the Plaintiff's personnel, with willful intent and full knowledge, are perpetuating the scheme in which this falsified document is being used. Instead of working with the Defendant to remedy the situation by thoroughly investigating the Defendant's claims and allegations of fraud, the Defendant alleges the Plaintiff simply ignored the Defendant and demanded payment.

76-V. Therefore, the Defendant took the only action the Defendant could have taken to force an investigation - suspend payments until the Plaintiff initiates, conducts and completes an onsite investigation. Otherwise, the Defendant would be knowingly participating in and perpetuating fraud. Every payment would only extend the fraud or scheme and the Plaintiff could go on for years ignoring the Defendant's concerns and allegations, while systematically swindling the Defendant out of \$75,000 plus interest one month at a time - one payment at a time.

77-V. The Defendant alleges the Plaintiff's personnel allowed fraud and fraudulent documents into the lending process by inherent negligence and gross negligence. The Defendant alleges allowing fraud to easily enter the banking, lending and/or investment process compromises the integrity of the process and places the Plaintiff's customers, clients and investors at unnecessary risk to experience substantial monetary loss. Only a thorough investigation by the Attorney General's Office in South Carolina, the Justice Department, the FBI, Congressional hearings and/or investigations can determine how many homeowners the Plaintiff is swindling in a similar manner.

78-V. The Defendant alleges the Plaintiff did not even realize the Plaintiff's personnel have a duty, responsibility and obligation to investigate any allegation or claim of fraud {refer to Janet Frotscher's letter dated February 21, 2008 Exhibit 45}, she

acknowledges receiving the Defendant's information concerning the appraisal but failed to acknowledge the significance of the information and relegated it to a dispute between buyer and seller.

79-V. The Defendant alleges additional evidence of the Plaintiff's desire to perpetuate this fraud or scheme after due notification, can be found in a subsequent letter {refer to the Plaintiff's letter dated May 11, 2008 Exhibit 46}, the Plaintiff insists payments be brought current by threatening loan acceleration. {the Plaintiff's letter dated June 16, 2008 Exhibit 48}, the Plaintiff requires payment in full for all outstanding payments due. In an attempt to force compliance or acceptance of terms to sustain and maintain this fraud, the Plaintiff has initiated foreclosure {refer to Docket #2008-CP-38-1024 Exhibit 5}. These actions and activities have occurred after the facts are known.

80-V. The Defendant alleges further evidence of the Plaintiff's desire to perpetuate this fraud and scheme, was demonstrated when the Plaintiff's personnel sent a copy of the alleged falsified appraisal, the alleged fraudulent Note and Mortgage to OCC and SCDC. The Court may contact OCC for verification {re: case #785593} and SCDC {re: complaint number 08-0237-B2}. The Defendant will gladly pay the Plaintiff if the Defendant's mortgage is based on truth instead of lies.

### **Background VI - Inherent Negligence & Gross Negligence**

81-VI. The Defendant alleges the Plaintiff's underwriting department was inherently negligent and grossly negligent by not verifying repairs were actually completed at the property. Jim H. Austin III (the appraiser that did the appraisal) clearly states his report was subject to repairs. There is no apparent evidence the Plaintiff's underwriters investigated to make sure repairs were completed before rendering an underwriting decision.

82-VI. As previously stated herein, the Defendant alleges the property described in the appraisal does not exist in actuality or fact. Because of the alleged inherent negligence and gross negligence by the Plaintiff's personnel, an alleged falsified

document entered the lending process. This alleged falsified document was eventually used to establish the Value for loan #0174072777.

83-VI. After February 5, 2008, the Plaintiff's personnel handling the complaints and allegations knew this document was suspected of being falsified, but still insisted on using it, protecting it and defending it {refer to Janet Frotscher's letter dated February 21, 2008 Exhibit 45}.

84-VI. Janet Frotscher in the same letter (dated February 21, 2008) shifts the blame for this alleged falsified document back to Golden Gate Mortgage/David Terrell. However, the Defendant alleges, if the Plaintiff's personnel had not been inherently negligent and grossly negligent, they would have verified the information on the appraisal before acceptance by requiring proof the improvements cited on page 1 of 6 of the appraisal were actually completed. The Defendant alleges, if the plaintiff's personnel had not been inherently negligent, this alleged falsified document never would have been accepted.

85-VI. The Defendant alleges that the evidence and proof of the Plaintiff's and/or the Plaintiff's personnel's alleged inherent negligence is the appraisal itself. The Plaintiff cannot deny this alleged falsified document is not in the Plaintiff's possession, nor can the Plaintiff deny that it was not used to establish the Value for the property.

### **Background VII - Failed to Exercise Its Fiduciary Responsibility As A Bank**

86-VII. The Defendant alleges using a Note and Mortgage obtained with, supported by and based upon a falsified document to encourage investment is willful intent to defraud and use of it swindles investors or enrich them unjustly because true value may be inflated or harm them monetarily because true value cannot be substantiated. Because of alleged inherent and gross negligence, the Defendant alleges the Plaintiff failed to exercise its fiduciary responsibility as a bank to maintain accurate records based upon reliable information.

87-VII. The Defendant alleges by not seriously investigating any claim or allegation of fraud, the Plaintiff exposes the Plaintiff's customers, clients and investors to unnecessary risk or monetary loss. Since the Defendant's Note and Mortgage makes the Defendant a customer or client of the Plaintiff, the Defendant is exposed as well and will face substantial monetary loss if this illegal foreclosure is allowed to continue.

88-VII. As stated previously, the Defendant will gladly pay the Plaintiff if the Defendant's mortgage is based on truth instead of lies. The Defendant alleges since the Plaintiff failed to thoroughly investigate the Defendant's allegations and complaints concerning suspected fraud, the Plaintiff has created this entire situation that is now before the Court.

### **Background VIII - Failed to Exercise Due Diligence**

89-VIII. The Defendant alleges not only has the Plaintiff and the Plaintiff's personnel demonstrated inherent and gross negligence, the Defendant alleges the Plaintiff and the Plaintiff's personnel have failed to exercise due diligence. The Plaintiff's underwriters should have verified repairs were actually completed at 423 Bayne Street and they should have demanded evidence or proof that the property was actually improved before rendering an underwriting decision. The Defendant alleges the Plaintiff's underwriters failed to do this. The Defendant further alleges that after February 5, 2008, there is no legal or justifiable excuse for the Plaintiff and the Plaintiff's personnel failure not to exercise due diligence.

90-VIII. The Defendant alleges more evidence of the Plaintiff's failure to exercise due diligence can be seen in a letter Janet Frotscher wrote to the Defendant dated June 2, 2008, in which she falsely accused the Defendant of being the borrower that met Jim H Austin III on September 14, 2007. The Defendant alleges this accusation provides credible evidence to support the Defendant's allegations that the Plaintiff and the Plaintiff's personnel have demonstrated inherent negligence, gross negligence, a failure to exercise due diligence {refer to Janet Frotscher's letter dated June 2, 2008 Exhibit 47}, a willingness to perpetuate an alleged illegal Predatory Lending Scheme in which

falsified documents have been used.

91-VIII. In the Defendant's letter to the Plaintiff {the Defendant directs the Court to the Defendant's letter dated February 5, 2008 - page 8 of 9 – Exhibit 4}, the Defendant told the Plaintiff, the Defendant did not even start looking for a house until September 15, 2007 and did not even see the property until October 10, 2007. The Defendant alleges if the Plaintiff or the Plaintiff's personnel had exercised due diligence and investigated the Defendant's allegation or claim of suspected fraud, the Plaintiff would have discovered the Defendant could not have been the borrower cited on the "Satisfactory Completion Certificate" dated September 14, 2007. The Defendant further alleges that the evidence will show, that this borrower must have been the seller -Thomas Jacobs. The reason: Golden Gate Mortgage ordered the original invoice and appraisal for Thomas Jacobs. As stated in the "Answer to Complaint" page 6 paragraph 2 and the Appraisal Exhibit with the markings Loan #0174072777 - SCDCA Case #08-0237-B2 - OCC Case #785593.

92-VIII. The Defendant alleges the circumstantial evidence will show this entire scheme was set in motion by Thomas Jacobs (seller) to get himself \$75,000 either as a borrower or seller. The Defendant also alleges Jim H. Austin III (appraiser) must be a willing accomplice because on page 1 of 6 of the appraisal, the appraiser forged the Defendant's last name Sistrunk as the property owner on this document and states Thomas Jacobs is the borrower {refer to appraisal 7-59 with the markings {loan #0174072777 - SCDCA Case #08-0237-B2 - OCC Case #785593}}.

93-VIII. As stated in the "Answer to Complaint", Rogers Townsend & Thomas, PC has provided additional evidence to support the allegation that the circumstantial evidence implies or indicates a "Conspiracy to Defraud" the Plaintiff out of \$75,000 by whatever means the alleged negligence the Plaintiff would allow. {refer to "ANSWER TO COMPLAINT, page 4, paragraph 1 and the COMPLAINT, number 7. More evidence is provided in Complaint number 8 {refer to the Foreclosure Notice with Docket Number 2008-CP-38-1024 marked as Exhibit 5}}.

94-VIII. The Defendant alleges that there is no apparent evidence Thomas Jacobs (hereafter the seller) is a certified appraiser and there is no apparent evidence he is an authorized mortgage broker. To implement this plan would have required the skills and services of qualified or authorized others. The Defendant alleges the only way the seller, David Terrell (hereafter the broker) and Jim H. Austin III (hereafter the appraiser) would have had the confidence to follow through on this scheme is because they had good reason to believe the Plaintiff and the Plaintiff's personnel were either, incompetent, inherently negligent, grossly negligent or would not exercise due diligence. The Defendant alleges they must have been confident the Plaintiff or the Plaintiff's personnel would not verify any information, require proof or follow up on any claim/s of fraud.

95-VIII. After February 5, 2008, (the date of written notification) personnel have knowingly perpetuated this scheme by attempting to defraud/swindle the Defendant out of \$75,000 plus interest one payment at a time. The Defendant alleges further evidence of the Plaintiff's and the Plaintiff's personnel failure to exercise due diligence in the performance of their duties can be seen in their response to the Defendant's allegation or claim of suspected fraud.

96-VIII. The Defendant alleges that once the Plaintiff's personnel received written and signed notification that the appraisal was suspected of being falsified, appropriate steps should have been taken to investigate this allegation or claim thoroughly by conducting an onsite inspection. The Plaintiff failed to do this also.

97-VIII. The Defendant alleges, a committee meeting held in a boardroom is insufficient activity to determine the falsification of the appraisal.

98-VIII. The Defendant asserts the evidence is clear that the Defendant has been victimized and triangulated in a malicious system. On one side, the Defendant asserts the Defendant has been trapped/caught by the deceit and deception that exist within the housing industry. On the other side the Defendant asserts, the Defendant is caught/trapped by the alleged inherent negligence, gross negligence, incompetence and

the lax policies and procedures of the Plaintiff's personnel that allowed this to happen and finally; the Defendant is caught/trapped by laws and/or regulations that duly elected officials have enacted that heavily favor lenders and not buyers or consumers.

### **Background IX - Unfair Lending & Banking Practice**

99-IX. The Defendant alleges the Plaintiff's personnel are engaging in an unfair lending and banking practice. According to personnel employed by the Plaintiff, the Defendant could not rescind this loan even if the Defendant wanted to {refer to Janet Frotscher's letter dated February 21, 2008 Exhibit 45}. Since documents relative to the reduction in the \$75,000.00 price of the property did not take place during the closing at the Player Law Firm located at 1415 Broad River Road in Columbia, South Carolina as promised by the Seller, the Defendant's immediate reaction was to cancel the loan. Since telephone calls cannot be presented as evidence without a written or recorded deposition from an eye witness, the Defendant cannot introduce the calls made to the Plaintiff's office in Raleigh, North Carolina as evidence of the Defendant's attempt to cancel. However, the failed faxed transmission of the Defendant's "Notice of Intent to Cancel" can be presented. {the Defendant refers the Court to Exhibit 1}.

100-IX. Consequently, the legal reference Janet Frotscher uses to defend her inaction and decision is a section of law under Regulation Z governing refinanced transactions. Even this section of Regulation Z is written for loans that are legally obtained, not fraudulently obtained. Janet Frotscher's use of this section of law; after written notification of suspected fraud was received and reception of the notification is acknowledged by the Plaintiff's personnel, the Defendant alleges use of this section of law constitutes willful intent to perpetuate a "Predatory Lending Scheme" by forcing compliance.

101-IX. The Defendant further alleges using a Federal Law for this purpose is an unfair lending and banking practice; especially if falsified documents are used to obtain a purchase money mortgage loan or after written notification has been received; along with

documented evidence of falsification.

102-IX. The Defendant alleges the Plaintiff's personnel use of this section of law also demonstrates the Plaintiff and the Plaintiff's personnel's willingness to accept, use, protect, defend and based decisions upon falsified documents, even after facts are known. If the Plaintiff had responded appropriately within hours after being notified, this entire matter, in its current form would not exist. All the Plaintiff had to do was suspend payment on the loan proceeds, until after an investigation was initiated, conducted and completed {refer to the illustrated Exhibit 23 & Exhibit 24}.

**Background X - Failed to Safeguard Customer, Client and Investor's Interest By Using Falsified Documents To Establish Value**

103-X. As a customer/client, the Defendant alleges the Plaintiff's reliance upon falsified documents to establish value makes investments in the Plaintiff's securities unsafe. The Defendant further alleges that if the Plaintiff's mortgages are obtained with falsified documents and if the Plaintiff's personnel knowingly accept, use, protect and defend the use and acceptance of falsified documents, then, the Defendant alleges the Plaintiff's securities are beyond acceptable risk and would not be worth the paper they are written on. Since the Defendant signed the Note, Mortgage, and closing documents without prior knowledge of falsification, these acts have made the Defendant a customer/client of the Plaintiff. Therefore, the Defendant alleges as a customer/client of the Plaintiff, that if the Defendant cannot rely upon the Plaintiff to maintain high standards of integrity before, during and after the lending process is completed, the Defendant alleges the financial safety and security of thousands are placed at risk.

104-X. As a customer/client of the Plaintiff, the Defendant alleges that the alleged willful intent of the Plaintiff to mislead the Court, the Defendant, the State of South Carolina, the Federal Government, the Plaintiff's own Agents of process and service and the Plaintiff's customers, clients and/or investors might lead to a mass withdrawal of money deposited in the Plaintiff's banks and might adversely affect the Plaintiff's

investment interest and the financial interest of the Federal Reserve Banking System. As a customer/client of the Plaintiff, the Defendant alleges foreign investors; as well as, American Citizens might withdraw their money and take it elsewhere. As a customer/client of the Plaintiff, the Defendant alleges it is far better for the Plaintiff to earn 5% for 30 years on a single investment, than 10% for 3 months and it is also far better for the Plaintiff to get some return on an investment, than absolutely nothing at all.

105-X. As a resident of Orangeburg and the State of South Carolina and an American Citizen, the Defendant asserts an American citizen should not be required to become a legal expert or an expert in consumer affairs to purchase a home. As a customer/client of the Plaintiff, the Defendant further alleges the Plaintiff and the Plaintiff's personnel clearly failed to safeguard the interest of the Plaintiff's customers, clients and investors by accepting, using, protecting and defending a falsified document to establish value.

106-X. As a customer/client of the Plaintiff, the Defendant alleges that the Plaintiff's use of falsified documents to show or maintain value after due notification and after the facts are known is fraud and an illegal attempt to defraud.

107-X. As a customer/client of the Plaintiff, the Defendant alleges the Plaintiff's banking customers, clients and investors will be exposed to unnecessary risk and could experience substantial monetary loss. If the Plaintiff fails to acknowledge or thoroughly investigates allegations of fraud or continues the alleged practice of using falsified documents to maintain a security's value, then every pension or retirement fund in America; including those of government employees and elected or appointed officials that were placed with the Plaintiff are at risk.

108-X. As a customer/client of the Plaintiff, The Defendant alleges that there is no way to determine how many homeowners the Plaintiff or the Plaintiff's personnel evicted by foreclosure because they refused to participate in or perpetuate fraud.

## **Background XI - Insurance Fraud**

109-XI. The Defendant alleges, since the value of 423 Bayne Street was obtained from an alleged falsified appraisal and the current condition of the property will not support this value, using an alleged falsified document to obtain homeowner's insurance would be knowingly engaging in insurance fraud. The Agents and companies in Orangeburg, South Carolina the Defendant has contacted will not insure the property for \$75,000. Since the Defendant does not have the time or financial resources to contact every agent on planet earth, and since any such request would be unreasonable, and since statistical sampling is an accepted practice for making decisions, and since State Farm Insurance had already cancelled the homeowner's insurance due to "Insufficient Underwriting" {refer to Exhibit 44}, and since, as far as the Defendant could surmise, all property and casualty insurers would, more or less, follow the same federal and state guidelines, the Defendant is justified in concluding, the chances of getting homeowner's insurance in Orangeburg, South Carolina were not very good.

110-XI. The Defendant alleges, the reason why the local insurers the Defendant contacted would not insure the property for \$75,000.00 is because: Local insurers maybe familiar with the property and already know it is not worth \$75,000 in its current condition and definitely not worth \$75,000 on September 14, 2007, October 9, 2007 or December 21, 2007; the date the loan was closed. These are conclusions without documented evidence. The Plaintiff is free to send the Plaintiff's own insurers to receive documented evidence of this fact.

111-XI. Even if the Plaintiff used the Plaintiff's own insurer(s), the Defendant alleges it would still be Insurance Fraud if the alleged fraudulent Value of the Note and Mortgage were used as the basis for value or the information contained in the alleged falsified appraisal. The Defendant acknowledges the Plaintiff cannot defraud the Plaintiff, however, if the Plaintiff demands the Defendant sign an insurance policy based upon falsified documents, the Defendant and the Plaintiff would be involved in a "Conspiracy to Defraud". Consequently, the Defendant would not sign the insurance

documents sent by the Plaintiff {Exhibits are attached hereto marked as Exhibits 29, 42, & 50}.

112-XI. As a customer/client of the Plaintiff, the Defendant alleges if the alleged fraudulent Note and Mortgage were included in a mortgage-backed security, it would be Securities Fraud. The Defendant asserts the Defendant's signature on the Note and Mortgage does not grant the Note or Mortgage immunity from the legal standard of verifiable and/or documented value required under the laws of the State of South Carolina or the United States of America and its Territories.

### **Background XII – Additional Relevant Facts**

113-XII. Even if the Defendant had reached an agreement with the seller to fix the electrical problem at the property or complete the repairs that are identified on the appraisal, the appraisal would still be an alleged falsified document. The Defendant has already informed the Plaintiff; thus, the Defendant hereby informs the Court, there was never an agreement between the seller and the Defendant to install a central air conditioning unit or a patio/deck.

114-XII. The Defendant asserts the Defendant's signature on a Note or Mortgage does not obligate the Defendant to perpetuate a Predatory Lending Scheme in which falsified documents are used. The Defendant asserts further, the Defendant's signature on a Note and Mortgage does not allow the Defendant to commit crimes. The laws of the State of South Carolina and the Laws of the United States of America categorizes defrauding people out of money and/or homes as a crime and the Defendant refuses to participate in it and not report it, even if authorized law enforcement agencies, government regulators or members of congress refuse to act upon it.

115-XII. As a customer/client of the Plaintiff, the Defendant alleges that Plaintiff's insistence that this scheme be perpetuated by whatever means possible, is the height of corporate arrogance and internal corruption.

116-XII. For 6 months the Defendant tried to resolve a legal problem as a consumer complaint; as evidenced by consumer complaint #08-0237-B2 filed with SCDCA (South Carolina Department of Consumer Affairs) and the Defendant's initial complaint #785593 filed with OCC (Office of the Comptroller of the Currency). Law enforcement and the Courts are much better equipped to handle and resolve Mortgage Fraud, Bank Fraud or a Predatory Lending Scheme than SCDCA or OCC.

117-XII. The Defendant alleges the appraisal and the Note and Mortgage are falsified beyond actual agreement and remedy. Even if the Plaintiff had sent the Defendant the money to repair the property, the appraisal would still be an alleged falsified document and the value of the Note and Mortgage would still be allegedly fraudulent. The Defendant did not realize this until July 1, 2008.

118-XII. The Defendant asserts that the Defendant's signature on a Note and Mortgage obligates her to it as long as the Note and Mortgage are not fraudulent and have not been obtained with deceit and/or deception and/or misrepresentation of facts, misstatements, omissions or obtained with falsified documents or documentation or obtained by using fraudulent means, methods or tactics.

### **Background XIII – The Actual Condition of 423 Bayne Street from September 30 to Oct 12, 2007**

119-XIII. Since the Plaintiff and the Plaintiff's personnel have demonstrated a pattern of failing to acknowledge facts and reality and since the dates being referenced by the Plaintiff are September 14, 2007 (the date of the "Satisfaction Completion Certificate") and October 9<sup>th</sup>, 2007 (the date of the final appraisal with file number 7-59 the Plaintiff's personnel received) {refer to Janet Frotscher's letter dated June 2, 2008 Exhibit 47} it is important the Defendant informs the Court of the actual condition of 423 Bayne Street on these dates. Since the house was opened and community residents had free access to the property, the Plaintiff or the Plaintiff's attorney is free to take depositions from neighbors in the community to verify that the following description of 423 Bayne Street on the dates in question is accurate.

120-XIII. The Plaintiff's personnel have repeatedly stated they stand behind the appraisal and the information on the appraisal even though evidence was sent to them on February 5, 2008 and February 7, 2008. The Defendant's husband visited the property daily from September 30, 2007 and the Defendant saw it for the first time on October 10, 2007. The Defendant's husband began actual work on 423 Bayne Street on October 12, 2007. This is 3 days after Jim H. Austin III did the final appraisal on October 9<sup>th</sup>, 2007.

121-XIII. Neighborhood residents have been witnessing the deterioration of the property since 2005. The previous owner; Bradford C. Lucas and his brother - Steve Dantzler, sons of the now deceased Bond Ceal Dantzler (mother and second owner of 423 Bayne Street) can also testify to the condition of 423 Bayne Street the last time they saw it and why they would not spend the money to repair it, improve it or keep the house in the family.

122-XIII. If the appraiser had really performed a physical analysis of the property like he claims, he would have seen and reported or made notations on the Appraisal that 423 Bayne Street...

- A. Had dampness and mildew problems (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- B. Settlement problems (visible inside and outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- C. Loose shingles on the roof (visible outside from ground level on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- D. Ruptured sewer line (clearly visible outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- E. No central air (would be visible outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007 – otherwise, an obvious fabrication on the appraisal.)
- F. No patio/deck (would be visible outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007 – otherwise, an obvious fabrication on the appraisal.)
- G. No scuttle (visible inside the house on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007 – inaccurate reporting)
- H. Rotten walls, doors, eaves and windows (visible inside and outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)

- I. Foundation separation in the rear of the house (visible inside and outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- J. Only one working bath instead of 4 (the appraiser would have known if the broker had ordered a new appraisal for the Defendant at anytime from October 12, 2007 to December 18, 2007)
- K. No office (inaccurate reporting on October 9<sup>th</sup>, 2007)
- L. No downstairs bedroom (inaccurate reporting on October 9<sup>th</sup>, 2007)
- M. Cracked and deteriorating concrete driveway (clearly visible outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- N. Termite damage (clearly visible inside and outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- O. Filthy and ragged carpets (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- P. Filled with debris, trash, spiders, roaches (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007 and rats ((the appraiser would have known if the broker had ordered a new appraisal for the Defendant at anytime from October 12, 2007 to December 18, 2007)
- Q. Rotted sinks and pipes (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- R. Few light fixtures (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- S. No new appliances (visible inside on October 9<sup>th</sup>, 2007 – otherwise, an obvious fabrication on the appraisal)
- T. No fresh paint (visible inside on October 9<sup>th</sup>, 2007 – an obvious fabrication on the appraisal.)
- U. No running water (the appraiser would have known if the broker had ordered a new appraisal for the Defendant at anytime from October 12, 2007 to December 18, 2007))
- V. No work done on the seals (The seller never did any work on the seals. This is probably a fabrication. (the appraiser would have known if the broker had ordered a new appraisal for the Defendant at anytime from October 12, 2007 to December 18, 2007)
- W. Doors that will not properly open or close because of settlement problems (the

appraiser would have known if the broker had ordered a new appraisal for the Defendant at anytime from October 12, 2007 to December 18, 2007)

X. Busted doors and windows (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)

Y. Human excrement in the toilets and plumbing problems (the appraiser would have known if the broker had ordered a new appraisal for the Defendant at anytime from October 12, 2007 to December 18, 2007))

Z. Exposed wiring in the closets (visible inside on October 9<sup>th</sup>, 2007)

AA. Difficult to access electrical panel (visible inside on October 9<sup>th</sup>, 2007)

BB. Antique knob and spool wiring (visible inside the house on October 9<sup>th</sup>, 2007 – part of the ceiling was missing at the time)

CC. Unbearable odors from the carpet in the den (If the appraiser had went inside, the appraiser definitely, could not miss the odor on October 9<sup>th</sup>, 2007)

DD. No sink trap in the den's bathroom allows sewer odors to enter the house (the appraiser would have known if the broker had ordered a new appraisal for the Defendant at anytime from October 12, 2007 to December 18, 2007))

EE. Dirty walls and ceilings (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)

FF. Busted and sagging ceilings (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)

GG. Substandard workmanship throughout the house (visible inside and outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)

HH. Fire damaged kitchen cabinets and doors (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)

II. Leaking roof (the appraiser would have known if the broker had ordered a new appraisal for the Defendant at anytime from October 12, 2007 to December 18, 2007)

JJ. Main electrical lines into the house held together with tape (visible outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)

KK. No new walls, fixtures, ceilings or floors (clearly visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)

- LL. Weak and dangerous floors – upstairs and down (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007– just walk on the floors)
- MM. Little closet or storage space (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- NN. No ceiling fans in the main house (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- OO. No security system (the appraiser would have known if the broker had ordered a new appraisal for the Defendant at anytime from October 12, 2007 to December 18, 2007))
- PP. Evidence of Infestation (visible inside and outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- QQ. Deteriorating porch (visible outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- RR. Damaged chain link fence (reported the fence but not the damage - visible outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- SS. No true fireplace, just an opening in the wall where a fireplace was located (visible inside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007). 423 Bayne Street does not have a chimney (clearly visible outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007).
- TT. Evidence of severe deferred maintenance (visible inside and outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- UU. Improper electrical wiring outside the house (clearly visible outside on September 14<sup>th</sup> or October 9<sup>th</sup>, 2007)
- VV. No working electricity inside the house (the appraiser would have known if the broker had ordered a new appraisal for the Defendant anytime from October 12, 2007 to December 18, 2007).

123-XIII. Any appraiser that actually came to the property on the dates in question would have seen the real 423 Bayne Street, not the glamorized property in Exhibit 3. Janet Frotscher and her Executive Resolution Team were sent this information and neighbors can verify it is not only accurate but also true. The actual condition of 423 Bayne Street dramatically illustrates the extent of the alleged fraud that is being perpetuated on the Plaintiff's customers, clients, investors and Orangeburg County. Janet

Frotscher's own letters bear witness and testimony to the Plaintiff's alleged flawed policies, procedures and corporate mentality and failure to acknowledge this fraud {refer to Janet Frotscher's and the Plaintiff's letters Exhibits 25, 38-41 & 45-48}

125-XIII. The Defendant recommends the Plaintiff order a "Home Inspection Report" at the Plaintiff's expense to obtain additional documented evidence as to the truth of the Defendant's statements. 423 Bayne Street is essentially a shell. The interior of the property must gutted, rewired to code and put back in place. The broker knows this and the seller knows this.

126-XIII. The Defendant believes this one of the reasons why the seller assured and promised the Defendant adjustments to the \$75,000.00 price would take place during the closing, OCC and SCDC know this because they have been informed and the Plaintiff's personnel know.

127-XIII. Janet Frotscher and her Executive Resolution Team at the Plaintiff's office in Des Moines, Iowa, allegedly chose to ignore facts and reality in order to perpetuate this alleged lending scheme and allegedly defraud the Defendant out of \$75,000 plus interest slowly, systematically and without conscious if the Defendant had not refused to participate.

128-XIII. The Defendant alleges this fraud was cleverly concealed from the Plaintiff and executed because of the Plaintiff's own alleged incompetence, inherent negligence, gross negligence, failure to exercise due diligence and Janet Frotscher's alleged misguided desire to maintain a value that does not exist in actuality or fact. In short, the Defendant alleges the Plaintiff was scammed.

129-XIII. The Defendant further alleges, rather than pursue the individuals that scammed them, the Plaintiff and the Plaintiff's personnel chose to perpetuate this alleged fraud by attempting to defraud or swindle the Defendant out of the money the Plaintiff's own corporate flaws and alleged perverted mentality lost.

130-XIII. The Plaintiff is free to examine the PHYSICAL EVIDENCE at 423 Bayne Street at any time. The Plaintiff should be aware that the property has been repaired, cleaned and upgraded since October 9, 2007 and no longer reflects its appearance on the dates in question. Repairs have ceased so as not to give any credibility to any claim the Plaintiff might make under the "improvements hereafter clause" in the alleged fraudulent Mortgage. The loan, Note and Mortgage were based on the dates in question and not on any other date or time thereafter, including the date of this filing.

131-XIII. The Defendant alleges that participating in and perpetuating Mortgage, Bank, Securities and/or Insurance Fraud and/or a Predatory Lending Scheme involving the use of falsified documents are criminal acts; as well as, swindling customers out of money and homes by unfair lending or banking practices, using falsified documents to establish value and forcing compliance by using federal laws intended for legitimate purchase money mortgage loans, not mortgage loans obtained by fraudulent means, documents or tactics. The Defendant alleges that the South Carolina Attorney General's Office, the Justice Department, the FBI and Congress should investigate these acts by the Plaintiff prior to any foreclosure proceeding, legal or illegal.

132-XIII. The Defendant alleges the Plaintiff and the Plaintiff's personnel have failed to exercise due diligence and their fiduciary responsibility to investors, customers, clients and the general public. The Defendant alleges the Plaintiff and the Plaintiff's personnel have demonstrated inherent negligence and gross negligence by their actions and/or inactions, actively and knowingly violating a federal law or failing to act responsibly after being notified documents in their possession are falsified. This is criminal intent of the most serious kind and the Court should DISMISS this Complaint on the merits and review this matter thoroughly.

133-XIII. The Defendant alleges the Plaintiff and the Plaintiff's personnel have accepted, used, protected, defended and are currently acting upon information taken from an alleged falsified document and after being duly notified in writing, continue the

practice as an acceptable operating procedure.

134-XIII. The Defendant alleges the Plaintiff, the Plaintiff's personnel or any qualified person(s) authorized by the Plaintiff can easily prove to themselves that the Value of 423 Bayne Street is Inflated, the Value of the Note and Mortgage fraudulent and the property described in the appraisal with file number 7-59 does not exist in fact or reality. As of the date of this filing, the Plaintiff has refused to take this simple step.

### **Background XIV – Little Known Facts**

135-XIV. Even though the Defendant alleges, the circumstantial evidence actually implies Jacobs, Terrell and Austin were actively engaged in a Conspiracy to Defraud the Plaintiff out of \$75,000 by whatever means the alleged negligence of the Plaintiff would allow, the Plaintiff has never acknowledged any wrongdoing by the seller, the broker or the appraiser.

136-XIV. Even though the Defendant has accused –Jacobs- the seller of lying about the price and lying about adjustments to the price, the Plaintiff has never admitted that the Plaintiff did not receive any information relative to price adjustments. The Defendant knows the seller has already lied to and endeavored to deceive SCDCA.

137-XIV. Even though the Defendant alleges Austin falsified an appraisal to obtain the price, the Plaintiff, not only has not admitted any wrongdoing by the appraiser, the Plaintiff still uses the appraisal.

138-XIV. Even though the Defendant alleges Golden Gate Mortgage/David Terrell sent the falsified appraisal (7-59) to the Plaintiff, the Plaintiff has only acknowledged the broker ordered the appraisal. Even though the Plaintiff has documented evidence that the Defendant's name was substituted on the appraisal and on the loan paperwork that was originally being done for Thomas Jacobs, the Plaintiff has not admitted this is an unacceptable behavior or an unacceptable business practice.

139-XIV. Even though the Defendant alleges the evidence can be easily established that will show Golden Gate Mortgage/ David Terrell never ordered an appraisal for the Defendant. The Defendant believes ordering a new appraisal with the Defendant in the house after December 15, 2007, would clearly show a house that was not worth the \$75,000 asking price, the Plaintiff has never admitted or acknowledged that the Plaintiff did not receive a second appraisal with a different sales price.

140-XIV. The Defendant alleges the Plaintiff has never acknowledged that the Plaintiff did or did not receive signed loan documents from Debra C. Galloway (the closing attorney) at Player Law Firm that showed adjustments to the \$75,000.00 sales price.

141-XIV. The Defendant asserts any person of reasonable intelligence would agree that a major corporation and bank like the Plaintiff, with millions of dollars in financial assets, could have easily afforded to send someone from one of its Resolution Teams to investigate allegations of fraud concerning a falsified document and a \$75,000 loan; yet no one was sent to 423 Bayne Street to investigate in order to resume payments.

WHEREFORE; the Defendant has concluded providing the Court and the Plaintiff's attorneys with background information the Plaintiff's Resolution Team may not have provided that directly and indirectly impacts the Plaintiff's Summons and Complaint. The Defendant has filed the FIRST AMENDMENT TO ANSWER TO COMPLAINT for these additional reasons.

142. The Defendant did not include a Counterclaim.

143. The Defendant did not state a Cause for Action.

144. The Defendant alleges new acts of misconduct by the Plaintiff, justifies additional Affirmative Defenses to the Plaintiff's Complaint.

145. The Defendant discovered the following pages in the original "Answer to Complaint" have typographical errors and/or missing or misspelled words on pages 3, 5, 6, 8, 9, 11, 12, 13, 14, 15 and 16. These errors have been corrected and the Defendant desires that these error pages be removed and the corrected pages the Defendant has

provided to the Clerk of Court without typographical errors or misspelled words be attached in the Defendant's "Answer to Complaint". Copies of the corrected pages will be sent to Plaintiff's Agents of process.

146. The Defendant has discovered additional evidence of alleged misinformation and misconduct by the Plaintiff.

WHEREFORE; the Defendant has set forth all the reasons, admissions, declarations and having provided additional Background information for the FIRST AMENDMENT TO ANSWER TO COMPLAINT WITH COUNTERCLAIMS, the Defendant alleges the following action must precede any foreclosure proceeding...

**FIRST CAUSE OF ACTION**  
(Ruling On Points Of Law)

147. The Defendant alleges the Plaintiff did not provide the Court and the Defendant any evidence in the Plaintiff's Complaint or supporting documents and/or exhibits with the Plaintiff's Complaint that the appraisal is not falsified and the Value of the Note and Mortgage are not fraudulent. Under the "Equal Protection Clause" in the 14<sup>th</sup> Amendment to the Constitution, the Court must give the Defendant equal protection under the law, therefore, the Plaintiff must provide evidence and proof to the Court the Plaintiff's Complaint is valid since the circumstances relative to the foreclosure are extenuating. The mere presentation of a Note and Mortgage for foreclosure is insufficient evidence when the Note and Mortgage are suspected of being fraudulent and the documents upon which the Note and Mortgage are based are suspected of being falsified. The Plaintiff must also provide evidence and proof to the Court and the Defendant that the Plaintiff:

(A) Did not receive information from the seller or the broker relative to adjustments to the \$75,000.00 sales price of 423 Bayne Street.

(B) Did not receive a second appraisal from the broker with a lower sales price. Finally.....,

(C) The Plaintiff must provide evidence and proof the Plaintiff initiated, conducted and completed an onsite investigation at 423 Bayne to determine whether the

Defendant's allegations of fraud are true or false.

148. If the Plaintiff fails to provide sufficient evidence on stipulations A-C that would prove the appraisal is not falsified and the Value of the Note and Mortgage are not fraudulent, the Defendant asserts the Complaint should be DISMISSED because the Plaintiff has no enforceable rights under the laws of the State of South Carolina or the United States of America. This in addition to being barred from seeking relief under Equitable Estoppel, Unclean Hands and the Statutes of Fraud.

**SECOND CAUSE OF ACTION**  
(Concealment, i.e., Failure To Disclose a Material Fact)

149. The Defendant alleges the Plaintiff failed to notify the Court in the Plaintiff's Complaint that the appraisal was suspected of being falsified and the Value of the Note and Mortgage were suspected of being fraudulent since January 14, 2008 and officially since February 5, 2008 and February 7, 2008, when the Plaintiff received written notification of suspected fraud and documented evidence of the falsification of the appraisal. This is failure to disclose a material fact to the Court.

150. The Plaintiff also failed to disclose to the Court, the Defendant did not stop payments, but suspended payments until after the Plaintiff initiated, conducted and completed an onsite inspection and investigation into the Defendant's allegations of fraud and falsification concerning the Defendant's loan. The Plaintiff failed to act appropriately. The Defendant's reasons for suspending payments have already been stated.

151. The Defendant request the Court review, *GOFF vs. AMERICAN SAVINGS ASSOCIATION*, 1 Kan.App.2d at 82, 561 P.2d. At page 903, the Court held, "A recipient of a fraudulent misrepresentation is justified in relying upon its truth without investigation, unless he knows or has reason to know of facts which make his reliance unreasonable."

152. The Defendant alleges the Plaintiff was given information, by the Defendant that made the Plaintiff's reliance on the Value of the Note and Mortgage and the validity of the appraisal unreasonable. Therefore, the Plaintiff's failure to act was to the Plaintiff's own detriment. If the Note and Mortgage are proven fraudulent and the appraisal is proven falsified, then the Value of the Note and Mortgage are nullified in their current form.

153. The Defendant prays the Court DISMISS this Summons and Complaint for foreclosure and permanently enjoin the Plaintiff from seeking any relief in the Court of Common Pleas. The Defendant alleges due to the alleged fraudulent Value of the Note and Mortgage and the alleged deception by the Plaintiff, the Plaintiff has no enforceable rights under the laws of the State of South Carolina or the United States of America. This is in addition to being barred from seeking relief under Equitable Estoppel, Unclean Hands and the Statutes of Fraud.

### **THIRD CAUSE OF ACTION**

(The Preponderance of the Evidence, Clear and Convincing Evidence and Beyond a Reasonable Doubt)

154. The Defendant alleges the Defendant has already provided the Plaintiff and the Court ample evidence to substantiate the Defendant's allegation that the Value of the Note and Mortgage are fraudulent. The Defendant has already made the actual condition of 423 Bayne Street on the dates in question; September 14, 2007 and October 9, 2007, a matter of public record to provide clear and convincing evidence and to prove beyond a reasonable doubt the appraisal is falsified (these are the dates referenced by Janet Frotscher, Executive Communications Coordinator and Head of the Executive Resolution Team at the Plaintiff's Office in Des Moines, Iowa).

155. The Defendant has encouraged the Plaintiff to order the Plaintiff's own "Home Inspection Report", contact local government agencies and come to the property so the Plaintiff can visibly see the extent of the fraud being perpetuated and perpetrated on the Plaintiff's customers clients and investors. Every letter the Plaintiff writes, every action not taken and every step taken toward the alleged fraudulent Note and Mortgage

and the alleged falsified appraisal, strengthens the Defendant's allegations that the Plaintiff is involved in a Predatory Lending Scheme in which falsified documents were used and are still being used.

156. The Defendant alleges every letter the Plaintiff writes that does not acknowledge the facts and evidence relative to Loan #0174072777 strengthens the Defendant's allegations of criminal intent to defraud and swindle the Defendant out of money and home. The Court of Common Pleas cannot be used as an unwitting and an unknowing accomplice to aid and abet the Plaintiff in a criminal act.

157. Therefore, since the Court cannot be used to commit criminal acts, and if criminal intent is proven, or if the Value of the Note and Mortgage are proven fraudulent and the appraisal is proven falsified, then the Value of the Note and Mortgage are nullified in their current form. Hence, the Court should DISMISS the Plaintiff's Summons and Complaint for foreclosure. The Defendant alleges the Plaintiff has no enforceable rights under the laws of the State of South Carolina or the United States of America. This is in addition to being barred from seeking relief under Equitable Estoppel, Unclean Hands and the Statutes of Fraud.

#### **FOURTH CAUSE OF ACTION** (Abuse of Process)

158. The Defendant alleges the Plaintiff is engaging in the malicious and deliberate misuse or perversion of a regularly used court process (i.e. the issuing of summons, etc) that is not justified by the underlying legal action. The Defendant alleges the reason this is an abuse of process is because the Plaintiff has defamed and profaned the Court of Common Pleas by filing a foreclosure notice with an alleged fraudulent Note and Mortgage that is based upon an alleged falsified appraisal.

159. The Defendant alleges, since the Value of the Note and Mortgage have been in dispute for 6 months, the validity of the documents should have been established prior to filing the foreclosure.

160. The Defendant alleges the Plaintiff has known since March of 2008, that the Defendant suspended payments until the Plaintiff thoroughly investigated the Defendant's allegations of suspected fraud. The Plaintiff refused to cooperate, still has not cooperated and continues to demand payments on an alleged illegal lending scheme in which falsified documents were used and are still being used.

161. The Plaintiff's pretense for legal action is the Defendant is behind in the Defendant's mortgage payments. The Defendant alleges that because of the Plaintiff's flawed policies, procedures, lax underwriting guidelines and corporate mentality, this incident escalated into a legal proceeding. {The Defendant refers the Court to Janet Frotscher's and the Plaintiff's letters Exhibits 25, 38-41 & 45-48}

162. This is pretense because the Defendant has written hundreds of pages of letters to the Plaintiff, SCDCA, OCC and the Better Business Bureau {refer to Exhibits 43 and 51-64}, about the falsified appraisal and the fraudulent Value of the Note and Mortgage. The Defendant alleges abuse of process because of the Plaintiff's deception. As a customer/client of the Plaintiff, the Defendant alleges the real issues in this case are alleged Bank Fraud, Mortgage Fraud, Insurance Fraud, Securities Fraud, Conspiracy to Cover up a Predatory Lending Scheme in which falsified documents were used in a "Purchase Money Mortgage Loan", Willful Intent to Perpetuate a Predatory Lending Scheme in which falsified documents were used and are still being used. The Defendant alleges these are criminal acts and should be investigated.

163. The Defendant further alleges that since the Plaintiff cannot defraud the Plaintiff, the Defendant alleges the Plaintiff's authorized personnel are engaged in these practices, thus rendering the Summons and Complaint filed in the Court of Common Pleas inadequate to deal with all the issues raised.

164. The Defendant further alleges that these alleged illegal acts occurred prior to the Plaintiff's Summons and Complaint, and therefore must be dealt with first as a matter of legal jurisprudence. The legitimacy of any legal or illegal foreclosure

proceeding must be established before a legitimate Summons and Complaint can be issued. Since legitimacy has not been established, the Defendant alleges the Plaintiff has abused the process relative to the Court of Common Pleas.

165. Therefore, if the appraisal is proven falsified, then the Value of the Note and Mortgage are fraudulent. If the Value of the Note and Mortgage are proven fraudulent, then all the closing documents relative to loan #0174072777 are null and void as a direct and/or indirect consequence of this alleged Fraud.

166. The Defendant alleges that since these acts occurred prior to any alleged default by the Defendant, and since a fraudulent Note and Mortgage cannot be in default because it is not legitimate, there is no legal basis for the Plaintiff's Summons and Complaint. The Plaintiff has abused the process.

167. The Defendant alleges, if enough credible evidence has been presented to suggest the Plaintiff or the Plaintiff's personnel are suspected of participating in Bank Fraud or Mortgage Fraud or Securities Fraud or Insurance Fraud or covering up an alleged Predatory Lending Scheme in which falsified documents were used and are still being used or participating in an alleged illegal Predatory Lending Scheme in which falsified documents have been used, or abused the process by filing a Summons and Complaint, without first establishing the legitimacy of the Complaint because the Value of the Note and Mortgage are suspected of being fraudulent or has demonstrated criminal intent to defraud or swindle the Defendant out of \$75,000.00 slowly, methodically, systematically and without conscious, or if the appraisal is proven falsified, then the Value of the Note and Mortgage are nullified in their current form, the Defendant alleges the Court should DISMISS the Plaintiff's Summons and Complaint and turn this entire matter over to the South Carolina Attorney General's Office as recommended by Iowa's Attorney General's Office {Copies of which are attached hereto marked as Exhibits 34 & 64}. Until the legitimacy of the Plaintiff's Complaint and actions have been determined in a Court of Law, the Defendant alleges the Plaintiff has no enforceable rights under the

laws of the State of South Carolina or the United States of America. This is in addition to being barred from seeking relief under Equitable Estoppel, Unclean Hands and the Statutes of Fraud. The Defendant alleges the Plaintiff should be permanently enjoined against seeking any relief from the Defendant; monetary or otherwise.

**FIFTH CAUSE OF ACTION**  
(The Weight of the Evidence)

168. The Defendant alleges that the “Weight of the Evidence” provided by the Defendant to the Court is more than sufficient to suspend, cancel or permanently enjoin the Plaintiff from seeking any relief in the Court of Common Pleas. The Defendant further alleges, that if enough credible evidence has been presented to suggest the Plaintiff or the Plaintiff’s personnel are suspected of participating in Bank Fraud or Mortgage Fraud or Securities Fraud or Insurance Fraud or covering up an alleged Predatory Lending Scheme in which falsified documents were used and are still being used or participating in an alleged illegal Predatory Lending Scheme in which falsified documents have been used, or abused the process by filing a Summons and Complaint, without first establishing the legitimacy of the Complaint because the Value of the Note and Mortgage are suspected of being fraudulent or has demonstrated criminal intent to defraud or swindle the Defendant out of \$75,000.00 slowly, methodically, systematically and without conscious, or if the appraisal is proven falsified, then the Value of the Note and Mortgage are nullified in their current form, then, the Court should DISMISS this Summons and Complaints. Until the legitimacy of the Plaintiff’s Complaint and actions have been determined in a Court of Law, the Defendant alleges the Plaintiff has no enforceable rights under the laws of the State of South Carolina or the United States of America. This is in addition to being barred from seeking relief under Equitable Estoppel, Unclean Hands and the Statutes of Fraud. The Defendant alleges the Plaintiff should be permanently enjoined against seeking any relief from the Defendant; monetary or otherwise.

**SIXTH CAUSE OF ACTION**  
(Injunctive Relief)

169. The reasons the Defendant needs Injunctive Relief from the Plaintiff's legal maneuvers have been stated herein {the Defendant refers the Court to numbers 16-20}. Therefore the Defendant alleges, if enough credible evidence has been presented to suggest the Plaintiff or the Plaintiff's personnel are suspected of participating in Bank Fraud or Mortgage Fraud or Securities Fraud or Insurance Fraud or covering up an alleged Predatory Lending Scheme in which falsified documents were used and are still being used or participating in an alleged illegal Predatory Lending Scheme in which falsified documents have been used, or abused the process by filing a Summons and Complaint, without first establishing the legitimacy of the Complaint because the Value of the Note and Mortgage are suspected of being fraudulent or has demonstrated criminal intent to defraud or swindle the Defendant out of \$75,000.00 slowly, methodically, systematically and without conscious, or if the appraisal is proven falsified, then the Value of the Note and Mortgage are nullified in their current form, , then, the Court should DISMISS this Summons and Complaints. Until the legitimacy of the Plaintiff's Complaint and actions have been determined in a Court of Law, the Defendant alleges the Plaintiff has no enforceable rights under the laws of the State of South Carolina or the United States of America. This is in addition to being barred from seeking relief under Equitable Estoppel, Unclean Hands and the Statutes of Fraud. The Defendant alleges the Plaintiff should be permanently enjoined against seeking any relief from the Defendant; monetary or otherwise. Therefore the Defendant prays the Court rules in favor of the Defendant's need for Injunctive relief until the Defendant has accumulated adequate financial resources of no less \$25,000 at the stated affordable rate of accumulation of \$1.00 (one dollar) a month.

**SEVENTH CAUSE OF ACTION**  
(Substantive Relief)

170. The Defendant has already stated the Defendants need for "Substantive Relief" because the Defendant is not an attorney and "Best Effort" defensive is inadequate due to the nature of this case. Even though the Defendant has honesty and

truth, they are not enough in America's Courts today. The Law Firms the Defendant has contacted will not take the case because they are not profitable and the Defendant must bear the entire cost of pursuing justice or receiving relief {Copies of which are attached hereto marked as Exhibits 32 & 33}. Therefore, the Defendant alleges, if enough credible evidence has been presented to suggest the Plaintiff or the Plaintiff's personnel are suspected of participating in Bank Fraud or Mortgage Fraud or Securities Fraud or Insurance Fraud or covering up an alleged Predatory Lending Scheme in which falsified documents were used and are still being used or participating in an alleged illegal Predatory Lending Scheme in which falsified documents have been used, or abused the process by filing a Summons and Complaint, without first establishing the legitimacy of the Complaint because the Value of the Note and Mortgage are suspected of being fraudulent or has demonstrated criminal intent to defraud or swindle the Defendant out of \$75,000.00 slowly, methodically, systematically and without conscious, or if the appraisal is proven falsified, then the Note and Mortgage are nullified in their current form, , then, the Court should DISMISS this Summons and Complaints. Until the legitimacy of the Plaintiff's Complaint and actions have been determined in a Court of Law, the Defendant alleges the Plaintiff has no enforceable rights under the laws of the State of South Carolina or the United States of America. This is in addition to being barred from seeking relief under Equitable Estoppel, Unclean Hands and the Statutes of Fraud. The Defendant alleges the Plaintiff should be permanently enjoined against seeking any relief from the Defendant; monetary or otherwise. Therefore; the Defendant prays the Court rules in favor of the Defendant's need for "Substantive Relief" in order to acquire adequate and competent legal counsel.

WHEREFORE; the Defendant has stated the "Causes of Actions" that must be addressed by the Court of Common Pleas prior to considering any Complaint filed by the Plaintiff relative to a foreclosure proceeding. The Defendant asserts that addressing these matters of law, process and the chronology of events are essential in order to prevent a miscarriage of justice and protect the Defendant's rights under the 14<sup>th</sup> Amendment to the Constitution. In so far as the Defendant has concluded the Defendant's presentation to the Court concerning "Cause of Action" for this filing, the Defendant now enters into the record these additional AFFIRMATIVE DEFENSES against the Plaintiff.

**NINTH AFFIRMATIVE DEFENSE**  
(Breach of Trust)

171. As a customer/client of the Plaintiff, the Defendant alleges the Plaintiff has failed to fulfill the responsibilities entrusted or expected from the Plaintiff by failing to act in a diligent manner to thoroughly investigate the Defendant's allegations of falsification concerning the appraisal and fraudulent value concerning the Note and Mortgage.

172. The Defendant alleges this failure by the Plaintiff constitutes a "Breach of Trust" because the Defendant relied upon the Plaintiff to fulfill the Plaintiff's obligation, duty and responsibility to investigate any allegation of fraud.

173. The Defendant alleges the Plaintiff failed to perform in a diligent manner. The Plaintiff failed to initiate, conduct and complete a thorough investigation that should have included an onsite inspection of the property prior to filing a Summons and Complaint.

174. The Defendant alleges, if enough credible evidence has been presented to suggest the Plaintiff or the Plaintiff's personnel are suspected of participating in Bank Fraud or Mortgage Fraud or Securities Fraud or Insurance Fraud or covering up an alleged Predatory Lending Scheme in which falsified documents were used and are still being used or participating in an alleged illegal Predatory Lending Scheme in which falsified documents have been used, or abused the process by filing a Summons and Complaint, without first establishing the legitimacy of the Complaint because the Value of the Note and Mortgage are suspected of being fraudulent or has demonstrated criminal intent to defraud or swindle the Defendant out of \$75,000.00 slowly, methodically, systematically and without conscious, or if the appraisal is proven falsified, then the Note and Mortgage are nullified in their current form, , then, the Court should DISMISS this Summons and Complaints. Until the legitimacy of the Plaintiff's Complaint and actions

have been determined in a Court of Law, the Defendant alleges the Plaintiff has no enforceable rights under the laws of the State of South Carolina or the United States of America. This is in addition to being barred from seeking relief under Equitable Estoppel, Unclean Hands and the Statutes of Fraud. The Defendant alleges the Plaintiff should be permanently enjoined against seeking any relief from the Defendant; monetary or otherwise.

**TENTH AFFIRMATIVE DEFENSE**  
(Malicious Prosecution)

175. The Defendant alleges the Plaintiff had every intention to file this Summons and Complaint without adequate reason or substance, with the sole intention of seizing the property to sell at auction. The Defendant alleges this is Malicious Prosecution. Based on all the written correspondence to the Plaintiff, the Plaintiff knew the Defendant would not and will not knowingly participate in an alleged Predatory Lending Scheme based upon and supported by falsified or fraudulent documents. The Defendant alleges the Plaintiff failed to acknowledge fraud, refused to investigate fraud and refused to remedy the situation, thus forcing the Defendant to suspend payments until the Plaintiff investigated the Defendant's allegations of fraud {refer to Janet Frotscher's and the Plaintiff's letters marked as Exhibits 25, 38-41 & 45-48}. Fraud is neither mentioned nor acknowledged.

176. By filing a foreclosure notice, the Defendant alleges the Plaintiff has demonstrated the Plaintiff has no desire or inclination to remedy the alleged falsified appraisal and the alleged fraudulent Note and Mortgage. This refusal and action by the Plaintiff constitutes "Malicious Prosecution" because of the Plaintiff's actions, the Defendant is forced to comply or participate in an alleged illegal Predatory Lending Scheme in which falsified documents were used and are still be used to Inflate Value, Establish Value and/or Maintain Value, or lose the Defendant's home by foreclosure. Since all malicious activities are punitive, the defendant claims damages in the amount of whatever a Judge and/or Jury deems is appropriate and fair if malice intention is established.

177. The Defendant alleges, if enough credible evidence has been presented to suggest the Plaintiff or the Plaintiff's personnel are suspected of participating in Bank Fraud or Mortgage Fraud or Securities Fraud or Insurance Fraud or covering up an alleged Predatory Lending Scheme in which falsified documents were used and are still being used or participating in an alleged illegal Predatory Lending Scheme in which falsified documents have been used, or abused the process by filing a Summons and Complaint, without first establishing the legitimacy of the Complaint because the Value of the Note and Mortgage are suspected of being fraudulent or has demonstrated criminal intent to defraud or swindle the Defendant out of \$75,000.00 slowly, methodically, systematically and without conscious, or "Breach of Trust" or "Malicious Prosecution" or if the appraisal is proven falsified, then the Value of the Note and Mortgage are nullified in their current form, , then, the Court should DISMISS this Summons and Complaints. Until the legitimacy of the Plaintiff's Complaint and actions have been determined in a Court of Law, the Defendant alleges the Plaintiff has no enforceable rights under the laws of the State of South Carolina or the United States of America. This is in addition to being barred from seeking relief under Equitable Estoppel, Unclean Hands and the Statutes of Fraud. The Defendant alleges the Plaintiff should be permanently enjoined against seeking any relief from the Defendant; monetary or otherwise.

WHEREFORE; the Defendant has concluded the establishment of additional AFFIRMATIVE DEFENSES to defend against the Plaintiff's Summons and Complaint. The Defendant alleges as further evidence of the Plaintiff's desire to mislead the Court, the Defendant, the Plaintiff's customers, clients and investors by maintaining a suspected fraudulent Note and Mortgage and the Plaintiff's alleged involvement in an illegal lending scheme in which falsified documents were used and are still being used to Inflate Value, Establish Value and Maintain Value, the Defendant enters these COUNTERCLAIMS against the Plaintiff.

**COUNTERCLAIM I**  
(Violation of the Fair Credit Reporting Act)

178. The Defendant's allegations have already been stated herein. The Defendant refers the Court to Background III, Numbers 56-III to 60-III.

**COUNTERCLAIM II**  
(Unjust Enrichment)

179. The Defendant's allegations have already been stated herein. The Defendant refers the Court to Background IV, Numbers 61-IV to 68-IV.

**COUNTERCLAIM III**  
(Willful Intent to Participate in & Perpetuate Mortgage/Bank/Insurance/Securities Fraud or a Predatory Lending Scheme in Which Falsified Documents were Used)

180. The Defendant's allegations have already been stated herein. The Defendant refers the Court to Background V, Numbers 69-V to 80-V.

**COUNTERCLAIM IV**  
(Gross Negligence & Inherent Negligence)

181. The Defendant's allegations have already been stated herein. The Defendant refers the Court to Background VI, Numbers 81-VI to 85-VI. Under the "Equal Protection Clause" of the 14<sup>th</sup> Amendment to the Constitution and in order to avoid a miscarriage of justice, the Defendant alleges the Plaintiff did not verify repairs were completed at the property, did not verify improvements were made to the property, did not verify there was no deferred maintenance, failed to acknowledge and ignored the Defendant's allegations of falsification and fraud, and did not conduct an adequate investigation into the Defendant's allegations of falsification and fraud relative to the Defendant's Note and Mortgage.

The Defendant asserts an onsite inspection and/or investigation would have proven to the Plaintiff the Defendant's allegations and complaints concerning falsification and fraud were true and the Defendant would have resumed payments based on these findings. The Defendant alleges the Plaintiff did not do this. Therefore, the Defendant alleges, the Plaintiff must have information about the property the Plaintiff is concealing from the Defendant. Consequently, the Defendant asserts the Plaintiff must provide evidence or proof to the Court and the Defendant under the "Equal Protection Clause", that:

(A) The Plaintiff knew and verified repairs were completed at the property before rendering an underwriting decision.

(B) The Plaintiff knew and verified the improvements itemized on page 1 of 6 of the appraisal were actually completed before rendering an underwriting decision.

(C) The Plaintiff knew and verified there is no deferred maintenance at the property before rendering an underwriting decision.

(D) The Plaintiff worked with the Defendant in "Good Faith" to resolve the alleged claims of fraud concerning the Defendant's Note and Mortgage before filing a Summons and Complaint for foreclosure.

(E) The Plaintiff conducted and completed an onsite investigation and/or inspection of the property to address the Defendant's concerns and allegations about falsification and fraud that would have allowed the Defendant to resume payments.

(F) The Plaintiff can present the findings of the Plaintiff's investigation and/or inspection relative to the Defendant's allegations of falsification and fraud to the Court and to the Defendant and therefore the Defendant should have resumed payments.

182. The Defendant alleges:

(i) If the Plaintiff cannot provide the Defendant and the Court evidence the Plaintiff verified repairs were completed, [Stipulation and Requirement (A)], before rendering and underwriting decision; then, whatever loss the Plaintiff incurs is due to the Plaintiff's negligence and to the Plaintiff's detriment.

(ii) If the Plaintiff cannot provide the Defendant and the Court evidence or proof the Plaintiff verified the improvements itemized on page 1 of 6 were actually completed before rendering an underwriting decision, [Stipulation and Requirement (B)], then whatever loss the Plaintiff incurs is due to the Plaintiff's negligence and to the Plaintiff's detriment.

(iii) If the Plaintiff cannot provide the Defendant and the Court evidence or proof the Plaintiff verified there was no deferred maintenance at the property before rendering and underwriting decision, [Stipulation and Requirement (C)], then whatever loss the Plaintiff incurs is due to the Plaintiff's negligence and to the Plaintiff's detriment.

(iv) If the Plaintiff cannot provide the Defendant and the Court evidence or proof the Plaintiff worked with the Defendant in "Good Faith" to resolve the allegations of fraud concerning the Defendant's Note and Mortgage that would have allowed the Defendant to resume payments prior to filing a Summons and Complaint for foreclosure, [Stipulation and Requirement (D)], then whatever loss the Plaintiff incurs is due to the

Plaintiff's negligence and to the Plaintiff's detriment.

(v) If the Plaintiff cannot provide the Defendant and the Court evidence or proof the Plaintiff conducted an onsite investigation or inspection that would have addressed the Defendant's concerns about falsification and fraud that would have allowed the Defendant to resume payments prior to filing a Summons and Complaint for foreclosure, [Stipulation and Requirement (E)], then whatever loss the Plaintiff incurs is due to the Plaintiff's negligence and to the Plaintiff's detriment.

(vi) If the Plaintiff cannot present to the Defendant and the Court evidence or proof relative to the Plaintiff's findings from an onsite investigation or inspection that would have addressed the Defendant's concerns about falsification and fraud that would have allowed the Defendant to resume payments prior to filing a Summons and Complaint for foreclosure, [Stipulation and Requirement (F)], then whatever loss the Plaintiff incurs is due to the Plaintiff's negligence and to the Plaintiff's detriment.

183. Consequently, if the Plaintiff cannot prove or provide evidence, the Defendant alleges the Plaintiff cannot validate the Value of the Note and Mortgage because the appraisal is falsified. The Defendant alleges if the appraisal is proven falsified, then the Value of the Note and Mortgage are nullified in their current form, then, the Court should DISMISS this Summons and Complaints. Until the legitimacy of the Plaintiff's Complaint and actions have been determined in a Court of Law, the Defendant alleges the Plaintiff has no enforceable rights under the laws of the State of South Carolina or the United States of America. This is in addition to being barred from seeking relief under Equitable Estoppel, Unclean Hands and the Statutes of Fraud. The Defendant alleges the Plaintiff should be permanently enjoined against seeking any relief from the Defendant; monetary or otherwise.

### **COUNTERCLAIM V** (Failed to Exercise Due Diligence)

184. The Defendant's allegations have already been stated herein. The Defendant refers the Court to Background VIII, Numbers 89-VIII to 98-VIII. Under the "Equal Protection Clause" of the 14<sup>th</sup> Amendment to the Constitution and in order to avoid a miscarriage of justice, the Defendant alleges the Plaintiff did not verify the improvements on page 1 of 6 of the appraisal were actually completed.

185. The Defendant further alleges the Plaintiff must provide evidence or proof

the Plaintiff verified improvements were completed at the property. If the Plaintiff cannot provide the Defendant and the Court evidence the Plaintiff verified the improvements cited on page 1 of 6 of the appraisal were completed, then whatever loss the Plaintiff incurs is due to the Plaintiff's failure to exercise due diligence, reasonable care or competence in the performance of the Plaintiff's duties.

186. Consequently, if the Plaintiff cannot prove or provide evidence the improvements cited on page 1 of 6 were actually completed, the Defendant alleges the Plaintiff cannot validate the Value of the Note and Mortgage because the appraisal is falsified.

187. The Defendant alleges if the appraisal is proven falsified, then the Value of the Note and Mortgage are nullified in their current form, then, the Court should DISMISS this Summons and Complaints. Until the legitimacy of the Plaintiff's Complaint and actions have been determined in a Court of Law, the Defendant alleges the Plaintiff has no enforceable rights under the laws of the State of South Carolina or the United States of America. This is in addition to being barred from seeking relief under Equitable Estoppel, Unclean Hands and the Statutes of Fraud. The Defendant alleges the Plaintiff should be permanently enjoined against seeking any relief from the Defendant; monetary or otherwise.

**COUNTERCLAIM VI**  
(Concealment of a Material Fact & Cover Up)

188. On July 23, 2008 at approximately 9:23 a.m., the Defendant called the following number 1-866-480-5004 to inquire about the HOPENOW program. During the course of the conversation, the representative asked the Defendant for the Defendant's loan number. The number is 708-0174072777. The representative then asked the Defendant for the reason why her Mortgage was in default. The Defendant replied, "because of suspected Mortgage Fraud, Bank Fraud, Potential Insurance Fraud and the Defendant's loan was involved a an illegal Predatory Lending Scheme in which falsified documents were used to inflate the Mortgage Value, Establish the Mortgage Value and Maintain the Mortgage Value." The representative typed in Fraud and proceeded to

inform the Defendant, that the Defendant did not qualify for the HOPENOW program because the Defendant's mortgage is suspected of being Fraudulent. The representative continued by informing the Defendant that there is no information in her files stating the Mortgage was suspected of being Fraudulent and there is nothing in her files that there is a problem with the Defendant's Mortgage.

189. The representative continued on by telling the Defendant, the Defendant has a Fannie Mae loan and if the Defendant suspected fraud is involved in the Defendant's Mortgage, the Defendant should report this to Fannie Mae. The Defendant alleges for 6 months this was reported, but, personnel at the Plaintiff's office in Des Moines, Iowa concealed this information from Fannie Mae.

190. For 6 Months, personnel at the Plaintiff's office in Des Moines, Iowa have not reported the Defendant's Mortgage is suspected of being involved in a Predatory Lending Scheme in which falsified documents were used to Inflate Value, Establish Value and Maintain Value. These actions by the Plaintiff's personnel constitute concealment of a material fact and cover up of an alleged Predatory Lending Scheme. This is the alleged misconduct referred to in Numbers 144 and 146.

191. The Defendant alleges it is important for the Court to realize this letter concerning the HOPENOW program was mailed from the Plaintiff's office in Fort Mill, South Carolina, located at 3480 Stateview Blvd {refer to Exhibits 27 and 28}. This is the same office location that told the Defendant to report any allegations of fraud to the Plaintiff's Resolution Team in Des Moines. The Defendant alleges these allegations have been reported and ignored or being covered up because the Plaintiff and the Plaintiff personnel are treating this alleged illegal lending scheme as a customer dispute {refer to Janet Frotscher's and the Plaintiff's letters marked as Exhibits 25, 38-41 and 45-48}.

192. The Defendant alleges the truth concerning loan #0174072777 and similar loans are being concealed from bank regulators, investors, Fannie Mae, Congressional investigators, the general public, the media, the Securities Exchange Commission and the

Court. The Defendant alleges the irregularities within the Plaintiff's offices might be massive, deeper and more extensive than the public realizes. The Defendant asserts the Court should follow Iowa's recommendation and turn this matter over to the Attorney General's Office, the Justice Department or the FBI for a thorough investigation.

193. The Defendant's problems with the Plaintiff might be just the tip of the iceberg. Consequently, the Defendant needs additional Injunctive relief in order to contact Fannie Mae and inform Fannie Mae of the problems with loan #0174072777.

### **COUNTERCLAIM VII**

(Failed to Exercise a Fiduciary Responsibility as a Bank)

194. The Defendant's allegations have already been stated herein. The Defendant refers the Court to Background VII, Numbers 86-VII to 88-VII.

### **COUNTERCLAIM VIII**

(Unfair Lending & Banking Practice)

195. The Defendant's allegations have already been stated herein. The Defendant refers the Court to Background IX, Numbers 99-IX to 102-IX.

### **COUNTERCLAIM IX**

(Failed to Safeguard the Financial Interest of Customers, Clients & Investors by Accepting, Using, Defending or Basing Decisions Upon Falsified Documents After the Facts are Known)

196. The Defendant's allegations have already been stated herein. The Defendant refers the Court to Background V, Numbers 103-X to 108-X.

### **COUNTERCLAIM X**

(Infliction of Emotional Stress)

197. The Defendant asserts as long as this falsified appraisal exist as a part of my home purchase, I will have guilt by association because I will be knowingly perpetuating a fraud; especially if I continue payments. The Defendant asserts having fraudulent documents associated with the Defendant's home threatens the future sale price of the property home.

198. The Defendant asserts that if an original appraisal is ordered and items on the appraisal do not exist, the Defendant can be accused of attempting to defraud another.

199. The Defendant asserts the falsified appraisal has threatened the security of the Defendant's property because the property is in foreclosure because the Defendant will not perpetuate this fraud by continued payments and if the Defendant loses, the Plaintiff can have the Defendant evicted by force if the Defendant refuses to leave.

200. The Defendant asserts being associated with an illegal lending scheme compromises the Defendant's morals, personal and spiritual values. The falsified documents have strained and tainted the Defendant's relationship with the Plaintiff because the Plaintiff would be swindling the Defendant out of \$75,000 plus interest and without conscious.

201. The Defendant asserts that the Summons and Complaint and the foreclosure filing has forced the Defendant to spend time, money and family resources the Defendant did not want to spend for legal matters, thus reducing the Defendant's discretionary income and creating hardship for the Defendant's family.

202. The Defendant asserts this incident, foreclosure and the deliberate concealment of truth by the Plaintiff and the Plaintiff's personnel has eroded the Defendant's faith, trust and belief in America's banking system, financial institutions and government agencies.

203. The Defendant asserts the strain of these foreclosure proceedings has created mental anguish, anxiety and stress. It violates the Defendant's ethical principles by knowing the Defendant's loan was obtained by a falsified document and the Plaintiff refused to cooperate to remedy the situation.

204. The Defendant asserts this alleged falsified document has caused the

Defendant public embarrassment, it has contributed to derogatory information being filed on the Defendant's credit reports, thus jeopardizing the Defendant's worthiness to obtain future loans and/or credit.

205. The Defendant asserts this incident has contributed to an increase in the cost of credit for the Defendant. It violates the Defendant's privacy by forcing the Defendant into the public spotlight and members of the Defendant's family.

206. The Defendant asserts, the Defendant cannot even improve the Defendant's property, because doing so would perpetuate the fraud.

207. Since an individual's credit history can be used as a condition of employment or personal advancement, the Defendant alleges poor credit ratings could limit the Defendant's chances for personal advancement because of this association with fraud and deception.

208. It has caused the Defendant tremendous emotional pain, anxiety, frustration, despair and emotional stress.

WHEREFORE, if any of the Defendant's allegation(s) and/or Counterclaims are proven true, and Defenses proven adequate under precedent, the Defendant prays for judgment as follows:

209. Judgment in the Defendant's favor to DISMISS the Plaintiff's Summons and Complaint in their entirety and permanently enjoin the Plaintiff from any relief relative to the Defendant's property or other assets.

210. On the First Cause of Action (Ruling), a finding that the Plaintiff must provide proof or evidence to verify the appraisal is not falsified. To secure 14<sup>th</sup> Amendment rights under the "Equal Protection Clause"....

(A) A finding that the Plaintiff must provide proof or evidence the Plaintiff did not receive information from the seller or the broker relative to adjustments to the

\$75,000.00 sales price of 423 Bayne Street.

**(B)** A finding that the plaintiff must provide proof or evidence that the Plaintiff did not receive a second appraisal from the broker with a lower sales price.

**(C)** A finding that the Plaintiff must provide evidence or proof the Plaintiff initiated, conducted and completed an onsite investigation at 423 Bayne to determine whether the Defendant's allegations of fraud are true or false.

**(D)** A finding that the Plaintiff must provide proof or evidence that the Value of the Note and Mortgage are not fraudulent.

**(E)** A finding that the Plaintiff must provide evidence or proof or Cancel the Note and Mortgage, remove any derogatory information sent to Credit Reporting Agencies and refund the Defendant's any and all monies paid including restitution of all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense.

211. Because the Plaintiff concealed from the Court the Note and Mortgage are in dispute and have been in dispute for 6 months, On the Second Cause of Action (Concealment) a finding that the Plaintiff can no longer conceal the fraudulent nature of loan #0174072777 and must report allegation(s) of fraud to Fannie Mae, regulatory authorities, customers, clients and investors. Remove any derogatory information sent to Crediting Reporting Agencies. Any monetary Judgment or fine to the Defendant as the Court deems fair and proper based on the Plaintiff's ability to pay including restitution of all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record.

212. On the Third Cause of Action (Evidence) a finding that the Plaintiff must provide proof or evidence to verify the appraisal is not falsified and the Value of the Note

and Mortgage are not fraudulent. Failure to provide proof or evidence, constitutes a waiver, release and a refund of any and all monies paid, DISMISSAL of the Summons and Complaint and the Plaintiff is permanently enjoined from any future attempts to seize the Defendant's property and any other relief the Court deems as just, fair and proper including restitution of all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County can not record fraudulent Mortgages are Mortgages suspected of being fraudulent in the public record.

213. On the Fourth Cause of Action, judgment in favor of the Defendant for whatever monetary damages the Court deems as just, fair and proper including restitution of all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense.

214. On the Fifth Cause of Action a finding that the "Weight of the Evidence" provided by the Defendant to the Court is more than sufficient to suspend, cancel or permanently enjoin the Plaintiff from seeking any relief in the Court of Common Pleas and any other relief the Court deems as just, fair and proper including recovery of any all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record.

215. On the Sixth Cause of Action a finding for Injunctive Relief if needed and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense.

216. On the Seventh Cause of Action a finding for Substantive Relief if needed and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort"

defense.

217. On the First Affirmative Defense (Willful Intent to Perpetuate an Alleged Predatory Lending Scheme in which a falsified appraisal was used to Inflate, Establish and Maintain Value), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record.

218. On the Second Affirmative Defense (Unclean Hands), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record.

219. On the Third Affirmative Defense (Waiver), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense. A finding to strike or remove this

mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record.

220. On the Fourth Affirmative Defense (Negligence), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense.

221. On the Fifth Affirmative Defense (Release), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record.

222. On the Sixth Affirmative Defense (In Pari Delicto), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record.

223. On the Seventh Affirmative Defense (Estoppel), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record.

224. On the Eighth Affirmative Defense (Statutes of Fraud), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense.

224. On the Ninth Affirmative Defense (Breach of Trust), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense.

225. On the Tenth Affirmative Defense (Malicious Persecution), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense.

226. On Counterclaim I (Violation of Fair Credit Reporting Act), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense and removal of all derogatory information sent to CRAs that did not include the real reason why the Defendant suspended payments.

227. On Counterclaim II (Unjust Enrichment), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence; judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense and refund any and all monies paid on the Note and Mortgage.

228. On Counterclaim III (Willful Intent to Perpetuate a Predatory Lending Scheme), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence; judgment for the Defendant in an appropriate amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense and refund any and all monies paid on the Note and Mortgage. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record. A finding to turn this case over to the South Carolina Attorney General's Office as recommended by Iowa's Attorney General's Office {refer to Exhibits 34 & 64}.

229. On Counterclaim IV (Negligence), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the

Defendant and if precedence, judgment for the Defendant in an appropriate amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense and refund any and all monies paid on the Note and Mortgage. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record. A finding to turn this case over to the South Carolina Attorney General's Office as recommended by Iowa's Attorney General's Office {refer to Exhibits 34 & 64}.

230. On Counterclaim V (Failed to Exercise Due Diligence), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense and refund any and all monies paid on the Note and Mortgage. A finding to turn this case over to the South Carolina Attorney General's Office as recommended by Iowa's Attorney General's Office {refer to Exhibits 34 & 64}.

231. On Counterclaim VI (Concealment of a Material Fact & Cover up), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense and refund any and all monies paid on the Note and Mortgage. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot

record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record. A finding to turn this case over to the South Carolina Attorney General's Office as recommended by Iowa's Attorney General's Office {refer to Exhibits 34 & 64}.

232. On Counterclaim VII (Failed to Exercise A Fiduciary Responsibility As a Bank), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense and refund any and all monies paid on the Note and Mortgage. A finding to turn this case over to the South Carolina Attorney General's Office as recommended by Iowa's Attorney General's Office {refer to Exhibits 34 & 64}.

233. On Counterclaim VIII (Unfair Lending & Banking Practice), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense and refund any and all monies paid on the Note and Mortgage. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record. A finding to turn this case over to the South Carolina Attorney General's Office as recommended by Iowa's Attorney General's Office {refer to Exhibits 34 & 64}.

234. On Counterclaim IX (Failed to Safeguard the Financial Interest of Customers, Clients & Investors by Accepting, Using, Defending or Basing Decisions Upon Falsified Documents After the Facts are Known), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar

amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense and refund any and all monies paid on the Note and Mortgage. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record. A finding to turn this case over to the South Carolina Attorney General's Office as recommended by Iowa's Attorney General's Office {refer to Exhibits 34 & 64}.

235. On Counterclaim X (Infliction of Emotional Stress), a finding to DISMISS the Plaintiff's Complaint and permanently enjoin the Plaintiff from any future action against the Defendant and if precedence, judgment for the Defendant in an appropriate dollar amount based on the Plaintiff's ability to pay; and any other relief the Court deems as just, fair and proper including recovery of any and all cost incurred in the preparation and execution of the Defendant's "Best Effort" defense and refund any and all monies paid on the Note and Mortgage. A finding to strike or remove this mortgage from Mortgage Book 1914 at page 221 because Orangeburg County cannot record fraudulent Mortgages or Mortgages suspected of being fraudulent in the public record. A finding to turn this case over to the South Carolina Attorney General's Office as recommended by Iowa's Attorney General's Office {refer to Exhibits 34 & 64}.

236. Such other relief as the Court deems just and proper.

### **Addendum**

Exhibits not specifically referenced but essential to this case and to securing "Equal Protection" under the law for the Defendant:

A. Exhibit 26 – Orangeburg County Tax Assessor's Office. Additional evidence the appraisal with file number 7-59 is falsified. Proving no Central Air, No Fireplace and Only 2 working baths not 4 as of 08/13/2007. These conditions at 423 Bayne Street still exist as of this filing.

B. Exhibit 23 – Illustrates what the Plaintiff should have done to the Mortgage after the Plaintiff received documented evidence the appraisal with file number 7-59 was falsified and the Value Inflated, thus rendering the Value of the Mortgage Invalid.

C. Exhibit 24 – Illustrates what the Plaintiff should have done to the Fixed Rate Note after the Plaintiff received documented evidence the appraisal with file number 7-59 was falsified and the Value Inflated, thus rendering the Value of the Note Invalid.

\*\*\*\*\*

IN WITNESS WHEREOF, The undersigned has signed and sealed these attestations this 31 day of July in the year 2008 in City of Orangeburg, State of South Carolina.

Signed, sealed and delivered in the presence of:

Print Name: Dorothy Sistrunk

Signature: Dorothy Sistrunk

Notary Witness (1): Shirley C. Shirley (Signature)

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

On July-31, 2008 before me appeared Dorothy Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument presents this document. WITNESS my hand and official seal.

Notary Wendie Kay Land (Signature)

Commission Expires June 27 2012

(Seal)

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

Wells Fargo Bank, N.A., ) Civil Action No. 2008-CP-38-1024  
 )

Plaintiff, )  
 )

vs. )

**WELLS FARGO'S MOTION FOR  
PROTECTIVE ORDER**

Dorothy Sistrunk, )  
 )

Defendant. )  
 )

Pursuant to Rules 26 and 36 of the South Carolina Rules of Civil Procedure, Wells Fargo Bank, N.A. ("Wells Fargo") moves for a protective order limiting Defendant's Requests to Admit to twenty requests as called for under the Rules of Civil Procedure; allowing Wells Fargo to answer only the first twenty of Defendant's 1,153 Requests to Admit that have been served; and enjoining Defendant from serving additional Requests to Admit.

**BACKGROUND**

Defendant Dorothy Sistrunk appears pro se in this foreclosure proceeding. On or about December 21, 2007, Defendant executed a fixed-rate note and purchase-money mortgage, in the principal sum of \$75,000.00, to evidence and secure a home loan from Wells Fargo.

(Compl. ¶¶ 6-11.)

5/23/2014 ADJ

*misstatement of fact*

Prior to the loan, Defendant's broker, Golden Gate Mortgage, submitted to Wells Fargo an appraisal of Defendant's property. (EXHIBIT A, Golden Gate Mortgage, Inc.

Mortgage Broker Fee Agreement for Financial Services (WF00080-82) (dated Nov. 26, 2007);

Answer to Compl. ¶ 6, at 4.) After the loan closing, Defendant had a dispute with the seller of

the property concerning repairs to the home that she believes were promised to her by the

Wanda B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

5/23/2014 ADJ

**Exhibit 228**

seller. (Answer to Compl. ¶ 6, at 2-3; **EXHIBIT B**, Fax Memo from Defendant entitled "This is not an Accusation, Just a Question. Are We the Victims of Fraud, Attempt to Defraud, Misrepresentation of Facts, Failure to Exercise Fiduciary Responsibilities in a Money Purchase Transaction, Lies, Deceit, and Deception? You Decide" (Feb. 5, 2008.)).

Defendant then requested a copy of the appraisal of her property (from her closing attorneys, seller of the property, and her broker) (**EXHIBIT C**, Fax Memo from Defendant (Jan. 9, 2008.)) Approximately three weeks after the closing, Defendant received and reviewed the appraisal for first time on January 12, 2008. (Answer to Compl. ¶ 6, at 3.)

After receiving the appraisal, Defendant disputed its accuracy and informed Wells Fargo that she would not make payments to Wells Fargo until completion of repairs that she alleges were promised by the seller. (Answer to Compl. ¶ 6, at 2; **EXHIBIT D**, letter from Defendant to her broker Golden Gate Mortgage, entitled "I Will Not Perpetuate A Fraud by Continued Payments, Notice of Intent to Stop Payments & Risk Foreclosure") (stating "I am not paying Wells Fargo another dime until this house is repaired or dramatically reduced in price.") (dated March 6, 2008)). Since March 2008, she has been in default on the loan. (Compl. ¶ 11.)

On June 26, 2008, after unsuccessful attempts to convince Defendant to make her payments or work with Wells Fargo to work out the payments due under the loan contract, Wells Fargo began these foreclosure proceedings. Defendant has counterclaimed, alleging that the appraisal is fraudulent, which she claims invalidates the mortgage lien. (Answer to Compl. ¶ 4.) Based on this premise, Defendant has steadfastly refused to make any further payments.

**Exhibit 228**

Since this case was filed in June, in addition to the discovery-related documents discussed below, Defendant has filed:

- an Answer (16 pages, excluding exhibits);
- First Amendment to Answer to Complaint with Counterclaims (65 pages, excluding exhibits); and
- Demand for Trial by Jury (20 pages)
- Response to Wells Fargo's Reply to Answer to Complaint (40 pages)<sup>1</sup>
- Response to Wells Fargo's Reply to Defendant's First Amendment to Answer to Complaint with Counterclaims (87 pages).<sup>2</sup>

After receiving from the Court an extension of time to respond, Wells Fargo has answered the Answer and First Amendment to Answer.

### DEFENDANT'S DISCOVERY REQUESTS

Defendant has filed and served twelve sets of discovery documents:

- Request for Discovery (includes a "Request for Admission of Authenticity of Documents and Other Papers") (25 pages, excluding exhibits) (Aug. 19, 2008);
- First Amendment to Request for Discovery (19 pages) (Sept. 2, 2008);
- Second Amendment to Request for Discovery: A Request for Admissions (This document contains no requests for admissions.) (25 pages) (Sept. 30, 2008);
- First Request for Admissions Set Number One (Requests 1-111) (Oct. 1, 2008);
- Second Request for Admissions Set Number Two (Requests 112-232) (Oct. 6, 2008);
- Third Request for Admissions Set Number Three (Requests 233-355) (October 6, 2008);
- Fourth Request for Admissions Set Number Four (Requests 356-440) (Oct. 10, 2008);
- Fifth Request for Admissions Set Number Five (Requests 441-525) (Oct. 10, 2008);

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<sup>1</sup> This document is a response to Wells Fargo's reply to Defendant's counterclaims and, except for her reply to affirmative defenses, is not allowed under the rules of civil procedure. *See* S.C. R. Civ. P. 7(a), 8(c).

<sup>2</sup> As with the previous document, this is a response to Wells Fargo's reply to Defendant's counterclaims and, except for her response to affirmative defenses, is not allowed under the rules of civil procedure. *Id.*

**Exhibit 228**

- Sixth Request for Admissions Set Number Six (Requests 526-635 plus demand for affidavits for more than nine executives at Wells Fargo) (Oct. 14, 2008);
- Seventh Request for Admissions Set Number Seven (Requests 636-900) (Oct. 14, 2008);
- Eighth Request for Admissions Set Number Eight (Requests 901-1100) (Oct. 14, 2008);
- Ninth Request for Admissions Set Number Nine (Requests 1101-1151) (Oct. 14, 2008);
- Reply to Wells Fargo Bank, N.A.'s Responses to Request for Discovery (86 pages) (October 28, 2008).
- Reply to Wells Fargo Bank, N.A.'s Supplemental Responses to Request for Discovery (25 pages) (October 29, 2008).

### ARGUMENT

The grounds for this motion are as follows:

- Defendant has served 1,153 Requests for Admission, which exceeds the limit under Rule 36(c) by 1,133.
- The Requests improperly seek admission on legal issues—not facts—that are contested.
- The Request to admit the genuineness of documents does not identify the documents or furnish copies.
- The Requests demand “affidavits of verification” from at least nine people (Wells Fargo’s Chairman, Executive Vice-President(s), Controller, Chief Credit Officer(s), Senior EVP Home and Consumer Finance, General Counsel, Head of Underwriting, and members of an Executive Resolution Team).

Rule 36 states:

A party may serve on any other party more than one set of requests to admit, but the total number of all requests to one party **shall not exceed twenty requests, including subparts**, except by leave of court upon good cause shown. Request to admit the genuineness of documents or tangible things are not limited to any number of documents or things.

S.C. R. Civ. P. 36(c) (emphasis added).

**Exhibit 228**

Rule 36 allows requests for admission of the truth of matters “that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of documents described in the request unless they have been or are otherwise furnished or made available for inspection and copying.” *Id.* R. 36(a). The South Carolina Supreme Court has reiterated the “reasonable inquiry” standard of Rule 36 and noted that the purpose for requests to admit is to “obtain admissions as to facts about which there is no real dispute and the adverse party can admit or deny clearly and without qualification.” *Adams v. Orr*, 260 S.C. 92, 97, 194 S.E.2d 232, 233 (1973).

Rule 26(c) allows the Court to issue “any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense.” Included among the types of protective orders are those providing that “the discovery not be had” and that “certain matters not be inquired into or that the scope of the discovery be limited to certain matters.” S.C. R. Civ. P. Rule 26(c)(1), (4). When issuing such an order, the Court has “broad latitude in limiting the scope of discovery” upon good cause shown by a litigant. *Gattison v. S.C. State Univ.*, 318 S.C. 148, 150, 456 S.E.2d 414, 415 (Ct. App. 1995). “The rules of civil procedure allow the trial judge broad latitude in limiting the scope of discovery when the discovery process threatens to become abusive.” *Id.* (citing *Hamm v. S.C. Public Serv. Comm’n*, 312 S.C. 238, 439 S.E.2d 852 (1994)).

Contrary to the purpose of Rule 36 and the Court’s admonition, Defendant’s requests do not pertain to perfunctory issues or obviate the parties of any cost or labor. Instead, many of Defendant’s Requests seek admissions on highly contested legal positions.

### Requests to Admit Facts

Defendant has served 1,153 Requests for Admission, and many include subparts. Of those, only one requests Wells Fargo to admit the genuineness of documents.

The Requests themselves are objectionable because the majority request Wells Fargo to admit legal wrong-doing on its on part or on the part of others, and therefore, they do not relate to statements of fact, opinions of fact, or the application of law to fact, as required under Rule 36(a).

For example:

- Admit [Wells Fargo's Executive Resolution Team] mishandled this entire matter. (First Request for Admissions, Set Number One, No. 64.)
- (A) Admit [Wells Fargo's Executive Resolution Team] was "negligent," failed to exercise "due Diligence" in the performance of duties and made "Judgment Errors" concerning loan #0174072777. . . . (*Id.* at No. 97.)
- Admit loan #0174072777 is a mess that needs to be cleaned up and can be cleaned up if there is an intelligent meeting of the minds. (*Id.* at No. 98.)

Further, they do not meet the purpose of "obtain[ing] admissions as to facts about which there is no real dispute and the adverse party can admit or deny clearly and without qualification." *Gattison*, 318 S.C. at 150, 456 S.E.2d at 415. The sheer numbers of Requests, however, support the entry of a protective order because they so clearly violate the rules and subject Wells Fargo to unjustified burden and expense.

### Requests to Admit the Genuineness of Documents

Two requests ask for admission of the authenticity of documents (Request for Discovery, No. 21; Reply to Wells Fargo Bank N.A.'s Responses to Request for Discovery, No. 21, at 81):

**Exhibit 228**

Pursuant Section 19-1-60 of the South Carolina Code of Laws (Request for admission of authenticity of documents and other papers). The Defendant hereby serves notice that this signed and notarized REQUEST FOR DISCOVERY shall be considered as the Defendant's written request for the admission of papers that are material and essential to the action pending. The Defendant has additional evidence that will be presented before the trial to the Plaintiff's attorneys. Since the cost in time and money to the Defendant is considerable, based on current financial needs and obligations, these documents will only be reproduced, printed and presented to the Plaintiff's attorneys if; or, when needed. Section 19-1-60 clearly states:

"Either party to a civil action may exhibit to the other or to his attorney at any time before the trial any paper material to the action and request an admission of its genuineness in writing. If the adverse party or his attorney fail to give the admission within four days after the request, and if the party exhibiting the paper be afterwards put to expense in order to prove its genuineness and the same be finally proved or admitted on the trial, such expense shall be paid by the party refusing the admission, unless it appear to the satisfaction of the court that there was good reason for the refusal."

That request neither specifically identifies any documents nor provides copies of documents, so that Request is improper, as well.

### **Demand for "Affidavits of Verification"**

Defendant's Sixth and Ninth Sets of Requests for Admission include demands for affidavits from Wells Fargo officers and employees to verify that they have read certain documents that Defendant has identified:

### **REQUIRED AFFIDAVITS OF VERIFICATION**

**Who must sign a Notarized Affidavit verifying he/she/they have received and read the preceding Court documents on page 3 of this filing? Your...**

- Chairman**
- President**
- Executive Vice President(s)**
- Controller**
- Chief Credit Officer(s)**
- Senior EVP Home and Consumer Finance**
- General Counsel or Head of your Legal Department**
- Head of your Underwriting Department**
- Members of Janet Frotscher's Executive Resolution Team**

**Exhibit 228**

### **Instructions for Completing Affidavits**

**(A) An affidavit can be done for each document or letter singularly, grouped by subject matter, or a single affidavit can be signed to indicate you have read all the required documents and letters.**

**(B) Your review can take place in front of a notary or with a witness of your choosing.**

Wells Fargo has no obligation under the Rules to comply with this demand and, therefore, objects to the demand for affidavits and requests a protective order on those requests.

### **CONCLUSION**

To prevent further burden and expense, Wells Fargo respectfully requests a protective order that limits Defendant's Requests for Admission to twenty in number, allows Wells Fargo to answer only the first twenty Requests to Admit that have been served, and enjoins Defendant from serving additional Requests to Admit.

Pursuant to Rule 11(a), counsel certify that they have not communicated with defendant prior to filing this motion, as she is a pro se litigant.

**[SIGNATURE PAGE ATTACHED]**

**Exhibit 228**

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Attorneys for Wells Fargo Bank, N.A.

Columbia, South Carolina

October 31, 2008

**Exhibit 228**

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Wells Fargo Bank, N. A.  
Plaintiff,

v.

Dorothy Sistrunk;  
Defendant(s).

(011784-06909)

IN THE COURT OF COMMON PLEAS

DOCKET NO

**2008-CP-38-1024**

**RESPONSE TO WELLS FARGO'S  
MOTION FOR PROTECTIVE ORDER**

Comes now the Defendant Dorothy Sistrunk to respond to WELLS FARGO'S MOTION FOR PROTECTIVE ORDER

**RESPONSE** (No heading, topic, motion or pleading listed)

**Response to unnumbered ¶ 1** – The Defendant objects to Wells Fargo Bank, N. A. (“Wells Fargo”) MOTION FOR PROTECTIVE ORDER because it is not needed and serves no useful purpose. The Defendant does not object to limiting the Defendant’s Request to Admit to twenty requests as called for under the Rules of Civil Procedure; allowing Wells Fargo to answer only the first twenty of the Defendant’s 1,153 Requests to Admit that have been served; however the Defendant rejects and objects to enjoining the Defendant from serving additional Request to Admit, for the following reasons, facts and points of law.

A) Wells Fargo’s MOTION FOR PROTECTIVE ORDER violates Rule 36(c) SCRPC that clearly states: *“A party may serve on any other party more than one set of requests to admit, but the total number of all requests to one party shall not exceed twenty requests, including subparts, except by leave of court upon good cause shown. Requests to admit the genuineness of documents or tangible things are not limited to any number of documents or things.”*

**B) Wells Fargo's MOTION FOR PROTECTIVE ORDER** is not needed because Wells Fargo mischaracterized and misstated facts which serves as additional credible evidence of Wells Fargo's tendency to misstate, mischaracterize and/or ignore and/or reject truth, actuality, reality and fact: The Defendant has served 9 (nine) separate Request for Admissions, not 2 (two) and each "Set" is clearly identified and "Numbered" as a separate "Set" which complies with, is in accordance with and pursuant to Rule 36 (c) *"A party may serve on any other party more than one set of requests to admit,"*

**C) Wells Fargo's MOTION FOR PROTECTIVE ORDER** violates Rule 36(c) SCRCF. Wells Fargo is only required to answer 20 request under the Rule. Under Rule 36(c), *"a party can submit more than one "Set" of requests."* The Defendant gave Wells Fargo 9 (Nine) Sets by and under the Rule. Wells Fargo was free to apply the Rule and answer any set of twenty request Wells Fargo chose, selected and/or elected to respond to. The Defendant gave Wells Fargo multiple choices not only in each individual Set of Request for Admissions, Wells Fargo's 20 required responses included the total number of 9 Sets 1 through 9 which does not violate the Rule.

**D) Wells Fargo's MOTION FOR PROTECTIVE ORDER** violates Rule 36(c) SCRCF because it would limit the Defendant's legal right under Rule 36(c) to requests to admit the genuineness of documents or tangible things that are not limited to any number of documents or things.

**E) Wells Fargo's MOTION FOR PROTECTIVE ORDER** is not only a clear violation of Rule 36(c), it is also not needed. Wells Fargo panicked and simply misconstrued the Defendant's intentions. Wells Fargo erred in its assumptions; which is consistent with Wells Fargo's newly found tendency to rely on "Mysticism" rather than reality, actuality or fact and ignore and/or reject truth, reality, actuality and fact.

**F) Wells Fargo's MOTION FOR PROTECTIVE ORDER** is not only a clear violation of Rule 36(c) is also not needed. All Wells Fargo had to do was ask the

Defendant about the unusually large number of requests and Wells Fargo failed to inquire which serves as additional credible evidence of Wells Fargo's consistent pattern of failures and Wells Fargo's negligence, inherent negligence and failure to exercise due diligence in the performance of duties. If Wells Fargo had inquired, Wells Fargo would have discovered and would have known the Request for Admissions was multiple choice. Chose, select and/or elect any 20 Wells Fargo desired to answer or respond to and Wells Fargo was and still is free to apply the Rule as to which 20 Wells Fargo admits or denies and state the reason(s) for denial. The Defendant has no knowledge as to why Wells Fargo did not inquire and ask or request clarification.

**G) Wells Fargo's MOTION FOR PROTECTIVE ORDER is not only a clear violation of Rule 36(c), it is also not needed. The Defendant's Request for Admissions were filed prior to receiving WELLS FARGO'S REPLY TO ANSWER TO COMPLAINT and WELLS FARGO'S REPLY TO DEFENDANT'S FIRST AMENDMENT TO ANSWER TO COMPLAINT WITH COUNTERCLAIMS and WELLS FARGO BANK N. A.'S RESPONSES TO REQUEST FOR DISCOVERY. The Defendant filed the 9 (nine) "Sets" of Requests for Admissions because Wells Fargo and Wells Fargo's legal counselor(s) had failed to answer or respond to any of the issues raised or respond to any of the Defendant's allegations concerning the illegalities surrounding the Defendant's loan and the "Fraud" associated with the Defendant's Note and Mortgage. Because Wells Fargo had failed to respond, the Defendant filed the 9 "Sets" for Request For Admissions.**

**H) Wells Fargo's MOTION FOR PROTECTIVE ORDER is not only a clear violation of Rule 36(c), it is also not needed. for these additional reasons:**

**(1) Wells Fargo has already admitted it does not have a copy of the Seller's "Building Permit" which would have allowed the Seller to legally initiate and perform major repairs and improvements at 423 Bayne Street. Without the "Building Permit", the Seller was engaged in a "Fraudulent" home improvement scheme.**

**(2) Wells Fargo has already admitted nowhere in the language of the Complaint did Wells Fargo or its Agents of Process reveal to the Court the**

**disputed nature of the “Value” of the Note and Mortgage or that the “Value” of the Note and Mortgage are suspected of being “Fraudulent”**

**(3) Wells Fargo has already admitted the Defendant has notified appropriate authorities and regulatory agencies concerning Wells Fargo’s failure to acknowledge suspected “Mortgage Fraud”, the falsified nature of appraisal #7-59 and the suspected “Fraudulent” and inflated “Value” of the Note and Mortgage.**

**(4) Wells Fargo has already admitted Wells Fargo has not notified appropriate authorities concerning suspected “Mortgage Fraud” thus verifying the Defendant’s assertion Wells Fargo has violated a federal regulation requiring suspected “Mortgage Fraud” be reported.**

**(5) Wells Fargo has already admitted Wells Fargo would not allow the Defendant to cancel the loan on January 14, 2008 and by that date the loan could not be canceled.**

**(6) Wells Fargo has already admitted the Defendant called Wells Fargo and sent Wells Fargo’s personnel correspondence by fax concerning the illegalities of the loan, Note and Mortgage on January 14, 2008 to Wells Fargo’s Office in Des Moines, Iowa and notified Wells Fargo’s personnel that the appraisal used to obtain the Defendant’s loan (#0174072777) is falsified.**

**(7) Wells Fargo has already admitted the Defendant sent additional written notification to Wells Fargo on February 5, 2008 and the evidence of falsification was sent on February 7, 2008 {refer to Wells Fargo’s Exhibit B, the same as the Defendant’s Exhibit 4 and refer to Exhibits 8-14}.**

**(8) Wells Fargo has already admitted Janet Frotscher’s Executive Resolution Team received documented evidence the appraisal #7-59 is falsified on February 7, 2008. {Refer to Exhibit 45}.**

**(9) Wells Fargo has already admitted the Defendant sent written correspondence on February 5, 2008 concerning the conduct of the Seller, the falsified appraisal #7-59 and was given a brief history of the events that led to its discovery {Refer Wells Fargo’s Exhibit D, the same as the Defendant’s Exhibit 4}.**

**(10) Wells Fargo admitted the Defendant maintained continuous written contact with Wells Fargo since February 5, 2008.**

**(11) Wells Fargo admits prior to June 26, 2008, Janet Frotscher’s Executive Resolution Team acknowledged receiving the Defendant’s correspondence concerning problems with the loan and appraisal.**

**(12) Wells Fargo admits Janet Frotscher's Executive Resolution Team did not authorize an onsite inspection to verify appraisal #7-59 is not falsified.**

(13) Wells Fargo has admitted Wells Fargo received copies of Exhibits 8-14 and a detailed explanation

**(14) Wells Fargo admits to the extent the Defendant alleges that she signed a Note and Mortgage, Wells Fargo admits that allegation that the Defendant signed a "Fraudulent" Note and Mortgage Security Instrument for \$75,000.**

(15) Wells Fargo admits hiring Rogers Townsend & Thomas, PC to foreclose rather than resolve all outstanding issues concerning the Defendant's Note and Mortgage.

(16) Wells Fargo has already admitted Wells Fargo did not accept the remedies the Defendant offered to legitimize the Defendant's Note and Mortgage and the falsified document upon which they are based appraisal #7-59.

**(17) Wells Fargo has already admitted Janet Frotscher's Executive Resolution Team members received and reviewed information concerning suspected "Mortgage Fraud" or "Banking Fraud" or a "Predatory Lending Scheme" in which the falsified appraisal #7-59 was used.**

(18) Wells Fargo has already admitted writing the Defendant on or about February 21, 2008 acknowledging receiving the Defendants letter dated February 5, 2008 and February 7, 2008.

**(19) Wells Fargo has already admitted Jim H. Austin III did the appraisal report #7-59 and Wells Fargo craves reference to the appraisal report #7-59 that is verifiably falsified and has verifiably inflated "Value".**

(20) Wells Fargo has already admitted State Farm canceled the homeowner's insurance for insufficient underwriting.

**(21) Wells Fargo has already admitted Janet Frotscher signed the letter dated June 2, 2008 falsely accusing the Defendant of meeting the Appraiser – Jim H Austin III on September 14, 2007, when the Defendant has never met or seen the Appraiser.**

(22) Wells Fargo has already admitted Golden Gate Mortgage/David Terrell sent the falsified appraisal (7-59) to Wells Fargo and the broker ordered the appraisal.

(23) Wells Fargo has already admitted Wells Fargo did not receive

signed loan documents from Debra C. Galloway (the closing attorney) at Player Law Firm that showed adjustments to the \$75,000.00 sales price.

(24) Wells Fargo admits to the allegation Wells Fargo did not provide any evidence in its complaint concerning fraud.

**(25) Wells Fargo has already admitted Wells Fargo did not provide the Court and the Defendant any evidence with its Complaint or supporting documents and/or exhibits that appraisal #7-59 is not falsified and the Value of the Note and Mortgage are not "Fraudulent".**

(26) Wells Fargo admitted Wells Fargo failed to disclose to the Court, the Defendant did not stop payments, but suspended payments until after the Plaintiff initiated, conducted and completed an onsite inspection and investigation into the Defendant's allegations of fraud and falsification concerning the Defendant's loan.

**(27) Wells Fargo has already acknowledge the Court may review, GOFF vs. AMERICAN SAVINGS ASSOCIATION, 1 Kan. App. 2d at 82, 561 P. 2d. At page 903, where the Court held, "A recipient of a fraudulent misrepresentation is justified in relying upon its truth without investigation, unless he knows or has reason to know of facts which make his reliance unreasonable."**

**(28) Wells Fargo has already admitted the Defendant encouraged Wells Fargo to order a "Home Inspection Report", contact local government agencies and come to the property with the falsified appraisal to establish factually Wells Fargo is involved in a Predatory Lending Scheme in which falsified documents were used and are still being used.**

(29) Wells Fargo admits the Defendant has written hundreds of pages of letters to Wells Fargo, SCDCA, OCC and the Better Business Bureau about the falsified appraisal and the fraudulent Value of the Note and Mortgage.

**(30) Wells Fargo admits to the extent the Defendant alleges she signed a Note and Mortgage, Wells Fargo admits that allegation that the Defendant's signature on a Note and Mortgage obligates her to it as long as the Note and Mortgage are not "Fraudulent" and have not been obtained with deceit and/or deception and/or misrepresentation of facts, misstatements, omissions or obtained with falsified documents or documentation or obtained by using fraudulent means, methods or tactics.**

**(31) Wells Fargo admits knowing since March of 2008, that the Defendant suspended payments until Wells Fargo thoroughly investigated the Defendant's allegations of suspected "Fraud".**

**(32) Wells Fargo admits it did not perform an onsite inspection and/or investigation that would have proven falsification and fraud and the Defendant was and still is telling Wells Fargo the truth.**

(33) Wells Fargo has admitted the Defendant did not receive the falsified appraisal with the file number 7-59 until after the closing.

**(34) Wells Fargo has admitted prior to July 1, 2008, the Defendant did everything possible to resolve this matter without court proceedings or experiencing the financial hardship, personal embarrassment and pressure of foreclosure and contacted many parties regarding the subject loan.**

(35) Wells Fargo admits Wells Fargo has no evidence the "Satisfaction Completion Certificate" is not an absolute lie.

(36) Wells Fargo admits Wells Fargo has no evidence contractors actually improved 423 Bayne and the appraisal is not falsified.

(37) Wells Fargo admits it has no documents to verify contractors were actively involved in improving the property and improvements were actually completed at 423 Bayne Street.

(38) Wells Fargo admits it has no documentation of any kind to establish as fact or evidence 423 Bayne Street has a central air conditioning unit as itemized on the appraisal.

(39) Wells Fargo admits it has no evidence contractors built a deck or ordered building material and/or supplies to build a deck at 423 Bayne Street.

(40) Wells Fargo admits it has no evidence contractors built a patio or ordered building material and/or supplies to build a patio at 423 Bayne Street.

(41) Wells Fargo admits it has no evidence contractors built a scuttle or ordered building material and supplies to build a scuttle at 423 Bayne Street.

(42) Wells Fargo admits it has no evidence 423 Bayne Street was not infested with pest on September 14, 2007 or October 9, 2007 or has termite damage.

(43) Wells Fargo admits it did not even understand the meaning of [deferred maintenance] that is stated on the falsified and inflated appraisal #7-59.

(44) Wells Fargo admits Wells Fargo did not verify any information from the Seller and the Appraiser sent to Wells Fargo from the Broker.

(45) Wells Fargo admits the only appraisal Wells Fargo used to approve loan #0174072777 is the verifiably falsified appraisal #7-59 WF00001 – WF00026.

(46) Wells Fargo admits Wells Fargo did not reappraise 423 Bayne Street to determine its verifiable and documented Value.

I) Wells Fargo's MOTION FOR PROTECTIVE ORDER is not only a clear violation of Rule 36(c), not needed, it is also a waste of time. If Wells Fargo had taken the time to examine the nature of the 1,153 questions instead of complaining about them, Wells Fargo would have notice the vast majority relate to acts and actions the Seller, Broker, Appraiser and Wells Fargo did not do, should have done and still have not done.

J) Wells Fargo's MOTION FOR PROTECTIVE ORDER is not only a clear violation of Rule 36(c), not needed, a waste of time, it is unnecessary. Wells Fargo has already admitted to the central elements in the Defendant's case and no further or additional Request for Admissions will be made because they are not needed. If Wells Fargo had contacted the Defendant as a Pro Se Litigant, Wells Fargo would have discovered this fact.

### **RESPONSE TO BACKGROUND**

**Response to ¶ 1.** Wells Fargo's statement is rejected. Wells Fargo has already admitted to the extent the Defendant alleges that she signed a Note and Mortgage, Wells Fargo admits that allegation that the Defendant signed a "Fraudulent" Note and Mortgage Security Instrument for \$75,000. Wells Fargo admits to the extent the Defendant alleges she signed a Note and Mortgage, Wells Fargo admits that allegation that the Defendant's signature on a Note and Mortgage obligates her to it as long as the Note and Mortgage are not "Fraudulent" and have not been obtained with deceit and/or deception and/or misrepresentation of facts, misstatements, omissions or obtained with falsified documents or documentation or obtained by using fraudulent means, methods or tactics.

**Response to ¶ 2, sentence 1** – (A) Wells Fargo's statement is rejected and

the Defendant issues this **FINAL WARNING!!** Any further use of the phrase and/or terminology, "her broker", "Defendant's broker", "your broker" and/or any relationship that the Defendant does not affirm and/or admit relative to or concerning "the broker" in existing and future court documents, letters and/or correspondence, legal or otherwise, shall be treated and considered as defamation of character and/or slander.

**(B)** The Defendant reserves the right to use any such filed Court document(s), any such letter(s) in which such term(s), word(s), phrase(s) and/or terminology(ies) that were sent by any Wells Fargo authorized agent(s), officer(s), staff, personnel and/or its legal counselor(s) to any government and/or regulatory agency and/or to any media outlet, printed and/or otherwise disseminated by Wells Fargo, its subsidiaries and/or any authorized agent(s), officer(s), staff, personnel and/or its legal counselor(s) shall be construed as evidence and proof of defamation of character, malicious maligning, impugning and/or slander. **The reason:**

**(1)** Wells Fargo has yet to prove the Seller - Thomas Jacobs had a "Loan Originator's License" between October 12, 2007 and December 21, 2007.

**(2)** Wells Fargo has yet to prove Golden Gate Mortgage met the requirements to be considered the legitimate broker of loan #0174072777.

**(3)** Wells Fargo has failed to prove loan #0174072777 and its ensuing "Fraudulently Induced" note and mortgage are not an illegally brokered loan that violates South Carolina Law and did not come into existence due to "Fraud". The Defendant does not condone, approve or otherwise consent to Wells Fargo's liberties with the defendant's character. **PROVE IT OR DO NOT USE IT.** "Fraud" can and often does produce very official looking and signed documents. **THEREFORE, WELLS FARGO MUST PROVE THE SELLER HAD A "LOAN ORIGINATOR'S LICENSE".**

**Response to ¶ 2 - sentence 2** - Wells Fargo's Exhibit A WF00080-82 is evidence and proof of an illegally brokered loan that the Defendant will testify to "Under Oath". As the Defendant has been stating from the very beginning, Golden Gate is not the Defendant's Broker. According to the Seller, Golden Gate is a business associate and the unlicensed Seller gave the Defendant the broker agreement and was led to believe Golden Gate Mortgage was not only a business associate but also a Lender. *{Refer to*

*WF00001 – WF00003, WF00010 – WF00016 & WF00023 – WF00027*}.

**Response to ¶ 2 - sentence 3** - The Defendant rejects Wells Fargo's rendition. After January 12, 2008, the repairs and improvements are not statements of belief, but statements of fact. Repairs and improvements are itemized on *WF00003 & WF00016 and WF00009 & WF00022*. These non-existent improvements are some of the reasons why appraisal #7-59 is verifiably falsified and has an illegally inflated "Value".

**Response to ¶ 2 – sentence 4** - The Defendant affirms Wells Fargo's Exhibit B. Wells Fargo has already admitted the Defendant sent written correspondence to Janet Frotscher's Executive Resolution Team on February 5, 2008 concerning the conduct of the Seller, the falsified appraisal #7-59 and was given a brief history of the events that led to its discovery *{Refer to Wells Fargo's Exhibit B, the same as the Defendant's Exhibit 4 and 8-14, 26, WF00014-WF00027}*.

**Response to ¶ 3** - The Defendant affirms Wells Fargo's rendition is factually accurate

**Response to ¶ 4** – Wells Fargo's rendition has enough truth not to be rejected as an outright lie. The facts are the Defendant told Wells Fargo "I Will Not Perpetuate A Fraud By Continued Payments" *{Refer to Exhibit 52 - letter heading, refer to page 2, paragraphs 1, 2 and paragraph 7, page 3, paragraphs 1 and 4 and page 4 paragraphs 1 – 4}* The Judge and the Jury can read and realize Wells Fargo has mischaracterized the facts and the statements of the Defendant.

**Response to ¶ 5** – The Defendant rejects and objects to Wells Fargo's rendition of events. Up to June 26, 2008, Wells Fargo never tried to work out anything, demanded payment on a "Fraudulently Induced" loan, Note and Mortgage and proceeded with foreclosure. *{Refer to Exhibits 38-41 & 45-50}* Wells Fargo has already admitted Wells Fargo did not accept the remedies the Defendant offered to legitimize the

Defendant's loan, Note and Mortgage and the falsified documents upon which they are based, appraisal #7-59 and others.

**Response to ¶ 6** – The Defendant affirms paragraph 6 including subparts without objection.

### **DEFENDANT'S DISCOVERY REQUEST**

**Response to ¶ 1** – The Defendant affirms paragraph 1, including subparts. Paragraph 1 and subparts 1-14 are pursuant to the Rules. The Defendant refers Wells Fargo to the Rules. The Defendant has already explained Wells Fargo was and still is free to apply the Rules, rather than complain.

**Response to Foot Note 1** – The Defendant rejects Wells Fargo's contention that the Defendant's responses are not within Rule 7(a). Rule 7(a) limits the number of pleadings not replies, amendments and/or responses. The Defendant has not made any additional pleadings except pursuant to the Rules. The Defendant has responded and stated averments in accordance with and pursuant to Rule 8(b).

### **COUNTER ARGUMENT**

The Defendant has served 1,153 Requests for Admissions in 9 separate "Sets". The Defendant gave Wells Fargo multiple choices to answer. Wells Fargo's failure to consult (there is no obligation to consult) led to Wells Fargo's erroneous assumptions. The Defendant's REQUEST FOR DISCOVERY, FIRST AMENDMENT TO REQUEST FOR DISCOVERY and SECOND AMENDMENT TO REQUEST FOR DISCOVERY A REQUEST FOR ADMISSIONS are not Requests for Admissions as defined by the Rule. Wells Fargo has misstated and mischaracterized facts. These request simply state the reasons why the Defendant was filing the Request for Discovery and the Request for Admissions.

The requests asks for any documentation Wells Fargo has to substantiate

its claim that the loan was not illegally brokered and the Note and Mortgage are not based on "Fraudulent Inducements". These request for admissions do not seek admission on legal issues, but rather request Wells Fargo respond to obvious actuality. Either you have an invoice or you don't. If you do not have it. Admit it and move on. Either this was done or not done. The Defendant has already explained why the documents that will be presented for authentication will only be presented when or if needed due to their cost.

The demand for affidavits is to verify Court documents and exhibits have been seen and read to avoid the excuses; "I have not seen". "Did not know." and "Have not read". Wells Fargo does not have to honor the request and the Defendant will not seek a Court Order to demand compliance. Wells Fargo's failure to comply will provide additional credible evidence of Wells Fargo's consistent pattern of failures. Wells Fargo has consistently failed to cooperate with the Defendant on common sense issues. Wells Fargo's failure to comply will lend additional credible evidence of Wells Fargo's newly found tendency to rely on "Mysticism" rather than reality, actuality and facts.

As the Defendant has stated Wells Fargo's failure to consult because there is no legal obligation, led to Wells Fargo's erroneous assumptions. Wells Fargo is free to apply the Rule rather than complain.

Wells Fargo is complaining about the legal workload emanating from bringing a "Fraudulently Induced" Note and Mortgage into the Court of Common Pleas. Since most foreclosures are on legitimate mortgages, Wells Fargo was not prepared for the Defendant's responses and replies. Consequently, Wells Fargo's legal counsel is trying to find any Rule of Civil Procedure or Ruling to stem the tide. Since Wells Fargo has consistently denied "Fraud", Wells Fargo entered the Court only to confront the "Fraud" Wells Fargo has consistently, precipitously, insidiously and persistently denied.

Wells Fargo fully expected the Defendant to acquiesce and the foreclosure should have been over by now. Wells Fargo's legal counselor(s) were also not prepared for the level and extent of the Defendant's ability to respond, thus, creating an unexpected workload that lawyers rarely see or experience in a foreclosure.

This foreclosure proceeding is a rarity and may never and should never happen again. It is a precedent setting case for a number of reasons, but the most important is: *"This is one of the few times in modern history that a National Bank entered a Courtroom to foreclose on a property with documents that are verifiably falsified, came into existence due to "Fraud", the "Fraud" is clear, convincing, preponderate and beyond a reasonable doubt and choose to ignore reality and facts and the Bank and its legal counselor(s) insist on conducting its foreclosure as business as usual."*

The Defendant affirms ¶¶ 1 through 4 without objection, since the "Case Law" referenced does not apply to "Fraud", but rather to, Nelson Mullins Riley & Scarborough's attempt to stifle and limit the Defendant's ability to respond to lower their own workload by a "Protective Order" that will restrict the Defendant's ability to respond and defend herself from Wells Fargo's negligence, inherent negligence, failure to exercise due diligence, "Fraud" and newly found "Mysticism".

#### **RESPONSE TO REQUEST TO ADMIT FACTS**

**Response to ¶ 1 – Sentence 1** – Wells Fargo's legal counselor(s) are not the Judge and Jury and Wells Fargo's complaint has been duly noted by referring Wells Fargo back to the Rules.

**Response to ¶ 1 – Sentence 2** – Wells Fargo's remaining complaints have already been addressed, set forth and stated herein.

#### **RESPONSE TO REQUEST TO ADMIT THE GENUINENESS OF DOCUMENTS**

**Response to ¶ 1** – Wells Fargo's complaint relative to the genuineness of

documents has already been addressed, set forth and stated herein.

### **RESPONSE TO DEMAND FOR AFFIDAVITS OF VERIFICATION**

**Response to ¶ 1** -- Wells Fargo's complaint relative to affidavits for verification has already been addressed, set forth and stated herein.

### **RESPONSE TO INSTRUCTIONS FOR COMPLETING AFFIDAVIT**

**Response to ¶ 1** – The Defendant did not expect Wells Fargo to comply with the Defendant's request for affidavits and will not file a Motion for a Court Order to demand compliance.

### **RESPONSE TO CONCLUSION**

**Response to ¶ 1** – The Defendant has already addressed Wells Fargo's Protective Order and why it is not necessary, not needed, a waste of time and serves no useful purpose. Reasons have already been set forth and stated herein.

WHEREFORE; the Defendant concludes responding to WELL FARGO'S MOTION FOR PROTECTIVE ORDER and enters the following Prayer for Relief that is to be incorporated with all the Defendant's prayers for relief that have been filed in the Court of Common Pleas.

### **PRAYER FOR RELIEF**

1. Ruling in the Defendant's favor to annul, invalidate, void, set aside or cancel the Note and Mortgage that was induced and came into existence due to "Fraud", just and fair compensation for the Defendant's hours of legal research, preparation, writing and submitting answers to Wells Fargo's Summons and Complaint at the rate of \$50.00 (Fifty Dollars) per hour per page and refund of any money(ies) paid to Wells Fargo under the "Fraudulent" Note and Mortgage.
2. Permanently bar Wells Fargo from any relief it seeks from the Defendant against the Defendant's personal assets, property and any attorney and/or cost Wells Fargo incurred to file its Summons and Complaint.

**NOTIFICATION**

A copy of the REPLY TO WELLS FARGO'S RESPONSE TO DEFENDANT'S FIRST AND SECOND AMENDMENTS TO REQUEST FOR DISCOVERY filed with the Clerk of Court will be mailed to the Plaintiff's Attorneys

Nelson Mullins Riley & Scarborough LLP @  
1320 Main Street / 17<sup>th</sup> Floor / Columbia, SC 29201  
POB 11070 / Columbia, SC 29211-1070  
Tel: 803-799-2000 / Fax: 803-256-7500

**Note:** Any attorney, the entire staff or all the attorneys at Nelson Mullins Riley & Scarborough are free to inspect the property to verify all statements of fact concerning the property are true. They are free to drop in, stop by or drive by at anytime unannounced without calling ahead between the hours of 9 a.m. to 6 p.m. – Monday – Sunday or as long as there is sufficient daylight. They are free to bring their own appraisers, contractors and/or experts for additional factual verification if they desire to do so. This invitation also holds true for the Plaintiff and the Plaintiff's authorized officers, managers, staff, JFERT, or any authorized personnel. For safety reasons please do not send anyone that weighs more than 250 pounds because the floors are weak.

-15-

ATTEST TRUE COPY  
*[Signature]*  
CLERK OF COURT  
ORANGE COUNTY  
SOUTH CAROLINA  
**Exhibit 107**

\*\*\*\*\*

**IN WITNESS WHEREOF**, The undersigned has signed and sealed these attestations this 3<sup>rd</sup> day of November in the year 2008 in City of Orangeburg, State of South Carolina.

**Signed, sealed and delivered in the presence of:**

Print Name: Dorothy Sistrunk

Signature: Dorothy Sistrunk

Address: 423 Bayne Street

City, State, Zip: Orangeburg, SC 29115

Notary Witness (1): George Watson  
(Signature)

**STATE OF SOUTH CAROLINA**

**COUNTY OF ORANGEBURG**

On Nov, 3, 2008 before me appeared Dorothy Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument presents this document. WITNESS my hand and official seal.

Notary George Watson  
(Signature)

Commission Expires Sept, 17, 2017

(Seal)