

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. 2014-001683

Wells Fargo Bank, N.A.,

Respondent,

v.

Dorothy Sistrunk,

Appellant.

RECORD ON APPEAL
VOLUME III OF V

July 17, 2015

Dorothy Sistrunk
423 Bayne Street
Orangenburg, South Carolina 29115
(803) 268-0716

Michael Anzelmo
SC Bar No. 72933
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Elizabeth Scott Moise
SC Bar No. 012945
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401 -2239
(803) 853-5200

RECEIVED

SFP 25 2015

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

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

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Exhibit 2 - Not included. See SOTE

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Exhibit 5 - Description: Vol. V - Part 1, Index Aii, then go to 1520-1524

Exhibit 6 - Not included. See SOTE

Exhibit 7 - Not included. See SOTE

Exhibits 8-14 - Description: Vol. V - Part 1, Index Aii, then go to 1525-1531

Exhibit 15 - Not included. See SOTE

Exhibit 16 - Not included. See SOTE

Exhibit 17 - Not included. See SOTE

Exhibit 18 - Not included. See SOTE

Exhibit 21 - Not included. See SOTE

Exhibit 25 - Not included. The same as Wells Fargo's Exhibit. See WF00131.

Exhibit 26 - Description: Vol. V - Part 1, Index Aii, then go to 1532

Exhibit 27 - Not included. The same as Wells Fargo's Exhibits. See WF00127-28.

Exhibit 29 - Not included. See SOTE

Exhibit 30 - Not included. See SOTE

Exhibit 31 - Not included. See SOTE

Exhibit 32 - Not included. See SOTE

Exhibit 33 - Not included. See SOTE

Exhibit 34 - Not included. See SOTE

Exhibit 35 - Not included. See SOTE

Exhibit 36 - Description: Vol. V - Part 1, Index Aiii, then go to 1533-1534

Exhibit 37 - Description: Vol. V - Part 1, Index Aiii, then go to 1535

Exhibit 38 - Not included. The same as Wells Fargo's Exhibit. See WF00121.

Exhibit 40 - Not included. The same as Wells Fargo's Exhibit. See WF00130.

Exhibit 41 - Not included. The same as Wells Fargo's Exhibits. See WF00132-133.

Exhibit 42 - Not included. See SOTE

Exhibit 43 - Not included. See SOTE

Exhibit 44 - Not included. See SOTE

Exhibit 45 - Not included. The same as Wells Fargo's Exhibit. See WF00120.

Exhibit 46 - Not included. The same as Wells Fargo's Exhibit. See WF00124.

Exhibit 47 - Not included. The same as Wells Fargo's Exhibits. See WF00125-126.

Exhibit 48 - Not included. The same as Wells Fargo's Exhibit. See WF00129.

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Exhibit 52 - Not included. See SOTE

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Exhibit 54 - Not included. See SOTE

Exhibit 55 - Not included. See SOTE

Exhibit 56 - Not included. See SOTE

Exhibit 57 - Not included. See SOTE

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Exhibit 59 - Not included. See SOTE

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Exhibit 209 - Not included. See SOTE

Exhibit 210 - Not included. See SOTE

Exhibit 211 - Not included. See SOTE

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WF00003 - Not reviewed or discussed in Court. See description: Index pg, Bi.

WF00004 - Not reviewed or discussed in Court. See description: Index pg, Bi.

WF00005 - Not reviewed or discussed in Court. See description: Index pg, Bii.

WF00006 - Not reviewed or discussed in Court. See description: Index pg, Bii

WF00007 - Not reviewed or discussed in Court. See description: Index pgs, Bii-Biii.

WF00008 - Not reviewed or discussed in Court. See description: Index pg, Biii.

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WF00010 - Not reviewed or discussed in Court. See description: Index pg, Biii.

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WF00012 - Not reviewed or discussed in Court. See description: Index pg, Biv.

WF00013 - Not reviewed or discussed in Court. See description: Index pg, Biv.

WF00014 - Not reviewed or discussed in Court. See description: Index pg, Bv.

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WF00019 - Not reviewed or discussed in Court. See description: Index pg, Bvi.

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2008-2014

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STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Wells Fargo Bank, N. A.

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

Plaintiff,

**THE DEFENDANT OBJECTS TO
MOTION OF CONTINUANCE AND
ENTRY OF SCHEDULING ORDER.
THE PROPOSED DATE OF
TRANSFER TO THE JURY TRIAL
ROSTER IS JUNE 25, 2012
SUBJECT TO RULE 38(b)
A PRIORITY MATTER
October 24, 2011**

Vs.

Dorothy Sistrunk;

Defendant.

FILED FOR RECORD
WILLIAM B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2011 OCT 24 A 10:43

Comes now the Defendant Dorothy Sistrunk to file this OBJECTION TO MOTION OF CONTINUANCE, ENTRY OF SCHEDULING ORDER AND TRANSFER TO JURY TRIAL ROSTER SUBJECT TO RULE 38(b), A PRIORITY MATTER that is dated October 14, 2011 and received on Saturday, October 15, 2011 by Federal Express and to DEMAND THE PROTECTION OF THIS COURT PURSUANT TO SCRPC RULES 26(c) and 45(c)(1). A MOTION has already been filed to DISMISS this Complaint with PREJUDICE and JUST and FAIR COMPENSATION. Additional reasons for objecting to the MOTION OF CONTINUANCE AND ENTRY OF SCHEDULING ORDER shall be stated herein.

OPENING STATEMENTS

To: The Court of Common Pleas. The Defendant Demands a copy of this pleading in it's entirety with any attached exhibits be faxed or mailed to South Carolina's Judicial Department's

Office of Disciplinary Counsel

1015 Sumter Street

Suite 309

Columbia, South Carolina 29201

Telephone: (803) 734-2038

Fax: (803) 734-1964

PROPOSED DATE OF TRANSFER TO JURY TRIAL ROSTER JUNE 25, 2012

ATTEST: TRUE COPY

Wingia B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

**OJECTION AND RESPONSE TO MOTION FOR CONTINUANCE AND
ENTRY OF SCHEDULING ORDER UNTIL JUNE 25, 2012**

Pursuant to SCRCP Rule 40(d)(1), the Defendant Objects to any transfer to the Trial Roster until **JUNE 25, 2012** for the following reasons:

SECTION I: REASONS FOR OBJECTION TO CONTINUANCE

1. There are too many unresolved issues of fact and law that must be resolved by the Court before this case can proceed. Consequently, **responding to the Plaintiff's Motion for Continuance and Entry of Scheduling Order in the unnumbered paragraph that begins with Pursuant Rule 40,** the Defendant alleges the Law Firm of Nelson Mullins Riley & Scarborough, LLP, and/or certain attorney/s from Nelson Mullins Riley & Scarborough, LLP, have no authority to file any motions or enter any Scheduling Order into the records of the Court. The Defendant alleges the Plaintiff no longer has any "Standing" the Court must recognize or consider. The Plaintiff failed to "Substantially Comply" with a Valid Supreme Court Order [**Re: Administrative Order #2009-05-22-01**] during the "Stay" and this matter of failed compliance must be decided by the Court before this case can proceed. Therefore, **the Plaintiff's request for continuance and any related assumption/s and/or filing/s must be summarily dismissed and denied.**

2. The Law Firm's failure to file Case Status Updates every 30 days as required cannot be overlooked, casually dismissed, ignored or conveniently swept under the rug. The Law Firm's failures have adversely impacted the Plaintiff. The violations have ethical and legal implications for the Defendant and the Plaintiff. Attorneys are Officers of the Court. If the Court allows lawless from within, then there is no such reality as just, fair and impartial adjudication. If the Court should ever fail to police its own ranks, enforce its Rules upon its ranks and maintains its integrity, the peace, stability and viability of the social, economic and political order will fail along with it. The seriousness of the matter demands the Court's attention and a remedy by the Court if an infraction of the Court's Rules has occurred.

3. The Defendant alleges this is an internal administrative and judicial matter that

has yet to be remedied. Therefore, until this matter of the Plaintiff's failed "Substantial Compliance" is officially dealt with by the Court, *the Plaintiff's request for continuance and any related assumption/s and/or filing/s must be summarily dismissed and denied until this matter is decided by the Court.*

4. ***The evidence.*** The following are not allegations, they are statements of fact. the Law Firm of Nelson Mullins Riley & Scarborough, LLP, and/or certain attorneys from Nelson Mullins Riley & Scarborough, LLP, violated **Section (3) of the May 22, 2009 Supreme Court of South Carolina Order for Foreclosure Cases** by failing to file a Case Status Update for the thirty (30) day periods beginning on October 15, 2010, on or about, to November 15, 2010 on or about..., December 15, 2010, on or about, to January 15, 2011 on or about..., and January 15, 2011, on or about, to February 15, 2011 on or about..., as required and pursuant to the May 22, 2009 Supreme Court of South Carolina Order for Foreclosure Cases. **{Review filing record of Case Status Updates}**

5. Based on the evidence, the Plaintiff's Case Status Updates were not filed in a timely manner. *Every 30 days means every 30 days.* Substantial compliance means notifying the Court every 30 days until the Order is rescinded or reversed. [Direct Quote] *"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."* [End Direct Quote] Any failure to comply with an Order of Court is a violation of the Order and the violations might be even more extensive than the Defendant is capable of reporting. Therefore, *the Plaintiff's request for continuance and any related assumption/s and/or filing/s must be summarily dismissed and denied until the Court has thoroughly investigated this matter.*

6. Based on the Plaintiff's **Exhibit B** that was attached to the filing the Defendant received from Nelson Mullins Riley & Scarborough, LLP, (**Administrative Order #2011-05-02-01**); Court filings relative to the HMP, i.e., Case Status Updates, had to be submitted every 30 days until May 2, 2011. This can be legitimately interpreted as the date **Administrative Order #2009-05-22-01** was officially rescinded by the Supreme Court.

A) Since there is no language in **Administrative Order #2011-05-02-01** that

exempted or rescinded the “every 30 day” requirement under **Administrative Order #2009-05-22-01**, and since the Law Firm represents the Plaintiff, this also means the Plaintiff, Wells Fargo Bank, N.A, failed to “Substantially Comply” with the “every 30 day” requirement. Therefore, **pursuant to Section (3)**, the Plaintiff’s complaint must be dismissed forthwith; with or without prejudice, and with Just and Fair Compensation for the Defendant including Punitive Damages if the Court deems it proper.

B) A careful examination of the filing records of the Law Firm and/or certain attorneys from the Law Firm, in the Court of Common Pleas in Orangeburg, South Carolina; i.e., Case Status Updates, will reveal the truth and the facts relative to the Defendant’s Civil Action Case #2008-CP-38-1024. Therefore, **the Plaintiff’s request for continuance and any related assumption/s and/or filing/s must be summarily dismissed and denied because the Section (3) Dismissal has priority over any subsequent filings or motions by the Plaintiff.**

7. A common basis for legal malpractice arises when an attorney or law firm misses a deadline for filing papers with the Court. This is pursuant to **Section 40-5-520**, that states in pertinent parts.... [boldness shall be added for emphasis]

“Any attorney, solicitor or counsellor may be removed or suspended who shall be guilty of any deceit, malpractice or misbehavior, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall be had and an opportunity shall have been given him of being heard in his defense.”

8. There is no doubt or question that the Plaintiff’s Case Status Updates were not filed in a timely manner pursuant to **Administrative Order #2009-05-22-01**. Therefore, any request by the Plaintiff for a continuance and any related assumption/s and/or filing/s must be summarily revoked and denied until this matter of the Plaintiff’s failed “Substantial Compliance” during the “Stay” is decided by the Court.

A) The Defendant; with or without motion, is eligible for a **Section (3) Dismissal** because the Plaintiff failed to “Substantially Comply with **Administrative Order #2009-05-22-01**. There are no provisions in the Order to excuse or exonerate the Plaintiff for compliance failures. Therefore, **pursuant to Section (3)**, the Plaintiff’s claim must be dismissed with or without a motion from the Defendant and any other motion by the Plaintiff must be revoked and

denied until the Court decides whether or not to enforce the Order.

B) Rule 41(b) SCRCP states in pertinent parts...

“Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits.”

9. A **Section (3) Dismissal** is not provided for in the rule. Therefore, pursuant to the Rule, a **Section (3) Dismissal** must be adjudicated on the merits. Either the Plaintiff “Substantially Complied” with the Supreme Court’s Order or the Plaintiff did not “Substantially Comply” with the Supreme Court’s Order is the only merit the Court must consider after the Plaintiff presents any evidence to the Court as trier of the facts. Consequently, *the Plaintiff’s request for a continuance and any related assumption/s and/or filing/s must be summarily revoked and denied until this matter of the Defendant’s Section (3) Dismissal is decided by the Court as the trier of the facts.*

SECTION II: REASONS FOR OBJECTION TO CONTINUANCE

10. **Responding to the Plaintiff’s Motion for Continuance and Entry of Scheduling Order in the unnumbered paragraph that begins with Good Cause:** The Law Firm of Nelson Mullins Riley & Scarborough, LLP, and/or certain attorney/s from Nelson Mullins Riley & Scarborough, LLP, have no verifiable good cause for a continuance and entry of any purposed scheduling order for the following reasons.”

A) Assuming the Court decides the Law Firm and/or certain attorneys at the Law Firm are not responsible for the Plaintiff’s compliance violations, i.e., filing Case Status Updates *every 30 days* as required and pursuant to the Order; the Plaintiff is not exonerated and cannot be excused.

B) Therefore, pursuant to **Section (3)** under **Administrative Order #2009-05-22-01**, the Plaintiff’s complaint must be dismissed with or without a motion from the Defendant. There is no stipulation in **Section (3)** that a motion is required; nor is there a reference to any particular Rule of Civil Procedure or a Rule requirement for dismissal. The only requirement for a **Section (3) Dismissal** is failure to comply.

C) Since the Plaintiff and the Law Firm have multiple compliance failures, the Defendant's case must be dismissed forthwith pursuant to **Section (3)** with or without prejudice and the Defendant must be compensated for the Defendant's legal defense and any other cost the Court deems is just, fair and proper. A **Section (3) Dismissal** has priority over a **Rule 41(b) Dismissal upon Motion** because the violations occurred during the "**Stay**" and cannot be legally ignored or legally disputed by the Plaintiff. The requirements of **Administrative Order #2009-05-22-01** are clearly stated and unambiguous. Therefore, there is no excuse for non-compliance.

11. The Plaintiff's request for continuance and any related assumption/s and/or filing/s must be summarily dismissed and denied; as well as, any proposed scheduling order and/or motions. Since the violations occurred during the "**Stay**", this matter must be decided prior to considering any other motion or request by the Plaintiff.

A) Any loss the Plaintiff incurred during the "**Stay**" is due to the Plaintiff's "Errors in Judgment", "Lack of Due Diligence", "Negligence", "Failure to "Substantially Comply" with "Lawful Statutes and a Valid Supreme Court Order" and the Plaintiff's "Reliance on Incompetent Legal Advice".

B) Any additional loss the Plaintiff incurred during the "**Stay**" is due to the compliance failure of the Plaintiff's Law Firm of Nelson Mullins Riley & Scarborough, LLP.

**SECTION III:
REASONS FOR OBJECTION TO CONTINUANCE
HARASSMENT & PERSECUTION BY AN OFFICER OF THE COURT**

12. An attorney from Nelson Mullins Riley & Scarborough, LLP, Brian A. Calub, has harassed and persecuted the Defendant with an absolutely unnecessary Deposition, (2) Subpoena Duces Tecums and a Notice of Taking Deposition to the Defendant's Witness and is currently in the process of continuing his harassment and persecution by filing a Motion to Compel discovery for documents and materials the Law Firm and the Plaintiff already have. {Refer to Wells Fargo's filed documents WF00001-WF00137}

13. This same attorney, Brian A. Calub, that is responsible for this legal abomination,

has now stooped to mischaracterizing and “**blaming**” the “**Stay**”; rather than, the Law Firm’s failed legal advice, failed “Substantial Compliance” to a Valid Supreme Court Order... and Wells Fargo’s “Errors in Judgment”, “Lack of Due Diligence”, “Negligence”, “Failure to “Substantially Comply” with “Lawful Statutes and a Valid Supreme Court Order”, and Wells Fargo’s “Reliance on Incompetent Legal Advice”. [Direct Quote] **“Because this is a foreclosure action, activity in this case has been effectively stayed from June 24, 2009 to August 5, 2011 by three administrative orders entered by the South Carolina Supreme Court concerning the Home Affordable Modification Program and an order of this court issuing an indefinite stay for this case as of June 24, 2009.”** [End Direct Quote] This statement not only misstates the facts, it borders on an ABSOLUTE LIE. {Refer to Filed Exhibit 235}

14. The Defendant’s “Fraudulent” Loan, Note and Mortgage did not qualify for the HMP from the very beginning. On June 24, 2009, Wells Fargo Bank, N.A., and/or Wells Fargo Home Mortgage did not have; and according to Wells Fargo’s own Loss Mitigation Department, Wells Fargo never has had a policy, program, procedure or process that would or could modify the Defendant’s “Fraudulent” Loan, Note and Mortgage. The Defendant has known this since 2008. {All Brian A. Calub has to do is call them for verification of this fact. The number is in the Defendant’s filed Pleadings and has been there since 2008}

15. The attorney from Wells Fargo; Elizabeth S. Hodgson, that filed the **Scam Affidavit**, committed **“Fraud upon the Court”** by misleading and deceiving the Court. The attorney claimed she was familiar with the Defendant’s case. **This was and still is the FIRST ABSOLUTE LIE in the Scam Affidavit**. If the attorney was familiar with the Defendant’s case, the attorney; Elizabeth S. Hodgson, should have known and would have known, the Defendant’s Complaint and Allegation was and still is the Defendant’s Loan, Note and Mortgage is “Fraudulent”; and was obtained by the “Fraud”, deceit and deception of the Broker, the Appraiser and the Seller. {Refer to Filed Exhibit 235}

16. **The second ABSOLUTE LIE in the Scam Affidavit**, filed by Wells Fargo’s attorney, Elizabeth S. Hodgson, was and still is the Defendant’s loan was subject to and possibly eligible for modification under the Home Affordable Modification Program, (HMP). Wells

Fargo never had any program, policy, process or procedure for modifying the Defendant's "Fraudulent" Loan, Note and Mortgage.

17. An attorney from Nelson Mullins Riley & Scarborough, LLP, Elizabeth Scott Moise, completely corroborated the information the Defendant received from Wells Fargo's Loss Mitigation Department in 2008. *The Law Firm's admission also proves Elizabeth S. Hodgson LIED*, and deceived and misled the Court in the *Scam Affidavit* that Wells Fargo's Senior Counsel filed on May 15, 2009. {Refer to filed Exhibit 235}

18. In a letter dated June 29, 2011 with the purported signature of Elizabeth Scott Moise, Nelson Mullins Riley & Scarborough, LLP admitted Wells Fargo did not have a policy, process or procedure to modify the Defendant's "Fraudulent" Loan, Note and Mortgage. [Direct Quote] *"Your Response and Request state that you will participate in Foreclosure Intervention only under the following condition: The Plaintiff must provide Defendant with a copy of Plaintiff's policy, process and/or procedure for settling a 'Fraudulent, Loan, Note and Mortgage'. Plaintiff does not have such a policy, process, or procedure."* [End Direct Quote]

19. The same attorney, Brian A. Calub, is now "**blaming**" the Defendant; rather than, Wells Fargo's "Errors in Judgment", "Lack of Due Diligence", "Negligence", "Failure to Substantially Comply" with "Lawful Statutes and a Valid Supreme Court Order" and "Reliance on Incompetent Legal Advice"; and his (Brian A. Calub's), flagrant violation of judicial ethics, protocol and the Rules of Civil Procedure for Wells Fargo's lack of preparation. *The attorney's filed statement goes beyond mischaracterizing the facts, the attorney's statement is an ABSOLUTE LIE*. Wells Fargo has had ample time to prepare for any trial since June of 2008.

20. Brian A. Calub; in his filed statement, says the following: [Direct Quote] *"Wells Fargo has recently filed a motion to compel discovery because Defendant and her spouse filed improper objections and refused to attend depositions scheduled for them on October 7, 2011 at the Orangeburg County Courthouse. To this end, Defendant's dilatory and improper acts have prejudiced Wells Fargo's ability to adequately prepare for trial and have effectively prevented Wells Fargo from filing a motion for summary judgment in response to the*

counterclaims asserted by Defendant.” [End Direct Quote]

21. Not only has Wells Fargo’s attorney, Brian A. Calub, failed to establish a material need, the attorney has; by his actions, thoroughly disregarded and violated **Rule 6(d) SCRCF** that states in pertinent parts..

“When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c)”

22. Wells Fargo has known about the information in the Witness’ Deposition since 2008 and simply ignored it. The Defendant’s Witness’ persecution and harassment began after the Witness filed the Witness’ Deposition as an Affidavit to Support the Defendant’s Motion to Dismiss with Prejudice. The Defendant believed the Affidavit was required by **Rule 6(d) SCRCF**. It is a violation of Professional Standards of Conduct, Judicial Ethics and the Lawyer’s Oath to harass and persecute an individual for filing an Affidavit to support a Motion.

23. The Defendant is relieved it was the Defendant’s husband that submitted the Affidavit, rather than another eyewitness. Is the Court going to allow this attorney to continue harassing and persecuting every eyewitness that submits an Affidavit on behalf of the Defendant... and... improperly joinder the Defendant’s Witnesses as third (3rd) party Defendants or third (3rd) party Witnesses like he has done to the Defendant’s husband?

24. How long is the Court going to continue allowing this irresponsible attorney, Brian A. Calub, to continually abuse and misuse his Subpoena Powers by harassing and persecuting the Defendant’s Witnesses with Subpoena Duces Tecums to inspect and produce documents and materials that were never sent to them?

25. How long is the Court going to continue allowing this attorney, Brian A. Calub, to abuse his authority as an Officer of the Court to Compel Discovery for documents and material that belong to Wells Fargo Bank, N.A. or Wells Fargo Home Mortgage?

26. How long is the Court going to continue allowing this attorney, Brian A. Calub, to misuse his authority as an Officer of the Court to badger, harass and persecute the Defendant and

the Defendant's Witnesses about documents and materials the Law firm already has and has had for over three (3) years?

27. How long is the Court going to continue allowing this attorney, Brian A. Calub, to disregard the Rules of Civil Procedure in order to inflict hardship and undue burden upon the Defendant and the Defendant's Witnesses in a misguided and perverted pursuit to find imaginary documents and materials that have never existed in fact, reality or actuality, that are not relevant to the case..... and not under the control or authority of the Defendant or the Defendant's Witnesses?

28. Wells Fargo's attorney Brian A. Calub, has not only violated **Rule 407 SCACR: Rules of Professional Conduct**, the attorney's actions demonstrate a callous disregard for factual evidence, truth and the Rules of Civil Procedure.

29. Since there is no Rule in South Carolina's Rules of Civil Procedure for the Defendant to file a Motion relative to an attorney's or law firm's misconduct, abuse and misuse of rights and privileges as Officers of the Court, it is the Court's responsibility to investigate these matters and not the Defendant when they occur during Oral Arguments, Hearings, Court Proceedings, when stated as an allegation in a Pleading or when duly filed with the Office of Disciplinary Counsel.

SECTION IV:

ADDITIONAL REASONS FOR OBJECTING TO MOTION FOR CONTINUANCE AND ENTRY OF SCHEDULING ORDER - THE PLAINTIFF HAS NO STANDING

30. Wells Fargo no longer has any Standing the Court can recognize and it is not an Article III issue. Wells Fargo's lack of Standing is due to failed "Substantial Compliance" to a Valid Supreme Court Order. Wells Fargo cannot accuse the Defendant or the Court for Wells Fargo's failures and Wells Fargo cannot be granted any relief by the Court unless the Court declares openly or clandestinely that its Administrative Orders are procedural and not subject to legal interpretation or enforcement.

SECTION V:

ADDITIONAL REASONS FOR OBJECTING TO MOTION FOR CONTINUANCE AND ENTRY OF SCHEDULING ORDER - THE PLAINTIFF NO LONGER HAS A CLAIM

31. Wells Fargo's inability to state any claim relative to the Defendant or the Court is not a **Rule 12(b) SCRC**P issue. Wells Fargo cannot state any claims because Wells Fargo's failure is self-inflicted. There is no one Wells Fargo can blame for Wells Fargo's failed compliance or seek relief from, other than Wells Fargo's personnel and Law Firm. Therefore, no relief can be granted to Wells Fargo due to non-compliance with a Valid Supreme Court Order; unless the Court declares openly or clandestinely that its Administrative Orders are procedural and not subject to legal interpretation or enforcement.

32. The only "Subject Matter" for the Court to decide is relative to Wells Fargo's lack of Standing for non-compliance with a Valid Supreme Court Order. Wells Fargo's non-compliance eliminated any issues of fact or law for the Court to decide. The Court has no alternative except to dismiss Wells Fargo's complaint forthwith. The Court is the trier of facts pursuant to **Rule 41(b) SCRC**P in this particular situation. Either Wells Fargo "Substantially Complied" with a Valid Supreme Court Order or Wells Fargo did not "Substantially Comply". These are the only facts in law the Court has to determine prior to any dismissal unless the Court declares openly or clandestinely that its Administrative Orders are procedural and not subject to legal interpretation or enforcement.

SECTION VI:

ADDITIONAL REASONS FOR OBJECTING TO MOTION FOR CONTINUANCE AND ENTRY OF SCHEDULING ORDER – NO AFFIRMATIVE DEFENSES OR COUNTERCLAIMS

33. Wells Fargo has effectively eliminated and nullified every Affirmative Defense and Counterclaim against the Defendant because Wells Fargo failed to "Substantially Comply" with a Valid Supreme Court Order and is effectively barred from introducing any new Affirmative Defenses or Counterclaims.

A) In order for Wells Fargo's original Affirmative Defenses and Counterclaims to remain valid, enforceable and actionable after the "**Stay**", Wells Fargo had to "Substantially Comply" with the terms and conditions of the TRO or "**Stay**".

B) Since the terms and conditions of Administrative Order #2009-05-22-01 are reasonable, clearly stated, not intrusive and well within the means and the ability of Wells Fargo to "Substantially Comply", Wells Fargo is without recourse or excuse for failed "Substantial Compliance".

34. The Plaintiff has effectively eliminated and nullified every Affirmative Defense and Counterclaim the Plaintiff had due to the Plaintiff's "Substantial Compliance" failure and is effectively barred from introducing any new Affirmative Defenses or Counterclaims. In order for the Plaintiff's original Affirmative Defenses and Counterclaims to remain valid, enforceable and actionable after the "**Stay**", the Plaintiff had to "Substantially Comply" with the terms and conditions of the TRO. Since the terms and conditions of Administrative Order #2009-05-22-01 are reasonable, clearly stated, not intrusive and well with the means and the ability of the Plaintiff to "Substantially Comply", the Plaintiff is without recourse or excuse for failed "Substantial "Compliance".

**SECTION VII:
ADDITIONAL REASONS FOR OBJECTING TO MOTION FOR CONTINUANCE AND
ENTRY OF SCHEDULING ORDER – THE PLAINTIFF IS BARRED FROM ANY
CONTINUANCE**

35. Wells Fargo is effectively barred from proceeding to any trial for reasons already stated and incorporated by reference as though fully set forth herein. Wells Fargo's Law Firm is also effectively barred from pursuing this case on behalf of Wells Fargo for reasons already stated and incorporated by reference as though fully set forth herein; unless the Court declares openly or clandestinely that its Administrative Orders are procedural and not subject to legal interpretation or enforcement.

**JUNE 25, 2012
PROPOSED DATE OF TRANSFER**

36. **Pursuant to SCRCP Rule 40(d)(1)** that states in pertinent parts... "If any party files an Objection to Transfer, the case may not be transferred to the Jury Trial Roster within 9 months of filing of the complaint except by agreement or as provided in (d)(2) below."

37. **Pursuant to SCRCP Rule 40(d)(2)** that states in pertinent parts... "Any party who objects to the transfer to the Jury Trial Roster shall also state in its Objection to Transfer whether it will consent to the transfer of the case to the Jury Trial Roster within 9 months of the date of the filing of the complaint, and the date on which it will consent to the transfer." The Defendant will give the Court and the Office of Disciplinary Counsel adequate time to address and remedy all the issues of fact and law raised in this Pleading. The Defendant elects June 25,

2012 as the proposed date of transfer.

38. Pursuant to SCRCP Rule 40(k) that states in pertinent parts...

"If the Response opposes the transfer, it shall indicate in what respect the case is not ready for trial."

THE CASE IS NOT READY FOR THE FOLLOWING REASONS

39. The reasons this case is not ready for any kind of trial and must be dismissed forthwith pursuant to Administrative Order #2009-05-22-01, **Section (3)** and supported by non-compliance to **Subsection [4]** of the Supplemental Directive. The Court is now the trier of facts pursuant to **SCRCP Rule 41(b)**. The additional reasons this case is not ready and cannot continue have already been clearly stated in this Pleading and are incorporated by reference as though fully set forth herein.

A) Therefore, the Plaintiff's request for continuance and any related assumption/s and/or filing/s must be summarily dismissed and denied until the Defendant's **Section (3)** dismissal; because of the Plaintiff's non-compliance, is thoroughly investigated and a decision rendered by the Court.

B) Dismissal of the Plaintiff's claim has priority over any subsequent filings or motions by the Plaintiff because it occurred during a Temporary Restraining Order, i.e., "Stay". "The power to punish for contempt is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice." Ex Parte Robinson, 86 U.S. 505, 510 (1873). See also State v. Bevilacqua, 316 S.C. 122, 128, 447 S.E.2d 213, 216 (Ct. App. 1994) ("Courts have no more important function to perform in the administration of justice than to ensure their orders are obeyed.").

WHEREFORE, the relief sought by the foregoing **OBJECTION TO MOTION OF CONTINUANCE, ENTRY OF SCHEDULING ORDER AND TRANSFER TO JURY TRIAL ROSTER SUBJECT TO RULE 38(b), A PRIORITY MATTER** that is dated October 14, 2011 and received on Saturday, October 15, 2011 by Federal Express. The Defendant's **DEMAND** for **PROTECTION OF THIS COURT** from further abuse and persecution **PURSUANT TO SCRPC RULES 26(c) and 45(c)(1)** should be granted forthwith and any request for continuance and any related assumption/s and/or filing/s must be summarily revoked and denied; as well as, any proposed scheduling order and/or motions until this matter is resolved.

Respectfully submitted,
Dorothy Sistrunk
423 Bayne Street
Post Office Box 217
Orangeburg, South Carolina 29115
(803) 268-0716

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **OBJECTION TO NOTICE OF TAKING DEPOSITION** has been furnished by U.S. mail to:

Nelson Mullins Riley & Scarborough LLP
ATTN: Brian A. Calub @
1320 Main Street
17th Floor
Columbia, SC 29201
POB 11070
Columbia, SC 29211-1070

Tel: 803-799-2000
Fax: 803-256-7500

2011 OCT 24 A 10:43
FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

I HEREBY CERTIFY that a true and correct copy of the foregoing **OBJECTION TO NOTICE OF TAKING DEPOSITION** has been furnished by U.S. mail to:

South Carolina's Judicial Department's
Office of Disciplinary Counsel
1015 Sumter Street
Suite 309
Columbia, South Carolina 29201

Telephone: (803) 734-2038
Fax: (803) 734-1964

-14-

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

IN WITNESS WHEREOF, The undersigned has signed and sealed these attestations this 21st day of October in the year 2011 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): Shanita Mcghee-Hamilton
(Signature)

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2011 OCT 24 A 10:43

On Oct. 21, 2011 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 Shanita Mcghee-Hamilton
(Signature)

Commission Expires August 1st, 2017

(Seal)

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

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Wells Fargo Bank, N. A.

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

Plaintiff,

**OBJECTION TO PLAINTIFF'S
MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL AND MOTION
FOR CONTINUANCE AND
SCHEDULING ORDER
SUBJECT TO RULE 38(b)
A PRIORITY MATTER
December 16, 2011**

Vs.

Dorothy Sistrunk;

Defendant.

Comes now the Defendant Dorothy Sistrunk to file this OBJECTION TO THE PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL AND MOTION FOR CONTINUANCE AND SCHEDULING ORDER, SUBJECT TO RULE 38(b), A PRIORITY MATTER that is dated December 05, 2011 and received from Attorney Brian A. Calub on Tuesday, December 06, 2011 during the hearing that was held before the Honorable Judge Diane S. Goodstein in the 3 floor Courtroom. Furthermore, the Defendant DEMANDS ACTION ON THE DEFENDANT'S MOTION TO DISMISS the Plaintiff's Complaint with PREJUDICE and JUST and FAIR COMPENSATION. Additional reasons for objecting to the MOTION TO COMPEL AND MOTION OF CONTINUANCE AND ENTRY OF SCHEDULING ORDER and the Supporting Memorandum shall be stated herein.

OPENING STATEMENT 1

I. **Objection #1:** After meeting Attorney Brian A. Calub, the Defendant concludes and enters into the Court record the following statements.

(A) Attorney Brian A. Calub is an intelligent, honorable and decent man that is to be respected and should not be subjected to any unsubstantiated allegation/s as to his professional ethics or professional behavior. The Defendant's allegations can be substantiated.

(B) After observing Attorney Brian A. Calub in the Courtroom on Tuesday, December 06, 2011, the Defendant further states; without any hesitation, that his performance, demeanor, character and the manner in which he conducted himself and the legal affairs of his client, Wells Fargo, are commendable and of the highest possible professional standard.

(C) **Objection #2:** The Defendant's allegations relative to Attorney Calub are not personal; rather, they are directed at his improper use of the Subpoena Duces Tecum, his

demands for unnecessary oral depositions and his violations of the rules. The Defendant's allegations will be verified in this Objection to the Plaintiff's Supporting Memorandum.

II. **Objection #3:** Based on the Defendant's personal observation of Attorney Calub during and after the hearing; the professional and respectful manner in which he conducted himself; the Defendant would not object to any oral deposition conducted by Attorney Calub. However; in this case, oral depositions are not needed. Wells Fargo must prove its supporting documents are not fraudulent. If Attorney Calub needs more information, he can submit written questions pursuant to *Rule 31(a) SCRPC*. The Defendant has the right to object to any discovery method/s that violate key provisions of South Carolina's Rules of Civil Procedure.

OPENING STATEMENT 2

I. **Objection #4:** At no time during the hearing that was held on December 06, 2011, did Attorney Calub present any evidence that refutes the Defendant's allegation that during the "*Stay*"/*TRO*; Wells Fargo failed to "Substantially Comply" with a Valid Supreme Court Order. [*Re: Administrative Order #2009-05-22-01, Subsection [4] and Section (3)*] This matter of failed compliance must be decided by the Court before this case can proceed. Therefore, *the Plaintiff's request for continuance and any related filing/s; including this supporting memorandum, must be summarily dismissed and denied.* South Carolina's Appellate Court will affirm the Defendant's objection relative to this matter.

II. The Defendant reaffirms Nelson Mullins Riley & Scarborough, LLP's (*hereafter also called the law firm*) failure to file Case Status Updates every 30 days; as required by the Order, cannot be overlooked, casually dismissed, conveniently swept under the rug or ignored. The Court must uphold the Order. If the Court/Judge fails to uphold the Supreme Court's Order, this is a serious departure from the Rule of Law. These actions are not only violations of the Rules of Civil Procedure, and the Appellate Court's Rules, they are serious violations of the Court's Mandate and present a serious threat to the administration of justice. The Court/Judge must render an official ruling relative to these issues before this case can proceed.

III. The Defendant reaffirms this is an internal administrative and judicial matter that can only be remedied by an official ruling. Therefore, until this matter of the Plaintiff's failed "Substantial Compliance" is officially dealt with by the Court, *Wells Fargo's request for continuance and any related assumption/s and/or filing/s including the supporting memorandum must be summarily dismissed and denied.*

IV. If "Substantial Compliance" demands 23 updates be filed, and only 20 are filed; by legal definition, this is partial compliance, not substantial compliance. It must be noted; for the Court's Record, that the Supreme Court's Administrative Order did not limit itself to any specific number of updates. *Every 30 Days Means Every 30 Days.* The plain meaning of the

of the Chief Justice's wording and language in the Order demands "Substantial Compliance"; otherwise, Chief Justice Toal would not have used the words, "every 30 days". Therefore,

(A) The law firm and/or certain attorneys from the law firm violated *Section (3) of Administrative Order #2009-05-22-01* by failing to file a Case Status Update for the thirty (30) day periods beginning on October 15, 2010, on or about, to November 15, 2010 on or about..., December 15, 2010, on or about, to January 15, 2011 on or about..., and January 15, 2011, on or about, to February 15, 2011 on or about....., as required and pursuant to the Supreme Court's Order. [Quote] **"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."** [End Quote]

(B) **Objection #5:** It is up to Court to decide whether or not Wells Fargo "Substantially Complied" with the Supreme Court's Order, *NOT WELLS FARGO!!!*. And until the Court/Judge has officially ruled; one way or the other, the Court/Judge in Orangeburg, South Carolina has failed to investigate violations of the Supreme Court's Order.

(C) Since there is no language in *Administrative Order #2011-05-02-01* that exempted or rescinded the "every 30 day" requirement under *Administrative Order #2009-05-22-01*, and since the law firm represents Wells Fargo, this also means Wells Fargo failed to "Substantially Comply" with the "every 30 day" requirement. Therefore, *pursuant to Section (3)*, Wells Fargo's complaint can be dismissed forthwith; with or without prejudice, and with Just and Fair Compensation for the Defendant including Punitive Damages if the Court deems it proper.

(D) A careful examination of the filing records of the Law Firm and/or certain attorneys from the law firm, in the Court of Common Pleas; i.e., Case Status Updates, will reveal the truth and the facts relative to the Defendant's Civil Action Case #2008-CP-38-1024. Therefore, *the Plaintiff's request for continuance and any related assumption/s and/or filing/s including the supporting memorandum must be summarily dismissed and denied because the settling of the Defendant's Section (3) Dismissal and the Rule 41(b) SCRCF Dismissal upon motion has priority over any subsequent filings or motions by the Plaintiff*. South Carolina's Appellate Court will uphold and affirm the Defendant's position relative to this matter.

V. The Defendant reaffirms that a common basis for legal malpractice arises when an attorney or law firm misses a deadline for filing papers with the Court. This is pursuant to *Section 40-5-520*, that states in pertinent parts.... [Boldness added for emphasis.]

(A) **"Any attorney, solicitor or counsellor may be removed or suspended who shall be guilty of any deceit, malpractice or misbehavior, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall be had and an opportunity shall have been given him of being heard in his defense."**

In the interest of "Substantial Justice", there must be an official ruling on the compliance issue.

(B) There is no doubt or question that Wells Fargo's Case Status Updates were not filed in a timely manner pursuant to *Administrative Order #2009-05-22-01*. Therefore,

(C) The Defendant; with or without motion, is eligible for a *Section (3) Dismissal* and upon motion, a *Rule 41(b) SCRPC Dismissal* because Wells Fargo failed to comply with an Order of Court. *Administrative Order #2009-05-22-01* is an Order of Court. There are no provisions in the Order to excuse or exonerate Wells Fargo for compliance failures.

(D) Therefore, *pursuant to Section (3)* and supported by *Subsection [4]*, Wells Fargo's claim can be dismissed without a motion and upon motion under *Rule 41(b)*. Therefore, and any other motion by Wells Fargo must be revoked and denied until the Court decides by an official ruling whether or not to enforce the Supreme Court's Administrative Order.

(E) *Rule 41(b) SCRPC* states in pertinent parts...

"Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits."

(F) A *Section (3) Dismissal* is not provided for in the rule. Therefore, pursuant to the Rule, a *Section (3) Dismissal* and the Defendant's *Rule 41(b) Motion to Dismiss* must be adjudicated on the merits. Either Wells Fargo "Substantially Complied" with the Supreme Court's Order or Wells Fargo did not "Substantially Comply" with the Supreme Court's Order is the only merit the Court must consider after Wells Fargo presents any evidence to the Court as trier of the facts. Consequently, *Wells Fargo's request for a continuance and any related assumption/s and/or filing/s must be denied until this matter of the Defendant's Section (3) & Rule 41(b) Dismissal have decided by the Court as the trier of the facts.*

(G) Therefore, any loss Wells Fargo incurred during the "*Stay*"/*TRO* is due to Wells Fargo's "Errors in Judgment", "Lack of Due Diligence", "Negligence", "Failure to "Substantially Comply" with "Lawful Statutes, a Valid Supreme Court Order" and Wells Fargo's "Reliance on Incompetent Legal Advice". Any additional loss Wells Fargo incurred during the "*Stay*"/*TRO* is due to the compliance failure of the Plaintiff's law firm of Nelson Mullins Riley & Scarborough, LLP.

OPENING STATEMENT 3

I. **Objection #6:** The Defendant objects to the Supporting Memorandum because the Court of Common Pleas failed to act when an attorney from Wells Fargo; Elizabeth S. Hodgson, filed a *False/Scam Affidavit* and may have committed "*Fraud upon the Court*" by misleading and deceiving the Court. The attorney claimed she was familiar with the Defendant's case. *This was and still is the FIRST ABSOLUTE LIE in the False/Scam Affidavit.* If the attorney was familiar with the Defendant's case, the attorney; Elizabeth S. Hodgson, should have known and would have known, the Defendant's complaint was and still is the Defendant's

Loan, Note and Mortgage is “Fraudulent”; and was obtained by the “Fraud”, deceit and deception of the Broker, the Appraiser and the Seller. {Refer to Filed Exhibit 235}

II. *The second ABSOLUTE LIE in the False/Scam Affidavit*, filed by Wells Fargo’s attorney, Elizabeth S. Hodgson, was and still is the Defendant’s loan was subject to and possibly eligible for modification under the Home Affordable Modification Program, (HMP). Wells Fargo never had any program, policy, process or procedure that can modify the Defendant’s “Fraudulent” Loan, Note and Mortgage. The loan must be rendered null and void.

III. An attorney from Nelson Mullins Riley & Scarborough, LLP, Elizabeth Scott Moise, completely corroborated the information the Defendant received from Wells Fargo’s Loss Mitigation Department in 2008. *The Law Firm’s admission also proves Elizabeth S. Hodgson LIED*, and deceived and misled the Court on May 19, 2009; the date the *False/Scam Affidavit* was filed. {Refer to filed Exhibit 235}

IV. In a letter dated June 29, 2011; with the purported signature of Elizabeth Scott Moise, Nelson Mullins Riley & Scarborough, LLP admitted Wells Fargo did not have a policy, process or procedure to modify the Defendant’s “Fraudulent” Loan, Note and Mortgage. [Direct Quote] *“Your Response and Request state that you will participate in Foreclosure Intervention only under the following condition: The Plaintiff must provide Defendant with a copy of Plaintiff’s policy, process and/or procedure for settling a ‘Fraudulent, Loan, Note and Mortgage’.* Plaintiff does not have such a policy, process, or procedure.” [End Direct Quote]

V. The Defendant received a copy of the Affidavit on May 20, 2009 and filed a Response on May 26, 2009 notifying the Court/Judge that the Affidavit was misleading. This was well within the Order’s 10-day filing requirement for a “Counter Affidavit”.

(A) Under Administrative Order #2009-05-22-01, **“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.”** The Court/Judge in the Defendant’s case did not resolve the issue as required by the Supreme Court’s Order.

(B) The Defendant’s filed Response is a notarized statement that informed the Court/Judge that Wells Fargo’s Affidavit was misleading because Wells Fargo’s Loss Mitigation Department suspected the Defendant’s loan *WAS* approved because of “Fraud” in 2008. {See stamped Response to Plaintiff’s Affidavit dated May 26, 2009}

(C) Wells Fargo’s Loss Mitigation Department advised the Defendant to contact Wells Fargo in Des Moines, Iowa to have the loan cancelled because of suspected fraud. When the Defendant contacted Janet Frotscher’s Executive Resolution Team in Des Moines, Iowa

during May of 2008, the Defendant's loan was already transferred to another department for foreclosure.

(D) Both Katherine R. Perkinson in 2007 and Wells Fargo's Loss Mitigation Department in 2008 recommended that the Defendant contact Wells Fargo in Des Moines, Iowa to have the loan cancelled. The problem in Iowa was Janet Frotscher's Executive Resolution Team. Janet Frotscher would not cancel the loan despite all the evidence of fraud that was sent to her. Janet Frotscher's Executive Resolution Team kept the Defendant's "Fraudulent" loan, note and mortgage alive for reasons no one can understand... and they have kept it alive by falsely accusing the Defendant. {Refer to WF00120, WF00121, WF00125 & WF00130}

OPENING STATEMENT 4

I. **Objection #7:** The Defendant objects to the Supporting Memorandum because the Court/Judge was notified in the Defendant's filed pleadings that certain attorneys from Nelson Mullins Riley & Scarborough, LLP were filing false and misleading statements relative to the HMP from June of 2009 until the last legitimate update was filed in October of 2010. Wells Fargo did not make any attempt to contact the Defendant during the "Stay"/TRO. The attorneys' statements in their filed Case Status Updates are absolute lies.

II. **Administrative Order #2009-05-22-01 Subsection [4]** states in pertinent parts... **"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."** Wells Fargo failed to "Substantially Comply" with the terms and conditions of the *"Contact Requirements"* of *Subsection [4]* as outlined and stated in the Supplemental Directive.

III. The evidence is undeniable that Wells Fargo failed to "Substantially Comply" with the *"Every 30 Day"* filing requirement of *Section (3)* and failed to "Substantially Comply" with the *"Contact Requirements"* of *Subsection [4]* of the Supplemental Directive. Based upon the Defendant's information and belief, the Court must rule on Wells Fargo's failure to "Substantially Comply" with a Valid Supreme Court Order before any subsequent filings, motions, claims and/or complaints can be considered from Wells Fargo. Therefore, *Wells Fargo's request for a continuance and any related assumption/s and/or filing/s including the supporting memorandum must be summarily revoked and denied until this matter of the Defendant's Section (3) and Rule 41(b) Dismissal are decided by the Court.*

IV. Because of Wells Fargo's verifiable compliance failures under *Administrative Order #2009-05-22-01*, Wells Fargo is effectively barred from participating in any "Foreclosure Intervention Process" that was authorized by *Administrative Order #2011-05-02-01*. Therefore,

Wells Fargo is effectively barred from filing any documents, verifications and/or certifications relative to it.

(A) In addition to a dismissal upon motion under *Rule 41(b) SCRPC*; and a dismissal pursuant to *Section (3)* that is supported by the Plaintiff's failure to comply with *Subsection [4]*, the Defendant's case can also be dismissed by default because Wells Fargo would have no legitimate standing to proceed.

(B) Just like the Defendant will not be a party to Wells Fargo's illegal "Predatory Lending Scheme", "Illegally Brokered Loan" and "Home Improvement and Mortgage Fraud", the Defendant cannot consciously be a party to Wells Fargo's violation of a Valid Supreme Court Order. Therefore, the Defendant must pursue this matter until the Court has rendered an official decision. South Carolina's Appellate Court will affirm the Defendant's position.

OPENING STATEMENT 5

I. **Objection #8:** The Defendant objects to the Supporting Memorandum because during the hearing on December 06, 2011, the Honorable Judge Diane Goodstein, clearly explained the reasons for the Supreme Court's *Administrative Orders 2009-05-22-01* and *2011-05-02-01*. The Defendant appreciated her (the Honorable Judge Goodstein's) insights and information that could provide professional legal help for the Defendant. However, the Honorable Judge Goodstein did not address the issue of Wells Fargo's failed compliance or why the Court has not ruled on the Defendant's *Rule 41(b) SCRPC Motion to Dismiss*?

II. **Objection #9:** The Defendant objects to the Supporting Memorandum because the Defendant believes the Honorable Judge Goodstein was limited to the reason for the hearing and could not go beyond that reason. The Honorable Judge Goodstein also pointed out and rightly so, that Judges don't just sit around waiting for pleadings to read. However, the question still remains, why didn't Judge Goodstein or any other Judge in the First Judicial Circuit call a hearing for the Defendant's *Rule 41(b) SCRPC Motion to Dismiss*?

III. **Objection #10:** The Defendant objects to the Supporting Memorandum because, even though Attorney Calub subtly, skillfully and enthusiastically defended Wells Fargo's performance during the "*Stay*"/*TRO*, his defense was totally inadequate. In addition, Attorney Calub did not present any hard evidence that verified Wells Fargo "Substantially Complied" with *Subsection [4]* of the Supplemental Directive.

IV. There are no provisions in the Supreme Court's Order for a homeowner/buyer to file a Rule to Show Cause or file a motion for an investigation. The Order specifically leaves administration of the "*Stay*"/*TRO* to the lower court Judges. Consequently, based upon the written stipulations in the Order, the Courts/Judges have the responsibility to determine whether or not Wells Fargo "Substantially Complied" with the Supreme Court's Order. The Appellate Court will affirm the Defendant's position that Judges had the authority and not the Defendant.

V. The Court/Judge also have the authority to demand Wells Fargo's attorneys verify their filed statements with hard evidence; i.e., phone records, dates, times, HMP determination methods and the names of the personnel that contacted the Defendant during the dates and times in question. The Defendant already knows this did not happen.

WHEREFORE, the Defendant concludes why she (the Defendant) objects to the Supporting Memorandum that is relative to the December 06, 2011 hearing. The Defendant shall now address the Plaintiff's Memorandum in Support of Motion in its entirety and state additional reasons why the Defendant objects to a Continuance and Scheduling Order.

OBJECTIONS TO MEMORANDUM IN SUPPORT OF MOTION

1. **Objection #11 to the unnumbered Paragraph 1:** A Motion to Compel Discovery is not needed because Wells Fargo's requests are inconsistent with key provisions of South Carolina's Rules of Civil Procedure that will be identified in this pleading.

OBJECTION TO INTRODUCTION

2. **Objection #12 to the unnumbered Paragraph 2, sentence #1:** The Defendant objects to Wells Fargo's opening statement in sentence #1 because it is indicative of Wells Fargo's familiar pattern of deceit and deception. The Defendant did not borrow \$75,000 on December 21, 2007. The Defendant did not receive any money from Wells Fargo.

(a) Wells Fargo paid the Seller – Thomas Jacobs - \$75,000 for a security interest in 423 Bayne Street according to its appraised value {WF00120}. The security interest consists of the mortgage and the note; and together are considered the loan or indebtedness. Since the appraised value is falsified and both appraisals are frauds {WF00001-WF00026}, Wells Fargo's mortgage and note are not valid and cannot be legally enforced. Since the Defendant did not order the 7-59 Appraisals, the Defendant has no liability for them. The note and mortgage must be free of fraudulent inducements and misrepresentations in order to have legal enforceability.

(b) Under the *Parol Evidence Rule*, the Defendant is allowed to present evidence that proves fraud. Wells Fargo must prove by the presentation of the evidence that the documents upon which its security interest is based are free from fraud; otherwise, the mortgage and note have no validity and cannot be enforced. A security interest based on fraud or came into existence as a result of fraud, duress or coercion is rendered null and void as a matter of law.

(c) If the property does not have the improvements and repairs that are stated on

the appraisals {WF00001-WF00026} and the Satisfaction Completion Certificate {WF00009 & WF00022}..... the documents are not valid and the security interest, the mortgage and note, are misrepresenting existing material facts and must be voided as a matter of law. Therefore, Wells Fargo must prove the Appraisals, the Satisfaction Completion Certificate and the Contract of Sale are not falsified, frauds and/or forgeries in order to have a valid and enforceable mortgage and note pursuant to the exceptions allowed under the *Parol Evidence Rule*.

(d) If this cannot be done, Wells Fargo must accept the fact that Wells Fargo has been defrauded out of \$75,000 by the Seller – Thomas Jacobs, with help from the Appraiser – Jim H. Austin, III and the Broker – Golden Gate Mortgage/David Terrell. {WF000125}.

(e) The evidence is undeniable that the Contract of Sale has been altered with forged initials. This forgery was done by someone; and it might even be Wells Fargo's own personnel that altered the contract and forged the Defendant's initials. {WF00028-WF00029 & Exhibit 140-141}. Both Contract of Sales came from Wells Fargo. There was no "As Is" clause on the Contract of Sale the Defendant signed on 11/26/2007; and....the figures are not the same as the figures on the HUD Settlement Statement. {WF00088-WF00089}

(f) According to South Carolina's Appellate Court, "[it] is axiomatic that there exists a well established exception to the parol evidence rule which allows extrinsic evidence by the party attacking an instrument on the ground of fraud. *Redwend*, 354 S.C. at 471, 581 S.E.2d at 503 (citing *Bradley v. Hullander*, 272 S.C. 6, 249 S.E.2d 486 (1978) and *Allen-Parker Co. v. Lollis*, 257 S.C. 266, 185 S.E.2d 739 (1971))."

(g) Since the Defendant's "Fraudulent" loan, note and mortgage is a brokered loan, Wells Fargo must pursue the Broker, Seller and Appraiser concerning this "Fraud". The Defendant did not have any control over the authenticity or reliability of the documents Wells Fargo used for its lending decision that came from the Broker, the Appraiser and the Seller.

Objection #13 to the unnumbered Paragraph 2, sentence #2: The Defendant objects to sentence #2 because the loan did not fall into default on March 1, 2008. After months of trying to get Wells Fargo to cancel the "Fraudulent", loan, note and mortgage, come to an agreement based on the true value of 423 Bayne Street or a negotiated settlement, the Defendant notified Wells Fargo Home Mortgage during March of 2008, that the Defendant was not going to participate in or be a party to Wells Fargo's illegal "Predatory Lending Scheme", "Mortgage

Fraud” and “Insurance Fraud”. {Refer to filed Exhibit 6 & Exhibit 56, Page 3 of 4}

Objection #14 to the unnumbered Paragraph 2, sentence #3: The Defendant objects to sentence #3 because the Defendant does not allege the appraisals are falsified. The Defendant has proven with clear and convincing evidence and beyond any doubt that the 7-59 Appraisals are not only “Falsified”, both Appraisals are “*Verifiable Frauds and Forgeries*”. {WF00001-WF00026}

(a) In February of 2008, the Defendant sent and faxed documented evidence of the falsified 7-59 Appraisals to Wells Fargo’s Executive Resolution Team in Des Moines, Iowa. {Refer to filed Exhibits 8-14} The team was headed by Janet Frotscher. {WF00120} To date; Wells Fargo still claims there is no evidence of wrongdoing by the Seller, Appraiser & Broker.

(b) The Defendant objects to the remaining statement in sentence #3 because the Seller did not give the Defendant a copy of the appraisal. The first copy of the falsified 7-59 Appraisals was faxed to the Defendant from Wells Fargo Home Mortgage. This copy was reduced in size, too dark and virtually unreadable; so Wells Fargo Home Mortgage mailed the Defendant another copy. As stated, this copy of the 7-59 Appraisal is not only falsified, it is also a *Verified Fraud and Forgery*. The Defendant is listed as the property owner on October 8, 2007. This is the same 7-59 Appraisal that Wells Fargo or the law firm has identified as WF00014-WF00026. See WF00016 for verification of this “Fraud” and “Forgery”.

(c) The second copy of Appraisal 7-59 came from Golden Gate Mortgage under a threat of a lawsuit. As stated, this copy is not only falsified, it is also a *Verifiable Fraud and Forgery*. It has the same 7-59 file number the Appraiser – Jim H. Austin III - assigned to the Seller - Thomas Jacobs. {WF00027} This is the same 7-59 Appraisal Wells Fargo or the law firm has identified as WF00001-WF00013.

3. **Objection #15 to the unnumbered Paragraph 3, sentence #1:** The Defendant objects to sentence #1 because this Action was not stayed by any Supreme Court Order during 2008. During the latter part of 2008, sometimes between October and the end of December, the Defendant received a letter from the Clerk of Court to come to Courtroom 2 or 3 or whatever Courtroom that had a Judge’s Chamber in 2008. {Refer to 2008 Trial Roster}

(a) When the Defendant entered the Courtroom, the Defendant was told the attorneys were in the Judge’s Chamber. The Clerk of Court asked the Defendant to identify

herself. Shortly after being confirmed by the Clerk of Court, the Defendant was informed that it was too late to place her (the Defendant's) case on the Trial Roster for December 2008. The first delay in 2008 had nothing to do with any "Stay"/TRO. The trial did not take place because of a problem, situation, event or circumstance that the Clerk of Court did not reveal to the Defendant. The Defendant was given the option of waiting for Wells Fargo's attorney/s or leaving. The Defendant chose to leave.

(b) The Defendant objects further because there was no follow up from Wells Fargo or from the law firm until May 20, 2009. The Defendant received a letter from Elizabeth Scott Moise with an affidavit from Elizabeth S. Hodgson. The letter and the affidavit are dated May 15, 2009. The file date on the Affidavit is May 18, 2009. {Refer to filed Exhibit 235}

(c) That's why the Witness spoke up during the hearing on December 06, 2011 to inform the Honorable Judge Goodstein and Attorney Calub of this fact. The Witness was present in the Courtroom at this 2008 meeting. The Witness in his (the Witness') eagerness to make this fact known may have misquoted *Rule 30(a)(1) SCRCF* as *Rule 38*. This is also the reason why the Witness stated Wells Fargo had concluded its discovery. Otherwise, why would the Clerk of Court inform the Defendant that her (the Defendant's) case could not be placed on the Trial Roster for December 2008; unless a trial was being scheduled?

(d) The Defendant objects further because, based on the evidence, the "Stay"/TRO is not the reason why the Defendant's case was delayed. The "Stay"/TRO came into being after 2008. The Defendant's case was included in the HMP because of Elizabeth S. Hodgson's May 18, 2009 Affidavit. This inclusion in the HMP has already been discussed in *Opening Statement 3 [V](A)-(B)* and is incorporated by reference as though fully set forth herein.

Objection #16 to the unnumbered Paragraph 3, sentence #2: The Defendant objects to sentence #2 because Wells Fargo has not "Substantially Complied" with any Supreme Court Order relative to the Defendant. The Defendant alleges the reason why no depositions were taken from 2008-2011 is because no attorney at the law firm believed they were needed or necessary. The Defendant's defense, claim and counterclaims are not predicated upon any particular Witness testimony or affidavit. The Defendant's defense, claims, and counterclaims are based on the evidence, the facts and Wells Fargo's own documents and filed statements.

RESPONSE TO ARGUMENT I

The Defendant Should Be Precluded from Falsely Characterizing Well's Fargo Counsel As Unethical.

4. **Objection #17 to the heading of Argument I.** Unethical is the opposite of ethical... and means not ethical. Merriam Webster's Collegiate Dictionary, 10th Edition, page 398, defines ethical as conforming to accepted professional standards or conduct.

(a) It is an unethical tactic to demand the Defendant and the Defendant's Witness produce documents that come from Wells Fargo and second or third parties. Wells Fargo and the law firm already have these documents. Compelling Discovery for documents the law firm already has or has unlimited access to is not conforming to any professional standard.

(b) The remaining statements relative to Attorney Calub's unethical tactics are in *Opening Statement 1(A)-(B)* and are incorporated by reference as though fully set forth herein.

Objection #18 to the unnumbered Paragraph 4, Sentences #1 and #2: The Defendant has already stated; for the record, her (the Defendant's) evaluation of Attorney Calub. The Defendant's statements are incorporated by reference as though fully set forth herein. The Defendant's allegations are substantiated, can be proven true and are not reckless because they are based on the evidence and the facts.

(a) The Defendant objected to Attorney Calub's tactic of sending (2) two Subpoena Duces Tecum to the Defendant's Witness for the same time and the same day. This is improper and unethical and the Defendant will object again. *{Refer to filed Exhibits 241-244}*

(b) The Defendant objects further because *Rule 11 SCRPC* does not address an attorney's improper actions and/or unethical behavior. *{See Rule 11 SCRPC}*

(c) The Defendant objects further because stating for the Court Record that attorneys have filed false and misleading statements relative to the HMP, Wells Fargo's personnel are falsely accusing the Defendant, filing false affidavits and misleading the Court, is proper and civil; not improper and uncivil. The Courts exist to establish the facts and the truth relative to the fair and impartial adjudication of any case/s before the Courts.

(d) The Defendant's concerns about the ethics of the law firm's attorneys and the false accusations by Wells Fargo's personnel are pursuant to *Rule 11(b)(3) F.R.C.P.*, that states in pertinent parts.... (Boldness added for emphasis.)

"..the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.."

(e) The Defendant claims and counterclaim of “Fraud” against Wells Fargo are based on documented evidence and the facts. Wells Fargo’s own documents and statements verify the Defendant’s allegations are true. Wells Fargo’s lending decision was based on the documents, misrepresentations and presentations that came from the Seller, Broker and the Appraiser. {WF00125-WF00126} They did not originate and did not come from the Defendant.

(f) Janet Frotscher’s Executive Resolution Team’s claim that the Defendant ordered these documents cannot be substantiated. In fact, her statements have already been proven false. There is absolute no evidence or facts that can or will support her false accusations. *File No. 7-59* was assigned by the Appraiser – Jim H. Austin III {WF00078}- to the Seller – Thomas Jacobs. {WF00027}

(g) Wells Fargo’s evidence clearly shows the supporting documents that led to the lending decision [*File No. 7-59*] were ordered by the Broker for the Seller – Thomas Jacobs. {WF00027} Wells Fargo used the Seller’s, Broker’s and Appraiser’s documents to pay the Seller \$75,000.00. Therefore, the Seller, Broker and Appraiser have liability and not the Defendant.

(h) Wells Fargo’s evidence clearly shows – the Seller – Thomas Jacobs, met the Appraiser – Jim H. Austin III to complete the Satisfaction Completion Certificate on 09/14/2007. The Certificate has the same *File No. 7-59* that was assigned to the Seller by the Appraiser. {WF00009 & WF00022} Janet Frotscher’s statements are factually not accurate and false.

(i) The 7-59 Satisfaction Completion Certificate is verifiably falsified. {See *Exhibit 113 & WF00001-WF00026*} The Contract of Sale is verifiably altered with forged initials {WF00028-WF00029 & *Exhibits 140-141*} and the 7-59 Appraisals are verifiably falsified and verifiably frauds and forgeries. {WF00001-WF00026} Therefore, this is a statement of fact. Wells Fargo is actively perpetuating an illegal “Predatory Lending Scheme” that involves the use of falsified, altered and forged documents and is actively aiding and abetting the illegal brokering activity of the Seller and the Broker.

(j) The Defendant discovered after December 21, 2007, that Wells Fargo was not a business associate of Golden Gate Mortgage or the Seller and the loan was brokered. Since the Defendant only dealt with the Seller, the Defendant did not know the Seller was brokering the loan. The only information the Seller gave the Defendant relative to the financing of the loan was, “your loan will handled by my friends and business associates.” The Defendant’s

husband investigated and discovered; by calling South Carolina's Department of Consumer Affairs, that the Seller was not licensed and needed a license in order to participate in the loan brokering process. If the Seller did not have a license, the Seller was engaging in illegal brokering activity.

{If Wells Fargo chooses, Wells Fargo can call South Carolina's Department of Consumer Affairs for verification. Since the Seller processed the Defendant's loan paperwork without a license, the Seller violated Sections of South Carolina's Code of Laws. These laws have already been identified and stated and are incorporated by reference as though fully set forth herein. The Seller and the Appraiser should have notified Wells Fargo.}

(k) Since Golden Gate Mortgage accepted and processed loan paperwork from an unlicensed originator, there is no doubt Golden Gate Mortgage was engaging in illegal brokering activity. Therefore, this is another statement of fact. Wells Fargo is actively perpetuating an "Illegally Brokered Loan".

{If Wells Fargo chooses, Wells Fargo can call South Carolina's Department of Consumer Affairs for verification. If the Broker accepted and processed the Defendant's loan paperwork from an unlicensed loan originator, the Broker violated Sections of South Carolina's Code of Laws. These laws have already been identified and stated and are incorporated by reference as though fully set forth herein. The Broker should have notified Wells Fargo.}

(l) The Defendant's husband investigated and discovered the Seller did not have a building permit to do any major repairs to 423 Bayne Street. Therefore, it is a statement of fact. Wells Fargo is actively perpetuating a "Home Improvement and Mortgage Fraud" that is also based on the use of falsified documents.

{If Wells Fargo chooses, Wells Fargo can call the City of Orangeburg Building Inspector for verification}

(m) Wells Fargo has received telephone calls and Wells Fargo has been notified in writing concerning all these matters *{Exhibits 1-248}* and Wells Fargo has been sent the documented evidence of this fraud. *{Exhibits 8-14}* Wells Fargo's law firm has received documented evidence of this fraud *{Exhibits 8-14}* and Wells Fargo has even referenced the Defendant's correspondence about this fraud in letters to government agencies *{WF00132-WF00133}*. The Court has exhibits and written pleadings relative to this fraud. *{Exhibits 1-248}* Therefore, this is a statement of fact. Wells Fargo is perpetuating an illegal "Predatory Lending Scheme", an "Illegally Brokered Loan", engaging in Insurance Fraud and perpetrating a "Home Improvement and Mortgage Fraud" upon the Defendant.

(n) The Defendant objects even further because the Defendant has firmly

established and demonstrated by using South Carolina's Appellate Court's own standard of proof and relevant case law that Wells Fargo and the Defendant are victims of "Fraud in the Inducement" by the Seller, Broker and the Appraiser; and this includes the Broker's Agreement and the "Fraudulent" loan, note and mortgage.

{The case law has already been cited and stated in previous pleadings and is incorporated by reference as though fully set forth herein}

(o) Therefore, the Defendant's filed statements and exhibits can be substantiated and verified by the evidence and the facts. The **Truth Meter** for the Defendant is at 100%, for the Seller – 0%, for the Broker – 0%, for the Appraiser – 0%, for Wells Fargo's personnel that have created this situation – 0%..... and for certain attorneys – 0%

(p) The **Rules of Professional Conduct, Rule 407, SCACR, Rule 3.3: Candor Toward the Tribunal**; clearly states within the following quotation marks that:

(1) "A lawyer shall not knowingly:"

(A) "make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer";

(B) "fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or"

(C) "offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false."

(2) "A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal."

(q) Unethical behavior by lawyers is a major concern of South Carolina's Supreme Court otherwise the Supreme Court would not have established the "Uniform Mentoring Plan". Unethical behavior is addressed in Attachment A, Section C3.

"Discuss how to address situations in which the new lawyer believes that another lawyer has committed an ethical violation or in which the new lawyer believes that he or she has been instructed to engage in unethical behavior."

OBJECTION TO ARGUMENT II

Defendant Cannot Avoid Wells Fargo's Deposition Because She Has Filed A Motion For Summary Judgment.

5. **Objection #19 to the Heading of Argument II:** The Defendant objects to this statement because the Defendant is not avoiding Wells Fargo's Deposition. The Defendant has clearly stated, the Plaintiff has not demonstrated any material need or has shown good cause for any additional discovery relative to the Defendants claims and counterclaims against Wells Fargo that necessitate and justify 3 years of ongoing discovery for a foreclosure proceeding; unless there are major legal issues as to how Wells Fargo's documents came into existence .. Wells Fargo has had ample time for discovery since June of 2008. {See Rule 30(a)(1) SCRCPP} The Appellate Court will affirm the Defendant's objection relative to this position during any appeal.

(a) The Defendant objects to the remaining statement in the heading because the Defendant did not file a motion for Summary Judgment.

(b) The Defendant's motion to Dismiss with Prejudice was filed pursuant to *Rule 41(b) SCRCPP* "Failure to Comply with Any Order of Court". {See Rule 41(b) SCRCPP}

Objection #20 to the unnumbered Paragraph 5, Sentences #1: The Defendant objects to sentence #1 because the Defendant has clearly stated the evidence is undeniable that Wells Fargo failed to "Substantially Comply" with a Valid Supreme Court Order. Because of the Plaintiff's non-compliance, the case can be dismissed pursuant to *Section (3)* of the Order.

(a) The only requirement for a *Section (3)* Dismissal is failure to comply. *Rule 41(b) SCRCPP* clearly states if a Plaintiff fails to comply with "Any Order of Court", the Defendant can move for a dismissal.

(b) Wells Fargo failed to "Substantially Comply" with *Section (3)* and *Subsection [4]* of the Supplemental Directive. Therefore, this matter of non-compliance is firmly established and must be resolved by the Court before this case can proceed.

(c) Consequently, Wells Fargo's request for continuance and any related assumption/s and/or filing/s including the supporting memorandum must be summarily dismissed and denied because the settling of the *Section (3) Dismissal* and the *Rule 41(b) SCRCPP Dismissal* upon motion has priority over any subsequent filings or motions by the Plaintiff. Based on existing case law, the Appellate Court will affirm this position.

Objection #21 to the unnumbered Paragraph 5, Sentences #2: The Defendant

objects to sentence #2 because there is no case law to cite. The Defendant might be the first person in the State of South Carolina that has demanded enforcement of *Administrative Order #2009-05-22-01*.

(a) The Defendant's demand for enforcement of the *Order #2009-05-22-01* might be the first case that establishes and determines the enforceability of the Supreme Court's Order and the legal standard that must be met to adjudicate violations of the Order.

(b) The Defendant's demand for enforcement might help the lower courts clarify and standardize the legal process for enforcement. What does the Supreme Court really mean by "*Every 30 Days*"? Would 5 updates qualify as complying, 10 updates, 15 updates or 20 updates? What did Chief Justice Toal really mean by reasonable efforts to contact homeowners? Would giving the homeowner 2 sheets of paper qualify as a reasonable effort and contact? What standard will be use to determine a reasonable effort?

(c) Then too, are the lower courts really prepared to dismiss cases for non-compliance? Is there an appeal standard or process if a bank or lender's case is dismissed pursuant to *Section 3*? Is violating a Supreme Court's Order more serious than a lower court's?

(d) What about lawyers and law firms? Do they really have to verify contact was made? Or would any filed statement satisfy the Court, even if it's an absolute lie? What standard of evidence is needed to verify compliance?

(e) Are the Supreme Court's Orders to be enforced? Are the Supreme Court's Orders enforceable? If so, how? when? ... and by which Court/Judge?

(f) Finally, would adjudicating the Defendant's demand to enforce compliance send a clear message to banks, lenders, servicers, lawyers and law firms that violations of the Supreme Court's Orders will not be tolerated? Or would it be business as usual?

Objection #22 to the unnumbered Paragraph 5, sentence #3: The Defendant further objects to the remaining allegation in sentence #2. The Defendant has not exhibited any bad faith. The Defendant has not filed any false or misleading statements. All the bad faith in this litigation has been demonstrated by Wells Fargo and the law firm. The Defendant objects to sentence #3 because the Defendant has not employed any dilatory tactics that prevented Wells Fargo from pursuing discovery. As stated previously, the Defendant objections are well taken. Any sitting Judge on the Appellate Court will affirm the Defendant's objection pursuant to *Rule*

30(a)(1) SCRCF. Wells Fargo has had ample time for discovery since 2008. Wells Fargo cannot justify 3 years of ongoing discovery for a foreclosure proceeding; unless there are major legal issues of fraud associated with the loan. The Appellate Court will affirm the Defendant's position that extrinsic evidence can be presented to prove fraud under the Parol Evidence Rule.

Objection #23 to the unnumbered Paragraph 5, sentence #4: The Defendant objects to sentence #4 because the various pieces of evidence that Wells Fargo is referring to came into existence as a direct result of Wells Fargo's and the law firm's failure to "Substantially Comply" with a Valid Supreme Court Order. If they had not failed, there would be no evidence.

(a) Even Wells Fargo admits the Defendant has evidence and since it is evidence relative to Wells Fargo's failed "Substantial Compliance", it is not beyond the scope of the pleadings. It is up to the Court to make this determination, *NOT WELLS FARGO!!!!*

(b) Furthermore, the Defendant objected to being included in the "Stay"/TRO in May of 2009. The Defendant's "Fraudulent" loan, note and mortgage needs to be nullified. The Defendant's case was included in the "Stay"/TRO because of Wells Fargo's Affidavit and the Court's inaction. Therefore, adjudication for violations during the "Stay"/TRO is proper.

(c) Finally, Wells Fargo and the law firm have a legal obligation to comply and the lower courts have a legal obligation to enforce the Supreme Court's Orders. Neither the Defendant nor the Court/Judge is responsible for Wells Fargo's failure to comply.

Objection #24 to the unnumbered Paragraph 5, sentence #5: The Defendant objects to sentence #5 because a *Rule 41(b) SCRCF Dismissal* is not the same as a *Rule 12(c) SCRCF*.

(a) A *Rule 41(b)* Dismissal is based on the Plaintiff's failure to prosecute or comply with these rules or any order of court; if this happens, the Defendant can move for dismissal of an action or any claim. In addition, there is no burden on the Defendant to prove no genuine issue of material fact exists or remains.

(b) A *Rule 12(c) Summary Judgment* is only appropriate when there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. In addition, the burden of proof would be on the Defendant to prove no genuine issues of material fact remain. The Appellate Court will affirm the Defendant's explanation is an accurate rendering of the differences.

Objection #25 to the unnumbered Paragraph 5, sentence #6: The Defendant objects to sentence #6 because the Plaintiff does need any deposition from the Defendant or an evidentiary record for a *Rule 41(b) SCRPC Dismissal*. The Appellate Court will affirm no deposition from the Defendant is required for a *Rule 41(b) SCRPC Dismissal*.

Objection #26 to the unnumbered Paragraph 5, sentence #7: The Defendant objects to sentence #7 because *Rule 30(b)(2) SCRPC* clearly states in pertinent parts...

"If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him."

What advantage is it to Wells Fargo to take a deposition that cannot be used against the Defendant or the Defendant's Witness? The Defendant and the Defendant's Witness are Pro Se.

OBJECTION TO ARGUMENT III
Defendant and Third Party Witness Have Material Knowledge of Facts Related to the Claims and Defenses at Issue in This Case and therefore, the Deposition Notice and Subpoena Issued by Wells Fargo's Counsel Should Be Enforced.

6. **Objection #27 to the Title of Argument III:** What Wells Fargo calls material knowledge of facts related to the claims and defenses at issue in this case is simply common sense reasoning. There is only one invoice, {WF00027} one file and one file number, 7-59. The Appraiser assigned the 7-59 file number to the Seller – Thomas Jacobs. There are no invoices, files or file numbers assigned to the Defendant. Therefore, every document with the 7-59 file number belongs to the Seller. The Broker was working with the Seller, the Appraiser was working with Seller and the supporting documents Wells Fargo used for the lending decision belonged to the Seller. The Seller brokered his own loan through Golden Gate Mortgage. Wells Fargo approved the loan and paid the Seller. There are no supporting documents that belong to the Defendant. Wells Fargo's files clearly show the Seller, with help from the Broker and the Appraiser victimized the Defendant and defrauded Wells Fargo out of \$75,000.00.

Objection #28 to the unnumbered Paragraph 6, sentence #1: The Defendant objects to sentence #1 because even though *Rule 34(c) SCRPC*, permits the compelling of documents for inspection, the Defendant has no documents at home; or anywhere else, that are relative to this case that can be presented for an inspection. The documents that are the source of the Defendant's counterclaims and defenses came from Wells Fargo and the law firm.

(a) *Rule 26(c) SCRCF* clearly states in pertinent parts...

"Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including one or more of the following: (1) that the discovery not be had."

(b) *Rule 45(c)(1) SCRCF* clearly states in pertinent parts...

"A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee."

Therefore, compelling or demanding enforcement for documents or materials the Defendant does not have, cannot obtain and cannot produce is a frivolous request, harassment, oppression and an undue burden.

Objection #29 to the unnumbered Paragraph 6, sentence #2: The Defendant objects to sentence #2 for the same reasons stated in the objection to sentence #1 in paragraph 6. The Defendant incorporates the objection by reference as though fully set forth herein.

7. **Objection #30 to the unnumbered Paragraph 7, sentences #1, #2 (Citation) and #3:** The Defendant objects to sentences #1, #2 (Citation not included) and #3 because the Defendant is not addressing the appropriateness of discovery; rather, there is nothing Wells Fargo cannot discover by written questions. *Rule 30(b)(2) SCRCF* prohibits using a deposition against a party if that person was not represented by counsel during the deposition.

Objection #31 to the unnumbered Paragraph 7, sentence #4: The Defendant objects to sentence #4 because the documents from which the Defendant asserts her (the Defendant's) counterclaims against Wells Fargo are *WF00001-WF00137*. These documents came from Wells Fargo; and the law firm, and are supported by the Defendant's *Exhibits 1- 248*.

Objection #32 to the unnumbered Paragraph 7, sentence #5: The Defendant objects to sentence #5 and refers Wells Fargo to the Witness' Affidavit.

Objection #33 to sentence #5 subpart 1: The Defendant objects. There are no additional documents. The relevant documents are *WF00001 – WF00137* and the Defendant's *Exhibits 1-248*.

Objection #34 to sentence #5 subpart 2: The Defendant objects and refers Wells Fargo to the Seller – Thomas Jacobs. All the paperwork for the loan was provided by the Seller. For more information about the loan, contact the Broker, the Appraiser and Wells Fargo.

Objection #35 to sentence #5 subpart 3: The Defendant objects. The Defendant never spoke with any mortgage Broker and only spoke to the Seller 3 times. 2 times at Bayne Street and once outside the closing attorney's office. The Seller has literally disappeared. The Defendant has not spoken to or has seen the Seller since December 21, 2007. For additional information relative to the Seller, contact the Broker and the Appraiser.

Objection #36 to sentence #5 subpart 4: The Defendant objects. The Defendant never transferred any appraisal to the Seller and the Seller never gave or transferred any appraisal to the Defendant. The 7-59 Appraisals came from Wells Fargo Home Mortgage, Golden Gate Mortgage and the law firm. For verification of falsification refer to *WF00001-WF00026, Exhibits 8-14 and Exhibit 113*.

Objection #37 to sentence #5 subpart 5: The Defendant objects and refers Wells Fargo to the Defendant's filed pleadings from July 2008 to December 2011 that are incorporated by reference as though fully set forth herein. There was no additional paperwork at the Player Law Firm or in the closing documents to lower the price of 423 Bayne Street. The Seller lied.

Objection #38 to sentence #5 subpart 6: The Defendant objects and refers Wells Fargo to *WF00001-WF00137* and Wells Fargo's *Exhibits B & D*. Wells Fargo's documents are the source of the Defendant's defenses, claims and counterclaims.

Objection #39 to sentence #5 subpart 7: The Defendant objects. The Defendant has never met and has never spoken to the Broker and has never called the Seller. The Defendant called the Seller's assistant on October 2, 2007 and completed a loan application over the phone. The assistant identified herself as someone that worked for Thomas Jacobs. As for the Witness, refer to the Witness' Affidavit for information up to 11/26/2007.

Objection #40 to sentence #5 subpart 8: The Defendant objects. The Defendant never spoke to any representative from Wells Fargo or from Wells Fargo Home Mortgage until December 24, 2007, Katherine R. Perkinson. For anyone and everyone else, refer to the Defendant's filed pleadings from July 2008 to December 2011 that are incorporated by reference as though fully set forth herein and to the Witness' Affidavit up to 11/26/2007.

Objection #41 to sentence #5 subpart 9: The Seller had no communications with the Defendant about financing real estate. The first time the Defendant met the Seller, the Seller told the Defendant her (the Defendant's) loan application was approved by Golden Gate Mortgage and Golden Gate Mortgage was going to be her (the Defendant's) lender. The Seller also told the Defendant that he (the Seller) was going to send his contractor, Mr. Lambright, to

begin repairs and improvements to the house. For more information about the Seller and Mr. Lambright, see the Witness' Affidavit.

Objection #42 to sentence #5 subpart 10: No loan documents were issued to the Defendant by the Seller. The Seller brought the loan paperwork to 423 Bayne Street on 11/26/2007 and told the Defendant her (the Defendant's) loan was going to be handled by his (the Seller's) friends and business associates.

(a) The Seller also told the Defendant she (the Defendant) would have to complete and sign all the paperwork or Golden Gate Mortgage would not fund the loan. In the paperwork was a blank copy of the Broker's Agreement {WF00080-WF00082}. The Defendant does not recall any figures on the application or supporting paperwork when they were signed.

(b) While the Defendant was completing the paperwork, the Seller got copies of the Defendant's driver's license {WF00118}, W-2 form {WF00062} and check stub {WF00061}. The Seller did not tell the Defendant why the paperwork was blank. The Defendant assumed; at the time, the new price had to be entered on the application. There may have been figures on other papers, but, the Defendant does not recall any figures.

(c) By the time the Seller returned with the Defendant's personal documents, the Defendant had completed the paperwork. The Seller took the paperwork with him. Before leaving, the Seller was asked about lowering the price. The Seller said, "The price will be lowered during the closing."

(d) The original loan paperwork was for \$75,000.00. This price included repairs and improvements. Since there were no repairs or improvements the price had to be lowered to \$30,000.00. This was the price the Defendant's husband told the Seller he (the Defendant's husband) was willing to pay for the house without repairs and improvements.

(e) The closing documents were received from the Player Law Firm on December 21, 2007. After returning home, the Defendant's husband examined the closing documents for a form, statement or any information that related to lowering the price to \$30,000.00. There were no additional closing documents.

(f) This is when the Defendant realized the Seller lied. There were no documents that lowered the price of 423 Bayne Street, no forms or any other information relative to the lowered price or itemized deductions from the original \$75,000.00 showing the price being lowered to \$30,000.00. Naturally, if Wells Fargo finds the Seller, he might lie about everything.

(g) The Defendant got on the phone immediately and called the number on the closing documents. The Defendant called every hour on the hour; but, the phone line stayed busy. Perhaps after 4 years, Wells Fargo will finally understand why it was imperative to cancel the loan immediately and place a stop payment order on any check issued to the Seller.

Objection #43 to sentence #5 subpart 11: There were no alleged attempts. On December 22, 2007, the Defendant's husband called Wells Fargo's office in Raleigh, North Carolina and left a message on the answering machine that the Defendant's loan is mired in fraud, deceit and deception.

(a) On December 24, 2007, Wells Fargo's representative, Katherine R. Perkinson returned the call and was informed of the problems with the loan. Instead of doing something to cancel the loan or putting a stop payment on the check to the Seller, Katherine R. Perkinson advised the Defendant to work things out with the Seller and if that could not be done, fax a written request to cancel the loan to Wells Fargo in Des Moines, Iowa. Since the Seller did not return any calls, the Defendant wasted valuable time following Katherine R. Perkinson's advice.

(b) On or about December 26/27, 2007, the closing attorney, Debra C. Galloway, faxed a letter to Wells Fargo Home Mortgage that notified WFHM of problems with the loan and the loan was in dispute. Wells Fargo still would not cancel the loan or put a stop payment on the check to the Seller.

(c) Calls and written correspondence to cancel the loan, modify the loan or issue a new loan began shortly after 1:00 pm on December 21, 2007 and have not stopped. Even this foreclosure proceeding is part of the same process to cancel the loan, modify the loan or issue a new loan for the true value of 423 Bayne Street.

(d) In May of 2008, after faxing them copies of the falsified 7-59 Appraisals {WF00014-WF00026}; {WF00001-WF00013} and Exhibits 8-14, Wells Fargo's Loss Mitigation Department advised the Defendant to contact Des Moines, Iowa to cancel the loan because of suspected fraud. {The 2008 phone number to Loss Mitigation is in the pleadings}

(e) Loss Mitigation told the Defendant Wells Fargo did not have a program, process or procedure that can modify a loan, note or mortgage that was obtained by fraud or suspected fraud. {Elizabeth Scott Moise has verified this fact.}

Objection #44 to sentence #5 subpart 12: The Defendant refers Wells Fargo to the Defendant's filed pleadings from October 2009 to December 2009. For more information about GreenPath, call Hopenow. The 2009 number is in the pleadings. {WF00127}

Objection #45 to sentence #5 subpart 13: In 2008, information about loan brokers and loan originators could be obtained from South Carolina's Department of Consumer Affairs by calling SCDCA with the name of the person that was the subject of the inquiry. In 2008, it Thomas D. Jacobs and Golden Gate Mortgage/David Terrell.

Objection #46 to sentence #5 subpart 14: In 2008, information about building permits could be obtained from the City of Orangeburg's Building Inspector by calling or going to the office in person if you wanted copies. In 2008, all you had to do was give the secretary the name of the person that is the subject of the inquiry. In 2008, it was Thomas D. Jacobs.

Objection #47 to the remaining statements in the unnumbered Paragraph 7, sentences #6 and #7: The Defendant objects to sentences #6 and #7 because the information in this pleading, all previous pleadings, and any information the law firm needs to prepare a case, can be obtained by written questions. Oral depositions are not necessary. In addition,

(a) If Wells Fargo failed to comply with these rules or any order of Court, a deposition is not required from the Defendant for a *Rule 41(b) SCRCF Dismissal*. Therefore, there are no outstanding issues for Wells Fargo to prepare for; and,

(b) Wells Fargo must present its evidence proving compliance to these rules and the Court's Order to the Court/Judge as trier of the facts. Therefore, the case will be adjudicated upon the merits. This is clearly stated in *Rule 41(b) SCRCF*: (Boldness added for emphasis.)

"For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief."

"The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for failure to join a party under Rule 19, operates as an adjudication upon the merits."

(c) Based on the facts, the law and the rules, the Defendant's objections should be sustained until the Court officially rules on Wells Fargo's failed compliance.

OBJECTION TO ARGUMENT IV

Administrative Order No. 2009-05-22-01 Does Not Permit Defendant to Avoid the Wells Fargo Subpoena under Rule 45 SCRCF

8. Objection #48 to the Heading, unnumbered Paragraph 8 & sentences #1, #2:

The Defendant objects to the Heading of Argument IV and sentences #1 and #2 because the Defendant is not avoiding any subpoena under *Rule 45 SCRCF*. *Rule 45(c)(1) SCRCF* clearly states: (Boldness added for emphasis.)

"A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee."

(a) The Subpoenas were overly broad and did not specify or identify any document/s. The Subpoenas failed to establish any relevance to the claims raised by the allegations in Wells Fargo's complaint or the counterclaims and defenses raised by the

Defendant. The Subpoenas did not identify or describe any category of documents, material or subject matter with any reasonable degree of clarity or precision. {Refer to filed Exhibits 241-244}.

(b) The Defendant objects further to the remaining statement relative to the HAMP in sentence #1. The Defendant can verify Wells Fargo did not initiate any contact during the “Stay”/TRO as required by *Subsection [4]* of the Supplemental Directive and can verify certain attorneys at the law firm filed false and misleading statements that Wells Fargo attempted to contact the Defendant, but were unsuccessful in those attempts. “Substantial Compliance” is required, implied and demanded by any Supreme Court Order until the Court says otherwise.

9. **Objection #49 to the unnumbered Paragraph 9:** The Defendant objects to the unnumbered paragraph 9 because of the following illustration: If 25 updates are required for “Substantial Compliance”, then any number less than 25 is not “Substantial Compliance”, that’s partial compliance. The Court determines what it really means by “Substantial Compliance” *NOT WELLS FARGO!!!!*. Every Valid Supreme Court Order implies, demands and expects “Substantial Compliance”; otherwise, there is no real need to issue an Order.

(a) In paragraph 9, Wells Fargo provided the hard evidence that proves the Defendant’s allegations are statements of fact. There was no “Substantial Compliance” to *Section (3)*, just partial compliance. In addition, Wells Fargo’s partial compliance is based on misinformation, false statements and fabrication. In addition to missing deadlines, Wells Fargo and/or the law firm repeatedly lied to the Court in their updates from 2009 to May 2, 2011.

(b) The Defendant’s *Rule 41(b) Dismissal* is also based on Wells Fargo’s absolute failure to comply with *Subsection [4]* of the Supplemental Directive. Wells Fargo cannot provide any hard evidence that Wells Fargo initiated any contact with the Defendant during the “Stay”/TRO. The dates and months in question are the filed pleadings that state attempts were made, but not successful.

“See Wells Fargo’s filed Updates dated June 15, 2009, July 15, 2009, August 17, 2009 & September 15, 2009 and the Defendant’s Responses dated August 26, 2009, September 16, 2009 & October 14, 2009”. More lies are in 2010 updates relative to possible modification.

(c) Wells Fargo must prove by the presentation of the evidence for the dates and months in question and for all the filings in 2010. Otherwise, Wells Fargo lied; and the Court cannot overlook absolute lies and still be a Court of Law or adjudicate fairly and impartially. The

Court might excuse the law firm, but the Court cannot excuse, exonerate or overlook Wells Fargo repeatedly lying to the Court month after month for almost 2 years.

(d) Conversely, if it is the attorneys that have knowingly and repeatedly lied to the Court, without Wells Fargo's knowledge or consent, then "*Fraud upon the Court*" has been committed and it is egregious. Therefore, Wells Fargo's request for a continuance and any related assumption/s and/or filing/s including the supporting memorandum must be summarily revoked and denied until the Court has rendered an official ruling. South Carolina's Appellate Court and Supreme Court will affirm the Defendant's position relative to these matters.

(e) Whether it is a failure to follow these rules or a failure to comply with any Order of Court, the Defendant has more than enough evidence for a *Section (3), Rule 41(b) SCRPC Dismissal* and a *Rule 12(h)(3) SCRPC Dismissal*. If Wells Fargo is found guilty of violating the Supreme Court's Order by repeatedly lying to the Court, Wells Fargo no longer has any "Standing" and the Court no longer has any "Subject Matter Jurisdiction" to proceed. The Defendant's case can also be dismissed by default. Wells Fargo can no longer plead its case.

(f) If the attorneys did the lying without Wells Fargo's knowledge or consent; then, the attorneys are guilty of violating their *Oath, the Rules of Professional Conduct* and committing "*Fraud upon the Court*". Whether the attorneys repeatedly lied or Wells Fargo repeatedly lied, there is no verifiable evidence of compliance during the dates and months in question. Consequently, Attorney Calub, has no justifiable need for depositions, continuance, Subpoenas, additional discovery or any scheduling order until these matters are resolved.

(g) Any loss Wells Fargo has incurred is due to Wells Fargo's own "Negligence"; "Failure to Exercise Due Diligence"; "Failure to Substantially Comply with Lawful Statutes and a Valid Supreme Court Administrative Order"; "Errors in Judgment"; [lying to the Court is definitely and error in judgment], and "Reliance on Incompetent Legal Advice"; if Wells Fargo did not repeatedly lie, but Wells Fargo's attorneys repeatedly lied in order to meet compliance requirements, then this malfeasance, separately or collectively is to Wells Fargo's own detriment.

(h) Consequently, the Defendant demands Wells Fargo and the law firm verify their filed statements with hard evidence; i.e., phone records, dates, times, HMP determination methods and the names of the personnel that contacted the Defendant during the dates and

months in question. Until this is done, the Defendant's objection to any continuance and scheduling order; as well as, to any additional discovery by Wells Fargo must be sustained by the Court until the Court has an official ruling. The Appellate Court will affirm the Defendant's position relative to the importance of investigating these matters and rendering a judgment.

10. **Objection #50 to the unnumbered Paragraph 10:** The Defendant's objection to the unnumbered paragraph 10 is stated in paragraph 9 and in subparts 9(a) – 9(h); and are incorporated by reference as though fully set forth herein.

11. **Objection #51 to the unnumbered Paragraph 11:** The Defendant's objection to unnumbered paragraph 11 is stated in paragraphs 9 and 10 and are incorporated by reference as though fully set forth herein. In addition, the case law cited in this paragraph is not relevant to this case. South Carolina's Circuit Court Judges and Appellate Court Judges cannot reverse and remand a Supreme Court's Order or a final decision of the Supreme Court. Therefore, under the law and by the rules, the lower courts must enforce any Valid Supreme Court Order.

12. **Objection #52 to the unnumbered Paragraph 12:** The Defendant's objection to the unnumbered paragraph 12 is stated in paragraphs 1 – 11 and are incorporated by reference as though fully set forth herein.

13. **Objection #53 to the unnumbered Paragraph 13:** The Defendant's objection to the unnumbered paragraph 13 has already been stated in the numbered paragraphs 1 - 11 and are incorporated by reference as though fully set forth herein.

OBJECTION TO ARGUMENT V

Compelling Defendant and Witness to Produce Documents Related to This Action and to be Deposed Does Not Give Rise to Any Undue Burden on Witness

14. **Objection #54 to the unnumbered Paragraph 14:** The Defendant's objection to the unnumbered paragraph 14 has already been stated in the Defendant's Opening Statements 2-5 and paragraphs 1-11 and are incorporated by reference as though fully set forth herein.

15. **Objection #55 to the unnumbered Paragraph 15:** The Defendant's objection to the unnumbered paragraph 15 has already been stated in the Defendant's Opening Statements 2-5 and in paragraphs 1-11 and are incorporated by reference as though fully set forth herein.

CONCLUSION

The Defendant does not object to Wells Fargo's Heading described as Conclusion:

16. **Objection #56 to the unnumbered Paragraph 16, sentences #1 and #2:** The Defendant's objection to the unnumbered paragraph 16, sentences #1 and #2 has already been stated in the Defendant's Opening Statements 2-5 and in the numbered paragraphs 1-11 and are incorporated by reference as though fully set forth herein.

(a) In addition, the Defendant further objects to Wells Fargo's conclusion that the Defendant and the Defendant's Witness have documents that can be subpoenaed and brought to a deposition or inspected. This is absolutely not true. It is an international law that no human being should be compelled to engage in any act of utter futility. By its very nature, this is cruel, degrading, inhuman...and unusual punishment.... and not a legitimate attempt at discovery. Some of these words were first used in the English Bill of Rights in 1689, and can be found in the Eighth Amendment to the United States Constitution. These same words can be found in the British Slavery Amelioration Act (1798).

(b) Similar words ('No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment') appear in Article V of the Universal Declaration of Human Rights adopted by the United Nations General Assembly (A/RES/217, December 10, 1948). The right, under a different formulation ('No one shall be subjected to (inhuman or degrading treatment or punishment.)' is found in Article III of the European Convention on Human Rights (1950).

(c) The Canadian Charter of Rights and Freedoms (1982) also contains this fundamental right in Section 12 and it is to be found again in Article IV (quoting the European Convention verbatim) of the Charter of Fundamental Rights of the European Union (2000).

(d) **Objection #57:** The Defendant should not be ordered by the Court/Judge with a writ, order, decree or mandate; regardless of Wells Fargo's insistence, that compels the Defendant to produce documents that do not exist. Such a request is an unreasonable demand of another human being; and.... by its very nature..... is oppressive and creates an undue burden.

(e) South Carolina's Appellate Court and Supreme Court will affirm and uphold the Defendant's objection to Wells Fargo's demand for the production and/or inspection of documents and/or materials that cannot be produced or presented because they do not exist in reality, actuality or fact.

LEGITIMATE DISCOVERY VS. ILLEGITIMATE DISCOVERY

17. In order for the Court/Judge to honor and uphold Wells Fargo's request for a motion to compel discovery, the Defendant has to refuse the discovery requests that are identified in *Rule 37(a)(2) SCRPC*. *Rule 37(a)(2) SCRPC* clearly states in pertinent parts...

"If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33,..."

18. The Defendant has "Substantially Complied" with these rules and every other lawful request from Wells Fargo that is pursuant to the rules. *Rule 30(b)(6) SCRPC* does not apply to the Defendant and *Rule 30(b)(2) SCRPC* clearly states in pertinent parts....

"If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him."

19. **Objection #58:** The Court/Judge should not order the Defendant to indulge the whims of Wells Fargo. Wells Fargo must comply with the rules. South Carolina's Appellate Court will affirm the Defendant's objection that Wells Fargo must comply with the rules.

20. **Objection #59:** The Court/Judge should not order the Defendant to give a deposition that violates the rule. If the deposition cannot be used against the person that does not have a counsel to represent him, why take it or order it? Pro Se does not meet the requirements of the rule. Counsel under the rules and under the law means an Officer of the Court (an attorney or lawyer that has not been disbarred and/or suspended). South Carolina's Appellate Court will affirm the Defendant's objection. The deposition cannot be used against the Defendant.

21. In order for the Court/Judge to grant a motion for the production of documents for inspection, the request must comply with the requirements of *Rule 34(a) and 34(b) SCRPC*. *Rule 34(a) SCRPC* clearly states in pertinent parts...

"Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents, or electronically stored information (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served.."

22. **Objection #60:** Wells Fargo's request for document production is not legitimate discovery and must be considered frivolous, an harassment, oppression and inflicting an undue burden. Wells Fargo's request is not pursuant to *Rule 34(a) SCRCP*. South Carolina's Appellate Court will affirm the Defendant's objection. Wells Fargo's document request must be pursuant to *Rule 34(a) SCRCP*.

23. **Objection #61:** The Court/Judge should not order the Defendant to produce any documents that Wells Fargo has not designated with specificity or particularity. South Carolina's Appellate Court will affirm the Defendant's objection. Wells Fargo must designate and described documents with specificity or particularity.

24. **Objection #62:** The Court/Judge should not order the Defendant or the Defendant's Witness to comply with any document request from Wells Fargo that is not supported by an affidavit, evidence, proof or information that the document/s requested for production and/or inspection are in the Defendant's possession, custody and under the control of the Defendant or the Defendant's Witness. South Carolina's Appellate Court will affirm the Defendant's objection relative to this matter.

25. *Rule 34(b) SCRCP* clearly states in pertinent parts...

"The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity."

26. **Objection #63:** Wells Fargo's request for document production is not legitimate discovery and must be considered frivolous, harassment, oppression and inflicting an undue burden. Wells Fargo's request failed to meet the requirements of *Rule 34(b) SCRCP*. South Carolina's Appellate Court will affirm the Defendant's objection. Wells Fargo's document request must be pursuant to *Rule 34(b) SCRCP*.

27. **Objection #64:** The Court/Judge should not order the Defendant to comply with any document request from Wells Fargo in which Wells Fargo does not set forth the items to be inspected; either by individual item or by category and does not describe the item/s or category of items that are in the Defendant's possession, under the control of the Defendant or in the

custody of the Defendant or the Defendant's Witness with a reasonable degree of particularity. South Carolina's Appellate Court will affirm the Defendant's objection relative to this matter.

27. *Rule 26(b)(1) SCRPC* states in pertinent parts...

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter."

28. **Objection #65:** Wells Fargo's request is not legitimate discovery. Wells Fargo's document request violates *Rule 26(b)(1) SCRPC*. South Carolina's Appellate Court will affirm the Defendant's objection, Wells Fargo's discovery request must be pursuant to *Rule 26(b)(1) SCRPC*.

29. **Objection #66:** The Court/Judge should not order the Defendant to comply with any discovery request from Wells Fargo for the production of documents until Wells Fargo presents evidence, proof, an affidavit or information that the Defendant or the Defendant's Witness has the ability, legal capacity and the legal authority to create and produce documents for inspection that are relevant to the subject matter of this case. South Carolina's Appellate Court will affirm the Defendant's objection. Wells Fargo must prove the Defendant and the Defendant's Witness have the ability, legal capacity and the legal authority to create and produce documents for inspection that are relevant to the subject matter of this case and/or in the lawful custody of and/or under the lawful control of the Defendant or the Defendant's Witness.

30. **Objection #67:** The Court/Judge should not order the Defendant or the Defendant's Witness to comply with any document request from Wells Fargo until Wells Fargo presents evidence, proof, an affidavit or any relevant information that verifies the existence, description, nature, custody, condition and location of any books, documents, or other tangible things that are in the lawful custody of and under the lawful control of the Defendant or the Defendant's Witness that are relative to the subject matter of this case; and Wells Fargo must prove the Defendant and the Defendant's Witness have the ability, legal capacity and the legal authority to create and produce such documents for inspection. The Appellate Court will affirm the Defendant's objection. Wells Fargo must identify the documents with particularity.

31. **Objection #68:** The Defendant has already complied with Wells Fargo's request for "the identity and location of persons having knowledge of any discoverable matter" that is pursuant to Rule 26(b)(1) SCRPC. The Defendant has repeatedly stated, Wells Fargo needs to contact the Seller, the Appraiser, the Broker, Wells Fargo Home Mortgage Underwriters, Janet Frotscher's Executive Resolution Team, South Carolina's Department of Consumer Affairs and the City of Orangeburg Building Inspector for additional discoverable matters and documents relative to the loan and relative to this case.

32. **Objection #69:** The Defendant has already complied with Wells Fargo's request by repeatedly stating the law firm needs to call Wells Fargo's Loss Mitigation Department and Wells Fargo's Legal Department and inquire about loans suspected of being obtained by fraud. Call Wells Fargo about its policy relative to fraud, fraudulent loans, mortgage fraud, insurance fraud, bank fraud, predatory lending schemes, illegal loan brokering and Wells Fargo's policy relative to home improvement and mortgage fraud. The Appellate Court will affirm the Defendant has "Substantially Complied" with Wells Fargo's request for the identity and location of persons having knowledge of any discoverable matter and documents relative to this case.

FRAUD AND THE PAROL EVIDENCE RULE

33. Texas' Supreme Court has written in a final ruling: "Fraud is, and has been for a long time, an exception to virtually every known legal doctrine. *See, e.g., Drinkard v. Ingram*, 21 Tex. 650 (1858). The reason is that fraud undermines the process, the foundation, of all transactions. Thus, fraud in the inducement vitiates contracts. Fraud is an exception to the parol evidence rule. Fraud tolls statutes of limitation. Fraud can revoke wills and divisions of community property. Fraud will undo real estate conveyances. There is no reason to sanctify fraud in any litigation..."

"...Preclusion does not apply when there has been fraud. *E.g., Heiser v. Woodruff*, 327 U.S. 726 (1946); *see also Sea-Land Serv., Inc. v. Gaudet*, 414 U.S. 573, 579 (1974). This exception applies whenever evidence is either fraudulently concealed or when it could not have been discovered with due diligence in the original proceeding. *Guerrero v. Katzen*, 774F.2d 506, 508 (D.C. Cir. 1985)."

34. West's Encyclopedia of American Law: [The parol evidence rule prevents a party

from avoiding liability on a written contract by presenting evidence that the writing does not mean what it says. The reason for the rule is to give stability to written contracts and to prevent someone claiming that there were oral terms that never found their way into the written agreement. Parol evidence will be allowed to:

- (a) Aid in the interpretation of existing terms; disprove the validity; or,
- (b) Show the writing of the contract is ambiguous; or,
- (c) Show the writing is not a true statement of the agreement of the parties; or,
- (d) Show fraud, misrepresentation, duress; or,
- (e) Show a consideration has not been paid, an accident or correct mistakes; or,
- (f) Show unconscionability, the existence of an illegal purpose; or,
- (g) Show the legality of a contract is in question; or,
- (h) Show wrongful conduct by one or both parties.]

35. South Carolina's Appellate Court has clearly stated: "[T]he parol evidence rule was designed to prevent frauds, not to promote frauds by immunizing a party from claims arising out of his fraudulent misrepresentations. Pinken, 704 F.2d at 1023."

"Parol evidence is admissible to ascertain the true meaning of the contract and the intent of the parties. Klutts Resort Realty, 268 S.C. at 89, 232 S.E.2d at 25."

36. Delaware's Trial Handbook states, "Parol evidence relating to circumstances surrounding the formation of the contract is admissible.." [Scott-Douglas Corp. v. Greyhound Corp., 304 A.2d 309, 315 (Del. Super. 1973). See also Glenm v. Tide Water Associated Oil Co., 101 A.2d 339, 342 (Del. Ch. 1953) (time, place and circumstances of execution of contract may be proved by parol evidence); Cochran v. Denton, C.A. No. 11826, slip op. at 5-6, Allen, C. (Del. Ch. Oct. 9, 1991), *aff'd mem.*, 612 A.2d 157 (Del. 1992) (parol evidence admissible to determine intent of parties to enter into a contract)]

37. "Thus, the parol evidence rule does not preclude evidence of fraud, duress, mutual mistake, misrepresentation or overreaching in the making of a contract.." [Anglin v. Bergold, No. 185, 1988, slip op. at 4-5, Walsh, J. (Del. June 26, 1989) (ORDER), disposition reported at 565 A.2d 279 (Del. 1989) (TABLE); Esso Standard Oil Co. v. Cunningham, 114 A.2d 380, 383 (Del. Ch. 1955), *aff'd*, 118 A.2d 611 (Del. 1955); Reeder v. Sanford School, Inc., 397 A.2d 139, 141 (Del. Super. 1979); Ed Fine Oldsmobile, Inc. v. Knisley, 319 A.2d 33, 36-37 (Del. Super. 1974); Scott-Douglas Corp. v. Greyhound Corp., 304 A.2d 309, 315 (Del. Super. 1973); New Castle County v. Crescenzo, C.A. No. 7087, slip op. at 7, Hartnett, V.C. (Del. Ch. Feb. 11, 1985), *aff'd mem.*, 505 A.2d 454 (Del. 1985); Ft. Howard Cup Corp. v. Quality Kitchen Corp., C.A. No. 89C-DE-34, slip op. at 5, Steele, J. (Del. Super. Aug. 17, 1992).]

"The subject matter of a contract and identity of the parties thereto may also be proved by parol evidence." [*Cieniewicz v. Sliwka*, 128 A. 527, 528 (Del. Ch. 1925); *Foreman's Systems, Inc. v. Milk Dealers' Crate Corp.*, 120 A. 358, 363 (Del. Ch. 1923); *Lewis v. Ennis*, C.A. No. 4941, slip op. at 7, Marvel, C. (Del. Ch. May 19, 1976)]

38. South Carolina's Appellate Court goes even further by stating, "The necessary elements of a contract are an offer, acceptance, and valuable consideration." *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997). "Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct. App. 1998). "A forbearance to exercise a legal right is a valuable consideration."

THE BURDEN OF PROOF IS ON WELLS FARGO

39. The Defendant has stated from the very beginning that the Court/Judge is dealing with "Fraud" and not a foreclosure. Wells Fargo defiled the Court of Common Pleas and polluted the judicial process by bringing into Court an "Illegally Brokered Loan", an illegal "Predatory Lending Scheme" and a "Home Improvement and Mortgage Fraud" and presented it to the Court as a foreclosure. The law firm continues to insist the Court/Judge prosecute Wells Fargo's illegal banking and brokering activity as a simple foreclosure proceeding. The Courts do not exist to legalize, illegal activity. This is an "Abuse of Process", even though the Defendant would have an uphill battle to prove it in Court.

40. South Carolina's Appellate Court has set a high standard to prove "Abuse of Process". "The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding." *Hainer v. Am. Med. Intern., Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997) (citing *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693 (1967)). "

"The abuse of process tort provides a remedy for one damaged by another's perversion of a legal procedure for a purpose not intended by the procedure. *Food Lion, Inc. v. United Food Commercial Worker's Int'l Union*, 351 S.C. 65, 69, 567 S.E.2d 251, 253 (Ct. App. 2002)."

"An allegation of an ulterior purpose or 'bad motive' standing alone, is

insufficient to assert a claim for abuse of process. *Id.* at 74, 567 S.E.2d at 255. Thus, to establish a claim for abuse of process, the plaintiff must prove not only that the lawsuit was brought for an ulterior purpose, but that willful acts were taken through which the process was misapplied or abused. *Id.*”

41. Ulterior is defined as going beyond what is openly revealed or avowed (especially being kept in the background or deliberately concealed); covert - secret or hidden; not openly practiced or engaged in or shown or avowed. Purpose is a reason, cause or an end to be obtained. It would be difficult for the Defendant to prove Wells Fargo purposely hid the truth; even though the truth has not been revealed.

42. Even though this fraud has been perpetuated for over 3 years, it would also be difficult for the Defendant to prove Wells Fargo’s “Abuse of Process” is being willfully done. If the Defendant’s loan has been packaged into a mortgage-backed security, Wells Fargo is also actively engaged in an investment fraud. How can an entity participate in fraudulent activity for over 3 years if it is not being willfully done by an individual or group?

43. Pigs don’t underwrite loans and the lowly snake hasn’t personally filed a recorded false statement since the Garden of Eden. Therefore, there is no evidence to prove the snake is guilty. Even though the “Devil” might have made them do it, the “Devil” is not recognized as a causative agent by the laws of the State of South Carolina. Even after receiving documented evidence of the fraud, someone authorized the perpetuation of it. Someone is responsible. **[The Defendant alleges it is Janet Frotscher; even the law firm repeats her false statements.]** The Defendant would have to spend thousands of dollars in legal fees to discover the truth from Wells Fargo. It simply would not be worth it to the Defendant from a financial point of view.

44. The last recorded sales price of 423 Bayne Street is \$14,000.00 *{Refer to filed Exhibits 163, Page 3 of 3 and Exhibit 115}* On January 2, 2009, documents were faxed to Melinda L. Goodnight, Complaint Operations Manager at the Office of the Comptroller of the Currency (OCC), South Carolina’s Department of Consumer Affairs (SCDCA) and Janet Frotscher’s Executive Resolution Team (JFERT). The purpose of the fax was to encourage Janet Frotscher to reconsider her (Janet Frotscher’s) position and come to a resolution about 423

Bayne Street. The fax was sent to OCC and SCDC to provide undeniable evidence that in 2008, the value of 423 Bayne Street; in its physical condition in 2007, could not possibly be worth \$75,000.00 in Orangeburg's housing market. The fax also provided additional proof that the Defendant's mortgage, loan and note was an absolute "Fraud". It did not work.

45. The personnel at these "watchdog" government agencies simply repeated Janet Frotscher's false statements. No one requested any evidence or proof that the broker actually ordered an appraisal for the Defendant and neither did Wells Fargo. No one bothered to check the Broker's records or the Appraiser's records and neither did Wells Fargo.

46. No one checked to make sure the Broker was not violating key provisions of RESPA (the Real Estate Settlement Procurement Act); by not actually meeting with, and working with the Defendant as required by RESPA and South Carolina's Code of Laws. The personnel at these government agencies did not request any evidence or proof that the Defendant met the Appraiser on 09/14/2007 and neither did Wells Fargo

47. The personnel at these regulatory agencies simply repeated Janet Frotscher's false statements. No one requested documented evidence from Janet Frotscher to prove her statements are true. If someone says, "I was not there." .. and presents evidence proving they were not there, it should have occurred to some one to look more closely at the accuser. If a person says, "Golden Gate Mortgage is not my broker. I was told by the Seller.. I had to sign the Broker's Agreement; otherwise, ... Golden Gate Mortgage would not fund the loan."

48. It should have motivated some one to request phone records from Golden Gate Mortgage proving there was telephone contact with the Defendant. They should have requested Golden Gate Mortgage send them copies of letters, faxes, or any written correspondence to the Defendant, as well as, dates and times of actual meetings. No one investigated the Defendant's allegation relative to Golden Gate Mortgage and neither did Wells Fargo. Agency personnel simply repeated Janet Frotscher's false statements and so did the law firm.

49. The Burden of Proof is on Wells Fargo. Wells Fargo must prove the Broker actually ordered an appraisal for the Defendant. Janet Frotscher has stated it in writing,

therefore, Wells Fargo must prove it. Otherwise, the statement is a false accusation; and even worse..., an absolute lie. *{See Attachments A, B & C}*

50. Wells Fargo must prove the Broker actually met the Defendant and signed the Broker's Agreement and the remaining RESPA paperwork in the presence of the Broker or in the presence of an authorized and licensed agent of the Broker. If this cannot be proven, Golden Gate Mortgage was working with and for the Seller and not working with or for the Defendant.

51. If the Broker never met the Defendant, corresponded with the Defendant or contacted the Defendant by any means whatsoever; then, Golden Gate Mortgage cannot be considered a legitimate Broker for the Defendant by RESPA guidelines or South Carolina Law even with a signed agreement. How did the Defendant's loan paperwork and personal documents, get delivered, signed and returned to Broker, including the Broker's Agreement, if the Broker did not do it? The answer to the preceding question proves beyond any reasonable doubt... the Defendant's statements have been verified. The Seller – Thomas Jacobs – brokered the loan and processed it through the Broker. Wells Fargo has no hard evidence that can refute the Defendant's statements and the Witness' statements; that's because they are absolutely true.

52. The evidence speaks for itself. The loan, note and mortgage came into existence as a direct result of the illegal brokering activity of the Seller, fraud, misrepresentation of existing material facts, omission of existing of material facts, failure to disclose the truth and/or the outright lies of the Seller, the Appraiser and the Broker. *{WF00001-WF00137}*

53. Wells Fargo must prove 423 Bayne Street was worth \$75,000.00 on October 8, 2007. The property must be reset to that date and time. October 8, 2007 is the date of the 7-59 Appraisals that Janet Frotscher's Executive Resolution Team reviewed and found acceptable for lending purposes. *{WF00001-WF00026}* If Wells Fargo cannot prove the 7-59 Appraisals are not falsified, then the value of the loan, note and mortgage are falsified by the omission of existing material facts, misrepresentation of existing material facts, failure to disclose the truth and/or the outright lies of the Appraiser. The 7-59 Appraisals came from the Broker. *{WF00120}*

54. The property must be reset to its condition on October 8, 2007. 09/14/2007 is the date of the 7-59 Satisfaction Completion Certificate that Janet Frotscher's Executive Resolution

Team reviewed and found acceptable for lending purposes. {WF00009 & WF00022} If Wells Fargo cannot prove the Satisfaction Completion Certificate is not falsified, then the value of the loan, note and mortgage are falsified by the misrepresentation of existing material facts, omission of existing material facts, failure to disclose the truth and/or the outright lies of the Appraiser and the Seller.

55. Wells Fargo Must produce the original Contract of Sale that was signed on 11/26/2007. There was no "As Is" clause on the original Contract of Sale. There were no strikeouts and no initials. Wells Fargo's (2) Contract of Sales have "As Is" clauses which means they are not the original Contract of Sale. {140-141} Wells Fargo must produce the original Contract of Sale without the "As Is" clause, strikeouts and initials. If there is an "As Is" clause, strikeouts or initials, the Contract of Sale is a "Forgery by Substitution". Information was added to the Contract of Sale after signing. This is the same document Janet Frotscher's Executive Resolution Team reviewed and found acceptable for lending purposes. {WF00028-WF00029}

56. If Wells Fargo cannot produce the original Contract of Sale or provide documented evidence the Contract of Sales has not been altered, then there is no valid Contract of Sale to support the loan, note and mortgage and there is no outstanding debt on the Defendant's property for Wells Fargo to collect or foreclose upon. The Defendant's loan, note and mortgage must be rendered null and void as a matter of law. Wells Fargo's losses can be directly traced to the misrepresentation of existing material facts, omission of existing material facts, failure to disclose the truth, false accusations and/or the outright lies of the Appraiser, the Seller, the Broker, Janet Frotscher's Executive Resolution Team and Wells Fargo Home Mortgage underwriters. Someone altered the Contract of Sale and it was not the Defendant.

57. The Parol Evidence Rule allows the Defendant to present extrinsic evidence to prove the writing is not a true statement of the agreement between the parties. It was never the intention of the Defendant to be involved in an illegal "Predatory Lending Scheme" and a Home Improvement and Mortgage Fraud; or be a party to Wells Fargo's Insurance Fraud and possible Securities Fraud. The Defendant never agreed to pay back any loan that is based on falsified documents, fraud and forgeries. Therefore, the note and mortgage are not a true statement of the

agreement between the parties and must be rendered null and void as a matter of law. Wells Fargo's complaint must be dismissed and the Defendant, Justly and Fairly compensated for the Defendant's legal defense and any punitive damages the Court deems is proper.

58. The Parol Evidence Rule allows the Defendant to present extrinsic evidence to prove fraud and misrepresentation. The 7-59 Appraisals are falsified and *Verifiable Frauds and Forgeries*. Is not the intention of the Defendant to be involved in a loan, note and mortgage that are based on the use and reliance on falsified documents to establish value and maintain value. Since the loan, note and mortgage do not represent a verifiable existing material fact, they can no longer be considered legitimate contracts and must be rendered null and void as a matter of law. Wells Fargo's complaint must be dismissed and the Defendant, Justly and Fairly compensated for the Defendant's legal defense and any punitive damages the Court deems is proper.

59. Since the 7-59 Appraisals are verifiably falsified, frauds and forgeries and the Satisfaction Completion Certificate is falsified, the 423 Bayne Street that is identified on the 7-59 Appraisals does not exist in reality, actuality or fact. Therefore, Wells Fargo's presentation of the property and its supporting documents misrepresents an existing material fact... and... is an absolute lie; therefore, the mortgage and note must be rendered null and void as a matter of law. Wells Fargo's complaint must be dismissed and the Defendant, Justly and Fairly compensated for the Defendant's legal defense and any punitive damages the Court deems is proper.

60. Because Wells Fargo's mortgage and note are a misrepresentation of a material existing fact, the mortgage and note are frauds that are being perpetrated on the investment community, the general public and the Defendant. Wells Fargo's mortgage and note represent an illegal scheme that is not supported by the laws of the State of South Carolina or the United States of America. Therefore, the Court/Judge has no legal alternative. The contracts must be rendered null and void as a matter of law and the Defendant, Justly and Fairly compensated for the Defendant's legal defense and any punitive damages the Court deems is proper.

61. Wells Fargo's mortgage and note, in addition to being a misrepresentation of a material fact and being based on and supported by falsified and forged documents, the mortgage and note have been maintained by false statements. The Satisfaction Completion Certificate does

not identify anyone. {WF00009} Parol evidence is permissible to show the legality of the note and mortgage is being maintained by untrue statements. {WF00125} Janet Frotscher's false statements have maintained an illegitimate note and mortgage for over 3 years. The Defendant did not send any information to anyone. {WF00120} Proof of misconduct by one of the parties is also permissible under the rule. Wells Fargo's failure to act responsibly after being notified of fraud and forgery is unconscionable for a major national and international bank. {Exhibits 8-14}

WELLS FARGO NEVER HAD A LEGITIMATE LOAN OR A LEGITIMATE CASE

62. The legal foundation for Wells Fargo's loan, mortgage and note never existed. The Defendant's loan was brokered entirely by the unlicensed Seller... a violation of South Carolina law; the Broker accepted and processed loan paperwork from an unlicensed loan originator... another violation of South Carolina law. **{Investigating will verify these facts.}**

(a) The Defendant's debt obligation in 2007 exceeded 50% of gross income... another violation of South Carolina law. Wells Fargo used an unauthorized credit report to qualify the Defendant for an **"Illegally Brokered Loan"** ... a violation of a Federal Law... and the unauthorized credit report is still in Wells Fargo's document file. {WF00066-WF00072}

(b) The remaining facts, pleadings, case law citations, federal citations and Code of Laws violations have already been stated and are incorporated by reference as though fully set forth herein. Wells Fargo has failed to state a lawful claim that justifies relief.

63. Wells Fargo breached its duty, responsibility and obligation as a banking institution to ensure the securities it offers to the public are not supported by falsified documents, forgeries and frauds. Janet Frotscher's Executive Resolution Team failed to honor that obligation, responsibility and duty by making false statements that others, including the law firm, have relied upon as truth. This is verifiable misconduct. Wells Fargo failed to **"Thoroughly"** and **"Substantially"** investigate allegations of fraud after notification. Therefore, Wells Fargo did not respond in a responsible manner, thereby, failing to honor its obligation, responsibility and duty. The loan was illegal from the date the first falsified document was approved by Wells Fargo's underwriting department. The **Fraud Meter** for the Defendant is 0%, for the Seller – 100%, for the Broker – 100%, for the Appraiser – 100% and for Wells Fargo..... the **Fraud Meter** is also at 100%. No Affidavit from the Seller, Broker or Appraiser can change these facts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing OBJECTION TO THE PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL AND MOTION FOR CONTINUANCE AND SCHEDULING ORDER, SUBJECT TO RULE 38(b), A PRIORITY MATTER has been furnished by U.S. mail to:

Nelson Mullins Riley & Scarborough LLP
ATTN: Brian A. Calub @
1320 Main Street
17th Floor
Columbia, SC 29201
POB 11070
Columbia, SC 29211-1070

Tel: 803-799-2000 - Fax: 803-256-7500

IN WITNESS WHEREOF, The undersigned, **BEING SWORN**, has signed and sealed these attestations this 16th day of Dec in the year 2011 in City of Orangeburg, State of South Carolina.

Signed, sealed and delivered in the presence of:

Signature: Dorothy Sistrunk
Address: 423 Bayne Street Orangeburg SC 29115
Notary Witness (1): Shirley M. Mapp - Handwritten
(Signature)

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG

On 12-16-11 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 Lillian D. Buck
(Signature)

Commission Expires My Commission Expires September 30th. 2012

(Seal)
Wingia B. Sistrunk
CLERK OF COURT
ORANGEBURG COUNTY

ATTACHMENT A

Parol Evidence Rule

“Bradley v. Hullander, 272 S.C. 6, 249 S.E.2d 486 (1978); *Allen-Parker Co. v. Lollis*, 257 S.C. 266, 185 S.E.2d 739 (1971); see also Restatement (Second) of Agency § 257 cmt. c (1958) (“Although parol evidence cannot be introduced to vary or contradict the terms of a written contract, it can be introduced for the purpose of proving that the contract was obtained by means of untrue statements.”); *Pinken v. Frank*, 704 F.2d 1019, 1023 (8th Cir. 1983) (finding “the fraudulent inducement exception to the parol evidence rule is not rendered inapplicable by a contract merger provision that all agreements between the parties are contained therein or a provision that no verbal agreement affecting the validity of the written contract will be recognized.”).”

“A general non-reliance clause, just as a merger clause, does not prevent one from proceeding on tort theories of negligent misrepresentation and fraud. See, e.g., *Texas Taco Cabana, L.P. v. Taco Cabana of New Mexico*, 304 F. Supp. 2d 903 (W.D. Tex. 2003) (illustrating nonreliance clause in franchise agreement will bar claims to extent clause specifically identifies statements not relied on, but will not always bar claims on other issues not expressly disclaimed in agreement); *Manufacturers Hanover Trust Co. v. Yanakas*, 7 F.3d 319 (2d Cir. 1993) (illustrating general boilerplate nonreliance clause will not prevent fraudulent inducement suit but specific statement in contract that states party is not relying on representation as to very matter claims it was defrauded on will prevent such suit); *Miles Excavating, Inc. v. Rutledge Backhoe & Septic Tank Servs., Inc.*, 927 P.2d 517 (Kan. App. 1997) (parol evidence admissible to show fraud even where contract contains provision stating parties have not relied on any representations other than those contained in the writing). See also *Allen-Parker Co. v. Lollis*, *supra* (even specific provisions or stipulations in a contract providing in effect for immunity from or nullification or waiver of preliminary or extraneous misrepresentations are generally ineffective, and do not prevent subsequent assertion of misrepresentations as basis for fraud). An opposite finding “would leave swindlers free to extinguish their victims’ remedies simply by sticking in a bit of boilerplate.” *Whelan v. Abell*, 48 F.3d 1247, 1258 (D.C. Cir. 1995). A party should not be given the opportunity to free himself from an allegation of fraud by incorporating a generalized non-reliance clause into a contract.”

“The recovery of damages may be predicated upon a negligently made false statement where a party suffers either injury or loss as a consequence of relying upon the misrepresentation.” *Id.* These general rules have been applied, in every case this Court has located, to support the recognition of a negligent misrepresentation claim where the misrepresented fact(s) induced the plaintiff to enter a contract or business transaction. See, e.g., *Winburn*, *supra* (recognizing that under appropriate facts, negligent representations inducing the signing of an endorsement could be actionable); *Pittman v. Galloway*, 281 S.C. 70, 313 S.E.2d 632 (Ct. App. 1984) (negligent representation inducing the plaintiff’s purchase of land is actionable); and *First Federal Sav. Bank v. Knauss*, 296 S.C. 136, 370 S.E.2d 906 (Ct. App. 1988) (recognizing that under appropriate facts, negligent representations inducing property purchase could be actionable). *Id.* at 301, 391 S.E.2d at 580.”

ATTACHMENT B

Contracts

“The essential terms of a contract are offer, acceptance of the offer, and valuable consideration. Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). In order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Patricia Grand Hotel v. MacGuire Enters., 372 S.C. 634, 638, 643 S.E.2d 692, 694 (Ct. App. 2007). The “meeting of the minds” requirement cannot be met by the “secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.” Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989).”

“In Lambert v. Firststar Bank, 83 Ark. App. 259, 127 S.W. 3d 523 (2003), complying with the Statutory Foreclosure Act does not insulate a financial institution from liability and does not prevent a party from timely asserting any claims or defenses it may have concerning a mortgage foreclosure A.C.A. §18-50-116(d)(2) and violates honest services Title 18 Fraud. Notice to credit reporting agencies of overdue payments/foreclosure on a fraudulent debt is defamation of character and a whole separate fraud.

“An agreement is “the union of two or more minds” in something done or to be done, a mutual assent to do something. Gaskins v. Blue Cross Blue Shield of S.C., 271 S.C. 101, 105, 245 S.E.2d 598, 600 (1978). Rules of contract construction exist to determine the parties’ intention, and the courts, in attempting to ascertain that intention, will seek to determine both the situation of the parties, as well as their goals at the time they entered the contract. Lindsay v. Lindsay, 328 S.C. 329, 337, 491 S.E.2d 583, 587-88 (Ct. App. 1997). “[A]n agreement that omits material terms may be determined to be unenforceable for indefiniteness.” Id. at 337-38, 491 S.E.2d at 588.”

“The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions. Berkebile v. Outen, 311 S.C. 50, 53-54, 426 S.E.2d 760, 762 (1993) (stating “[a]n illegal contract has always been unenforceable”); Batchelor v. American Health Ins. Co., 234 S.C. 103, 107 S.E.2d 36 (1959) (noting that contracts violating public policy as expressed in constitutional provisions, statutes, or judicial decisions are void).”

“Silence can only be equated with fraud where there is a legal or moral duty to speak or when an inquiry left unanswered would be intentionally misleading.” U.S. v. Tweel, 550 F.2d 297 (1977).

“If any part of the consideration for a promise be illegal, or if there are several considerations for an un-severable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise.” Menominee River Co. v. Augustus Spies L & C Co., 147 Wis. 559 at p. 572; 132 NW 1118 (1912).

ATTACHMENT C

The Plaintiff/Defendant had Ample Time for Discovery

“In Baughman, the Supreme Court of South Carolina expressly cited two factors to be considered in determining whether the party opposing summary judgment has had a “full and fair opportunity to complete discovery.” First, the party must demonstrate “a likelihood that further discovery will uncover additional evidence relevant to the issue . . . and that they are not merely engaged in a ‘fishing expedition.’” *Id.* at 112, 410 S.E.2d at 544. Second, they must demonstrate they were not dilatory in seeking discovery on the particular issue. *Id.* at 113, 410 S.E.2d at 544.”

“The trial court found Appellants had adequate time to participate in discovery, noting Appellants filed the case nearly eleven months prior to the hearing. Appellants had not: (1) provided a good reason why eleven months was insufficient time under the facts of this case to develop documentation in opposition to Respondents' motions for summary judgment; (2) filed any affidavits explaining why they needed more time for discovery; (3) demonstrated a likelihood that further discovery would uncover additional evidence relevant to their causes of action....” *See Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)

“In Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997), the appellant raised the issue that collateral estoppel should not apply because of an inadequate defense and failing to identify witnesses in the first action. This court rejected that argument stating: [Appellant] presented no affidavits or depositions to the trial court regarding the purported testimony of the alleged additional witnesses. Further, prior to the federal action, both parties had a substantial amount of time to prepare for trial and conduct extensive discovery. Both cases had been on the docket for well over a year prior to the [first action]. *Id.* at 439, 480 S.E.2d at 461.”

“*See Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439 (holding that “the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is ‘not merely engaged in a fishing expedition’”) (quoting Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991)).

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Wells Fargo Bank, N. A.

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

Plaintiff,

**OBJECTION TO NOTICE OF TAKING
DEPOSITION OF DEFENDANT
DOROTHY SISTRUNK**

April 27, 2012

Vs.

Dorothy Sistrunk;

Defendant.

Comes now the Defendant Dorothy Sistrunk to file this OBJECTION TO NOTICE OF TAKING DEPOSITION OF DEFENDANT DOROTHY SISTRUNK that is dated April 23, 2011 and delivered by a USPS carrier on Tuesday, April 24, 2012 with a Certified Number of 7196 9008 9111 2718 9755. An uncontested Rule 41(b), SCRPC Motion has already been filed to Dismiss the Plaintiff's Complaint with Prejudice and Just and Fair Compensation. Additional reasons for objecting to the NOTICE OF TAKING DEPOSITION UPON ORAL EXAMINATION ONLY shall be stated herein.

**OBJECTIONS & REASONS
FOR NOT SUBMITTING TO AN ORAL DEPOSITION**

1. **Objection 1: & Reason 1:** The Plaintiff's Notice of Taking Deposition can only be characterized as harassment, annoyance, embarrassment, oppression, and inflicting undue burden upon the Defendant. {*Civil Procedure Authorities – Rules 26(a), (a)(i), (a)(ii), (a)(iii), (b)(1), (c), (c)(1), (c)(2), (c)(3), (c)(5) & (e), SCRPC*}
2. **Objection 2: & Reason 2:** The Plaintiff has consistently failed to show good cause for Oral Depositions Only. {*Civil Procedure Authority – Rule 26(b)(3), SCRPC & Supporting Evidence - Transcript of the Hearing Held on December 06, 2011*}
3. **Objection 3: & Reason 3:** The Plaintiff's Notice of Taking Deposition must be Quashed or "Stayed" by Objection because it is absolutely unnecessary. No Oral Deposition from the Defendant is going to change the fact that the Plaintiff is perpetuating an Illegal

“Predatory Lending Scheme” that involves the use of “Falsified” and “Forged” documents since 12/21/ 2007, protecting and defending an Illegally “Brokered Mortgage and Loan” and has been maintaining a “Home Improvement and Mortgage Fraud”; based on the same “Falsified” and “Forged” documents as a delinquent account since 2008. *{Supporting Evidence – Plaintiff’s Filed Documents – WF00001-WF00137, Loan Originator Records – South Carolina’s Department of Consumer Affairs, Building Permit Records – the City of Orangeburg Building Inspector, Testimony from an Eyewitness – Defendant’s Exhibit 245 and the Oral Deposition of the Eyewitness taken by Attorney Brian A. Calub on Friday, March 02, 2012}*

4. **Objection 4: & Reason 4:** If the Plaintiff must hear the Defendant’s voice, an Oral Deposition can be taken by telephone. *{Civil Procedure Authority – Rule 30(b)(7), SCRPC}*

5. **Objection 5: & Reason 5:** If the Plaintiff desires, needs or simply wants more information from the Defendant, the Plaintiff can submit written questions at any time. *{Civil Procedure Authorities – Rule 30(c) & Rule 31(a), SCRPC}*

6. **Objection 6: & Reason 6:** A Deposition upon Oral Examination cannot be used against the Defendant if the Defendant does not have a personal attorney present at the Deposition. *{Civil Procedure Authority – Rule 30(b)(2), SCRPC}*

7. **Objection 7: & Reason 7:** The Defendant has shown good cause to the Court in previous pleadings that are incorporated by reference as though fully set forth herein on matters relating to the Plaintiff’s unnecessary, frivolous, procedurally defective and absolutely not needed demands for Taking a Deposition by Oral Examination Only when the rules for discovery are not limited to Oral Depositions Only. *{Civil Procedure Authorities – Rules 26(a), 30(c), 31, 33 & 36, SCRPC}*

8. **Objection 8: & Reason 8:** The Plaintiff has had ample time and opportunity for discovery since 2008. *{Supporting Evidence – The Plaintiff’s filed Substitution of Counsel – dated and filed, August 15, 2008; Civil Procedure Authorities - Rules 30(a)(1), 31(a), 33(a), 33(b) & 36(a), SCRPC, Supporting Case Law - Middleborough Horiz. Property Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 479-80, 465 S.E.2d 765, 771 (Ct. App. 1995) (affirming summary judgment where appellants “advance[d] no good reason why four months*

was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment”)} The Plaintiff has had 4 years for discovery.

9. **Objection 9: & Reason 9:** The Defendant has already “Substantially Complied” with the Plaintiff’s request for Production. {*Civil Procedure Authorities – Rules 26(e), 34(a) & 34(b), SCRCPP; Supporting Evidence – Plaintiff’s Production request dated and filed November 13, 2008 & Defendant’s Response dated and stamped December 10, 2008*}

10. **Objection 10 & Reason 10:** The Defendant has already “Substantially Complied” with the Plaintiff’s Interrogatories. {*Civil Procedure Authorities – Rules 26(e), 33(a) & 33(b), SCRCPP; Supporting Evidence – Plaintiff’s Interrogatories dated and filed January 30, 2009 & the Defendant’s Response, dated, stamped and filed February 23, 2009*}

11. **Objection 11: & Reason 11:** The Defendant has “Substantially Complied” with the Plaintiff’s request by obeying a “Protective Order” and limiting the Defendant’s request for Admissions to 20 instead of the much needed and desired 1,151. {*Supporting Evidence – Plaintiff’s Protective Order and Answer to Admissions dated and filed October 30, 2008*}

12. **Objection 12: & Reason 12:** The Plaintiff has not submitted a request for Admissions since August 15, 2008. {*Supporting Evidence – Plaintiff’s Filed Pleadings from August 15, 2008 to Today’s Filing Date*} The Defendant craves the Plaintiff’s request for Admissions instead of an Oral Deposition. {*Civil Procedure Authority – Rule 36(a), SCRCPP*}

13. **Objection 13: & Reason 13:** The Defendant has already “Substantially Complied with Rule 26(b)(1) SCRCPP, i.e., the identity and location of persons having knowledge of any discoverable matter. {*Supporting Evidence - Defendant’s Answer to Complaint, Page 2, Paragraph 6, First Amendment to Answer to Complaint with Counterclaims, Page 20, Paragraphs 91-VIII to 92-VIII & Page 21, Paragraph 94-VIII; First Amendment to Request for Discovery, Page 4, Paragraph 7, Page 7, Paragraph 17, Page 8, Paragraph 20, Page 10, Paragraph 26 and the Defendant’s Second Amendment to Request for Discovery, A Request for Admissions, Pages 12-16, Paragraphs 33- 47. In addition, all the Defendant’s remaining filed pleadings that are incorporated by reference as though fully set forth herein.*}

14. **Objection 14: & Reason 14:** The Plaintiff’s request for Oral Deposition must be rejected and/or denied by the Court/Judge because certain attorneys employed by the Plaintiff

filed false and misleading statements relative to *Administrative Order #2009-05-22-01*. Such behavior is a violation of the *Rules of Professional Conduct, Rule 407, SCACR, Rule 3.3: Candor Toward the Tribunal*; that clearly states within the following quotation marks that:

(1) "A lawyer shall not knowingly:"

(A) "make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer";

(B) "fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or"

(C) "offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false."

(2) "A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal." *{Supporting Evidence – Filed Case Status*

Updates from June of 2009 to May of 2011, i.e., the Massive Filing Fraud of Burns & Moise}

15. **Objection 15: Reason 15:** The Plaintiff's request for Oral Depositions should be rejected and denied because the request violates *Rule 26(b)(3) SCRCP*. The Rule clearly states in pertinent parts:

"..... only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." (Boldness and Italics added for emphasis)

(A) During the preceding 3 years, neither the Plaintiff, nor the Plaintiff's Counsel has presented the Court or the Defendant any evidence of material need. *{Civil Procedure Authority – Rule 26(b)(3), SCRCP}*

(B) Since neither the Plaintiff nor the Plaintiff's Counsel has complied with the Rule by presenting or stating a claim or prior claim of material need or presenting evidence of a material need, the Notice of Taking Deposition must be construed and considered for what it is; an abuse of authority by an Officer of the Court because this is an act of harassment, a nuisance, an annoyance, burdensome, oppressive and persecutive. *{Civil Procedure Authorities - Rules*

26(a), (a)(i), (a)(ii), (a)(iii), (b)(1), (c), (c)(1), (c)(2), (c)(3), (c)(5) & (e), SCRCP & Supporting Evidence – the Transcript of the Hearing Held on December 06, 2011}

16. **Objection 16: & Reason 16:** An Oral ONLY Deposition from the Defendant is not needed. Written questions are all that is required because Wells Fargo must prove the supporting documents Wells Fargo Home Mortgage relied upon to fund the loan are not “Fraudulent”. This proof must be presented to the Court/Judge for the following reasons.

(A) The Defendant’s loan is a brokered loan that is regulated by Federal and State Laws and not an “arms length transaction” between the Defendant and Wells Fargo. No one from Wells contacted the Defendant to approve the loan. Wells Fargo dealt exclusively with second and/or third parties.

(B) The supporting documents Wells Fargo used for its lending decision came from second and/or third parties within the mortgage industry that is regulated .

(C) The Defendant had no authority, influence or control over these second and third regulated parties that supplied Wells Fargo with documents and information.

(D) Wells Fargo must prove the supporting documents from these second and/or third regulated parties that Wells Fargo’s underwriters relied upon are not “Falsified”, “Forged” and “Altered”. If Wells Fargo cannot present the Court/Judge the verifiable evidence that these documents are not “Falsified”, “Forged” and “Altered”, Wells Fargo is actively involved in, perpetuating and defending an “Illegally Brokered Loan” (*the Seller provided all the paperwork to broker the loan and not any agent or representative from Golden Gate Mortgage*), an “Illegal Predatory Lending Scheme” (*that involves the use of “Falsified”, “Forged” and “Altered” documents*), and a “Home Improvement and Mortgage Fraud” that is based on the same “Falsified”, “Forged” and “Altered” documents. *These documents are from the same second and third regulated parties that Wells Fargo relied upon for its lending decision and these parties are not before the Court/Judge.* Therefore, there is no need for an Oral ONLY Deposition from the Defendant, written questions are all that is required. {Civil Procedure Authorities – Rules 26(c)(3), 30(c) & 31(a), SCRCP}

17. **Objection 17: & Reason 17:** The Defendant has the right to object to any discovery method/s that does not comply key provisions of South Carolina’s Rules of Civil Procedure. {Civil Procedure Authority – Rule 41(b), SCRCP}

18. **Objection 18: & Reason 18:** Due to the nature of this proceeding, as the Court can plainly see from the dates this action began until the “Stay”/TRO was implemented, the Plaintiff had ample opportunity to complete discovery prior to December 06, 2011. Any claims by the Plaintiff that contradicts these facts cannot be maintained or substantiated.

**CHECK # 695107
RETURNED TO THE PLAINTIFF WITH PLEADING**

19. Since the Defendant will not be attending the Deposition because of the reasons stated in paragraphs 1-18, the Defendant has returned the Plaintiff’s check [**Check #695107** for **Fifty-One and 46/100 dollars (\$51.46)** that was drawn on the **National Bank of S.C., Columbia, S.C.**, dated, **April 20, 2012**].

(A) The Defendant assumes the check was issued to comply with South Carolina’s Rules of Civil Procedure for attendance . *{Civil Procedure Authorities – Rules 30(a)(2) & 45(b)(1), SCRPC}* *{See Attached Exhibit 258}*

(B) **Note:** The Plaintiff’s check is enclosed in the original envelop *{See Attached Exhibit 259}* and was stapled to the Plaintiff’s copy of Exhibit 258. This notification is included to inform the Court the Plaintiff complied with the Rules. *{See Attached Exhibits 258 & 259}*

THE PLAINTIFF STILL OWES THE WITNESS

20. The Plaintiff still has not completely complied with *Rule 45(b)(1), SCRPC*, for March 02, 2012. The Plaintiff Still owes the Witness Twenty-Five and 00/100 (\$25.00) for attendance and compliance with the Plaintiff’s Subpoena request on Friday, March 02, 2012. The Witness has been paid for attending the Deposition on the same day, Friday, March 02, 2012. *{Supporting Evidence – the Witness gave Attorney Calub, a copy of Exhibit 245 that complied with the Plaintiff’s Subpoena and Exhibit “A” for document inspection}*

CONCLUSION

21. Since the Plaintiff has not exhausted or utilized all the methods and procedures that are available for discovery purposes that have been authorized by South Carolina’s Rules of Civil Procedure, the Defendant will “Substantially Comply” with any Deposition by written questions and any additional submitted request for Interrogatories or Admissions. *{Civil Procedure Authorities – Rules 26(c)(3), 26(e), 30(c), 31(a), 33, & 36(a) SCRPC}*

RELIEF SOUGHT

22. The Defendant seeks the following relief.

(A) Voluntary Withdrawal: It is best if the Notice of Taking Deposition is withdrawn.

(B) Quashed: If the Notice to Taking Deposition is not withdrawn voluntarily, then it is up to the Court to quash it and /or modify the Plaintiff's request ex officio. *{Civil Procedure Authorities – Rules 26(a), (a)(i), (a)(ii), (a)(iii), (b)(3), (c), (c)(1- (c)(5), (e), 30(c), 31(a) & 37(a)(4), SCRCPP}*

(C) Stayed: The Defendant's Objection to unnecessary harassment should be more than adequate to stay the Notice to Taking Deposition by Oral Examination without a formal Motion. *{Civil Procedure Authorities – Rules 26(a), (a)(i), (a)(ii), (a)(iii), (b)(3), (c), (c)(1- (c)(5), (e), 30(c), 31(a) & 37(a)(4), SCRCPP}* In addition, the Defendant has an uncontested *Rule 41(b), Motion to Dismiss with Prejudice* before the Court; if successful, the Deposition will not be necessary. *{Refer to Filed Exhibits 246 & 247}*

(D) Upon Motion: Finally, if the Defendant must file Motions to end this malfeasance, Wells Fargo Bank, N.A., should be sanctioned to pay for it. *{Civil Procedure Authority – Rule 37(a)(4), SCRCPP}*

WHEREFORE, the relief sought by the foregoing OBJECTION TO NOTICE OF TAKING DEPOSITION to Quash ex officio or Stay should be granted forthwith.

Respectfully submitted,
Dorothy Sistrunk
423 Bayne Street, Post Office Box 217
Orangeburg, South Carolina 29115
(803) 268-0716

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing OBJECTION TO NOTICE OF TAKING DEPOSITION has been furnished by U.S. mail to:

Nelson Mullins Riley & Scarborough LLP
ATTN: Brian A. Calub @
1320 Main Street; 17th Floor
Columbia, SC 29201
POB 11070
Columbia, SC 29211-1070
Tel: 803-799-2000, Fax: 803-256-7500

IN WITNESS WHEREOF, The undersigned, **BEING DULY SWORN**, has signed and sealed these attestations this 27th day of APRIL in the year 2012 in the City of ORANGEBURG, State of South Carolina.

Signed, sealed and delivered in the presence of:

Signature: Dorothy Sistrunk
Signature Notary Witness (1): Shirley W. H. Hamilton

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

On APRIL 27, 2012 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 Signature: Shirley W. H. Hamilton
My Commission Expires August 1st, 2017
Commission Expires: August 1st, 2017

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Wells Fargo Bank, N. A.

Civil Action No. 2008-CP-38-1024

Plaintiff,

**THE DEFENDANT DOROTHY
SISTRUNK FILED OBJECTIONS
TO THE PLAINTIFF'S MOTION
FOR SANCTIONS AND DEMANDS
FOR AN ORAL ONLY DEPOSITION
SUBJECT TO RULE 38(b)
A PRIORITY MATTER.**

Vs.

Dorothy Sistrunk;

Defendant.

May 25, 2012

FILED FOR
WINNIE
CLERK
ORANGEBURG
2012 MAY 25 PM 4:00

Comes now the Defendant Dorothy Sistrunk to file her OBJECTIONS TO THE PLAINTIFF'S MOTION FOR SANCTIONS AND DEMANDS FOR AN ORAL ONLY DEPOSITION SUBJECT TO RULE 38(b), A PRIORITY MATTER that is dated May 15, 2012 and delivered by a USPS carrier on or about May 16, 2012 with a Certified Number of 7196-9008 9111 2718 9663. The Defendant has an *Uncontested Motion* to Dismiss Wells Fargo's Complaint with Prejudice and Just and Fair Compensation that still has not been acted upon by the Court. Additional reasons for objecting to the Plaintiff's Oral Only Deposition shall be stated herein.

THE PLAINTIFF HAS MISCONSTRUED THE FACTS

1. **Response to paragraph 1:** The Defendant notified the Plaintiff within the time limits specified by South Carolina's Rules of Civil Procedure and in previous pleadings relative to this matter that are incorporated by reference as though set forth herein verbatim. Hence, if the Plaintiff chose to deliberately disregard the Defendant's notification and objections to an ORAL ONLY Deposition in a manner in which the Plaintiff has all the control and advantages and the Defendant has none; and proceeded to the location in order to have some justification for the Plaintiff's Motion for Sanctions, the Defendant objects to the Plaintiff's subterfuge and is; therefore, not responsible for any cost the Plaintiff incurred. The Plaintiff's action in this manner lends even more credibility to the Defendant's sworn statement of fact that the Plaintiff has "**Unclean Hands**". {Supporting Evidence – WF00001-WF00137 & Filed Pleading}

(A) The Plaintiff has misconstrued the facts. The Plaintiff has failed to disprove any of the Defendant's sworn statements of fact that are based on personal knowledge. {Supporting Evidence – Plaintiff's Filed Pleadings & Filed Documents}

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CLERK
ORANGEBURG
2012 MAY 25 PM 4:00

(B) The Plaintiff has failed to produce any evidence to counter any one of the Defendant's pleadings. *{Supporting Evidence – Plaintiff's Filed Pleadings & Filed Documents}*

(C) If the Plaintiff and the Court will re-examine the Defendant's pleadings, the Court and the Plaintiff will discover, the Defendant's pleadings are sworn statements; and under the Rules of Civil Procedure and under the Rules of Evidence, a pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted. *{Supporting Case Law - Renville State Bank v. Kinsberg, 166 N.W. 643, 644 (S.D. 1918) ("A written declaration, properly sworn to, may constitute an affidavit, even though in the form of an ordinary pleading."); Washington ex rel. Victor Boom Co. v. Peterson, 70 P. 71 (Wash. 1902) (holding that a verified pleading can constitute an affidavit)}*

(D) Therefore, the Defendant's sworn statements that are embodied in the pleadings can only be refuted by documented evidence, expert and/or eyewitness testimony, interrogatories, depositions and/or affidavits that are based on personal knowledge and/or documentation. To date, the Plaintiff has not presented any factual evidence, documentation, and/or testimony that is based on any personal knowledge from the Plaintiff or from anyone else. *{Supporting Evidence – Plaintiff's Filed Pleadings & Filed Documents}*

(E) The Plaintiff has been unable to defeat any of the Defendant's Counter claims, Affirmative Defenses or any of the averments in the Defendant's sworn statements that are incorporated by reference as though fully set forth herein verbatim. *{Supporting Authority - Arnold v. Arnold, 285 S.C. 296, 328 S.E.2d 924 (Ct. App. 1985) (wherein the court of appeals accepted verified pleadings as evidence)}**{Supporting Evidence – Plaintiff's Filed Pleadings & Filed Documents}*

(F) There is no legal requirement or mandate that the Defendant has to submit to an Oral Only Deposition during pre-trial procedures. *{Supporting Authority – SC Code of Laws}* In addition, the Plaintiff's demands are not supported by any Rule of Civil Procedure. *{Supporting Authority – SC Rules of Civil Procedure 1-86}*

(G) The Plaintiff has not presented any documentation or evidence that the Plaintiff has a legitimate need that requires an Oral Only Deposition. *{Supporting Authority - Rule 26(b)(3), SCRPC & Supporting Evidence – Plaintiff's Filed Pleadings & Filed Documents}*

(H) The Plaintiff is shooting arrows at the wrong target. *{Supporting Evidence – Plaintiff's Filed Documents}*

FACTS THE PLAINTIFF CANNOT REFUTE

2. The Plaintiff has expended a great deal of time and energy shooting arrows at the Defendant, when all the plaintiff has to do is look in the mirror. The Plaintiff needs evidence and factual information from the Plaintiff that is based on personal knowledge. *{Authority – Rule 56(e) SCRPC}*

(A) An Oral Only Deposition from the Defendant is not going to change the following facts.

Fact #1: The Plaintiff is a Depository Institution. Therefore, the Plaintiff is governed by Federal and State laws. *{Authorities – SC Code of Laws & Federal Reserve Board of Governors}*

Fact #2: It is unlawful for the Plaintiff to make any claim to the Defendant's money, property and/or any other asset that is not lawfully obtained, received or established by adherence and/or strict compliance to State and Federal regulatory rules and/or regulations and/or policies and/or procedures. *{Authorities – SC Code of Laws & Federal Reserve Board of Governors}*

Fact #3: As a Depository Institution, the Plaintiff cannot enforce any loan agreement against the Defendant that is based on falsified, forged, or altered documents. *{Authority – Federal Reserve Board of Governors Rules, Regulations, Policies & Procedures}*

(B) No Oral Only Deposition is going to change the fact that the Plaintiff is conducting a foreclosure on the unverified statements, unsubstantiated claims and the false accusations of Janet Frotscher. *{Supporting Evidence – WF00120 & WF00125}*

Fact #1: The Defendant did not receive the falsified 7-59 Appraisals until after the closing. *{Supporting Evidence – Defendant's Filed Exhibit 70}*

Fact: #2: Based on the Appraiser's Invoice, the falsified 7-59 Appraisals were prepared for Thomas Jacobs and are the same 7-59 Appraisals Janet Frotscher said she reviewed and Wells Fargo's underwriters used to approve loan #708-0174072777 and its ensuing Note and Mortgage. *{Supporting Evidence – WF00001-WF00027}*

Fact #3: The Defendant sent Janet Frotscher a letter on February 5, 2008 with the Defendant's concerns about the conduct of the Seller, Broker and Appraiser and suspected "Mortgage Fraud", "Bank Fraud", "Insurance Fraud" and/or a "Predatory Lending

Scheme” in which a falsified appraisal 7-59 was being used to Inflate the “Value”, Establish the “Value” and Maintain a false and misleading “Value” of 423 Bayne Street. *{Supporting Evidence – Plaintiff’s Exhibit B}*

Fact #4: Janet Frotscher received correspondence and an appraisal (file #7-59) from the Defendant verifying the Defendant’s statement of fact that the Defendant’s letter *{Supporting Evidence Plaintiff’s Exhibit B – dated 02/05/08}* and the 7-59 appraisal with itemized falsifications *{Supporting Evidence Defendant’s Exhibits 8-14}* were sent to and received by Janet Frotscher on February 7, 2008. *{Supporting Evidence – WF00120}*

(C) Instead of cancelling the Loan, Note & Mortgage, Janet Frotscher falsely accused the Defendant. *{Supporting Evidence - WF00120 & WF00125}* The Plaintiff’s attorneys have also referenced her statements. Additional sworn statements the Plaintiff cannot refute are in the Defendant’s pleadings that are incorporated by reference as though fully set forth herein.

THE DEFENDANT’S ARGUMENT I (The Plaintiff has been Dilatory)

3. When it comes to this case, the Plaintiff has consistently misconstrued or failed to accurately state the facts. It is not the Defendant that has been dilatory, IT HAS BEEN THE PLAINTIFF. The Plaintiff has had almost 4 years to complete discovery and the Plaintiff has consistently failed to explain to the Court and the Defendant why the Plaintiff could not complete discovery with an almost 4- year head start. The Defendant has argued this point in previous pleadings and incorporates those arguments and pleadings by reference as though fully set forth herein verbatim. *{Supporting Evidence – CA# 2008-CP-38-1024}*

RESPONSE TO INTRODUCTION

4. Once again, the Plaintiff has misstated the facts. The Defendant did not borrow \$75,000.00 on December 21, 2007 to finance the purchase of 423 Bayne Street. The Plaintiff supposedly paid the Seller for a security interest in 423 Bayne Street that was based on an appraised value of \$75,000.00. *{Supporting Evidence – WF00042-WF00060 & WF00088-WF00089}*

5. Again, the Plaintiff is misstating the facts. The Defendant’s loan did not fall into default on March 1, 2008. The Defendant suspended payments on March 1, 2008 until all

outstanding issues relative to the Defendant's loan could be resolved. The Defendant was not going to perpetuate the Plaintiff's "Insurance Fraud" and "Securities Fraud" by making monthly payments on an "Illegally Brokered Loan", an "Illegal Predatory Lending Scheme" and a "Home Improvement and Mortgage Fraud". All; of which, are based upon and supported by falsified and forged documents and an altered and forged Contract of Sale. *{Supporting Evidence – WF00001-WF00029}*

6. If the Plaintiff would have cooperated with the Defendant, payments would have been resumed and this foreclosure action would not be happening. If the Plaintiff says otherwise or puts anything in writing that contradicts paragraph 5 in this pleading, the Plaintiff is lying. *{Supporting Evidence – Defendant's Filed Exhibits 51-64}*

7. The Defendant has a bad habit of telling the truth and expecting truthfulness or a reasonable facsimile thereof from others. Attorney Brian A. Calub told his first bald-faced lie and the first verified lie in a filed pleading. Other than having a penchant for misstating the facts, until now, attorney Calub had one sterling attribute he had not lied in a pleading. The Defendant never stated at anytime anywhere to anyone or in any pleading or inferred, alluded to, hinted at, or gave any indication to anyone at anytime that the Seller – Thomas D. Jacobs aka Thomas Jacobs had given the Defendant an appraisal. *{Supporting Evidence – the Defendant's Filed Pleadings From July of 2008 to Today's Filing Date}*

8. The Defendant's first appraisal came by fax from Wells Fargo Home Mortgage and was too dark to even read. The reason: A bad drum on the fax machine. Wells Fargo Home Mortgage eventually mailed the Defendant an 8 ½ x 11 copy sometimes after February 5, 2008. The Broker's 7-59 Appraisal and the signed closing documents arrived on Saturday, January 12, 2008. *{Supporting Evidence – See Filed Exhibit 89 & Attached Exhibit 265}*

9. As stated in paragraph 7, the Defendant has a bad habit of telling the truth and expecting truthfulness or a reasonable facsimile thereof from others. Attorney Brian A. Calub told his second bald-faced lie and second verified lie in a filed pleading. Initially, this action was not stayed by Administrative Order #2009-05-22-01.

(A) This action was first stayed by some decision or event late in 2008. To this day, the Defendant has no idea why the Defendant's case was not placed on the Trial Roster.

(B) The second incident occurred in 2009. The Defendant's "Fraudulent" Loan, Note and Mortgage were included in the HMP by inaction by a sitting judge that failed to follow the procedures outlined in the Supreme Court's Order and a SCAM/SHAM Affidavit filed by Elizabeth S. Hodgson was used for that purpose. *{Supporting Evidence – Administrative Order #2009-05-22-01, the Defendant's Filed Exhibit 235 & Attached Exhibit 266, Pages 1, 2, & 5}*

10. Elizabeth S. Hodgson's SCAM/SHAM Affidavit was discredited and impeached by the Defendant's notarized response and should have been dealt with accordingly pursuant to Rule 56(g), SCRCF. Elizabeth S. Hodgson lied about her familiarity with the Defendant's loan and mortgage on the Affidavit. Wells Fargo does not have a program, policy or procedure to modify a "Fraudulent" Loan, Note and Mortgage. This fact has also been verified by Elizabeth Scott Moise. If the judge had acted pursuant to the Order, this case might have been dismissed 3 years ago. *{Supporting Evidence – Attached Exhibit 266}*

11. Attorney Calub has returned to his usual tactic of misstating actual facts. There is no alleged falsified appraisal. The Defendant knows the 7-59 Appraisals and Satisfaction Completion Certificate are falsified and forgeries based on personal knowledge. The Defendant can read, has copies of the 7-59 Appraisals and lives at 423 Bayne Street. No sane thinking person of reasonable intelligence would come to any other conclusion except, the Defendant not only has personal knowledge; but also, personal, factual and actual experience with the house.

(A) In addition, the Defendant's sworn statements that are embodied in every signed, sealed, notarized, and/or verified pleading have the probative force of Affidavits. The 7-59 Appraisals are falsified and forgeries, the Satisfaction Completion Certificate is falsified and the Contract of Sale has been altered and the Defendant's initials are forgeries. *{Supporting Evidence – the Defendant's Filed Pleadings From July of 2008 to the Present}*

(B) Since the Defendant got involved in trying to purchase a house, the Defendant has encountered:

(1) A lying and deceitful Seller – Thomas D. Jacobs aka Thomas Jacobs
{Supporting Evidence – WF00028-WF00029 – the Defendant does not recall an "As Is" Clause being on the Contract of Sale when it left 423 Bayne Street with the Seller on 11/26/2007; the Defendant's Exhibits 35 & 36 –the Seller lied to SC Department of Consumer Affairs about the

electrical wiring & many other things & the Defendant's Exhibit 140 – the Defendant does not recall this Contract of Sale as being the one signed on 11/26/2007},

(2) Documents from a lying Appraiser – Jim H. Austin III, {Supporting Evidence - WF00001-WF00026 – lied on the Appraisals and the Satisfaction Completion Certificate}

(3) Documents from a lying Broker – David Terrell {Supporting Evidence – WF00032 – the Broker never conducted any interviews with the Defendant},

(4) A lying Closing Attorney – Debra C. Galloway {Supporting Evidence – Defendant's Exhibit 70 – Debra C. Galloway lied to the Commission about leaving messages on the Defendant's answering machine; the Defendant did not have an answering machine at the time},

(5) A falsely accusing Executive Communications Coordinator - Janet Frotscher {Supporting Evidence – WF00120 & WF00125 -the Defendant has never admitted at anytime that Golden Gate Mortgage brokered the loan. The Defendant has always stated the Seller brokered the loan and the Defendant has no evidence Golden Gate Mortgage submitted the paperwork. Janet Frotscher also falsely accused the Defendant of meeting the Appraiser. Since the Defendant has never met the Appraiser, it is humanly impossible for the Defendant to have personally shown the Appraiser any invoices},

(6) 3 fabricating attorneys, Elizabeth S. Hodgson {Supporting Evidence – Exhibit 235 – author of the SCAM/SHAM Affidavit}, Elizabeth Scott Moise and James H. Burns {Supporting Evidence – fabricated filed case status updates from June of 2009 – July of 2011 – Engineers of a Massive Filing Fraud},

(7) A bald-faced lying attorney – Brian A. Calub {Supporting Evidence – Paragraphs 1-2 in Plaintiff's Motion for Sanctions – 05/ 15/2012; See the Truth @ pp 7&9}

(8) A lying Bank – Wells Fargo Bank, N.A., {Supporting Evidence – CA #2008-CP-38-1024 – the Defendant suspended payments and agreed to pay the Plaintiff if the Plaintiff would fix the house according to the 7-59 Appraisal and the Satisfaction Completion Certificate or lower the mortgage to the actual condition of 423 Bayne Street on 10/08/2007}

(9) A deceitful Underwriting Department – Wells Fargo Home Mortgage {Supporting Evidence – WF00028-WF00029 & Exhibit 140 – both Contract of Sales the

Defendant has seen in this litigation come from Wells Fargo – both are altered and both are forged. However, WF00028-WF00029 is altered with forged initials} and now.....,

(10) A Judge that lied on a Court Order {*Supporting Evidence – Exhibit 255 & The Transcript of the Hearing Held on December 06, 2011 – Judge Diane Shafer Goodstein did not discuss any objections filed by the Defendant or the Defendant's filed Rule 41(b) Dismissal during the hearing and attorney Calub did not discuss any unusual hardship or substantial need.*} The remaining statements in the Plaintiff's **INTRODUCTION** are statements of fact and do not require a response.

RESPONSE TO ARGUMENT & THE DEFENDANT'S COUNTER-ARGUMENT

12. The Plaintiff's argument is spurious at best. The Plaintiff is greedily and gleefully quoting Rules 37(a), (b), and (d), because of potential benefits; while studiously ignoring every other discovery Rule in South Carolina's and the Federal Rules of Civil Procedure; especially, Rule 37(a)(2), SCRPC that clearly states:

"if a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c)." **{Authority – Rule 37(a)(2), SCRPC}**

(A) It would have been and still can be a simple matter of asking the Defendant what manner of Deposition are you most comfortable with, and the Defendant would have immediately replied; "Written Questions". [Rule 30(c) and Rule 31(a), SCRPC]

(B) It seems; from the Defendant's point of view, any Rule of Civil Procedure that would facilitate a just and fair adjudication of this civil matter is being ignored or avoided. The Defendant has already cited every Rule and procedure the Plaintiff has ignored and continues to ignore in a previous pleading. That pleading and those Rules of Civil Procedure are incorporate by reference as though set forth herein verbatim. The Defendant has never refused to being Deposed by written questions.

13. The Defendant's Counter-Argument is also rather simple. The Defendant has neither the time nor the financial resources to play gotcha' or tiddlywinks with the Plaintiff. These matters are far too serious. The Defendant has presented the supporting case law and the Rules of Civil Procedure upon which the Defendant's objections are based.

(A) The Defendant has a difficult time dealing with lies even when they are cloaked in the sanctity of a legal proceeding. As stated previously, the Defendant has a bad habit of speaking the truth and expecting others to speak the truth or a reasonable facsimile thereof; and especially, in a legal proceeding. The Defendant expects the Judge to quote the ordinance, regulation, procedure, policy, law or a precedent after thoughtful deliberation or a ruling based on the facts. If Judge Goodstein chooses to stand on lies rather than truth it is her decision. If she chooses to adjudicate fairly and impartially with honor and dignity, it is her decision. If she chooses to join the ranks of the hundreds of other corrupt Judges that litter America's courtrooms and judicial system and the corrupt and worthless politicians that pollute our legislative bodies, it is still her decision.

(B) The Defendant position is also very simple. Every Court Order should be based on the truth, the facts, the circumstances and needs of the litigation, the evidence and the "Law of the Case" as it evolves from hearing to hearing. If there are rules, then the rules should be applied equally to both sides in the litigation.

(C) U.S. Supreme Court Justice Kennedy said it best, "...the law makes a promise. The promise is neutrality. If that promise is broken, the law ceases to exist. All that's left is the dictate of a tyrant, or a mob,"

(D) Whether the Defendant is denied her right to due process and equal protection, as guaranteed by Section 1 of the 14th Amendment to the U.S. Constitution or railroad because a Judge intentionally: misstate the facts; refuses to address the relevant issues; and refuses to apply the applicable law; or secretly favors one side over the other, thereby causing the Defendant to lose her case and property; in the final analysis and at the end of the day, it still depends on how well and how honestly Judge Goodstein adjudicates the case.

(E) The Defendant became outraged when the Defendant recognized that the Defendant was literally being barred from presenting the Defendant's case in court, while Judge Goodstein seemingly favored every Motion by the Plaintiff. As long as the Plaintiff is the

beneficiary of an unfair and biased judicial proceeding; quite naturally, the Plaintiff is pleased and happy. However, the Defendant is absolutely certain the Plaintiff's attitude would change instantly if the Plaintiff were the recipient of biasness, unfairness and partiality. If the Defendant should lose, it will not be on the basis of the merits of the Defendant's case or any lack thereof, but rather, because the adjudicating process was heavily biased, partial and corrupt.

(F) Finally, the Defendant cannot honor any Court Order that is based on a lie or a half-truth. As the Defendant has already stated in a previous pleading that is incorporated by reference as though fully set forth herein verbatim, the Defendant is prepared to go all the way to the Supreme Court if necessary on these issues of fairness, honesty, truth and equality under the law and in the court.

RESPONSE TO BACKGROUND

14. **Response to paragraph 1:** The Plaintiff has misstated the facts again. The Defendant will answer all questions in any written deposition submitted by the Plaintiff. As the Defendant has stated in previous pleadings that are incorporated by reference as though fully set forth herein verbatim, the Plaintiff can submit written questions at any time. Based on the facts in the case and on the December 06, 2011 hearing; the Plaintiff has failed to demonstrate a substantial need for an Oral Only Deposition.

(A) The Defendant will obey any Court Order that is based on truth, the facts, the evidence and the needs of the litigation. In fact, if this were ever done, a Court Order would not be necessary. The Defendant would voluntarily comply out of respect for the Judge's commitment to just and fair adjudication.

(B) Again, the facts are misstated. The Defendant has never refused to cooperate with the Plaintiff. The Defendant has steadfastly refused to submit to an Oral Only Deposition for reasons that have already been stated and are incorporated by reference as though fully set forth herein verbatim. The Plaintiff's statement relative to Court Orders has already been answered in paragraph 13.

15. **Response to Background, Subparts 1-6:** The Plaintiff's statements are factual; therefore, no response is required.

16. **Response to Background, Subpart 7:** The Plaintiff's first sentence in this

subpart is factual. Sentence #2 is a mischaracterization of the facts. The Defendant has never done anything in this litigation in bad faith. Every objection relative to this matter is supported by a Rule of Civil Procedure and some are supported by multiple Rules of Civil Procedure. The Defendant refused to answer any questions because the Defendant did not have a personal attorney present and stated such in the Deposition and had a prepared statement to read into the record why she was objecting to the Deposition. The Transcript of the Deposition, the Plaintiff's Exhibit D verifies the Defendant has spoken the Truth relative to this matter.

17. **Response to Background, Subpart 8:** The Plaintiff's statements are factual; therefore, no response is required.

18. **Response to Background, Subpart 9:** The Plaintiff has grossly misstated the facts in the first sentence of this subpart relative to bad faith, respect for the Court, and selective obedience to Court Orders.

(A) Unlike the Plaintiff, since this litigation began, the Defendant has not done or said anything in bad faith. Secondly, the Defendant has tremendous respect for the Courts, and the title and position of Judge. The Defendant has absolutely no respect for a lie, half-truth or liars and this includes the Plaintiff, Barack Obama or anyone else that lies or undermines the truth.

(B) A liar cannot be trusted to exercise sound judgment or discretion consistently. The lie proves that fact. Once a liar has been discovered, he/she should be dealt with accordingly. After a severe reprimand, respect for the person can only be restored after repentance and much apologizing. However, respect can no longer be given, it must be earned by deeds and much verification of statements and/or actions. No human being is perfect and there are no perfect human institutions.

(C) With the exception of Yeshua HaMachiach (Jesus the Christ), No human can claim any kind of perfection and anyone that does try to claim perfection is an ABSOLUTE FOOL, and anyone that believes there are perfect human institutions is also an ABSOLUTE FOOL.

(D) Liars can be forgiven after repentance and should be forgiven after repentance to the Father ,YHVH, (called GOD) [the Almighty Elohiym] and to the offended

person, group and/or institution. The circumstance, event or condition that prompted the lie/s should be considered over and done with.

(E) Finally, the Court knows the last statement in the Plaintiff's trilogy is absolutely not true. The Defendant has honored a Court Order for over 3 years. The reason: The Court Order was based on the Rule. Rule 33(c), SCRCF and the Judge correctly applied the Rule. Even though the Defendant's husband gave the Judge a copy of a pleading with more than 20 admissions, the Defendant has voluntarily complied with the Plaintiff's Protective Order to limit questions for Admissions to 20; instead of the much needed and desired 1,151.

(F) If the Plaintiff had answered one-tenth (1/10) of the Defendant's request for admissions, the Plaintiff would have clearly seen the truth, spoken the truth and this litigation would have probably been over 60 days after it began.

19. **Response to Background, Subpart 10:** The Plaintiff has made a factual statement; therefore, no response is required.

20. **Response to Background, Subpart 11:** Since attorney Calub has succumbed to unprofessionalism and has resorted to lying to support a position, the Defendant does not have sufficient knowledge or information to ascertain the truth of his statement. The Defendant has every justifiable reason not to believe the trip is for the reason stated.

(A) The Defendant sent the Plaintiff written notification that the Defendant was not going to attend any Oral Only Deposition without good cause being shown in Court, before the Judge and a verifiable demonstration of material and/or substantial need. Naturally, a Court Reporter would have to be present. The Defendant's objection is supported by Rules 26(a), (a)(i), (a)(ii), (a)(iii), (b)(1), (b)(3) (c), (c)(1), (c)(2), (c)(3), (c)(5) & (e), 30(b)(7), 30(c) and 31(a), 34(a), 34(b), 36(a) [the Plaintiff has not filed a request for Admissions to the Defendant's knowledge], 45(a)(1)(C) & (D) and 45(c)(1), SCRCF.

(B) The postmark on the pleading that was sent to attorney Calub will verify the date the Defendant's notification was placed in the postal system for deliverance; and the Clerk of Court's stamp will verify the date the Defendant's notification was placed in Court. The Defendant is not responsible for any postal delays.

(C) In addition to misstating facts, ignoring the Rules and manipulating the

Rules, attorney Calub has now demonstrated he has the capacity to lie in a pleading. Before this filing, the Defendant did not believe attorney Calub needed to lie to support his position because of his skill at manipulating Judges and Rules. The Defendant now knows attorney Calub will resort to lying if necessary. Therefore, it would not be beneath attorney Calub to engage in a deliberate rouse in order to engineer an event or a set of circumstances that would trap the Defendant; knowing, in advance, the Defendant would fall into his trap by not appearing at his cleverly manipulated Deposition.

(D) Since the Defendant had no justifiable cause or reason to appear because no additional hearing had been called that would have allowed attorney Calub to demonstrate a substantial or material need for an Oral Only Deposition, it was not humanly possible for the Defendant not to fall into attorney Calub's carefully constructed trap and/or web of intrigue.

COUNTER- ARGUMENT TO THE PLAINTIFF'S ARGUMENT ON PAGE 4

21. Before responding to the Plaintiff's **ARGUMENT** on page 4, it is necessary for the Defendant to set the record straight. The Defendant's issue is not and never was with the Court's authority to issue Orders or Judge Goodstein's authority to issue a Court Order. The Defendant's outrage was triggered by the lie that was used to issue it. A lie had to be used; and was used. During the hearing, attorney Calub did not show any good cause or discussed any substantial or material need and did not notify Judge Goodstein of any hardships. This is the half-truth, i.e., for good cause shown. Any meaningful good cause Wells Fargo might have shown was immediately nullified by an open admission that all the Case Status Updates were not filed. Finally, at the hearing, Judge Goodstein did not address any one of the Defendant's or the Witness' objections and stated that she did in the Order. This is an outright lie. *{Supporting Evidence – the Transcript of the Hearing that was Held on December 06, 2011}*

22. The Court Order as written, [because it is based on a lie and a half-truth] also violates South Carolina's and the Federal Rules of Civil Procedure. Attorney Calub's demands for Oral Only Depositions are not supported by any State or Federal Rule of Civil Procedure or by any Statue in South Carolina's Code of Laws. Neither, attorney Calub nor Judge Goodstein has the legislative authority, any legal authority or any legitimate mandate to overrule the General Assembly of the State of South Carolina, the people of the State of South Carolina,

South Carolina's Supreme Court and the Constitution of the United States of America.

23. Any violation of the Due Process Clauses in the Constitution of the United States that are mandated and guaranteed rights, not privileges, strips any Judge of Judicial Immunity. Judicial Immunity was enacted to protect Judges, so that any Judge could adjudicate fairly and impartially. Judicial Immunity is not a license for a Judge to engage in corruption, trample the Rule of Law, violate the Constitution and deny fairness and impartiality by turning a legal proceeding into a Kangaroo Court. In such a Court the violations of procedure, precedents, and due process are so gross that fundamental justice is denied. The legal proceedings in such a Court are a mockery of the principles of law, justice and professional ethics because they are totally disregarded, discarded and /or perverted.

24. The U.S. Supreme Court has stated; "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

25. Therefore, any sitting Judge that issues a Court Order that is based on a verifiable lie and uses that lie to deprive a litigant of Constitutionally "Guaranteed" fairness and due process in a legal proceeding, by his/her action has also violated the following Canons of the Code of Judicial Conduct: Canon 1 (a judge shall uphold the integrity and independence of the judiciary); Canon 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities); Canon 2(A) (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary); Canon 3 (a judge shall perform the duties of judicial office impartially and diligently); Canon 3(B)(2) (a judge shall be faithful to the law and maintain professional competence in it; a judge shall not be swayed by partisan interests, public clamor or fear of criticism).

THE WORD VALID

26. Finally, the Supreme Court of South Carolina and the Supreme Court of the United States use a word that has extraordinary implications and that word is VALID. Every Court Order must be VALID. According to Black's Law Dictionary 2 Ed, Valid means having all the formalities required by law. Therefore, a Court Order...

(A) Cannot be outside or not conform to the law.

- (B) Must be based entirely on the law.
- (C) Cannot violate the law.
- (D) Must be issued according to the law.
- (E) Must be sustainable in law.
- (F) Must be supportable in law.
- (G) Must be executed with proper formalities.
- (H) Must be TRUTHFUL.

27. There are several more requirements that can be added to the list before a Court Order can be considered valid. However, when it comes to the issue the Defendant is currently encountering, the most important requirement to the Defendant is TRUTHFUL. ALL the formalities required by law, means ALL the formalities required by law. Therefore, no Court Order can be based on false statements, fabrications or a lie. A Court Order based on a lie fails to meet “the ALL the formalities required by law” rule. Consequently, such a Court Order for all practical purposes is INVALID. Now that the groundwork has been laid, the Defendant will address the allegations raised in the Plaintiff’s ARGUMENT.

28. **Response to paragraph 1:** The Plaintiff quotes Rule 30(a) but fails to quote Rule 30(c), SCRCP which states; “In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.” The Plaintiff quotes Rule 37(b), but fails to quote Rule 37(a)(2), SCRCP that clearly states in pertinent parts, “If a deponent fails to answer a question.....” “.....fails to respond.....” The Defendant has complied with every lawful request from the Plaintiff and repeatedly told the Plaintiff written questions can be submitted at any time.

29. **Response to paragraph 1(b):** The Defendant did not fail to Comply with the Court’s Order. Nowhere in the Court Order will the Plaintiff find the words “Oral Examination Only”. Therefore, in lieu of a Deposition by Oral Examination, the Defendant would have accepted written questions from the Plaintiff at any time. [Rule 30(c), SCRCP]

(A) **Response to paragraph 1(b)(1):** The Defendant did not fail to be sworn, the Plaintiff failed to cooperate and did not provide any written questions for the Defendant to answer. [Rule 30(c), SCRCP]

(B) **Response to paragraph 1(b)(2):** The Defendant has not failed to provide or

permit discovery. The Plaintiff has consistently failed to comply with the discovery requirements of Rule 26(b)(1), SCRPC and the Subpoena requirements of Rule 45(a)(1)(C).

(C) Response to paragraph 1(b)(2)(A): The Plaintiff's Sanction Order in paragraph 1(b)(2)(A) must be denied. The Court is not a surrogate Mother for the Plaintiff. The Plaintiff cannot and should not expect the Judge to violate the Rules of Civil Procedure in order to compensate for the Plaintiff's compliance failures.

(D) Response to paragraph 1(b)(2)(B): The Plaintiff's Sanction Order in paragraph 1(b)(2)(B) must be denied. The Court is not a Foster Parent for the Plaintiff. The Plaintiff cannot and should not be relying on the Judge to ignore established legal precedent and the Rules of Civil Procedure in order to overlook the Plaintiff's failure to comply with the Rules.

(E) Response to paragraph 1(b)(2)(C): The Plaintiff's Sanction Order in paragraph 1(b)(2)(C) must be denied. The Court is not a Guardian Ad Litem for the Plaintiff. The Judge should not be required to violate the Rules of Civil Procedure and Judicial Principles in order to satisfy the Plaintiff's demands that are not supported by any State or Federal Rule of Civil Procedure.

(F) Response to paragraph 1(b)(2)(D): The Plaintiff's Sanction Order in paragraph 1(b)(2)(D) must be denied. The Court is not a Big Brother for the Plaintiff. The Plaintiff cannot and should not expect the Judge to violate the guaranteed Constitutional right of Due Process of Law and Procedure in order for the Plaintiff to benefit unjustly and unfairly at the expense of the Defendant.

29. **Response to paragraph 2:** In addition to not being supported by any Federal or State Rule of Civil Procedure, the Plaintiff's Sanction Orders must be denied because the Plaintiff's demands are not supported by any statute in South Carolina's Code of Laws and no statute in Common law and/or Federal law.

(A) The Plaintiff's Sanction Orders must be denied because the Plaintiff's demands are not supported by any article or amendment in the Constitution of the United States of America or by any article or amendment in the Constitution of the State of South Carolina.

(B) The Plaintiff's demands are not even supported by any Regulation, Rule, Procedure or Policy issued by the Board of Governors that supervise Depository Institutions for the Federal Reserve System – a private business enterprise.

(C) The Plaintiff's Sanction Order must be denied because the case law and citations that are included as authoritative, do not apply to the Plaintiff. The Plaintiff has not substantially complied with any discovery rule.

30. **Response to paragraph 3:** The only bad faith in this litigation has been shown by the Plaintiff and the only willful disobedience has been shown by the Plaintiff. The Plaintiff failed to substantially comply with Administrative Order #2009-05-22-01 and has consistently shown bad faith by ignoring the required Rules of Civil Procedure relative to discovery. The burden of proof rest on the Plaintiff not the Defendant; therefore, prejudice cannot be presumed. The Defendant rejects the remaining allegations in the Plaintiff's Argument because; even though the Plaintiff's remaining assertions, case law and citations might be factual, they are not relevant to this case, the subject matter before the court and there is no genuine case law the Plaintiff can cite that supports the Plaintiff's verifiable bad faith and willful disobedience.

31. **Response to paragraph 4:** As for Protective Orders, the Defendant can't obtain a Protective Order from any Court where the Due Process of Law and Procedure is denied. The Plaintiff is currently the beneficiary of judicial partiality that heavily favors the Plaintiff and not just and fair adjudication.

(A) Again the Plaintiff has misstated the facts. The Defendant has not ignored the Court, the Court has ignored the Defendant. Wells Fargo's counsel travelled to Orangeburg on March 02, 2012 and then refused to allow the Defendant to read the Defendant's objections into the record that Wells Fargo's counsel controlled. The Transcript of the Defendant's aborted Deposition will verify this fact.

(B) Wells Fargo's motion to compel violated the Rules of Civil Procedure. The Defendant's conduct is supported by South Carolina's and the Federal Rules of Civil Procedure. If the Plaintiff's case has come to a halt, it is because the Plaintiff's "Illegally Brokered Loan", "Illegal Predatory Lending Scheme" and "Home Improvement and Mortgage Fraud" cannot be legitimized in the Court of Common Pleas.

RESPONSE TO CONCLUSION

32. For all the foregoing reasons the Plaintiff's Motion for Sanctions must be denied. In addition, the Plaintiff has no legitimate standing to file any motions, threaten the Defendant

with sanctions, make demands for Oral Depositions Only, request any order to strike the Defendant's Answers, Counterclaims or Affirmative Defenses or request any re-imbursement of any cost incurred. The Plaintiff no longer has any legal standing to do any of the above. It is only a matter of time before the Court/Judge figures this out, realizes this fact and acts on it.

(A) The Defendant no longer alleges anything. The Defendant did not allege Burns & Moise's filed Case Status Updates were falsified documents, i.e., the **Massive Filing Fraud**, the Defendant entered a sworn statement of fact into the Court's record based on personal knowledge supported by documented evidence and sources for corroborating evidence.

(B) The Defendant did not allege the Seller brokered loan #708-0174072777 and not Golden Gate Mortgage, the Defendant entered a sworn statement of fact into the Court's record based on personal knowledge that is supported by eyewitness testimony.

(C) The Defendant did not allege Judge Diane Shafer Goodstein lied on an Official Court Document, the Defendant entered a sworn statement of fact into the Court's record based on personal knowledge that is supported by an unimpeachable source for evidence and proof – the actual transcript of the hearing.

(D) The Defendant did not allege Brian A. Calub inadvertently revealed the extent of the **Massive Filing Fraud** of Burns and Moise, the Defendant made a sworn statement of fact that is supported by an unimpeachable source – the actual transcript of the Court hearing.

(E) The Defendant did not allege Wells Fargo did not "Substantially Comply" with Section (3) of Administrative Order #2009-05-22-01, the Defendant entered a sworn statement of fact into the record based on personal knowledge supported by the evidence.

(F) The Defendant did not allege Brian A. Calub did not present any evidence (physical or otherwise), affidavits or testimony to show good cause, the Defendant entered a sworn statement of fact into the Court's record based on personal knowledge that is supported by an unimpeachable source for evidence and proof – the actual transcript of the hearing.

(G) The Defendant did not allege the Broker lied on the application submitted to the Plaintiff on 12/04/2007 the Defendant entered a sworn statement of fact into the Court's record based on personal knowledge that is supported by the Plaintiff's own documents.

(H) The Defendant did not allege the 7-59 Appraisals are falsified, the Defendant entered a sworn statement of fact into the Court's record based on personal knowledge that is supported by the Plaintiff's own documents.

DEFENDANT'S ARGUMENT II

33. A pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted. {*Supporting Case Law - Renville State Bank v. Kinsberg*, 166 N.W. 643, 644 (S.D. 1918) ("A written declaration, properly sworn to, may constitute an affidavit, even though in the form of an ordinary pleading."); *Washington ex rel. Victor Boom Co. v. Peterson*, 70 P. 71 (Wash. 1902) (holding that a verified pleading can constitute an affidavit)}

(A) The Defendant's Pleadings are written and sworn statements of fact based on personal knowledge that are supported by evidence. In addition to having the probative force of an affidavit, the Defendant's sworn statements also have the probative force of a written deposition, a solemn affirmation and a solemn declaration.

(B) By whatever legal terminology the Court uses to describe a probative document, the Defendant's sworn Pleadings have the common feature of being able to identify evidence of which the Defendant has first-hand knowledge, has witnessed, and if the Defendant is relying on another source, the Defendant has already identified that source in the Pleading and described the evidence the source can provide, e.g., the Seller had no building permit. The source for verification – the City of Orangeburg Building Inspector.

(C) Consequently, the self-serving statements made by the Plaintiff's attorneys on behalf of the Plaintiff cannot overcome the probative force of the Defendant's sworn statements of fact in the Defendant's Pleadings. In addition, the Defendant's sworn statements of fact are supported by numbered Exhibits that document the evidence and/or the source from which additional documented and/or corroborating evidence can be obtained.

(D) There is no legal question that the Defendant's sworn statements of fact in the Defendant's Pleadings that are supported by extensive documentation constitute substantial evidence and testimony that have not been denied or refuted; and there are pages of testimony.

(E) Therefore, individually and cumulatively the Defendant's sworn statements of fact that are based on personal knowledge can be entered directly as testimony into the litigation because they are already sworn affidavits and depositions that the Plaintiff is directly involved in perpetuating an "Illegal Predatory Lending Scheme", an "Illegally Brokered Loan" and a "Home Improvement and Mortgage Fraud" that are based on the acceptance, use, approval and protection of falsified and forged documents and an altered and forged Contract of Sale.

DEFENDANT'S ARGUMENT III
(Why the Plaintiff's Request to Compel & for Sanctions are Ludicrous)

34. It is the Defendant's belief that the Plaintiff and the Court/Judge failed to realize and recognize the Defendant's Pleadings are sworn statements of fact supported by Exhibits, documented evidence and/or information to a source for documented evidence. Therefore, it is absolutely ludicrous for the Plaintiff to state in any pleading that the Defendant must be Compelled to cooperate, be Deposed or the Defendant is responsible for some kind of delay that prejudiced the Plaintiff. The Defendant has already submitted over 50 sworn statements of fact that are supported by over 100 numbered Exhibits that document the evidence and/or a source for documented evidence.

35. The Plaintiff has not controverted any of the Defendant's over 50 sworn statements of fact that are contained in the Defendant's Pleadings. The Defendant's sworn statements of fact based on personal knowledge cannot be controverted by responses from the Plaintiff's attorneys.

(A) The Plaintiff must prove by documented evidence, affidavits and/or depositions from individuals with personal knowledge of the events in order to controvert the Defendant's sworn statements of fact.

(B) No Court can grant relief based on statements from the Plaintiff's attorneys; unless of course, the attorney has first hand knowledge of the events, or on the Plaintiff's information and belief. The Plaintiff's information and belief is not admissible as evidence and cannot be used to support any Motion for Summary Judgment.

(C) As the Defendant has stated and re-stated, since the Plaintiff had no direct contact with the Defendant, the Plaintiff has presented no evidence to refute the Defendant's testimony that the documents the Plaintiff presented in Court are forgeries by substitution or forgeries by any other means. This paragraph has 3 sworn statements of fact that are supported by the evidence WF00001-WF00038 & WF00080-WF00085. The Plaintiff has to prove these sworn statements of fact are not true based on the Plaintiff's personal knowledge.

(D) The Defendant's objections on the following pages are sworn statements as well that are also based on the Defendant's personal knowledge. Each objection is supported by the evidence and the facts. Every objection has to be proven false by documented evidence.

**RESTATEMENT OF OBJECTIONS & REASONS 1-18
FOR NOT SUBMITTING TO AN ORAL ONLY DEPOSITION**

36. **Objection 1: & Reason 1:** The Plaintiff's re-filed Notice of Taking Deposition can only be characterized as harassment, annoyance, embarrassment, oppression, and inflicting undue burden upon the Defendant. *{Authorities – Rules 26(a), (a)(i), (a)(ii), (a)(iii), (b)(1), (c), (c)(1), (c)(2), (c)(3), (c)(5) & (e), SCRC}*
37. **Objection 2: & Reason 2:** The Plaintiff has consistently failed to show “Good Cause” or demonstrate a “Material Need” for an Oral Only Deposition. *{Authority – Rule 26(b)(3), SCRC & Supporting Evidence - Transcript of the Hearing Held on December 06, 2011}*
38. **Objection 3: & Reason 3:** The Plaintiff's re-filed Notice of Taking Deposition must be Quashed or “Stayed” by Objection because it is absolutely unnecessary. No Oral Deposition from the Defendant is going to change the fact that the Plaintiff is perpetuating an Illegal “Predatory Lending Scheme” that involves the use of “Falsified” and “Forged” documents since 12/21/2007, protecting and defending an Illegally “Brokered Mortgage and Loan” and has been maintaining a “Home Improvement and Mortgage Fraud”; based on the same “Falsified” and “Forged” documents as a delinquent account since 2008. *{Supporting Evidence – Plaintiff's Filed Documents – WF00001-WF00137, Loan Originator Records – South Carolina's Department of Consumer Affairs, Building Permit Records – the City of Orangeburg Building Inspector, Testimony from an Eyewitness – Defendant's Exhibit 245 and the Oral Deposition of the Eyewitness taken by Attorney Brian A. Calub on Friday, March 02, 2012}*
39. **Objection 4: & Reason 4:** The Rules specifically allow for a Deposition by telephone. Consequently, if the Plaintiff must hear the Defendant's voice, an Oral Deposition can be taken by telephone. *{Authority – Rule 30(b)(7), SCRC}*
40. **Objection 5: & Reason 5:** If the Plaintiff desires, needs or simply wants more information from the Defendant, the Plaintiff can submit written questions at any time. *{Authorities – Rule 30(c) & Rule 31(a), SCRC}*
41. **Objection 6: & Reason 6:** A Deposition upon Oral Examination cannot be used against the Defendant if the Defendant does not have a personal attorney present at the Deposition. *{Authority – Rule 30(b)(2), SCRC}*

42. **Objection 7: & Reason 7:** The Defendant has shown “Good Cause” to the Court/Judge in previous pleadings; that are incorporated by reference as though fully set forth herein, on matters relating to the Plaintiff’s frivolous, procedurally defective and absolutely unnecessary demands for an Oral Only Deposition when the rules for discovery are not limited to Oral Depositions Only. {*Authorities – Rules 26(a),(c), (e), 30(b)(2), 30(c), 31, 33 & 36, SCRCP*}

43. **Objection 8: & Reason 8:** The Plaintiff has had ample time and opportunity for discovery since 2008. {*Supporting Evidence – The Plaintiff’s filed Substitution of Counsel – dated and filed, August 15, 2008; Authorities - Rules 30(a)(1), 31(a), 33(a), 33(b) & 36(a), SCRCP, Supporting Case Law - Middleborough Horiz. Property Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 479-80, 465 S.E.2d 765, 771 (Ct. App. 1995) (affirming summary judgment where appellants “advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment”)*} The Plaintiff has had 4 years for discovery.

44. **Objection 9: & Reason 9:** The Defendant has already “Substantially Complied” with the Plaintiff’s request for Production. {*Authorities – Rules 26(e), 34(a) & 34(b), SCRCP; Supporting Evidence – Plaintiff’s Production request dated and filed November 13, 2008 & Defendant’s Response dated and stamped December 10, 2008*}

45. **Objection 10 & Reason 10:** The Defendant has already “Substantially Complied” with the Plaintiff’s Interrogatories. {*Authorities – Rules 26(e), 33(a) & 33(b), SCRCP; Supporting Evidence – Plaintiff’s Interrogatories dated and filed January 30, 2009 & the Defendant’s Response, dated, stamped and filed February 23, 2009*}

46. **Objection 11: & Reason 11:** The Defendant has “Substantially Complied” with the Plaintiff’s request by obeying a “Protective Order” and limiting the Defendant’s request for Admissions to 20 instead of the much needed and desired 1,151. {*Supporting Evidence – Plaintiff’s Protective Order and Answer to Admissions dated and filed October 30, 2008*}

47. **Objection 12: & Reason 12:** The Plaintiff has not submitted a request for Admissions since August 15, 2008. {*Supporting Evidence – Plaintiff’s Filed Pleadings from August 15, 2008 to Today’s Filing Date*} The Defendant craves the Plaintiff’s request for

Admissions instead of an Oral Deposition. *{Authority – Rule 36(a), SCRCP}*

48. **Objection 13: & Reason 13:** The Defendant has already “Substantially Complied with *Rule 26(b)(1) SCRCP*, i.e., the identity and location of persons having knowledge of any discoverable matter. *{Supporting Evidence - Defendant’s Answer to Complaint, Page 2, Paragraph 6, First Amendment to Answer to Complaint with Counterclaims, Page 20, Paragraphs 91-VIII to 92-VIII & Page 21, Paragraph 94-VIII; First Amendment to Request for Discovery, Page 4, Paragraph 7, Page 7, Paragraph 17, Page 8, Paragraph 20, Page 10, Paragraph 26 and the Defendant’s Second Amendment to Request for Discovery, A Request for Admissions, Pages 12-16, Paragraphs 33- 47. In addition, all the Defendant’s remaining filed pleadings that are incorporated by reference as though fully set forth herein.}*

49. **Objection 14: & Reason 14:** The Plaintiff’s request for an Oral Deposition Only must be rejected and/or denied by the Court/Judge because certain attorneys employed by the Plaintiff filed false and misleading statements relative to *Administrative Order #2009-05-22-01*. The Defendant’s case can be Dismissed pursuant to *Rule 41(b), SCRCP*. In addition, such behavior is a violation of the *Rules of Professional Conduct, Rule 407, SCACR, Rule 3.3: Candor Toward the Tribunal*; that clearly states within the following quotation marks that:

(1) “A lawyer shall not knowingly:”

(A) “make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer”;

(B) “fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or”

(C) “offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.”

(2) “A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.”

{Supporting Evidence – Filed Case Status Updates from June of 2009 to May of 2011, i.e., the Massive Filing Fraud of Burns & Moise}

50. **Objection 15: Reason 15:** The Plaintiff's request for an Oral Only Deposition should be rejected and denied because the request violates *Rule 26(b)(3) SCRCP*. The Rule clearly states in pertinent parts:

"..... only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." (Boldness and Italics added for emphasis)

(A) During the preceding 3 years, neither the Plaintiff, nor the Plaintiff's Counsel has presented the Court or the Defendant any evidence of any substantial material need for materials or Oral Depositions Only. *{Authority – Rule 26(b)(3), SCRCP}*

(B) The Plaintiff has not presented any evidence that a need exists for an Oral Only Deposition. Therefore, the Plaintiff's Notice of Taking Deposition must be construed and considered for what it is; an abuse of authority by an Officer of the Court because this is an act of harassment, a nuisance, an annoyance, burdensome, oppressive and persecutive.

{Authorities - Rules 26(a), (a)(i), (a)(ii), (a)(iii), (b)(1), (c), (c)(1), (c)(2), (c)(3), (c)(5) & (e), SCRCP & Supporting Evidence – the Transcript of the Hearing Held on December 06, 2011}

51. **Objection 16: & Reason 16:** An Oral Only Deposition from the Defendant is not needed. Written questions are all that is required because Wells Fargo must prove the supporting documents Wells Fargo Home Mortgage relied upon to fund the loan are not "Fraudulent". This proof must be presented to the Court/Judge for the following reasons.

(A) The Defendant's loan is a brokered loan that is regulated by Federal and State Laws and not an "arms length transaction" between the Defendant and Wells Fargo. No one from Wells contacted the Defendant to approve the loan. Wells Fargo dealt exclusively with second and/or third parties. *{Refer to Wells Fargo's Filed Documents WF00001-WF00137}*

(B) The supporting documents Wells Fargo used for its lending decision came from second and/or third parties within the mortgage industry that is regulated .

(C) The Defendant had no authority, influence or control over these second and third regulated parties that supplied Wells Fargo with documents and information.

(D) Wells Fargo must prove the supporting documents from these second

and/or third regulated parties that Wells Fargo's underwriters relied upon are not "Falsified", "Forged" and "Altered". If Wells Fargo cannot present the Court/Judge the verifiable evidence that these documents are not "Falsified", "Forged" and "Altered", Wells Fargo is actively involved in, perpetuating and defending an "Illegally Brokered Loan" (*the Seller provided all the paperwork to broker the loan and not any agent or representative from Golden Gate Mortgage*), an "Illegal Predatory Lending Scheme" (*that involves the use of "Falsified", "Forged" and "Altered" documents*), and a "Home Improvement and Mortgage Fraud" that is based on the same "Falsified", "Forged" and "Altered" documents. *These documents are from the same second and third regulated parties that Wells Fargo relied upon for its lending decision and these parties are not before the Court/Judge.* Therefore, there is no need for an Oral Only Deposition from the Defendant, written questions are all that is required. {*Authorities – Rules 26(c)(3), 30(c) & 31(a), SCRPC, 12 U.S.C. §§ 2601–2617 et. seq. & § 37-22-120(B) SC Code of Laws & Wells Fargo's Filed Documents WF00001-WF00137*}

52. **Objection 17: & Reason 17:** The Defendant has the right to object to any discovery method/s that does not comply with these rules or key provisions of South Carolina's Rules of Civil Procedure. {*Authority – Rule 41(b), SCRPC*}

53. **Objection 18: & Reason 18:** Due to the nature of this proceeding, as the Court can plainly see from the dates this action began until the "Stay"/TRO was implemented, the Plaintiff had ample opportunity to complete discovery prior to December 06, 2011. Any claim by the Plaintiff that contradicts these facts cannot be maintained or substantiated.

**THE PLAINTIFF DID NOT AND STILL HAS NOT SHOWN ANY
GOOD CAUSE BECAUSE THE PLAINTIFF STILL HAS NOT PAID THE WITNESS**

54. The Plaintiff still has not completely complied with *Rule 45(b)(1), SCRPC*, for March 02, 2012. The Plaintiff still has not paid the Witness Twenty-Five and 00/100 (\$25.00) for attendance and compliance with the Plaintiff's Subpoena request on Friday, March 02, 2012. The Witness has been paid for attending the Deposition on the same day, Friday, March 02, 2012. {*Supporting Evidence – the Witness gave Attorney Calub, a copy of Exhibit 245 that complied with the Plaintiff's Subpoena and Exhibit "A" for Document Inspection*}

CONCLUSION

55. Since the Plaintiff has not exhausted or utilized all the methods and procedures that are available for discovery purposes that have been authorized by South Carolina's Rules of Civil Procedure, the Defendant will "Substantially Comply" with any Deposition by written questions and any additional submitted request for Interrogatories or Admissions. *{Authorities – Rules 26(c)(3), 26(e), 30(c), 31(a), 33, & 36(a) SCRPC}*

SUMMATION

56. The Court Order the Plaintiff presented is the same 03/07/2012 Court Order that triggered the Defendant's outrage at the Judicial process and the Petition for the Removal or Voluntary Recusal of Circuit Court Judge Diane Shafer Goodstein that has not been denied or proven false that was filed on March 23, 2012. *{Refer to Filed Exhibit 255 & the Filed Petition}*

57. Without "Good Cause" being shown, the Plaintiff's request for any Court Order for Sanctions must defeat the plain wording of Rule 37(a)(2), SCRPC that clearly states;

"if a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c)." ***{Authority – Rule 37(a)(2), SCRPC}***

The Defendant has "Substantially Complied" with every lawful request of the Plaintiff. Under Rule 30, SCRPC, the Defendant can participate in a Deposition by telephone, *[Authority - Rule 30(b)(7), SCRPC]* or by written questions *[Authority - Rule 30(c), SCRPC]* and under Rule 26(c), SCRPC, "the discovery may be had only by a method of discovery other than selected by the party seeking discovery;" *{Authority – Rule 26(c)(3), SCRPC}*

58. Therefore, the Defendant's objections to the Plaintiff's tactic of playing "fast and loose" with the Rules of Civil Procedure and failure to "Substantially Comply" with the Rules of Civil of Procedure governing discovery are firmly rooted and supported by the Rules of Civil Procedure; where as, the Plaintiff's demands are not supported by any Rule of Civil Procedure. *{Authorities - Rules 26(a), (a)(i), (a)(ii), (a)(iii), (b)(1); (c), (c)(1), (c)(2), (c)(3), (c)(5) & (e),*

30(b)(7), 30(c), 31(a), 33(a), 33(b), 34(a), 34(b), 36(a), 37(a)(2), 37(a)(4) and 45(a)(1)(c) SCRCP; *Supporting Evidence – the Transcript of the Hearing Held on December 06, 2011*}

59. Accordingly, any attempt by a Judge or Attorney to violate the Rules of Civil Procedure, ignore the Rules of Civil Procedure, abuse the Rules of Civil Procedure, render them of no effect or apply them with partiality and/or bias is violation of a Judge's Oath of Office, Professional Ethics and Code of Judicial Conduct. Any violation by an attorney is a failure to abide by the Rules of Professional Conduct. {*Authorities – Rule 502.1, SCACR, Subdivision (A) of CANON 2, Subdivision (B)(5) of CANON 3, Subdivision (D)(2) of CANON 3 & Subdivision (E)(1)(a) of CANON 3: Of the Code of Judicial Conduct; Rule 501 SCACR "South Carolina Appellate Court Rules" and the Ruled Divisions & Subdivisions of Rule 407, SCACR*}

RELIEF SOUGHT

60. The Defendant seeks the following relief.

(A) Voluntary Withdrawal: It is best if the Motion for Sanctions is withdrawn. The Plaintiff's Motion is not supported by the facts or the evidence.

(B) Quashed: If the Motion for Sanctions is not withdrawn voluntarily, then it is up to the Court to quash it and /or modify the Plaintiff's request ex officio. {*Authorities – Rules 26(a), (a)(i), (a)(ii), (a)(iii), (b)(3), (c), (c)(1- (c)(5), (e), 30(c), 31(a) & 37(a)(4), SCRCP*}

(C) Stayed: The Defendant's Objection to unnecessary harassment should be more than adequate to deny the Motion for Sanctions and the Plaintiff's demands for Oral Only Depositions. {*Authorities – Rules 26(a), (a)(i), (a)(ii), (a)(iii), (b)(3), (c), (c)(1- (c)(5), (e), 30(c), 31(a) & 37(a)(4), SCRCP*} The Defendant has an uncontested *Rule 41(b), Motion to Dismiss with Prejudice* before the Court; that is supported by statements of material facts that are not in dispute. documented evidence and a legal memorandum; if successful, the Depositions and/ Sanctions will not be necessary. {*Refer to the Defendant's Filed Exhibits 246 & 247*}

(D) Upon Motion: Finally, if the Defendant must file Motions to end this malfeasance, Wells Fargo Bank, N.A., should be sanctioned to pay for it. {*Authority – Rule 37(a)(4), SCRCP*}

FINAL COMMENT I

61. There is another power that governs the affairs of humanity that supersedes

Judges, Juries, Attorneys, Litigants and Governmental Authorities in such matters. That other power is guided by a universal principle of what is right, wrong and correct; and has never failed to act when corruption in all its many forms reaches full measure. *{Authority - Human History}*

FIANL COMMENT II

62. Every sentence the Defendant writes is clearly stated without ambiguity and is a sworn statement of fact based on personal knowledge and is not an allegation or statement that is based on the Defendant's information or belief. Therefore, every statement that has the probative force of a statement of fact cannot be casually dismissed, overlooked or ignored by the Court or the Plaintiff. Statements of fact based on personal knowledge must be proven false.

63. The Defendant has over 50 sworn statements of fact that are based on personal knowledge that are supported by evidence, documentation or an Exhibit that have not been denied or disproven. Statements from the Plaintiff's attorneys will not overcome the Defendant's sworn statements of fact and the evidence and documentation that supports them.

64. **WHEREFORE**, the relief sought by the foregoing Objections to the Plaintiff's Motion for Sanctions and Demands for an Oral Only Deposition is denial of the Motion and a reprimand for the Plaintiff's insistence on making demands of the Defendant that are not supported by South Carolina's Rules of Civil Procedure or a Statue in South Carolina's Code of Laws. This should be done forthwith.

Respectfully submitted,
Dorothy Sistrunk
423 Bayne Street, Post Office Box 217
Orangeburg, South Carolina 29115
(803) 268-0716

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing will be mailed to:

Nelson Mullins Riley & Scarborough LLP
ATTN: Brian A. Calub @
1320 Main Street; 17th Floor
Columbia, SC 29201
POB 11070
Columbia, SC 29211-1070
Tel: 803-799-2000 • Fax: 803-256-7500

VERIFICATION

I, Dorothy Sistrunk, am the Defendant that is identified in the Plaintiff's filed Complaint. I have read the Plaintiff's pleading and know the contents thereof. My filed Response is based on my personal knowledge and information from other sources. As to those matters that are based on my information and belief and/or other sources, resources and/or references; I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

PERSONALLY, appeared before me Dorothy Sistrunk,
in the STATE OF SOUTH CAROLINA, in the COUNTY OF ORANGEBURG, and presented
to me an acceptable picture identification in the form of a STATE OF SOUTH CAROLINA
driver's license with the number 008190796, being of full age, on
her oath, being **DULY SWORN**, and under the **PENALTY OF PERJURY**, deposes and declares
all that proceeded as her own statements:

IN WITNESS WHEREOF, the undersigned has declared and will sign and seal her attestations
on this 25th day of May in the year 2012 in City of Orangeburg, in
the State of South Carolina.

Signed, sealed and delivered in the presence of:

Signature: Dorothy Sistrunk

Signature of Notary Witness (1): _____

SWORN to and subscribed before me;

This 25th day of May 20 12

Notary Signature: Sylvan D. Buck

My Commission Expires
September 30th, 2012

My Commission Expires: _____

(Seal)

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Wells Fargo Bank, N.A.,

Plaintiff,

Vs.

Dorothy Sistrunk

Defendant,

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
)

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

) **DEFENDANT DOROTHY SISTRUNK'S**
) **DEMAND FOR JURY TRIAL AND**
) **LEGAL MEMORANDUM**
) **SUPPORTING OPPOSITION TO**
) **PLAINTIFF WELLS FARGO BANK,**
) **N.A.'S MOTION FOR SUMMARY**
) **JUDGMENT**

) **JUDICIAL NOTICE REQUESTED**
) **PURSUANT TO RULE 201, SCRE**
)

) **Today's Date: July 17, 2013**

Comes now the Defendant, Dorothy Sistrunk, to file her *Demand for Jury Trial and Legal Memorandum Supporting Opposition to Plaintiff's Wells Fargo Bank, N.A.'s Motion for Summary Judgment*. The Plaintiff's Motion for Summary Judgment was retrieved from the Mail box on Monday, July 1, 2013.

RULE 201, SCRE
JUDICIAL NOTICE OF ADJUDICATIVE FACTS REQUESTED

1. Adjudicative facts are "facts about the particular event which gave rise to the lawsuit and ... [help] explain who did what, when, where, how and with what motive and intent." Therefore, the Defendant request Judicial Notice of all Adjudicative Facts in this case pursuant to *Rule 201, SCRE*, that states the following....

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed.

In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing Jury. The court shall instruct the jury to accept as conclusive any fact judicially noticed.”

ADJUDICATIVE FACTS RELATIVE TO THE DEFENDANT

2. The Plaintiff’s Mortgage Loan should have been treated as a “Fraudulent Loan” rather a consumer dispute because of the following undeniable adjudicative facts. Furthermore according to South Carolina’s Appeals Court.

“[a] trial court may take judicial notice of a fact only if sufficient notoriety attaches to the fact involved as to make it proper to assume its existence without proof.” *Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 228 S.E.2d 108 (1976). “A fact is not subject to judicial notice unless the fact is either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.” *Masters v. Rodgers Dev. Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984).

3. **Judicial Notice #1:** The Plaintiff’s loan is a brokered loan. The Defendant could not and did not broker the loan. {See the Plaintiff’s Filed Exhibit WF00125}

4. **Judicial Notice #2:** The Defendant could not and did not perform the Appraisal. This was done by Jim H. Austin III. {See the Plaintiff’s Filed Exhibits WF00078 & WF00125}

5. **Judicial Notice #3:** The Defendant is not a licensed broker and there is no record at South Carolina’s Department of Consumer Affairs that the Defendant was ever licensed to be a loan broker. Therefore, the Defendant could not and did not submit the loan application to the Plaintiff. {See the Plaintiff’s Filed Exhibit WF00125}

6. **Judicial Notice #4:** The Defendant is not a licensed appraiser. Therefore, the Defendant could not and did not “Falsify” the 7-59 Appraisals or the Satisfaction Completion Certificate. {See Plaintiff’s Filed Exhibits WF00001-WF00026, WF00009 & WF00022}

7. **Judicial Notice #5:** “Mortgage Fraud”, “Predatory Lending” and “Insurance Fraud” are illegal acts; punishable by fines and/or imprisonment.

8. **Judicial Notice #6:** The Defendant is not the lender in this case. Therefore, the

Defendant did not and cannot violate any provisions of South Carolina's "HIGH-COST AND CONSUMER HOME LOANS ACT".

9. **Judicial Notice #7:** Loan Brokers in South must be licensed and loan brokering activity is currently governed by state law and Federal law pursuant to RESPA.

10. **Judicial Notice #8 Sentence #1:** It is unlawful to broker loans in South Carolina without a license. The Plaintiff's loan was brokered entirely by the "Unlicensed" Seller – Thomas Jacobs – and not by Golden Gate Mortgage. This was reported to South Carolina Department of Consumer Affairs [SCDCA] (Case #08-0237-B2), to the Office of the Comptroller of the Currency [OCC] (Case #785593), the City of Orangeburg Department of Public Safety (No written report was taken; advised to contact the FBI), to the Federal Bureau of Investigation (FBI), (No written report was taken; advised to contact Wells Fargo Bank) and to the Plaintiff. *{See the Plaintiff's Filed Exhibits WF00120, WF00121, WF00125 & WF00126}* Since 2008, the Plaintiff has filed any interrogatories, admissions, depositions, affidavits or presented any testimony from the Broker – Golden Gate Mortgage, Inc., or the Seller – Thomas Jacobs to deny or refute this fact.

11. **Judicial Notice #9 Sentence #2:** On December 22, 2007, the Plaintiff's personnel were notified by telephone that the loan was mired in fraud, deceit and deception. The Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from the Plaintiff that denies or refutes this fact. *{Review Plaintiff's Filed Documents, Exhibits and Affidavits if any}*

12. **Judicial Notice #10 Sentence #2:** On December 24, 2007, the Plaintiff's representative, Kathryn R. Perkinson, returned the call and told the Defendant to work things out with the seller and if this could not be done to fax the Defendant's written cancellation request to the Plaintiff's office in Des Moines, Iowa. The Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from Kathryn R. Perkinson that denies or refutes this fact. *{Review Plaintiff's Filed Documents, Exhibits and Affidavits if any}*

13. **Judicial Notice #11 Sentence #4:** The Defendant received the 7-59 "Falsified Appraisal" by UPS Delivery on January 12, 2008. *{See the Plaintiff's Filed Exhibit with this Motion for Summary Judgment WF00001-WF00013}* The Plaintiff was notified by telephone on Monday

January 14, 2008 of the “Fraud” associated with loan. The Plaintiff’s personnel told the Defendant someone would contact her and no one did. The Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from any employee, staff member, agent, manager or executive from Wells Fargo Home Mortgage (WFHM) denying or refuting this fact. *{Review Plaintiff’s Filed Documents, Exhibits and Affidavits if any}*

14. **Judicial Notice #12 Sentence #1:** Falsified appraisals are unlawful documents. After waiting for almost 3 weeks for someone from Wells Fargo Home Mortgage to call her back, on or about February 6, 2008, the Defendant faxed the Plaintiff a letter on February 8, 2008 faxed the documented evidence the 7-59 Appraisals were “Falsified” *{Filed Exhibit WF00003}*

15. **Judicial Notice #13:** One does not need to be an expert appraiser to know a house does not have central air conditioning, a patio or deck, no new appliances, walls, ceilings, floors, fixtures, new carpeting or fresh painting. The Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from Wells Fargo’s personnel or from any certified appraiser that denies or refutes the aforementioned facts since 2008. *{Review Plaintiff’s Filed Documents, Exhibits and Affidavits if any}*

16. **Judicial Notice #14:** One does not need to be a certified appraiser to recognize decaying and deteriorating wood or when a house needs repairs. The Defendant’s testimony relative to the actual condition of 423 Bayne Street is based on eyewitness accounts, personal knowledge and experience that the 7-59 Appraisal the Plaintiff used to establish “Loan Value” is an unlawful document the Plaintiff is still using. *{See the Plaintiff’s Exhibits WF00001- WF00013 that are Filed with this Motion for Summary Judgment}*

ADJUDICATIVE FACTS RELATIVE TO THE PLAINTIFF

17. **Judicial Notice #15 Sentence #2:** The Plaintiff’s motion for Summary judgment should be denied and this case dismissed with Prejudice because the Plaintiff, Wells Fargo Bank, N.A. is a Federal Reserve Bank that is regulated by both the federal and state governments and is subject to the Federal Reserve’s; as well as, the FDIC’s regulations, rules and guidelines relative to “Fraudulent Loans”. Wells Fargo Bank, N.A., is also subject to exclusive regulatory jurisdiction by the Office of the Comptroller of the Currency (OCC), the federal regulator of nationally

chartered banks and its policies, rules and regulations relative to “Fraudulent Loans”. Wells Fargo’s personnel were duly notified concerning the “Fraudulent” nature of loan #0174072777. {See the Plaintiff’s Filed Exhibits B, D, WF00120, WF00121 & WF00125 and Defendant’s Exhibits 8-14, 37, 43, 52-64, 81, 113 [House] & 166-173}

18. **Judicial Notice #16:** 18 USC § 656 clearly states in pertinent parts, “Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) of the Federal Reserve Act, or a receiver of a national bank, insured bank, branch, agency, or organization or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank, branch, agency, or organization or holding company or any moneys, funds, assets or securities intrusted to the custody or care of such bank, branch, agency, or organization, or holding company or to the custody or care of any such agent, officer, director, employee or receiver, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.” Funding a money purchase home mortgage that is based on “Falsified”, “Altered” and/or “Forged” documents is a misapplication of money, funds or credit of such bank.

19. **Judicial Notice #17:** 18 U.S.C. 1001(a) states in pertinent parts, “Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both. If the matter relates to an offense under 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall not be more than 8 years.”

20. **Judicial Notice #18:** *18 U.S.C. 1005* states in pertinent parts, “Whoever, being an officer, director, agent or employee of any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) of the Federal Reserve Act, without authority from the directors of such bank, branch, agency, or organization or company, issues or puts in circulation any notes of such banks; or Whoever, without such authority, makes, draws, issues, puts forth, or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debentures, bond, or other obligation, or mortgage, judgment or decree; or Whoever, makes any false entry in any book, report, or statement of such bank, company, branch, agency, or organization with intent to injure or defraud such bank, company, branch, agency, or organization, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, company, branch, agency, or organization, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank, company, branch, agency, or organization, or the Board of Governors of the Federal Reserve System; or Whoever with intent to defraud the United States or any agency thereof, or any financial institution referred to in this section, participates or shares in or receives (directly or indirectly) any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such financial institution-- Shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.” Maintaining an account based on “Questionable” or “Falsified Value” and Falsified”, “Altered” and/or “Forged” documentation is deceiving any officer of such bank, company, branch, agency, or organization, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank or company; as well as any mortgage backed security, to which, the Plaintiff’s mortgage loan is attached or included as a loan in pool or packaged investment security.

21. **Judicial Notice #19:** After receiving documented evidence of the “Fraud” associated with loan number #0174072777, the Plaintiff’s personnel also had a duty to report any suspected fraud to appropriate authorities pursuant to *18 U.S.C. 1343* that states in pertinent parts... “Whoever, having devised or intending to devise any scheme or artifice to defraud, or for

obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.” **{Loan Proceeds were wired}**

22. **Judicial Notice #20:** *18 U.S.C. 1344* states in pertinent parts.... “Whoever knowingly executes, or attempts to execute, a scheme or artifice-- (1) to defraud a financial institution; or (2) to obtain any of the moneys, funds, credits, assets, securities or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”

23. **Judicial Notice #21:** *18 U.S.C. 1007* states in pertinent parts, “Whoever, for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation, knowingly makes or invites reliance on a false, forged, or counterfeit statement, document, or thing shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”

24. **Judicial Notice #22:** *18 U.S.C. 1014* states in relevant parts, “Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of ----- a Federal Reserve bank -----, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, --- the Federal Deposit Insurance Corporation,-----, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both -----.”

25. **Judicial Notice #23:** *Section 16-13-10 – SC Code of Laws* states in relevant parts.... “(A) It is unlawful for a person to: (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing; (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing; (3) falsely make, forge, counterfeit,

alter, change, deface, or erase; or cause or procure to be falsely made, forged, counterfeited, altered, changed, defaced, or erased any record or plat of land; or (4) willingly act or assist in any of the premises, with an intention to defraud any person. (B) A person who violates the provisions of this section is guilty of a: (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the amount of the forgery is ten thousand dollars or more;”

26. **Judicial Notice #24:** *Section 40-58-30(B) – SC Code of Laws* states in relevant parts...

(B) It is unlawful for a person to employ, to compensate, or to appoint as its agent a loan originator unless the loan originator is licensed pursuant to this chapter. The license of a loan originator is not effective during any period when that person is not employed by a mortgage broker licensed pursuant to this chapter. When a loan originator ceases to be employed by a licensed mortgage broker, the loan originator and the mortgage broker by whom that person was employed shall notify promptly the administrator in writing....”

27. **Judicial Notice #25:** *Section 40-58-50(E)(1) – SC Code of Laws* clearly states in relevant parts, “A person may not act as a qualified loan originator in this State without first being licensed with the administrator. It is unlawful for a person to employ, to compensate, or to appoint as its agent a qualified loan originator unless the qualified loan originator is licensed pursuant to this chapter. The license of a qualified loan originator is not effective during any period when that person is not supervised pursuant to an exclusive written contract by a mortgage broker licensed pursuant to this chapter. When a qualified loan originator ceases to be supervised by a licensed mortgage broker, the qualified loan originator and the mortgage broker shall notify promptly the administrator in writing...”

28. **Judicial Notice #26:** *Section 40-58-70 – SC Code of Laws* states in relevant portions....

“In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person in the course of a mortgage loan transaction to: (1) misrepresent the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan. This includes presenting the broker in the guise of a lender or pursuing a course of misrepresentation through agents or otherwise; (2) intentionally misrepresent or conceal a material factor, term, or condition of a transaction to which he is a

party, pertinent to an applicant for a mortgage loan or a mortgagor; (3) engage in a transaction, practice, or course of business which is unconscionable, as provided in Section 37-5-108, or which operates a fraud upon a person in connection with the making of or purchase or sale of a mortgage loan; ----- (6) ---- This item does not prohibit a mortgage broker or mortgage lender from asking the appraiser to do one or more of the following: (a) consider additional appropriate property information; (c) correct errors in the appraisal report; and ----- (9) fail to provide disclosures as required by state or federal law....;”

29. **Judicial Notice #27:** *Section 40-58-78 – SC Code of Laws* states in relevant parts...

(A) A mortgage broker fee agreement with a mortgage broker or loan originator must contain an explicit statement that: (1) the mortgage broker or loan originator is acting as the agent of the borrower in providing brokerage services to the borrower; (2) when acting as agent for the borrower, it owes to that borrower a duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the mortgage broker or loan originator is authorized to act as an agent for any other person, the mortgage broker fee agreement must contain a statement of that fact and identification of that person; ---- (B) If a mortgage broker or loan originator violates the provisions of subsection (A), the borrower may recover from the mortgage broker or loan originator charged with the violation: (1) 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; (2) fees paid by the borrower to the mortgage broker or loan originator for services rendered by the agreement; and (3) actual costs, including attorney's fees, for enforcing the borrower's rights under the agreement.....”

30. **Judicial Notice #28:** *Section 37-23-40 – SC Code of Laws* states in pertinent parts... The lender of a high--cost home loan may not: (1) 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;”

**WHY THE PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT MUST BE DENIED**

31. **Reason #1:** The Plaintiff's Motion for Summary Judgment must be denied and this case remanded to a Jury or Dismissed with Prejudice because the Plaintiff's Motion for Summary Judgment fails to meet the requirements of *Rule 56(c), SCRPC* that clearly states in pertinent parts... "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, **show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.**" There are over 40 genuine issues of material facts.

32. **Reason #2:** *Rule 56(c), SCRPC*. In order to determine whether a triable issue of fact exists, the trial court "must view all evidence and all inferences that can be reasonably drawn from it in the light most favorable to the non-moving party." *Rawlinson Rd. Homeowners Ass'n, Inc. v. Jackson*, 395 S.C. 25, 32, 716 S.E.2d 337, 341 (Ct. App. 2011). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Id.* at 32-33, 716 S.E.2d at 341.

33. **Reason #3:** *Restatement, Second, Torts* § 538 clearly states the following.... "a matter is material if: (1) A reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question; or (2) The maker of the representation knows or has reason to know that the recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard.

34. **Reason #4:** If the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to the jury. *Armstrong v. Collins*, 366 S.C. 204, 223, 621 S.E.2d 368, 377 (Ct. App. 2005); *see also Small v. Springs Indus., Inc.*, 292 S.C. 481, 483, 357 S.E.2d 452, 454 (1987) (*same*).

35. **Reason #5:** An issue is 'material' if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action. *See PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 179, 375 S.E.2d 331, 332 (Ct. App. 1988).

36. **Reason #6:** Probative means tending to prove or disprove. *Black's Law Dictionary* 1323 (9th ed. 2009). Probative value is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues. "[T]he more essential the evidence, the greater its probative value." *United States v. Stout*, 509 F.3d 796, 804 (6th Cir. 2007). Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates.
37. **Reason #7:** Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Ellis v. Davidson*, 358 S.C. 509, 520, 595 S.E.2d 817, 823 (Ct. App. 2004)
38. **Reason #8:** Having personal knowledge of an event and having physical evidence that proves an event are two entirely different matters. One can have personal knowledge of an event without having any physical evidence relative to it. The Defendant has personal knowledge and experience to the events in question that have probative force as "Relevant Evidence".
39. **Reason #9:** Rule 401, SCRE states, "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."
40. **Reason #10:** Rule 402, SCRE states the following, "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible."
41. **Reason #11:** Rule 601(a), SCRE clearly states... "Every person is competent to be a witness except as otherwise provided by statute or these rules."
42. **Reason #12:** Rule 701, SCRE firmly states... "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not

require special knowledge, skill, experience or training.”

43. **Reason #13:** *Rule 704, SCRE* emphatically states,... “Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.”

44. **Reason #14:** Fraud is one of the exceptions to the Parole Evidence Rule.

45. **Reason #15:** The Discovery Rule. Under the discovery rule, the statute of limitations begins to run from the date the Defendant either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct. *Section 15-3-535 – SC Code of Laws; Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996)*. The exercise of reasonable diligence simply means the Defendant had to act with some promptness where the facts and circumstances would put a person of common knowledge and experience on notice that some right of hers has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed. *Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 328-29, 534 S.E.2d 672, 676 (2000)*

46. **Reason #16:** The Full Faith and Credit Clause of the United States Constitution provides that “Full Faith and Credit shall be given in each State to the . . . judicial Proceedings of every other State.” U.S. Const. art. IV, § 1. The thrust of the clause is that courts of one state must give such force and effect to a foreign judgment as the judgment would receive in the issuing state. *Purdie v. Smalls, 293 S.C. 216, 219-20, 359 S.E.2d 306, 308 (Ct. App. 1987)*.

47. **Reason #17: (Representations)** from the Broker, Seller and the Appraiser induced the Plaintiff’s underwriters to approve a loan that is based upon “Falsified”, “Forged” and “Altered” documents and the Seller induced the Defendant (*adjustments to the price will take place during the closing*) to enter into a “Fraudulent” Mortgage and Note. {*See the Plaintiff’s Filed Exhibits with this Motion for Summary Judgment WF00001-WF00013 & WF00042-WF00060*} Fraud is an intentional misrepresentation of a material fact or facts made by a person with knowledge of its (**Falsity**) for the purpose of inducing another to act and upon which the other person relies with a resulting injury or damage. “Fraud” also includes omissions or the intentional failure to

state material facts, knowledge of which is necessary to make other statements by the Broker, Seller and Appraiser not misleading to the Plaintiff or the Defendant. Maher v. Hibernia Ins. Co., 67 N. Y. 292; Alexander v. Church, 53 Conn. 501, 4 Atl. 103; Studer v. Bleistein, 115 N.Y. 31G, 22 X. E. 243, 7 L. R. A. 702; Moore v. Crawford, 130 U. S. 122, 9 Sup. Ct. 447, 32 L. Ed. 878; Fechheimer v. Baum (C. C.) 37 Fed. 167; U. S. v. Beach (D. C.) 71 Fed. 160; Gardner v. Ilearth, 3 Denio (N. Y.) 232; Monroe Mercantile Co. v. Arnold, 108 Ga. 449, 34 S. E. 176.

49. **Reason #18: (Knowledge of Falsity)** The Broker, Appraiser and the Seller intended to induce the Plaintiff's underwriters to rely upon and act upon the Appraiser's, Broker's and Seller's misrepresentations and/or omissions. Even though (**Intent**) is not ordinarily proved directly because there is no way of scrutinizing the operations of the human mind. Any statement made or acted on or omitted by a party whose intent is an issue, and all other facts and circumstances which indicate a state of mind, are circumstantial evidence of a party's state of mind and one may infer a person's intent from actions, conduct and surrounding circumstances. One may also infer that the Broker, Seller and the Appraiser intended the natural probable consequences of acts knowingly done or knowingly omitted. State v. Wright, 249 S.E.2d 519 (W.Va. 1978); Peterson v. Crown Financial Corporation, 476 F. Supp. 1155 (E.D. Pa. 1980); Piedmont Cotton Mills, Inc. v. H.W. Ivey Construction Co., 137 S.E.2d 528 (Ga. 1964); Restatement, Second, Torts § 531.

50. **Reason #19: (Materiality)** An Appraisal, Contract of Sale and a Satisfaction Completion Certificate were material to establishing the underwriter's monetary value for loan #0174072777. {See the Plaintiff's Filed Exhibits WF00120 & WF00125}

51. **Reason #20: (Ignorance of the Falsity)** Evidence of the (**Ignorance of the Falsity**) of the two 7-59 "Falsified & "Forged" Appraisals", "Falsified" Satisfaction Completion Certificate and the two "Forged" and "Altered" Contract of Sale are the Plaintiff's Filed Exhibits WF00001-WF00137, the \$75,000.00 paid to the Seller – Thomas Jacobs {See the Plaintiff's Filed Exhibits WF00088-WF00089} and this foreclosure proceeding - CA Case #2008-CP-38-1024.

52. **Reason #21: (Reliance on the Truth of the Representation)** The Plaintiff's underwriters rely on Brokers to submit legitimate documents not falsified documents. The Broker

and the Appraiser are licensed by the State of South Carolina with the power and authority to act in a professional capacity. This is the same reliance that exists within the legal profession and the judicial system. Appellate and Supreme Court Justices rely on the integrity, competency, professionalism and honesty of lower court judges as Officers of the Court. **Example:** In an action at law, tried without a jury, the Appellate court will not disturb the trial court's findings of fact unless they are found to be without evidence that reasonably supports those findings. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

53. **Reason #22:** The Plaintiff's underwriters had a (**Right to Rely Thereon**). Brokered loans, Brokers, and "Loan Originators" are governed by State Law. {See Title 40, Chapter 58 for Loan Brokers and Originators} Appellate Courts have a right to rely on rulings from the lower courts and the Supreme Court has a right to rely on rulings from the all the Courts; {See Section 5, Article V, South Carolina's Constitution} Judges have a right to rely on testimony from Law Enforcement and other professional occupations and/or professionals and/or experts in their field of study an/or experience.

54. **Reason #23:** The Plaintiff's (**Consequent and Proximate Damage**). The Plaintiff must suffered injury as direct result of the Plaintiff's reliance on the misrepresentations of the Broker, Seller and the Appraiser. If any or all of these losses were caused, in whole or in part, by the fraudulent conduct of the Broker, Appraiser and the Seller, then this final element of fraud has been established. Even though the Seller – Thomas Jacobs – brokered loan #0174072777, the Plaintiff dealt exclusively with the Broker and not the Defendant.

55. **Reason #24:** The Defendant will not knowingly participate in and support a criminal act. The "Fraudulent Value" of the Note and Mortgage, the "Falsified and "Forged" 7-59 Appraisal, the lies of the Seller and the "Forged" and Altered Contract of Sale led the Defendant to suspend payments to the Plaintiff until the Note and Mortgage were legitimized. The Defendant will not knowingly participate in an illegal "Predatory Lending Scheme" based upon and supported by "Falsified" documents. JFERT insisted on treating the "Fraudulent" activities of the Broker, Seller and the Appraiser as a consumer dispute. This persistent and ongoing pattern of failures and "Errors in Judgment" eventually led to the foreclosure proceeding currently in the Court of Common Pleas. {See the Plaintiff's Filed Exhibits WF00120-WF00126}

56. **Reason #25:** Fraudulent” conduct can also be the suppression or concealment of what is true. When the Appraiser, Broker and Seller concealed the true condition of 423 Bayne Street from the Plaintiff, they collectively and individually concealed a fact that was material to the transaction. This concealment of truth is as much a “Fraud” as if the existence of a vastly improved 423 Bayne Street were expressly denied or the reverse of it expressly stated. *Frazier v. Brewer*, 43 S.E. 110 (W.Va. 1902); *Ware v. Scott*, 220 Va. 317, 257 S.E.2d 855 (1979).

57. **Reason #26:** The Plaintiff is entitled to recover damages from the Seller, Broker and the Appraiser, but, not from the Defendant. The Plaintiff paid the Seller – Thomas Jacobs \$75,000.00 not the Defendant. Even if the Broker had no actual knowledge of the real condition of 423 Bayne Street at the time, the Broker is under a duty to know that the information he represents as facts are in fact true before submitting the representations to a bank or lender. It is no defense for the Broker to say that he did not know the actual condition of 423 Bayne St. As a professional, Golden Gate Mortgage had a duty to know the representations made to the Plaintiff were in fact not true, false and misleading. *Glenn v. Shannon*, 12 S.C. 570, 570 (1879). *See also Pilot Life Ins. Co. v. Cudd*, 208 S.C. 6, 36 S.E.2d 860 (1945) (holding the general rule is that money paid to another under a mistake of fact may be recovered because the money belongs, in equity and good conscience, to the person who paid it). *See Castock Corp. v. Bailey*, 492 N.Y.S.2d 921 (Sup. Ct. 1985) (the fact that recipient has parted with the money is an insufficient excuse to forgive repayment); 70 Am. Jur. 2d *Payment* § 114(c) (1987) (no defense where money has been paid to another or spent). **Note:** the \$75,000.00 was not paid to the Defendant.

58. **Reason #27:** As the Defendant has stated from the beginning of this foreclosure proceeding and from the beginning in letters sent to the Plaintiff’s personnel in Des Moines, Iowa, the issue confronting the Defendant and the Plaintiff is “Fraud” not a polite consumer dispute. The Defendant has always stated the liability for the Plaintiff’s loss is with the Seller, Broker and Appraiser. {See filed Exhibits 52-66}

STATEMENT FACTS & MATERIAL FACTS

59. **Material Fact #1:** The Seller did not have a “Building Permit” to complete any repairs at 423 Bayne Street and did not complete any repairs. The Plaintiff’s Motion for Summary Judgment must be denied. This is an undeniable and verifiable material fact. Consequently, the

Appraiser's Satisfaction Completion Certificate that states repairs were completed is not a misstatement of fact, it is an ABSOLUTE LIE. *{See the Plaintiff's Exhibit Filed with This Motion for Summary Judgment WF00009}* The Plaintiff's lending decision was based in part on the Appraiser's Satisfaction Completion Certificate. *{See the Plaintiff's Filed Exhibit WF00125}*

60. **Material Fact #2:** The City of Orangeburg's department that issues building permits does not issue copies of permits to the general public as such. To determine whether or not a home improvement or construction is authorized within the city limits of Orangeburg, one must call the department. The Building Inspector's phone number was given to the Plaintiff in correspondence and to the Plaintiff's Law Firm via the Pleadings over 4 years ago. *{See Defendant's Wells Fargo Bank, N.A.'s Supplemental Response to Request for Discovery Paragraphs (xvi) –(xx), page 15, Filed and Date Stamped October 29, 2008}* The aforementioned Pleading is incorporated by reference as though fully set forth herein verbatim.

61. **Material Fact #3:** The Appraiser's description of the property under the IMPROVEMENTS section in the Appraisal on page 1 of 6 *{WF00003}* is an ABSOLUTE LIE. There is no fresh paint. There are no new floor coverings, new bathroom fixtures and there are no new appliances. The statement that "the subject property is in overall average condition without signs of needed repairs and deterioration" is also an ABSOLUTE LIE. Deterioration was and still is all around the house. There is no central air conditioning, no patio and no deck. *{See Plaintiff's Exhibit Filed with this Motion for Summary Judgment WF00003}* These are all ABSOLUTE LIES. *{Black's Law Dictionary, 4th Edition, defines a LIE as, "An untruth deliberately told; the uttering or acting of that which is false for the purpose of deceiving; intentional misstatement."}*

62. **Material Fact #4:** The Appraiser described a property that does not exist is reality, actuality or fact. The Appraiser's sketch of the property is also an ABSOLUTE LIE. There is no master bedroom, no den, no office and no half bath as indicated on the sketch. *{See the Plaintiff's Filed Exhibit with this Motion for Summary Judgment WF00012}* This has been repeatedly stated in the Defendant's Pleadings since 2008, and all relevant Pleadings are incorporated by reference as though fully set forth herein verbatim.

63. **Material Fact #5:** Janet Frotscher's Executive Resolution Team (hereafter also called

JFERT) ignored or disregarded the representations, correspondence and the documented evidence of the “Falsified” #7-59 Appraisal sent to them by the Defendant and..instead, falsely accused the Defendant of being the borrower that supposedly met the appraiser on September 14, 2007. *{See the Plaintiff’s Filed Exhibit WF00125}* The borrower that met with the Appraiser on September 14, 2007 was not the Defendant. According to the Appraiser’s #7-59 Invoice, the Appraisal was done for Thomas Jacobs. *{See the Plaintiff’s Filed Exhibit WF00027}*

64. **Material Fact #6:** The Contract of Sale has been altered and is a “Forgery”. *{WF00028-WF00029}* The Seller never gave the Defendant a copy of the Contract of Sale. During the month of June, 2008, the Defendant received a packet of information from Wells Fargo Home Mortgage (hereafter also called WFHM) along with a letter from Janet Frotscher that is dated June 2, 2008. *{See Plaintiff’s Filed Exhibit WF00125}* In the packet, along with other documents, was the supposed Contract of Sale. The Plaintiff has two Contract of Sale. Neither Contract of Sale in the Plaintiff’s possession is the Contract of Sale the Defendant signed for the Seller – Thomas Jacobs. The signed Contract of Sale does not have an “AS IS” clause. *{See the Plaintiff’s Filed Exhibits WF00028 & WF00029 and the Defendant Exhibits 140 & 141}*

65. **Material Fact #7:** Janet Frotscher’s June 2, 2008 letter verifies the Plaintiff’s underwriters relied in whole or in part upon the “Falsified” #7-59 Appraisal, the “Falsified” #7-59 Satisfaction Completion Certificate and the “Altered” and” Forged” Contract of Sale for WFHM’s lending decision. JFERT and WFHM relied upon the “False” and “Misleading Representations” of the Appraiser and the Seller, that were submitted by the Broker – Golden Gate Mortgage, Inc. *{See the Plaintiff’s Filed Exhibits WF0003, WF00009, WF00016, WF00022, WF00027, WF00028-WF00029, WF00120, WF00121 & WF00125}* The averments in paragraphs 11-13 have been repeatedly stated in the Defendant’s Pleadings since 2008 and all relevant Pleadings are incorporated by reference as though fully set forth herein verbatim.

66. **Material Fact #8:** The Broker never ordered an Appraisal for the Defendant. The Appraiser’s 7-59 file number and job number are assigned to the Seller – Thomas Jacobs. *{See the Plaintiff’s Filed Exhibit WF00027}* Since the Appraiser’s 7-59 Invoice file number and 7-59 job file number are assigned to the Seller – Thomas Jacobs, this is credible evidence that the

“Falsified” 7-59 Appraisal that was relied upon in whole or in part by WFHM’s underwriters, belongs to the Seller – Thomas Jacobs and not the Defendant. *{See the Plaintiff’s Filed Exhibits WF00001 -WF00026 & WF00027}*

67. **Material Fact #9:** The Appraiser’s 7-59 job file number that is clearly assigned to Thomas Jacobs proves Janet Frotscher misstated facts and misled the Plaintiff by insisting the Broker ordered the Appraisal for the Defendant and it was the Defendant that met with the Appraiser on 09/14/2007. *{WF00125}* Based on the 7-59 job file number, the borrower that met with the Appraiser to complete the “Falsified” Satisfaction Completion Certificate is the Seller – Thomas Jacobs. *{See the Plaintiff’s Filed Exhibits WF00001 -WF00026 & WF00027}*

68. **Material Fact #10:** The Appraiser’s 7-59 job file also provides credible evidence that the Broker was working for the Seller – Thomas Jacobs and not for the Defendant. This is a violation of *Section 40-58-78(A)(1) & (2) – SC Code of Laws*. This is also credible evidence that the Broker misrepresented and misstated facts to the Plaintiff. As already stated under Adjudicative Facts #2(j) on page 3 in this Pleading, the Seller – Thomas Jacobs provided all the paperwork for the loan and not the Broker – Golden Gate Mortgage. To this day, the Defendant has never met or seen the Broker. *{See the Plaintiff’s Filed Exhibits WF00001-WF00026 & WF00027}*

69. **Material Fact #11:** The Seller – Thomas Jacobs - did not have a “Loan Originator’s” license from South Carolina’s Department of Consumer Affairs to broker loan #0174072777. *{Call for Verification}* This is a violation of *Section 40-58-50(E)(1) - SC Code of Laws*. In addition, the Seller – Thomas Jacobs – misrepresented the Broker as the lender. This is a violation of *Section 40-58-70(1)-(3) – SC Code of Laws*. *{See the Plaintiff’s Filed Exhibits WF00064, WF00084 & WF00085}*

70. **Material Fact #12:** The Broker – Golden Gate Mortgage – accepted, processed and submitted loan paperwork from an unlicensed “Loan Originator” to the Plaintiff. The Broker’s actions of accepting, processing and submitting loan paperwork from an “Unlicensed Loan Originator” is also a violation of *Sections 40-58-30(B) & 40-58-50(E)(1) – SC Code of Laws*. The Broker also misrepresented Golden Gate Mortgage as a lender. *{See the Plaintiff’s Filed*

Exhibits WF00064, WF00084 & WF00085} This is also a violation of *Section 40-58-70(1)-(3), – SC Code of Laws*. This was confirmed by Janet Frotscher. *{WF00120 & WF00125}*

71. **Material Fact #13:** The Plaintiff, unknowingly or knowingly, is **complicit** in misrepresenting the Broker – Golden Gate Mortgage – as a lender. *{See the Pinkerton Liability Rule & Filed Exhibits WF00001- WF00027, WF00064, WF00084 & WF00085}*

72. **Material Fact #14:** The Plaintiff, knowingly or unknowingly, is **complicit** in supporting, maintaining and defending the unlawful brokering activities of the Seller – Thomas Jacobs – and the Broker – Golden Gate Mortgage. *{See the Plaintiff's Filed Exhibits with this Motion for Summary Judgment WF00001 - WF00060}*

73. **Material Fact #15:** The Plaintiff's filed documents supports the Defendant's belief that Wells Fargo Bank, N. A., is a business associate of the Seller - Thomas Jacobs and the Broker – Golden Gate Mortgage. *{See the Plaintiff's Filed Exhibits WF00001-WF00029, WF00064, WF00084, WF00085, WF00088 & WF00089}* Someone “Altered” and “Forged” the Defendant's signature and initials on the Plaintiff's Contract of Sale *{See Plaintiff's Filed Exhibits WF00028-WF00029 & Exhibits 140-141}*. This is a violation of *Section 16-13-10 – SC Code of Laws*.

74. **Material Fact #16:** The Broker LIED to the Plaintiff by claiming he interviewed the Defendant. As stated, loan #0174072777 was brokered entirely by the Seller – Thomas Jacobs – in violation of South Carolina Law. *{See the Plaintiff's Filed Exhibits WF00032 & WF00035}*

75. **Material Fact #17:** The Plaintiff, knowingly or unknowingly, accepted, processed, approved, funded, supports, maintains and is actively defending an unlawful loan transaction that was obtained by violating State and Federal Law. *{See Sections 16-13-10, 40-58-30(B), 40-58-50(E)(1), 40-58-70(1)-(3), 40-58-78(A)(1) & (2) – SC Code of Laws & 18 U.S.C. 1344}*.

76. **Material Fact #18:** The signed Broker's Agreement was “Fraudulently Induced” by the Seller – Thomas Jacobs - by telling the Defendant, **in addition to signing the Golden Gate Mortgage application, the Defendant had to complete and sign all the paperwork or Golden Gate Mortgage would not fund the loan**. The paperwork included the Golden Gate Mortgage, Inc., Broker's Agreement *{See the Plaintiff's Filed Exhibits WF00080 & WF00081}*, the

following documents also had to be signed so Golden Gate Mortgage, Inc., could fund the loan.

- (a) The Uniform Residential Loan Application, {WF00030-WF00038},
- (b) The Attorney / Insurance Preference Checklist {WF00083},
- (c) RESPA Servicing Disclosure {WF00084},
- (d) Good Faith Estimate {WF00087},
- (e) Fair Lending Notice {WF00085},
- (f) Disclosure Notice {WF00063},
- (g) Credit Authorization {WF00064}, [See **unauthorized Credit Report WF00066-WF00073**] [See Wells Fargo's **complicity** and continued use. [WF00065]
- (h) Borrower's Certification & Authorization {WF00074},
- (i) Right to Receive Copy of the Appraisal {WF00077},
- (j) Contract of Sale. [Note: The Plaintiff's "Forged and "Altered" Contract of Sale {See WF00028 & WF00029 & Exhibits 140-141} is not the Contract of Sale signed by the Defendant. {See Affidavit of George Sistrunk}

The averments in paragraphs 76(a)-(j) have been repeatedly stated in the Defendant's Pleadings since 2008 and all relevant Pleadings are incorporated by reference as though fully set forth herein verbatim.

77. **Material Fact # 19:** As of the stamped and filed date of this Pleading, the Plaintiff has not filed any interrogatories, depositions, admissions, testimony or an affidavit from anyone that has denied or refuted any statement by the Defendant or the Witness. {Review Plaintiff's Filed Documents, Exhibits and Affidavits if any.}

78. **Material Fact #20:** The Plaintiff was notified by fax by the closing attorney, Debra C. Galloway that the Plaintiff's loan was in dispute. {See Defendant's Filed Exhibit 70}

79. **Material Fact #21:** Based on the presentation and representations of the Seller – Thomas Jacobs - the Defendant had no reason to suspect a "Loan Originator's" license was necessary to secure the loan. Nor could the Defendant have determined this at that time because the Seller – Thomas Jacobs was the property owner. The Defendant knows of no Federal or State Law, Rule or Regulation that prohibits a property owner from selling his/her own property and owner financing the sale of that property.

80. **Material Fact #22:** Based on the presentation and representations of the Seller, the Defendant had no reason to suspect or believe, the Seller needed a “Loan Broker”. The Seller never represented himself as a “Loan Broker”. Therefore, the Defendant could not have determined at the time that the Defendant’s loan was being brokered for the same reason. The Seller was the property owner. The Defendant knows of no Federal or State Law, Rule or Regulation that prohibits a property owner from selling his/her own property and owner financing the sale of that property. *{See Affidavit of George M. Sistrunk}*

81. **Material Fact #23:** The Seller had verbally agreed to lower the price of the house during the closing. Since the Seller was the property owner, there was no reason for the Defendant to suspect or not believe, the Seller could not lower the price at some point during the closing. As property owner, this was well within his legal authority and right to do so. *{See Affidavit of George M. Sistrunk}*

82. **Material Fact #24:** The Seller had verbally agreed to repair the lights, plumbing and roof and do major repairs that included new walls, floors, ceilings, windows, fixtures, floor covering, new appliances and painting. Since the Defendant did not know about the 7-59 Appraisals at the time and the Seller did not mentioned an appraisal, there was no reason for the Defendant to suspect or not believe, the Seller, as the property owner could not have his contractor, Mr. Lambright, repair the house. *{See Affidavit of George M. Sistrunk}*

83. **Material Fact #25:** The Seller, as property owner, never mentioned a Broker or Appraiser. The Seller had obtained copies of the Defendant’s personal documents that were necessary to facilitate the loan *{See the Plaintiff’s Filed Exhibits WF00061, WF00062 & WF00118}* and the Seller told the Defendant her (the Defendant’s) loan was being handled by his (the Seller’s) friends and business associates. There was no reason for the Defendant to suspect or not believe that the loan closing was not within the ability and legal authority of the Seller, as the property owner, to sell and finance his property with the help of his friends and business associates. *{See the Plaintiff’s Filed Exhibits WF00032, WF00035 & WF00038 – Interviewer’s Employer & WF00001-WF00137}*

84. **Material Fact #26:** As far as the Defendant is concerned, the Appraiser, Golden Gate

Mortgage, the Player Law Firm and the Plaintiff are knowingly and/or unknowingly, by design and/or happenstance are unwittingly presenting themselves and acting as though they **ARE** friends and/or business associates of the Seller – Thomas Jacobs.

85. **Material Fact #27:** The evidence the Plaintiff has provided proves the Plaintiff has two (2) “Falsified” Appraisals both with the same file numbers 7-59. *{See the Plaintiff’s File Exhibits WF00001-WF00013 & WF00014-WF00026}*

86. **Material Fact #28:** One 7-59 Appraisal is undeniably and irrefutably “Falsified” and is definitely “Fraudulent” because of “Forgery”. *{A violation of Section 16-13-10 SC Code of Laws & 18 U.S.C. 1344}* The Defendant is listed as the property owner of record on October 8, 2007. *{See the Plaintiff’s Filed Exhibits WF00014-WF00026}* As the Appraiser.... Jim H. Austin III *{See the Plaintiff’s Filed Exhibit WF00078}* would have known and should have known this was not true, and..... as the Seller and property owner..... Thomas Jacobs/Thomas D. Jacobs knew it was not true. *{See Plaintiff’s Filed Exhibit WF00016}*

87. **Material Fact #29:** The second 7-59 Appraisal is just as “Falsified” as the first and is also just as “Fraudulent” because of “Forgery”. *{A violation of Section 16-13-10 SC Code of Laws & 18 U.S.C. 1344}* The 7-59 file numbers assigned to the Seller – Thomas Jacobs - were never transferred by the Appraiser to the Defendant. *{See the Plaintiff’s Filed Exhibits WF00001 – WF00026}* The Plaintiff has not provided any evidence, i.e., an invoice or statement from Jim H. Austin III that he (Jim H. Austin III) did an appraisal for the Defendant or transferred the file numbers to the Defendant. Jim H. Austin III never did an appraisal for the Defendant because the Broker never ordered one for the Defendant. The Defendant’s name was “Forged by Substitution” on to the Seller’s Appraisal and sent to the Plaintiff by the Broker *{See the Plaintiff’s Filed Exhibits WF00027 & WF00125}*

88. **Material Fact #30:** Since no appraisal was ordered for the Defendant, and the Plaintiff does not have any evidence the Appraiser transferred the file numbers to the Defendant, any document with a 7-59 file number belongs to the Seller. Consequently, **ANY DOCUMENT WITH 7-59 FILE NUMBERS THAT HAS THE DEFENDANT’S NAME ON IT.... IS A FRAUD.... BECAUSE OF “FORGERY BY SUBSTITUTION”.** *{See the Plaintiff’s Filed*

Exhibits with this Motion for Summary Judgment WF00001-WF00013}

89. **Material Fact #31:** The evidence the Plaintiff has provided proves the 7-59 file number the Appraiser invoiced to the Broker identifies Thomas Jacobs/Thomas D. Jacobs as the Seller and the Borrower. Both Appraisals belong to the Seller. The Defendant has no legitimate Appraisal. *{See the Plaintiff's Filed Exhibits WF00001 -WF00026}*

90. **Material Fact #32:** These are the same “Falsified” and “Forged” 7-59 Appraisals, individually and/or jointly, as evidenced by the 7-59 file numbers, that were done for the Seller – Thomas Jacobs/Thomas D. Jacobs, that Janet Frotscher’s Executive Resolution Team stated were ordered by the Broker for the Defendant. This proves Janet Frotscher’s statements and the statements by the Plaintiff’s attorneys are “False Accusations” that are not supported by the evidence or the facts. *{See Plaintiff's Filed Exhibit WF00125}*

91. **Material Fact #33:** These are also the same “Falsified” and “Forged” 7-59 Appraisals, individually and/or jointly, as evidenced by the 7-59 file numbers, that Janet Frotscher’s Executive Resolution Team admitted were used in whole or in part to approve and fund loan #0174072777. Therefore, the Defendant has no liability for the Plaintiff’s lending decision that was based on the 7-59 “Falsified” and “Forged” Appraisals the Plaintiff received from the Broker. *{See the Plaintiff's Filed Exhibits WF00120, WF00121, WF00125-WF00126}*

92. **Material Fact #34:** Finally, these are the same 7-59 “Falsified” and “Forged” Appraisals, individually and/or jointly, as evidenced by the 7-59 file number, that Janet Frotscher’s Executive Resolution Team reviewed and found acceptable for lending purposes. *{See WF00120, WF00121, WF00125-WF00126 &WF00130}*

93. **Material Fact #35:** The Defendant does not know the Broker or Appraiser and has never met or seen the Broker or the Appraiser. The Plaintiff has not filed any interrogatories, depositions, admissions, testimony or affidavits from the Appraiser and/or Broker that denies or refutes this fact. *{Review Plaintiff's Filed Documents, Exhibits and Affidavits if any.}*

94. **Material Fact #36:** The Sellers or whoever added of an “AS IS” clause after the Contract of Sale was signed, does not preclude a suit for fraud. *MacFarlane v. Manly, 274 S.C.*

392, 264 S.E.2d 838 (1980). MacFarlane involved an action for fraud in the sale of a house that suffered from termite and water damage. The contract included an “as is” clause. The trial court granted summary judgment to the sellers on the basis that the sellers “as a matter of law had no duty to disclose any matter to the Plaintiffs.” *Id.* at 392, 264 S.E.2d at 839. However, South Carolina’s Supreme Court reversed the decision. (*Holding that, “The “as is” clause of the contract does not constitute an absolute defense to an action for fraud and deceit. The inclusion of “as is” clauses is usually an effort on the part of the seller to assure application of the caveat emptor rule. . . . In years gone by, the tendency of the law was to let the buyer beware in real estate transactions. The more recent trend at law is to hold the seller to a more strict accountability.” Id. at 395-96, 264 S.E.2d at 840.*)

95. **Material Fact #37:** During the dates and times in question, loan #0174072777 was brokered entirely by the Seller – Thomas Jacobs – as an “Unlicensed Loan Originator” and an “Unlicensed Loan Broker” in violation of South Carolina and Federal law. {*See Sections 16-13-10, 40-58-30(B), 40-58-50(E)(1), 40-58-70(1)-(3), 40-58-78(A)(1) & (2) – SC Code of Laws & 18 U.S.C. 1344.* . Therefore, either knowingly or unknowingly, the Plaintiff is complicit in a “Home Improvement & Mortgage Fraud”, an Illegal “Predatory Lending Scheme” that involves the use of “Inflated 7-59 Appraisals” and reliance upon “Falsified”, “Forged” and “Altered” documents, “Insurance Fraud” involving same and “Securities Fraud” involving same if the loan #0174072777 is pooled in a “Mortgage-backed Security”. {*See the Plaintiff’s Filed Exhibits with this Motion for Summary Judgment WF00001-WF00013*}

96. **Material Fact #38:** The Plaintiff is **complicit** in the acceptance, processing, approving, funding, use, protection and defense of “Falsified”, “Forged” and “Altered” documents in violation State and Federal Law. {*See the Plaintiff’s Filed Exhibits WF00001-WF00013*}

97. **Material Fact #39:** Based on the language of the Plaintiff’s Mortgage “Security Instrument” and the legal definition of “Covenant” (agreement or contract), it is governed by all federal and state laws relative to and governing agreements and contracts. Parties to a contract or agreement are bound by the terms to which they have agreed, even if the contract or

agreement appears to be improvident or a bad bargain. The courts can only enforce a contract or agreement and not create a contract or agreement for the parties involved. A contract or an agreement cannot be enforced, if it comes into being as a result of “Fraud”, “Duress” or “Undue Influence.” “Fraud” is relative to the Defendant’s case and the Plaintiff’s Summons and Complaint. Menominee River Co. v. Augustus Spies L & C Co., 147 Wis. 559 at p. 572; 132 NW 1118 (1912). (Holding that, “If any part of the consideration for a promise be illegal, or if there are several considerations for an un-severable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise.”)

98. **Material Fact #40:** If the “Fraud” is in the factum, done during the execution of the contract, such as the Seller’s statement, “*the price will be lowered during the closing*”, then the contract is void ***AB INITIO*** (from its inception). The signatory (the Defendant) is not bound, because the contract or agreement would not have been entered into if all the facts were known. If the “Fraud” is in the inducement, again the Defendant refers to the statement of the Seller, “*the price will be lowered during the closing*”, then the contract is not void, but is voidable by the innocent party (the Defendant), because what was intended to be executed (*a mortgage and note with reduced value because repairs had not been completed as agreed*) was not in fact executed. Restatement, Second of Contracts § 167 (“[a] misrepresentation induces a party’s manifestation of assent if it substantially contributes to his decision to manifest assent.”)

99. **Material Fact #41:** A contract can be invalidated if it is based on any misrepresentation of a material matter, whether the misrepresentation was intentional or innocent. A contract can be set aside if it is discovered after the execution of the contract that information, documents and/or statements were discovered to be false, misrepresented, forged, and/or counterfeited or concealment of a material fact, or non-disclosures. Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis. 550, 279 NW 79 (1938) (Holding that, “The contract is void if it is only in part connected with the illegal transaction and the promise single or entire.”); Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (Holding that “illegal contracts are void and unenforceable, such that actions for its breach may not be maintained”) In addition, the unauthorized credit report voided mortgage on December 04, 2007.

100. **Material Fact #42:** There is no principal amount due, accrued interest, escrow advances, recoverable corporate advances for inspection fees, or any other pro rata mortgage or any other charges or fees for a mortgage and note that was obtained in violation of State and Federal law. This is consistent with South Carolina law and precedent that clearly states without any ambiguity....

“no person is permitted to acquire a right of action from an unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act. See *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and maintained by bribery). "This rule applies at both law and in equity and whether the cause of action is in contract or in tort." *Jackson*, 313 S.C. at 276, 437 S.E.2d at 170.

101. **Material Fact #43:** There is no pay off due or validation of debt on an illegal loan obtained in violation of Federal and state law.

“Generally, South Carolina Courts will not enforce contracts that are illegal or violate public policy. See *White v. J.M. Brown Amusement Co., Inc.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) (“The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.”)

102. **Material Fact #44:** There is no payee original or otherwise on a mortgage note that was obtained in violation of Federal and State law. Any such note and mortgage is unenforceable.

“The general rule is that contracts for performance of illegal conduct are unenforceable and void. The Minnesota Court of Appeals addressed this, stating “the application of the doctrine of *in pari delicto* is appropriate for (1) preventing enforcement of a contract the performance of which is illegal.” *Brubaker v. Hi-Banks Resort Corp.*, 415 N.W.2d 680, 684 (Minn. App. 1987). The Supreme Court of Minnesota has held “anyone who engages in a fraudulent scheme forfeits all right to protection, either at law or in equity.” *State by Head v. AAMCO Automatic Transmissions, Inc.*, 293 Minn. 342, 347 (1972).”

103. **Material Fact #45:** *Section 36-3-305 – SC Code of Laws* states in pertinent parts...(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (1) a defense of the obligor based on (ii) ----- illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms.....”

STANDARD OF REVIEW

104. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 602 S.E.2d 389 (2004); McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004); Rule 56(c), SCRPC; *see also* Higgins v. Medical Univ. of South Carolina, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (noting that when ruling on motion for summary judgment, trial judge must consider all of documents and evidence within record, including pleadings, depositions, answers to interrogatories, admissions on file, and affidavits).

105. “On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.” Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002); *see also* Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003) (noting that all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party)

106. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000); Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004).

107. Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000); Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001); Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

108. The party seeking summary judgment has the burden of clearly establishing the absence

of a genuine issue of material fact. McCall, 359 S.C. at 376, 597 S.E.2d at 183.

109. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)

110. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Ellis, 358 S.C. at 518-19, 595 S.E.2d at 822; Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRPC.

111. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004).

112. "The Plaintiff must show the absence of material fact beyond the slightest doubt. Generally, the party moving for summary judgment has the burden to prove conclusively the nonexistence of any genuine issue of material fact." See: Krol vs. City of Orlando, 778 So. 2d 490, 92 (Fla. 5th DCA 2001), (citing City of Cocoa vs. Leffler, 762 So. 2d 1052, 1055 (Fla. 5th DCA 2000) (citing Holl vs. Talcott, 191 So. 2d 40, 43 (Fla. 1966)).

113. "The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." See: Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Trivelas vs. South Carolina Dep't of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001).

114. "The slightest doubt will bar an entry of Summary Judgment." See: Mivan (Florida), Inc. vs. Metric Constructors, Inc., 857 So. 2d 901, 902 (Fla. 5th DCA 2003).

115. Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004); Hawkins, 358 S.C. at 289, 594 S.E.2d at 561-62; Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001).

NO LEGITIMATE DEBT VALIDATION

116. Rule 56(e), SCRCF requires certifications in support of Motions for Summary Judgment be made on personal knowledge. Personal knowledge excludes matters based on information and belief. See, e.g., *Wang vs. Allstate Ins. Co.*, 125 N.J. 2, 16 (1991); *Lamb vs. Global Landfill Reclaiming*, 111 N.J. 134, 153 (1988).

117. Since the Plaintiff's debt validation is a continuation of the Seller's illegal brokering activity, Amanda Weatherly's {See Wells Fargo's Support Affidavit for Summary Judgment} debt presentation is verification of the fraud perpetrated against Wells Fargo by the Seller with help from the Broker, Appraiser and the apathy, gross negligence and **complicity** of Wells Fargo's own employees. {See Amanda Weatherly's Exhibit 3}

118. Based on the verifiable fact that Thomas Jacobs was the property owner {Exhibit 236} and not a licensed broker or loan originator, and after being duly notified by phone and in writing, {Exhibits 1-246} no legitimate brokered loan ever existed for the Defendant, therefore, Amanda Weatherly cannot validate any debt for the Defendant, she can only validated it for the Seller, with help from the broker, appraiser and Wells Fargo's **complicit** employees.

119. Not only does Summary Judgment fail as a matter of law for Wells Fargo, so does the Plaintiff's complaint. Therefore, this foreclosure must be Dismissed with Prejudice and Punitive and Statutory Damages awarded to the Defendant due to Wells Fargo's verifiable **complicity** in illegal activity after the facts were known. {WF00066-WF00073} See Verification at {WF00064, WF00065 & WF00074}

120. In addition, no valid debt can exist for the Defendant because Janet Frotscher confirmed the Broker / Golden Gate Mortgage submitted Thomas Jacobs' loan paperwork. {WF00125} This is confirmation that the paperwork was received by a known method of delivery, i.e., the Postal Service, FedEx or UPS. Wells Fargo's underwriter's confirm Janet Frotscher's statements by stamping the Uniform Residential Loan Application received on 12/04/2007. {WF00030-WF00032}

121. Therefore, in addition to Wells Fargo's loan being void, due to unauthorized access of the Defendant's credit report, the loan was dead on arrival because it was delivered in violation of 18 USC 1341.

18 U.S.C. 1341 clearly states in pertinent parts..."Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both."

ARGUMENT I

A. Wells Fargo's liability due to complicity in using and continuing to use an unauthorized credit report after the facts were known.

122. **Reason #28:** The Plaintiff's foreclosure proceeding against the Defendant must be Dismissed with Prejudice and the Defendant awarded Punitive and Statutory Damages because the evidence in Wells Fargo's document is clear and convincing evidence Wells Fargo's mortgage and note should have been cancelled years ago because it is an illegal transaction since October 3, 2007 {WF00066-WF00073} due to the unauthorized accessing of the Defendant's credit report by Golden Gate Mortgage and Wells Fargo's continued **complicity** in that unlawful act. Verification is found in {WF00063-WF00064, WF00065 & WF00074} This a violation of *15 USC Section 1681n(a)*.

(a) *15 USC Section 1681n(a)* that states the following in pertinent parts., "Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of— (1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or (B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater; (2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court..."

B. Wells Fargo's liabilities due to Gross Negligence, Due Diligence Failures and Errors in Judgment by Wells Fargo's employees after the facts were known.

123. As a direct result of Wells Fargo's **complicity** in using unauthorized documents and known "Falsified" documents to support its "Cause of Action" on a Mortgage that came into existence due to the "**Complicity**", "Gross Negligence", "Due Diligence Failures" and "Errors in Judgment" of Wells Fargo's own employees and by "Perpetrating and Perpetuating" a "Fraud" upon the Defendant by maintaining and defending the illegal brokering activities of the Seller, Wells Fargo has "Defamed the Character of the Defendant" with false accusations, Abused the Legal Process" by bringing an "Illegally Brokered" loan into Court , engaged in "Wrongful Litigation" because the Defendant has no liability for the loan, misled the Court of Common Pleas, and was on the verge of committing additional illegalities by using Federally Mandated Programs, i.e., the HMP and the Foreclosure Intervention Process to legally exact payment from the Defendant on an "Illegally Brokered" Loan, an Illegal "Predatory Lending Scheme" and a Home Improvement and Mortgage Fraud. Consequently, Summary Judgment must be denied and this case Dismissed with Prejudice and Statutory and Punitive Damages awarded to the Defendant.

"If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." *Menominee River Co. v. Augustus Spies L & C Co.*, 147 Wis. 559 at p. 572; 132 NW 1118 (1912).

ARGUMENT II

"The Defendant Is An Innocent Victim of Unscrupulous People"

124. Wells Fargo's document file proves with clear and convincing evidence the Defendant is a *Victim* of the Seller's illegal brokering activities, his Home Improvement and Mortgage Fraud and his illegal Predatory Lending Scheme and Wells Fargo is still being **complicit** in the Seller's illegal activities by using the courts, CRA's, law firms and the legal process to extract money from the Defendant for Thomas Jacobs', David Terrell's, Jim H. Austin, III's, and Wells Fargo's employee's **complicity** in that activity. {*Amanda Weatherly's Support Affidavit Exhibit 3*}

125. The Defendant has done everything within the Defendant's ability to end this "Fraud, {Refer to filed Wells Fargo Exhibits B and D} while Wells Fargo has used every legal means and tactic; including the "Law of Contracts" to unjustifiably persecute the Defendant, rather than

using the testimony of the Defendant to justifiably prosecute the Seller, Appraiser, the Broker and perhaps; severely reprimand, if not terminate some of Wells Fargo's own employees. Wells Fargo has spent 5 years studiously overlooking and disregarding the criminal liability of the Seller, Broker and Appraiser and has used every means and method to perpetuate its illegal transaction {See WF00120, WF00121, WF00125 & WF00130}, protect it legally {Refer to the *WELLS FARGO BANK, N.A., RESPONSES TO REQUEST FOR DISCOVERY* filed in the Court of Common Pleas, October 15, 2008} and exact payment from it. {See WF00122- WF00124, WF00127, WF00129 & Amanda Weatherly's Exhibit 3}

"A securitization model _ a system wherein parties that provide the money for loans and drive the entire origination process from afar and behind the scenes _ does nothing to abolish the basic right of a borrower to assert a defense to the enforcement of a fraudulent loan, regardless of whether it was induced by another party involved in the origination of the loan transaction, be it a broker, appraiser, closing agent, or another." *Herrod v. First Republic Mortg. Corp.*, 625 S.E.2d 373 (W. Va. 2005).

ARGUMENT III

"Without Any Loss Whatsoever"

126. The Plaintiff could have easily cancelled this loan, stop, suspend or delay payments on it without any loss whatsoever. Consequently, any loss the Plaintiff has incurred is due to the Plaintiff's own "**Complicity** in Illegality, "Gross Negligence", "Failure to Exercise Due Diligence" and Errors in Judgment" that are to the Plaintiff's own detriment. On December 26, 2007, according to attorney, Debra C. Galloway, the closing attorney, she notified the Plaintiff by facsimile that the Defendant's loan was in dispute. According to A.C.T., the loan did not fund until December 28, 2007.

127. From the time of the Defendant's husband taped telephone message on Saturday, December 22, 2007 and attorney's Galloway's fax on December 26, 2007, and with fraudulent loans being exposed virtually on an hourly basis, Wells Fargo's personnel should have acted decisively and cancelled the loan themselves. They would have saved \$75,000.00 and thousands more in attorney fees. From a purely practical and "Common Sense" point of view, Wells Fargo had more than enough time to take action. Hence, the Affirmative Defenses of "Failure to Mitigate Losses" and "Gross Negligence" by Wells Fargo's employees. Then too, if Wells Fargo earns a billion dollars in profits and pays 85 million of it fines and penalties, they still earned a sizeable profit.

ARGUMENT IV
"The Defendant Has no Liability"

128. Janet Frotscher has admitted the 7-59 Appraisals, the 7-59 Satisfaction Completion Certificate and the "Altered" and "Forged" Contract of Sale were used in whole or in part as the basis for the Plaintiff's lending decision. {See WF00120, WF00121, WF00125 & WF00130} Wells Fargo's document file provides clear and convincing evidence that the representations and presentations Wells Fargo accepted and used for its lending decision are from the Seller, the Broker and the Appraiser and this includes the October 3, 2007 unauthorized credit report. Every fraudulent and/or unlawful document came from second and/or third parties with whom Wells Fargo dealt with exclusively and whose signed documents and/or statements Wells Fargo's personnel and attorneys treat and revere like the VERY WORD OF GOD. Therefore, the Defendant has no liability for the loan.

ARGUMENT V
**Wells Fargo Is Complicit In Violating Federal & State Laws By Accepting, Processing, Approving
And Apparently Funding A Loan From An Unlicensed Loan Originator
And Is Actively Perpetuating & Defending His "Illegally Brokered" Loan**

129. Wells Fargo's mortgage was never valid or legitimate because of the dates on the documented evidence in the Plaintiff's filed Exhibits,

- (a) September 14, 2007, the date of the Scam Satisfaction Completion Certificate.
- (b) October 03, 2007, the of the unauthorized Credit Report.
- (c) October 08, 2007, the date the Appraisal was supposedly performed.
- (d) October 09, 2007, the date Jim H. Austin, III supposedly signed the falsified and forged Appraisals.
- (e) November 26, 2007, the date Thomas Jacobs obtained signatures on Golden Gate Mortgage's loan paperwork.
- (f) December 04, 2007 – the date the illegal Predatory Lending Scheme was received by Wells Fargo and the date Wells Fargo became **complicit** in the illegal activities of the Seller, with help from the Broker, Appraiser and Wells Fargo's own employees.
December 04, 2007, is also date the Wells Fargo became **complicit** in violating 15 USC 1681n(a)

130. Since Wells Fargo was duly notified by phone and in writing and did absolutely nothing, except falsely accuse, defame and persecute Defendant, Wells Fargo is **complicit** in all the illegal activities of the Seller, with help from the Broker, Appraiser and Wells Fargo's own employees.

131. Despite all the legal authority the Seller had as the property owner to owner finance his (the

Seller's) property, when the Seller engaged in processing, placing and negotiating and brokering his own loan, he violated State and Federal law.

CONCLUSIONS

132. Loan #708-0174072777 was not brokered in compliance with South Carolina's Code of Laws and/or Federal law and is therefore unenforceable and must be cancelled by Court Order, since Wells Fargo will not do it voluntarily. It is the Plaintiff's responsibility to meet compliance requirements before any loan is closed and/or funded. If the Plaintiff fails to exercise due diligence and approves and/or funds a loan that violates South Carolina's Laws and/or Federal laws, rules and/or regulations, any such loan is already an illegal loan transaction and voidable. Consequently, whatever restitution the Plaintiff seeks must come from the Broker, the Appraiser, the Seller, the Plaintiff's Underwriters, Executive Resolution Team, Attorneys and/or Legal Advisers and not from the Defendant. The Seller's Home Improvement and Mortgage Fraud and illegal Predatory Lending Scheme could not have succeeded without the Plaintiff's "**Complicity**", "Gross Negligence", "Due Diligence Failures", "Errors in Judgment" and corporate culture that seeks profits before human decency. Therefore any losses Wells Fargo incurs was induced by this corporate culture of greed and to Wells Fargo's own detriment.

SETTLEMENT

134. In the event and after review, a Judge at the Court of Common Pleas deems it proper, conforming, compliant and/or in accordance with existing and/or established law, precedent/s and/or Court ruling/s to DISMISS the Plaintiff's Complaint with PREJUDICE because of fraud, on the merits of the case, the Plaintiff's willing **complicity** in violating Federal and State law, or for any other justifiable cause, reason and/or purpose, and/or the Plaintiff decides by Court Order and/or on the advice of Counsel and/or of the Plaintiff's own volition to settle this matter without further litigation and/or settle with the Defendant out of Court for any reason, purpose or cause, the Defendant hereby waives, her (the Defendant) Right/s to a Trial By Jury relative to these matters; but reserves her (the Defendant) Right/s to a Trial By Jury in the event the Plaintiff engages in further deceit, deception and/or trickery relative to such settlement, agreement and/or accord to end this matter and relinquish any future claim/s to the Defendant's property and/or other assets

NOTIFICATION

A copy of the Defendant's Opposition to the Plaintiff's Motion for Summary Judgment that has been filed with the Clerk of Court will be mailed to the following:

Nelson Mullins Riley & Scarborough, LLP
Elizabeth Scott Moise
SC Bar No. 012945
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401 -2239
803-853-5200

James H. Burns
SC Bar No. 70313
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Wells Fargo Bank, N.A.

NOTARY VERIFICATION

IN WITNESS WHEREOF, The undersigned, being duly **SWORN**, and under the **PENALTY OF PERJURY** has signed and sealed these attestations this 17 day of July in the year 2013 in City of Oranburg, State of South Carolina.

Affiant Signature: Dorothy Sistrunk

Notary's Signature as Witness (1): Lucie J. Allen

Signed, sealed and delivered in the presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On July 17, 2013 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 document and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on this Pleading presents this Pleading to the Court.

WITNESS my hand and official seal.

Notary's Signature Lucie J. Allen

Commission Expires MY COMMISSION EXPIRES
APRIL 13TH, 2015

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Wells Fargo Bank, N.A.,

Plaintiff,

Vs.

Dorothy Sistrunk

Defendant,

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
)

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

) **DEFENDANT DOROTHY SISTRUNK'S**
) **OPPOSITION TO PLAINTIFF'S WELLS**
) **FARGO BANK, N.A.'S MOTION FOR**
) **SUMMARY JUDGMENT AND**
) **DEMAND FOR JURY TRIAL**
)

) **JUDICIAL NOTICE REQUESTED**
) **PURSUANT TO RULE 201, SCRE**
)

) **Today's Date: July 17, 2013**
)

Comes now the Defendant, Dorothy Sistrunk, to file her *Opposition to Plaintiff's Wells Fargo Bank, N.A.'s Motion for Summary Judgment and Demand for Jury Trial*. The Defendant's *Opposition to the Plaintiff's Motion for Summary Judgment* is supported by the Defendant's *Legal Memorandum Supporting Opposition to Plaintiff's Wells Fargo Bank, N.A.'s Motion for Summary Judgment* that is attached to this Pleading. The Plaintiff's Motion for Summary Judgment was retrieved from the mail box on Monday, July 1, 2013.

WHY THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT MUST BE DENIED

Additional reasons why the Plaintiff's Motion for Summary Judgment must be denied are in the attached Legal Memorandum. This Pleading will address individual statements directly.

OBJECTION TO THE PLAINTIFF'S INTRODUCTION

1. **Objection to Paragraph #1:** The Defendant objects to the Plaintiff's misstatement of the facts. This case is not about a contested foreclosure between the bank, Wells Fargo and a borrower, Dorothy Sistrunk ("Defendant"). This case is about an illegal Predatory Lending Scheme that involves the use of falsified documents, a Home Improvement and Mortgage Fraud, Securities Fraud, Insurance Fraud and the Plaintiff's continued acceptance, approval, support and **complicity** in the illegal brokering activity of the Seller – Thomas Jacobs. That's why this case needs to be tried by a Jury to expose this illegality or be Dismissed with Prejudice. The Defendant will not participate in this criminal enterprise or support the Plaintiff's illegal activities by paying monthly payments. {See Filed Exhibits 34, 39, 43-66 & 166-173}

2. **Objection to Paragraph #2:** The Defendant objects to the Plaintiff's misstatement of the facts. The Defendant never said or inferred that the Seller and Appraiser conspired to mislead her. **The Defendant has stated and will restate it for the record... the Plaintiff's Filed Documents Suggest a Conspiracy Between the Broker, the Seller & Appraiser to Defraud Wells Fargo Bank . Someone at the Bank is also Involved..... and the Defendant is an Innocent Victim of this Scheme.** The aforesaid averments are clearly and plainly stated in previous Pleadings and all relevant Pleadings are incorporated by reference as though fully set forth herein verbatim. {See the Plaintiff's Filed Documents WF00001- WF00035, WF00065-WF00074, WF00077, WF00078, WF00080, WF00083-WF00085, WF00087- WF00089 & WF00125}

"In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Cowburn*, 366 S.C. at 49, 619 S.E.2d at 453. "Conspiracy may be inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances." *Moore v. Weinberg*, 373 S.C. 209, 228, 644 S.E.2d 740, 750 (Ct. App. 2007). "Because civil conspiracy is 'by its very nature covert and clandestine,' it is usually not provable by direct evidence." *Id.* (quoting *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987)).

"The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). "[T]he gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design." *Id.* "Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." *Pye v. Estate of Fox*, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006).

3. The Defendant has never met the Appraiser, nor did the Appraiser promise to do any repairs at 423 Bayne Street. The Seller never had a "Building Permit". Therefore, the Appraiser LIED about repairs in his 7-59 Satisfaction Completion Certificate and LIED on the 7-59 Appraisals. {See Filed Exhibits 8-14, WF00009, WF00022 & WF00001-WF00026}

4. The Defendant went to the closing because the house was not repaired and the price was going to be lowered during the closing. This fact has been stated, repeated and written since December 24, 2007 and never denied by the Seller. It is plainly stated and repeated in previous

Pleadings since 2008 and in filed Affidavits. The filed Affidavits and all relevant Pleadings since July of 2008, are incorporated by reference as though fully set forth herein verbatim. *{See also the Affidavit of George M. Sistrunk Filed and Date Stamped August 15, 2011 at 11:38 a.m.}*

5. The actual physical condition of 423 Bayne Street in October of 2007 is in the Circuit Court records and verifies beyond any reasonable doubt and by the preponderance of the evidence the Appraiser did not accurately describe 423 Bayne Street. Material facts are omitted, there are fabrications and in some instances, OUTRIGHT LIES in both of the Plaintiff's 7-59 Appraisals. The 7-59 Appraisals are "Forged" and "Falsified", and the property value is inflated. *{See the Defendants Filed Exhibits 8-14 & the Plaintiff's Filed Exhibits WF00001-WF00026}*

6. Since 2007, the property has continued to deteriorate and is in worst condition now and worth much less than it did in 2007. *{See Defendant's Exhibit 113 – the Property}* The last known sales price is not \$13,000.00, it is \$14,000.00 *{See Filed Exhibit 115}*

7. The actual physical condition of 423 Bayne Street that is in the Circuit Court records also identifies **THE COMPLICITY, SUPPORT AND APPROVAL OF THE SELLER'S ILLEGAL LOAN BROKERING ACTIVITY BY THE APPRAISER, THE BROKER AND THE PLAINTIFF, WELLS FARGO BANK, N. A.** *{See Exhibits 8-14, First Amendment to Complaint with Counterclaims, the Plaintiff's Filed Exhibits WF00001 -WF00137, All the Plaintiff's Pleadings and Affidavits that are Filed in the Court of Common Pleas relative to Civil Action Case #2008-CP-38-1024 & the Pinkerton Liability Rule}*

8. **Response to Paragraph #3:** The Plaintiff's Mortgage Loan #708-0174072777 was brokered entirely by the Seller – Thomas Jacobs. *{See Filed Exhibits WF00001-WF00137}*

9. In addition to being supported by "Forged", "Altered" and "Falsified" documents that have been in the Plaintiff's possession since December 04, 2007 *{See the Plaintiff's Filed Exhibits WF00030-WF00038 & WF00065}*, the Plaintiff's mortgage loan 708-0174072777 is unenforceable and must be cancelled by Court Order if necessary pursuant to *Section 37-23-50(B)(1)(a) – SC Code of Laws*, because the Seller – Thomas Jacobs - obtained and brokered the Plaintiff's mortgage loan in violation of South Carolina and Federal law. *{See Sections 16-13-10, 40-58-30, 40-58-50, 40-58-70, 40-58-78 – SC Code of Laws and 18 U.S.C. 1001 & 1344}*

10. During the same time period, the Plaintiff, Wells Fargo Bank, N.A., was not only

complicit in the Seller's illegal brokering activity by not cancelling the loan, Wells Fargo violated *Section 37-23-40(1) – SC Code of Laws*. Therefore, the Plaintiff, Wells Fargo Bank, N. A., is equally guilty under the legal Doctrines of "Unclean Hands" and "In Pari Delicto".

1) The expression 'clean hands' means a clean record with respect to the transaction with the Defendant and not with respect to others. *Arnold v. City of Spartanburg*, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). This is consistent with South Carolina precedent asserting that "no person be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act." *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and maintained by bribery). "This rule applies at both law and in equity and whether the cause of action is in contract or in tort." *Jackson*, 313 S.C. at 276, 437 S.E.2d at 170.

2) The Doctrine of In Pari Delicto is "[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing." *Black's Law Dictionary* 794 (7th ed. 1999). The Doctrine of In Pari Delicto is "[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing." *Myatt v. RHBT Fin. Corp.*, 370 S.C. 391, 395, 635 S.E.2d 545, 547 (Ct. App. 2006) (quoting *Black's Law Dictionary* 794 (7th ed. 1999)).

11. Wells Fargo was notified that according to South Carolina's Department of Consumer Affairs, Thomas Jacobs was not a licensed broker or a licensed loan originator during the dates and times in question. {Call SCDCA for Verification During Normal Business Hours}

12. Not only did Wells Fargo not cancel the illegal loan even though filed documents clearly show loan #708-0174072777 is based on falsified documentation, misrepresentation of material facts and OUTRIGHT LIES, the Plaintiff's documents that are filed in the Court of Common Pleas in Orangeburg, South Carolina also clearly show - the Seller - Thomas Jacobs - obtained his loan paperwork from... and was brokering his loan through... and.. with the acceptance and approval of Golden Gate Mortgage {See Plaintiff's Filed Exhibits WF00001- WF00-035, WF00066-WF000-74, WF00077, WF00078, WF00080, WF00083-WF00085, WF00087 & WF00089} and with the complete backing and support of Wells Fargo Bank after being duly notified by phone and in writing. {See the Plaintiff's Filed Exhibits WF00001-WF00137}.

13. The Defendant has never met and has never seen the Broker - David Terrell. Janet Frotscher's 02/21/08 letter confirmed Golden Gate Mortgage submitted Thomas Jacobs'

illegally brokered loan to Wells Fargo and not Thomas Jacobs. As far as the Defendant is concerned, every person and/or entity involved in this transaction is a business associate or friend of the Seller – Thomas Jacobs. {See the Filed Affidavit of George M. Sistrunk} This has been consistently stated verbally, in correspondence to the Plaintiff and in Pleadings that have already been filed in the Court of Common Pleas. Therefore, all relevant Pleadings that contain the aforesaid statement/s are incorporated by reference as though fully set forth herein verbatim.

14. Consequently, as a direct result of these verifiable facts, the Plaintiff is guilty of; knowingly or unknowingly, accepting, processing, approving, relying upon, funding and actively defending a loan that was obtained from an unlicensed broker and/or unlicensed loan originator in violation of State and Federal law and a Home Improvement and Mortgage Fraud, Insurance Fraud, Securities Fraud, and an “Illegal Predatory Lending Scheme”.

15. In addition, the Plaintiff, Wells Fargo Bank, N.A., is; knowingly or unknowingly, **complicit** in approving, supporting and defending the Seller’s unlawful brokering activity, with help from the Broker – Golden Gate Mortgage - that supposedly submitted the paperwork, the Appraiser - Jim H. Austin, III - that supposedly performed and signed the “Forged” and “Falsified” 7-59 Appraisals and someone working within Wells Fargo’s Bank. {See Plaintiff’s Filed Exhibits WF0001-WF00038, WF00065- WF00074, WF00078-WF00079, WF00080-WF00085, WF00087-WF00096 & WF00120-WF00121, WF00125-WF00126, WF00130, WF00132-WF00133. See also WF00028-WF00029} The aforementioned averments have been consistently stated in previous Pleadings already filed and all relevant Pleadings, since 2008, are incorporated by reference as though fully set forth herein verbatim.

16. Based on the known facts and filed documents, and after all the facts were known, the Plaintiff’s, (Wells Fargo Bank’s) behavior is indicative of an **accomplice** before, during and after the fact. The Plaintiff’s actions would lead anyone to believe Wells Fargo is **complicit** and is indeed a friend and business associate of the Seller - Thomas Jacobs, David Terrell – the Broker and Jim H. Austin, III – the Appraiser. {See Plaintiff’s Filed Exhibits WF00120- WF00121, WF00125-WF00126, WF00130 & WF00132-WF00133}

(a) (Violation of the Fair Credit Reporting Act) The Broker did violate the FCRA, § 1681n(a). Unknown to the Defendant and without written or verbal authorization, the Broker accessed the Defendant’s credit file on October 3, 2007. {See the Plaintiff’s

Filed Exhibits WF00064-WF00074 Thomas Jacobs did not bring any authorizing documents until 11/26/07. *{See Filed Exhibits WF00064 & WF00074}* Thomas Jacobs authorizing paperwork never came after obtaining the Defendant's SS# to verify employment.

(b) (Unjust Enrichment) "Unjust Enrichment" is an equitable doctrine that is available as an Affirmative Defense, if this case were in Equity Court. The doctrine permits recovery of the amount that the Plaintiff has been unjustly enriched at the expense of the Defendant. *Dema v. Tenet Physician Servs. Hilton Head, Inc.* 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009); *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 474, 366 S.E.2d 12, 15 (Ct. App. 1988). If the Defendant would have continued monthly payments, the Plaintiff would have been "Unjustly Enriched" for an illegally Brokered Loan, a Home Improvement and Mortgage Fraud and an illegal Predatory Scheme that involves the use and reliance upon "Falsified", "Forged" and "Altered" documents and an overly inflated property value. *{Defendant's Exhibit 115 & WF00003}*

(c) (Willful Intent to Participate in and Perpetuate Mortgage, Bank, Insurance and Securities Fraud and an Illegal Predatory Scheme based upon the acceptance, use and reliance upon "Falsified", "Forged" and "Altered" documents. {WF00001-WF00026 & WF00028-WF00029}

FACTS I

(1) The Plaintiff was notified on December 22, 2007 that the loan was mired in "Fraud", "Deceit" and "Deception". Kathryn R. Perkinson *{WF00042}* returned the call on December 24, 2007 and advised the Defendant to work things out with the Seller and if this could not be done, fax a written request for cancellation to Wells Fargo Home Mortgage (WFHM) in Des Moines, Iowa. *{Defendant's Exhibit 1}*

(2) Shortly after, Deborah Galloway, the closing attorney, notified WFHM by fax that the loan was in dispute. *{Defendant's Exhibit 70}*

(3) The Defendant received Jim H. Austin, III's 7-59 Appraisal and Satisfaction Completion Certificate on January 12, 2008. *{WF00014-WF00026}*

(4) On January 14, 2008, the Defendant notified WFHM by phone that the 7-59 Appraisal and the Satisfaction Completion Certificate were "Falsified". After waiting almost 3 weeks, no one called her back as promised.

(5) After receiving the 7-59 "Falsified" and "Forged" Appraisals, Shortly after January 14, 2008, George M. Sistrunk contacted the City of Orangeburg Building Inspector and discovered, the Seller - Thomas Jacobs - never applied for a "Building Permit" and never had one in the past. *{Must Call for Verification}*

(6) The following week, George M. Sistrunk contacted South Carolina's Department of Consumer Affairs and discovered the Seller - Thomas Jacobs - did not have a broker's license and or a loan originator's license and was not employ-

ed as a loan originator by Golden Gate Mortgage. *{Must Call for Verification}*

(7) After receiving an appraisal from WFHM, *{WF00014-WF00026}* a letter was faxed on or about February 6, 2008. *{Exhibit 4 and the Plaintiff's Exhibit B}*

(8) On or about February 8, 2008, the Defendant's husband faxed WHFM, documented evidence of the falsifications on the 7-59 Appraisals. *{See Filed Exhibits 8-14}*

(9) Rather than cancel the mortgage and loan, Janet Frotscher falsely accused the Defendant of being the Borrower that met with the Appraiser. *{WF00125}*

FACTS II

(1) At no time did the Seller represent himself as a Loan Broker.

(2) At no time did the Seller represent himself as a Loan Originator.

(3) The Seller – Thomas Jacobs – always represented himself as the property owner. *{WF00003, WF00088, WF00096-WF00093}*

(4) At no time did the Seller mentioned anything about an Appraisal.

(5) The Seller always represented Golden Gate Mortgage as a Business Associate.

(6) Wells Fargo Bank and the Seller represented Golden Gate Mortgage as a Lender. *{WF00001-WF00026, WF00074, WF00084-WF00085}*

(7) At no time did the Seller mention to the Defendant that her loan was being brokered. The Defendant justifiably believed Golden Mortgage was her Lender.

(8) The Seller never represented Golden Gate Mortgage as a Broker.

(9) All the paperwork for the loan was provided by the Seller – Thomas Jacobs.

FACTS III

(1) David Terrell/Golden Gate Mortgage LIED to WFHM & SCDCA. He never interviewed the Defendant. *{WF00032 & WF00035 & Filed Exhibit 37}*

(2) Janet Frotscher LIED to WFHM. The Defendant never met the Appraiser. *{WF00125}* Thomas Jacobs LIED to SCDCA *{Filed Exhibits 35-36}*

(3) The Appraiser – Jim H. Austin, III LIED. *{WF00001- WF00026}* Debra C. Galloway LIED to SCDCA & the Commission on Lawyer Conduct *{Exhibits 68-70}* Attorney Galloway left no messages on the Defendant's answering device because the Defendant did not have one at the time. And never faxed any letters.

FACTS IV

(1) Since December 22, 2007, the Plaintiff was informed of the "Fraud", "Deceit"

and “Deception” that is associated with loan #708-0174072777. Since 2008, the Plaintiff has not filed any interrogatory, admission, affidavit or presented any testimony from Kathryn R. Perkinson that refutes or denies the Defendant’s or Witness’ statements. {See also Section 36-3-305(a)(1)(2) – SC Code of Laws}

(2) Since February 8, 2008 the Plaintiff had verifiable knowledge of falsity and forgery. {Defendants Exhibits 4 & 8-14} Since 2008, the Plaintiff has not filed any derogatory, admission, affidavit or presented any testimony from Kathryn R. Perkinson that refutes or denies the Defendant’s or Witness’ statements. Any statement from Kathryn R. Perkinson that contradicts what is written in this Pleading after this Pleading has been filed and date stamped must be considered and construed as an ABSOLUTE LIE and will be an ABSOLUTE LIE.

(3) Since February of 2008, the Plaintiff has known loan #708-0174072777 was brokered entirely by the Seller – Thomas Jacobs – and not by Golden Gate Mortgage. Since 2008, the Plaintiff has not filed any interrogatory, admission, affidavit or presented any testimony from any Wells Fargo employee, staff member or officer that refutes or denies the Defendant’s or Witness’ statements.

(4) Any statement from a Wells Fargo Bank employee, staff member or officer that contradicts what is written in this Pleading after this Pleading has been filed and date stamped must be considered and construed as an ABSOLUTE LIE and will be an ABSOLUTE LIE and these people will continue to LIE after the facts are known. {WF00125 & Filed Exhibit 235}

(5) Since February 8, 2008, Wells Fargo Bank has been protecting and defending the Sellers – Thomas Jacobs’ - illegally Brokered Loan, his illegal Home Improvement and Mortgage Fraud and his illegal Predatory Lending Scheme. {See the Plaintiff’s Exhibits Filed with this Motion for Summary Judgment}

(6) Since February 8, 2008, Wells Fargo Bank is trying to collect money and force the Court to hold the Defendant liable for the Seller’s – Thomas Jacobs’ - illegally Brokered Loan, his illegal Home Improvement and Mortgage Fraud and his illegal Predatory Lending Scheme. {See the Plaintiff’s Exhibits Filed with this Motion for Summary Judgment & WF000120-WF00133}

(7) Since February 8, 2008, the Plaintiff has demonstrated **Willful Intent to Participate in and Perpetuate Mortgage, Bank, Insurance and Securities Fraud and an Illegal Predatory Scheme based upon the acceptance, use and reliance upon “Falsified”, “Forged” and “Altered” documents.** {WF00001-WF00026, WF00028-WF00029 & Filed Exhibit 235}

FACTS V

(1) The Seller not only brokered his loan with help from the Appraiser, all the necessary supporting documents to approve loan #708-0174072777 belong to the Seller – Thomas Jacobs. {WF00001-WF00029}

(2) WF00001-WF00013 is the Seller's 7-59 Appraisal that is not only "Falsified", it is also a "Forgery by Name Substitution". {See the Plaintiff's Filed Exhibits WF00014-WF00026 with the same Thomas Jacobs 7-59 File Number}

(3) Based solely on the Plaintiff's filed documents, all the Appraisals Jim H. Austin, III did were for the Seller – Thomas Jacobs {WF00027} in violation of 18 USC 1001 et seq

(4) Based solely on the Plaintiff's filed documents, the Seller's "illegal Home Improvement and Mortgage Fraud" began in earnest on September 14, 2007 with Jim H. Austin, III's "Falsified" Satisfaction Completion Certificate. {WF00009 & WF00022}

(5) Based solely on the Plaintiff's filed documents, the 7-59 "Falsified" Appraisal with it's inflated \$75,000.00 value was ready for use in the Seller's illegal Predatory Lending Scheme by October 9, 2007. {WF00008 & WF00021}

(6) The Home Improvement and Mortgage Fraud and Predatory Lending Scheme was accepted for processing on December 4, 2007 {WF00030-WF00032 & WF00065}

(7) Based solely on the Plaintiff's filed documents, money for the Seller's illegal Home Improvement and Mortgage Fraud and Predatory Lending Scheme was approved before or on December 20, 2007. {WF00075, WF00115 & WF00119}

(8) The Plaintiff's mortgage loan was already illegal and violated State and Federal law, before the Defendant showed up on December 21, 2007. {See UCC § 305(a)(1) & Section 36-3-305} – Sc Code of Laws}

(d) (Gross Negligence and Inherent Negligence) Now (Comparative Negligence)

(1) The term "Inherent" is now moot. In 1991, South Carolina abolished the doctrine of contributory negligence and adopted comparative negligence as its tort standard in Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991). In Nelson, South Carolina's Supreme Court stated that, "under comparative negligence "a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant." Id. at 245, 399 S.E.2d at 784. "The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his or her negligence." Id. The Plaintiff has failed to exercise diligence.

(2) South Carolina's Supreme Court also adopted a modified version of comparative negligence known as the "less than or equal to" approach, by which the plaintiff in a negligence action could recover damages if his or her negligence is 50% or less or, stated another way, if the plaintiff's negligence does not exceed 50%. Singleton v. Sherer, 377 S.C. 185, 205, 659 S.E.2d 196, 206 (Ct. App. 2008). "The determination of respective degrees of negligence attributable to the plaintiff and the defendant presents a question of fact for the jury, at least where conflicting inferences may be drawn." Hurd v. Williamsburg County, 363 S.C.

421, 429, 611 S.E.2d 488, 492 (2005).

(3) The Defendant has already stated any loss the Plaintiff has incurred is due to the Plaintiff's negligence and failure to exercise due diligence. The Defendant is not responsible for any losses the Plaintiff has incurred. The Defendant has discussed the Plaintiff's negligence in previous Pleadings and incorporates all relevant Pleadings by reference as though fully set forth herein verbatim.

(e) **(Failure to Exercise Due Diligence)** In addition to what has been already stated in the Pleadings relative to this matter, that are incorporated by reference as though fully set forth herein verbatim, the Plaintiff has failed to exercise due diligence. After being duly notified of "Fraud" and the illegal brokering activity of the Seller – Thomas Jacobs, the Plaintiff failed to exercise due diligence to investigate these matters thoroughly and comprehensively to mitigate losses. {Exhibits 43-64}, any loss the Plaintiff has incurred is due to the Plaintiff's own negligence and failure to exercise due diligence. Due diligence is the "diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation." Diligence looks not to what the Plaintiff actually discovered, but what the Plaintiff could have discovered. *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005)

(f) **(Concealment of Material Facts)** In addition to what has already been stated in previous Pleadings that are incorporated by reference as though fully set forth herein verbatim, as of the filed and stamped date of this Pleading, Wells Fargo Bank has concealed from bank regulators the material facts that...

(1) the bank accepted, approved, funded and is actively defending a mortgage loan that was obtained from an unlicensed loan broker and/or unlicensed loan originator in violation of South Carolina law, Federal law and the UC Code. By concealment, the Plaintiff is an active participant in Mortgage Fraud.

(2) Wells Fargo Bank has concealed from the Security and Exchange Commission that any mortgage backed security with loan #708-0174072777 is supported by documents that can be verified as "Falsified", "Forged" and "Altered". By concealment, the Plaintiff is an active participant in Securities Fraud.

(3) the bank has concealed from its property and casualty insurers the value of 423 Bayne is inflated and based on a "Falsified" & "Forged" Appraisals and meets the FBI's definition of an illegal Predatory Lending Scheme. By concealment, the Plaintiff is an active participant in Insurance Fraud.

(4) By concealment of material facts, the Plaintiff is actively engaged in Fraudulent Conduct. *Leonard v. Springer*, 197 Ill 532. 64 NE 299 (1902 (Holding that, "Any conduct capable of being turned into a statement of fact is representa-

-tion. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." [The seller or lender] "He is liable, not upon any idea of benefit to himself, but because of his wrongful act and the consequent injury to the other party.") If not true, present the notification proof.

(g) (Failure to Exercise Fiduciary Responsibility as a Bank) In addition to what has already been stated in previous Pleadings that are incorporated by reference as though fully set forth herein verbatim, Wells Fargo Bank is a corporation. By law, "A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives." *Travelers Ins. v. Roof Doctor*, 325 S.C. 614, 615-616, 481 S.E.2d 451, 452 (Ct. App. 1997) Wells Fargo Bank representatives and officers have a duty and responsibility to fully disclose information relative to its mortgage backed securities to its investors and regulatory authorities. Failing to disclose a "Fraudulent Loan" is a breach of Fiduciary duty and responsibility. See *U.S. v. Tweel*, 550 F.2d 297 (1977 (holding that, "Silence can only be equated with fraud where there is a legal or moral duty to speak or when an inquiry left unanswered would be intentionally misleading.")) See also {Section 36-3-307(a)(1) – SC Code of Laws}

(h) (Unfair Lending and Banking Practice – A Violation of SCUTPA) The Defendant has discussed the Plaintiff's unfair lending and banking practice of forcing the Defendant to make monthly payments on the unlicensed Seller's illegal Home Improvement and Mortgage Fraud, illegal Predatory Lending Scheme; while overlooking the Seller's illegal brokering activities. Forcing the Defendant to make payments on an illegal loan is a violation of South Carolina's Unfair Trade Practices Act (SCUTPA).

(1) To be actionable under SCUTPA, the alleged unfair or deceptive act or practice must have an impact upon the public interest. *Noack Enterprises, Inc. v. Country Corner Interiors*, 351 S.E.2d 347 (S.C.Ct.App. 1986).

MORTGAGE FRAUD'S IMPACT ON THE PUBLIC

(a) Mortgage fraud is one of the fastest growing financial crimes in the history of the United States (*Mortgage Asset Research Institute*)

(b) Prosecutors consider mortgage fraud to be among the most "economically destructive crimes prosecuted by their offices," according to *Patrick Leahy, cosponsor of the Fraud Enforcement and Recovery Act*.

(c) According to the FBI, numerous forms of mortgage fraud fall into two categories: fraud for housing and fraud for profit.

(d) Effects of mortgage fraud and foreclosure have proven to devastate communities, creating dangerous conditions that fuel crime, lower property values and foster despair among residents who watch their

neighborhoods deteriorate around them. (*National Crime Prevention Council*)

(e) In February of 2012, [49] state attorneys general and the Federal government reached agreement on a historic joint state-federal settlement with the country's five largest loan servicers: Ally/GMAC, Bank of America, Citi, JPMorgan Chase and *Wells Fargo*.

MORTGAGE FRAUD IS A CRIME

(2) The Plaintiff's perpetuation of the Seller's Home Improvement and Mortgage "Fraud" is a crime that materially misrepresents or omits information and gives a "False Constructive Notice" in violation of *Section 30-7-10 SC Code of Laws* by concealing and misrepresenting the truth relative to 423 Bayne St. See *{National Bank of Newberry v. Livingston, 155 S.C. 264, 284, 152 S.E. 410, 417-19 (1930)}*

SCUPTA

(3) SCUPTA states "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." *S.C. Code Ann. § 39-5-20 (Supp. 2005)*. "An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is 'deceptive' when it has a tendency to deceive." *Johnson v. Collins Entm't Co., Inc., 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002)*.

(4) *Section 39-5-140 – SC Code of Laws* states: "Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by *Section 39-5-20* may bring an action individually, but not in a representative capacity, to recover actual damages. *Section 39-5-140* only protects a "person who suffers any ascertainable loss of money or property, real or personal."

(5) Federal courts have held that unfair or deceptive acts as defined in the FTC Act need not constitute ordinary fraud. *Federal Trade Commission v. Algoma Lumber Co., 291 U.S. 67, 54 S.Ct. 315, 78 L.Ed. 655 (1934)*; *D.D.D. Corp. v. Federal Trade Commission, 125 F. (2d) 679 (7th Cir. 1942)*. Under the statute there is no need to show that a claim or representation was intended to deceive, but only that it had the capacity or effect or tendency to deceive. *Id.* See also *Hardy v. Toler, 288 N.C. 303, 218 S.E. (2d) 342 (1975)*; *Heller v. Silverbranch Construction Corp., 376 Mass. 621, 382 N.E. (2d) 1065 (1978)*

(6) Actual knowledge is not required under SCUTPA to hold Wells Fargo liable for the misrepresentations of its agent/s. At common law actual knowledge is not necessary to hold a principal liable, if misrepresentations are made by the agent

while acting within the scope of his agency. See, West v. Service Life & Health Insurance Co., 220 S.C. 198, 66 S.E. (2d) 816 (1951); See also, Restatement (Second) of Agency § 261, comment a (1958)

(7) Under Section 39-5-20(a) and (b), SC Code of Laws, the Defendant need not prove the elements of common law deceit in order to establish a violation of the South Carolina Unfair Trade Practices Act since, under the statute, there is no need to show that a claim or representation was intended to deceive but only that it had the capacity, effect, or tendency to deceive. State ex rel. McLeod v. C & L Corporation, *supra*.

(i) (Failure to Safeguard the Financial Interest of Customers, Clients and Investor Accepting, Using or Basing Decisions Upon “Falsified” Documents After the Facts are Known) In addition to averments stated in previous Pleadings, that are incorporated by reference as though fully set forth herein verbatim, the Defendant incorporates by reference **FACTS I** on page 6, **FACTS IV** on pages 7-8 and **FACTS V** on page 8. Even asking the Defendant to make monthly payments on a known illegally brokered loan, known violations of Federal and State law, a known Predatory Lending Scheme that is also based on a verifiable “Forged” and “Altered” Contract of Sale is Unconscionable. The Plaintiff has offered the Defendant no legitimate choice. No sane and rational person would make payments on a mortgage loan under these conditions.

UNCONSCIONABLE

(1) Section 37-5-108 – SC Code of Laws clearly states, “(1) With respect to a transaction that is, gives rise to, or leads the debtor to believe will give rise to, a consumer credit transaction, if the court as a matter of law finds: (a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or (b) any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result and award the consumer any actual damages he has sustained. (2) With respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction. In addition, the consumer has a cause of action to recover actual damages and, in an action other than a class action, a right to recover from the person violating this section a penalty in the amount determined by the court of not less than one hundred dollars nor more than one thousand dollars...”

(2) “Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms

that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” Carolina Care Plan, Inc. v. United Health-Care Services, Inc., 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004).

(3) "In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Id.* at 24-25, 644 S.E.2d at 668.

(j) (Negligent Infliction of Emotional Stress) The Plaintiff has inflicted emotional stress upon the Defendant. In addition to what has already been stated in previous Pleadings that are incorporated by reference as though fully set forth herein verbatim, When the actions of one person cause emotional or mental trauma to another, the victim may be able to recover damages for the mental stress. Emotional distress includes suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame.

(1) There are only three elements the Defendant must prove for a finding of negligent infliction of emotional distress: 1) the Plaintiff engaged in conduct that the Plaintiff should have realized involved an unreasonable risk of causing emotional distress and that that distress, if it were caused, might result in illness; 2) that the Plaintiff's conduct caused emotional distress to the Defendant; and 3) the distress was of such a nature as might result in illness. As to the first element, the Plaintiff engaged in conduct that the Plaintiff should have realized involved an unreasonable risk of causing emotional distress and that that distress, if it were caused, might result in illness.

(2) The Defendant need not prove the Plaintiff intended to cause any harm or distress to the Defendant but only that the Plaintiff should have known that it was likely that a reasonable person under the circumstances would be distressed by the Plaintiff's conduct and that.. that distress might result in illness. The Defendant need only prove her distress was reasonable in light of the Plaintiff's conduct. Larobina v. McDonald, 274 Conn. 394, 410 (2005); Carrol v. Allstate Ins. Co., 262 Conn. 433, 446-47 (2003); Restatement (Second) of Torts, § 313 (2007).

(k) (Rescission of the Loan Contract Under the Truth-In-Lending Act [TILA])

In addition to what has already been stated in previous Pleadings that are incorporated by reference as though fully set forth herein verbatim, TILA violations are governed by strict liability standards. The Plaintiff's failure to reveal the exact nature of 423 Bayne Street violates TILA. See Cervantes v. General Electric Mortgage Co., 67 B.R. 816 (E.D. Pa. 1986) & {See Plaintiff's Filed Exhibit 117 That Mandates Disclosure}

(1) In addition to South Carolina Case Law, South Carolina Courts can defer to other states for remedies The Full Faith and Credit Clause of the United States Constitution requires the courts of one state give "such force and effect to a

foreign judgment as the judgment would receive in its own state.” *Taylor*, 326 S.C. at 532, 484 S.E.2d at 597; and see 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.”)

(2) The Defendant does not have to show the Plaintiff in fact deceived her by not fully disclosing the exact nature of 423 Bayne Street in the loan documents. *Rowland v. Magna Millikin Bank of Decatur, N.A.*, 812 F.Supp. 875 (1992),

(3) The general rule is that contracts for performance of illegal conduct are unenforceable and void. The Minnesota Court of Appeals addressed this, stating “the application of the doctrine of *in pari delicto* is appropriate for (1) preventing enforcement of a contract the performance of which is illegal.” *Brubaker v. Hi-Banks Resort Corp.*, 415 N.W.2d 680, 684 (Minn. App. 1987). The Supreme Court of Minnesota has held “anyone who engages in a fraudulent scheme forfeits all right to protection, either at law or in equity.” *State by Head v. AAMCO Automatic Transmissions, Inc.*, 293 Minn. 342, 347 (1972)

(4) South Carolina precedent asserts “no person be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act.” *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and maintained by bribery). “This rule applies at both law and in equity and whether the cause of action is in contract or in tort.” *Jackson*, 313 S.C. at 276, 437 S.E.2d at 170.

(5) Generally, South Carolina Courts will not enforce contracts that are illegal or violate public policy. See *White v. J.M. Brown Amusement Co., Inc.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) (“The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.”); See also *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (holding that illegal contracts are void and unenforceable, such that actions for its breach may not be maintained).

(I) (Money Damages) The Defendant objects to the restrictions placed on the Defendant by the Plaintiff. Therefore, in addition to the money damages already stated in previous Pleadings, that are incorporated by reference as though fully set forth herein verbatim, the Defendant has a legitimate cause of action for compensation and any fees for any and all of the Plaintiff’s statutory violations that will be included in this Pleading as Counterclaims and/or Affirmative Defenses.

17. **Objection to Paragraph #4:** The Defendant objects to the Plaintiff's misstatement of facts. Attorney Calub never asked the Defendant about Wells Fargo's evidence. The Defendant has no personal evidence. The Defendant's evidence comes from the law firm. Based on their evidence of "Fraud", "Falsity", "Omissions", "Misrepresentation of Material Facts" "Non Disclosures" and in many cases "OUTRIGHT LIES" by the Broker, the Appraiser, the Seller and "Janet Frotscher" that are outlined in this Pleading and in the "Undisputed Material Facts" that are outlined in the Defendant's *Legal Memorandum Supporting Opposition to the Plaintiff's Motion for Summary Judgment* that is incorporated by reference as though fully set forth herein verbatim, the Plaintiff's Motion must be denied and this case sent to a Jury on all triable issues pursuant to *Rule 38(a) & (b) SCRCF* or Dismissed with Prejudice. {See the Plaintiff's Filed Exhibits WF00001-WF00137}

**OBJECTIONS AND/OR RESPONSES
TO THE PLAINTIFF'S UNDISPUTED FACTS**

18. **Response to Sentence #1:** This is true and the Plaintiff has not filed an interrogatory, deposition, admission, affidavit or presented any testimony from the Plaintiff that denies or refutes this fact. {Review Plaintiff's Filed Documents, Exhibits and Affidavits if any}

19. **The Defendant Objects to Sentence #2:** One does not need to be an expert appraiser to know a house does not have central air conditioning, a patio or deck, no new appliances, walls, ceilings, floors, fixtures, new carpeting or fresh painting. {Rule 701, SCRE} In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from the Plaintiff's personnel or from any certified appraiser that denies or refutes the aforementioned facts. {Review Plaintiff's Filed Documents, Exhibits and Affidavits if any} One does not need to be a certified appraiser to recognize decaying and deteriorating wood or when a house needs repairs. The Defendant's testimony relative to the actual condition of 423 Bayne Street is based on eyewitness accounts, personal knowledge and experience that the 7-59 Appraisal the Plaintiff used to establish "Loan Value" is a "Falsified" document that the Plaintiff is still using. {Rule 401, SCRE & See the Plaintiff's Exhibits WF00001- WF00013 that are Filed with this Motion for Summary Judgment}

20. **Response to Sentence #3:** This is not only true, the Plaintiff has not filed any interro-

gatories, depositions, admissions, affidavits or presented any testimony from the owner Tommy Mitchell that has.. or can, deny or refute this undisputed fact without saying or writing an ABSOLUTE LIE. *{Review Plaintiff's Filed Documents, Exhibits and Affidavits, if any}*

21. **Response to Sentence #4:** This is not only true, the Plaintiff has not filed an interrogatory, deposition, admission, affidavit or testimony has been presented from the Seller – Thomas Jacobs that has.. or can deny or refute this fact without saying or writing an ABSOLUTE LIE. *{Review Plaintiff's Filed Documents, Exhibits and Affidavits, if any}*

22. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #5:**
The Defendant has no personal knowledge as to the person that prepared the Plaintiff's filed Pleading. Whoever prepared it misstated the facts at index 12:24 – 13-1 in attorney Calub's Deposition. *{Reread the index}* The undisputed fact is, the Defendant's husband was looking for a house to rent, rent to own or lease not purchase. *{See Filed Exhibit 30}* In addition, The Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from the Seller – Thomas Jacobs or Tommy Mitchell that has.. or can, deny or refute the Defendant's undisputed aforesaid fact with saying or writing an ABSOLUTE LIE. *{Review Plaintiff's Filed Documents, Exhibits and Affidavits, if any}*

23. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #6:**
The Defendant has no personal knowledge as to the person that prepared the Plaintiff's filed Pleading. Whoever prepared it, misstated a fact at index 212:23 – 213:12 in attorney Calub's Deposition. *{Reread the index}* The undisputed fact, is the Defendant's husband was negotiating with Thomas Jacobs to rent, rent to own or lease not purchase. *{See Defendant's Filed Exhibit 30}* In addition, The Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from the Seller – Thomas Jacobs that has or can deny or refute this undisputed fact with saying or writing an ABSOLUTE LIE. *{Review Plaintiff's Filed Documents, Exhibits and Affidavits if any}*

24. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #7:**
The Defendant has no personal knowledge as to the person that prepared the Plaintiff's filed

Pleading. Whoever prepared it, misstated the facts at index 214: 11– 21 in attorney Calub’s Deposition. *{Reread the indexes}* The Deposition actually reads as follows:

Index - 214:11-15 A: “Like I said, the house was owned by Thomas Jacobs, and that was the only person that we had contact with about the house. We did not know anything about Wells Fargo. We are just as surprised as --”

Index – 214:16-24 Q: “And you’re not aware of Mr. Jacobs – you don’t have any evidence or you don’t know if Mr. Jacobs, David Terrell or even Jim H. Austin communicated those terms to Wells Fargo; you don’t have any evidence of that either, right?”

A: “I don’t have any evidence of that.”

Q: “No evidence or knowledge?”

A: “No evidence or knowledge.

The undisputed fact is the Defendant did advise Wells Fargo, of the representations of Thomas Jacobs by telephone and in writing beginning on December 22, 2007 and continuing until November of 2010 by responding to every letter. *{See Wells Fargo’s Filed Responses to the Defendant’s Phone Calls and Correspondence about the House, and the “Fraud” of the Broker, the Seller and the Appraiser, Exhibits WF00120, WF00121, WF00125-WF00126, WF00130 & Filed Exhibits 39, 43-64 & 192}* In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from anyone from Wells Fargo Home Mortgage (WFHM) or from Wells Fargo Bank that has.. or can..deny or refute the Defendant’s undisputed aforesaid facts without saying or writing an ABSOLUTE LIE. *{Review Plaintiff’s Filed Documents, Exhibits and Affidavits if any & See Filed Exhibits 166-173}*

25. The Defendant Objects & Disputes the Plaintiff’s Undisputed Fact in Sentence #8:

The Defendant has no personal knowledge as to the person that prepared the Plaintiff’s filed Pleading. Whoever prepared it, misstated a fact at index 58:15–20 in attorney Calub’s Deposition. *{Reread the index}* The undisputed fact is, the Defendant’s husband was cleaning the house prior to leasing it, not closing. *{See Filed Exhibit 30}* In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from Thomas Jacobs or anyone else that has.. or can.. deny or refute the Defendant’s undisputed aforesaid facts without saying or writing an ABSOLUTE LIE and these people will LIE even the attorneys *{See attorneys Burns & Moise Case Status Updates & Review Plaintiff’s Filed Exhibits and Affidavit from Elizabeth S. Hodgson}*

26. **Response to Sentence #9:** This is true. In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from anyone that has.. or can; deny or refute this undisputed fact without saying or writing an ABSOLUTE LIE. *{Review Plaintiff's Filed Documents, Exhibits and Affidavits, if any}*

27. **Response to Sentence #10:** In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from Thomas Jacobs that has.. or can, deny or refute this undisputed fact without saying or writing an ABSOLUTE LIE. *{Review Plaintiff's Filed Documents, Exhibits and Affidavits, if any}* However, the Contract of Sale used in WFHM's approval process is "Altered" and "Forged". The Contract of Sale that was signed on 11/26/2007 did not have an "AS IS" clause and no initialed alterations. The Plaintiff has not presented the Contract of Sale the Defendant signed for the Seller – Thomas Jacobs. In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from Jim H. Austin III, Thomas Jacobs, David Terrell, WFHM or from Wells Fargo Bank that has.. or can..deny or refute the Defendant's undisputed aforesaid facts without saying or writing an ABSOLUTE LIE. *{Review Plaintiff's Filed Documents, Exhibits and Affidavits if any}* Evidence "Alteration" and Forgery can be clearly seen in the (two) Contract of Sale the Defendant received from WFHM. *{See the Plaintiff's Filed Exhibit WF00028-WF00029 & the Defendant's Filed Exhibits 140-141}* In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from Jim H. Austin III, Thomas Jacobs, David Terrell, Wells Fargo Home Mortgage (WFHM) or from Wells Fargo Bank that has.. or can..deny or refute the Defendant's undisputed aforesaid facts without saying or writing an ABSOLUTE LIE after this Pleading is date stamped and filed.

28. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #11:** The Defendant has no personal knowledge as to the person that prepared the Plaintiff's filed Pleading. Whoever prepared it, misstated the facts . **Index pages, 64-68, 70-75, 78-82, 84-90, 106 – 108 are not in the Deposition sent to the Defendant.** The actual last known sales price for 423 Bayne Street was not discovered until after the closing.. and it is not \$13,000.00. The last known sales price is \$14,000.00. *{See Defendant's Filed Exhibit 115}* **Indexes 108:5-109:7, 79:21-25; 80:5-9 and 65:12-21 cannot be reviewed for evaluation – not included.**

29. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #12:**

The Plaintiff has misstated a material fact. The undisputed fact is, Jim H. Austin III inflated the value of 423 Bayne Street to \$75,000.00 and "Forged" the Defendant's name on it by "Substitution". The Plaintiff's Exhibit 5, is the same 7-59 Appraisal Jim H. Austin III did for the Seller - Thomas Jacobs. This is evidenced by the 7-59 job file number, the Appraiser assigned to Thomas Jacobs. {See Plaintiff's Filed Exhibits WF00014-WF00026 & Invoice WF00027}.

30. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #13:**

The Plaintiff has misstated a fact. The undisputed fact is, the Defendant never stated that she did not have any evidence. The Defendant's evidence comes from Wells Fargo Bank and she still believes; from what has happened to her...that every person or entity involved in this illegal loan transaction; either still is... or was.. a friend or business associate of the Seller – Thomas Jacobs, including someone working for Wells Fargo's subsidiary - WFHM. Since the Contract of Sale cannot "Forge" a signature and "Alter" itself, **someone did**. Since both Contract of Sale come from and were processed by WFHM, {Compare WF00028-WF00029 to Exhibits 140-141} besides Thomas Jacobs, the evidence suggests someone at Wells Fargo's subsidiary -WFHM.

31. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #14:**

The Plaintiff's filed Pleading has misstated a material fact. The undisputed fact is, the Defendant does not believe or allege anything. The Defendant knows this for a fact and the Plaintiff's own documents prove it beyond a reasonable doubt and by the preponderance of the evidence. {See Plaintiff's Filed Exhibits WF00028-WF00029 & Compare Exhibits 140-141} besides Thomas Jacobs, the evidence suggests someone at Wells Fargo's subsidiary -WFHM.

32. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #15:**

The Plaintiff's filed Pleading has misstated a fact. The undisputed fact is, the Defendant cannot name or identify the person. Otherwise, this person would already be known. As previously stated, since the Contract of Sale cannot alter itself or forge an initial or copy and paste a signature, someone "Forged" and "Altered" the Contract of Sale. Since both Contract of Sale come from.. and were processed by WFHM.. {WF00028-WF00029 & Exhibits 140-141} besides Thomas Jacobs... the evidence suggests someone at Wells Fargo's subsidiary -WFHM.

33. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #16:**

The Plaintiff's filed Pleading has misstated a material fact. The undisputed fact is, the Defendant signed loan documents that were later discovered to be illegally brokered loan by the Seller – Thomas Jacobs in violation of South Carolina and Federal law. The loan documents are the consummation of an illegal Predatory Lending Scheme, a Home Improvement and Mortgage Fraud and the underpinning for Insurance Fraud, Bank Fraud and Securities Fraud....and... the Defendant will not knowingly participate in a criminal scheme. {See the Defendant's Filed Exhibits 1 – 246, WF00120-WF00130, UCC § 305(a)(1) & Section 36-3-305(a)(1)}

34. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #17:**

The Plaintiff's filed Pleading has misstated a fact. The undisputed fact is, the Defendant signed loan documents that did not lower the price of 423 Bayne Street. The Defendant notified Wells Fargo the price is inflated and identifies the loan as an illegal Predatory Lending Scheme that involves the use of "Falsified" documents and an inflated and "Falsified" Appraisal.

35. These same documents were later discovered to be involved in an illegal brokering scheme that was orchestrated by the Seller – Thomas Jacobs, with help from the Broker, the Appraiser and someone working at Wells Fargo's subsidiary - WFHM. The documents were also discovered to be the underpinning of an illegal Predatory Lending Scheme, a Home Improvement and Mortgage Fraud, Insurance Fraud, Bank Fraud and Securities Fraud. The Defendant did everything she could to legitimize the loan or cancel it. {See Filed Exhibits 43-64}

36 No where does it state, "**I Promise to Pay Even if Illegal.**" {WF00039} Wells Fargo Bank would not, did not and has not cooperated with the Defendant to legitimize loan. The loan documents do not require the Defendant to pay on any loan that was obtained by violating Federal and/or State Law. {See Filed Exhibits 1 – 246 and WF00120-WF00130}

37. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #18:**

The Plaintiff's filed Pleading has misstated a fact. The undisputed fact is, no where on the 30-year fixed rate mortgage does it state, "**Pay Even If Illegal and Violates Federal and/or State Law**" {WF00039}. The only remedy is cancellation by Court Order or a Jury's verdict. Wells Fargo will not stop perpetuating its Home Improvement and Mortgage Fraud, Insurance Fraud, Bank

Fraud and Securities Fraud voluntarily. *{See Filed Exhibits 1 – 246 and WF00120-WF00130}*

38. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #19:**

The Plaintiff has misstated a fact. Since pages in the Defendant's Deposition were not sent to the Defendant by the Plaintiff for comparative evaluation, the Defendant disputes the Plaintiff's statement/s of fact with verifiable documentation that has been in the Plaintiff's possession since December 4, 2007. The undisputed facts relative to this statement can be found in **FACTS I – V** on pages 6-9 in this Pleading. In addition, the Plaintiff cannot file any depositions, admissions, interrogatories, affidavits or presented any testimony from anyone that can deny or refute the facts on pages 6-9 without that person/s saying or writing ABSOLUTE LIES after this is filed.

39. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #20:**

The Plaintiff has misstated a material fact. Wells Fargo is owner and holder of an illegal mortgage and note that is the underpinning of a Home Improvement and Mortgage Fraud, Bank Fraud, Insurance Fraud and Securities Fraud and is an active participant and perpetuator of an illegal Predatory Lending Scheme that involves the use and reliance on "Forged", "Altered" and "Falsified" documents. Mortgages and Notes cannot be associated with illegality. *{UCC § 305}*

40. Since pages in the Defendant's Deposition were not sent to the Defendant by the Plaintiff for comparative evaluation, the Defendant disputes the Plaintiff's statement/s of fact with verifiable documentation that has been in the Plaintiff's possession since December 4, 2007. *{See Plaintiff's Filed Exhibits WF00030-WF00032}*

41. The undisputed facts relative to this statement can be found in **FACTS I – V** on pages 6-8 in this Pleading. In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from anyone that can deny or refute the facts on pages 6-8 without that person/s saying or writing ABSOLUTE LIES after this Pleading is filed.

42. **The Defendant Does Not Object to the Plaintiff's Undisputed Fact in Sentence #21:**

Additional undisputed facts relative to this statement can be found in **FACTS I – V** on pages 6-8 in this Pleading. In addition, Jim H. Austin, III violated *18 USC 1001 and 1344 et seq.*

43. **The Defendant Does Not Object to the Plaintiff's Undisputed Fact in Sentence #22:**

On December 24, 2007, Katherine R. Perkinson {WF00042} advised the Defendant to work things out with the Seller. The Defendant was following the advice of Ms. Perkinson. Additional facts relative to this statement can found in **FACTS I – V** on pages 6-9 in this Pleading.

44. **The Defendant Does Not Object to the Plaintiff's Undisputed Fact in Sentence #23:**

Additional undisputed facts relative to this statement can found in **FACTS I – V** on pages 6-9 in this Pleading.

45. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #24:**

The Plaintiff's filed Pleading has misstated the facts. The Defendant does not believe or allege anything. It is an undisputed, verifiable and undeniable fact the Plaintiff's 7-59 Appraisals are "Forgeries" and "Falsities" with an inflated monetary value based; in some instances, on OUT-RIGHT LIES. A comparison of the Plaintiff's (two) 7-59 Appraisals {WF00001-WF00013 & WF00014-WF00026} proves beyond any reasonable doubt and by the preponderance of the evidence to any reasonably intelligent person that this is true. In addition, the Plaintiff cannot and will not find any certified appraiser that can or will say otherwise. Furthermore, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from anyone that has denied or refuted the Defendant's undeniable facts.

46. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #25:**

On December 24, 2007, Katherine R. Perkinson {WF00042} advised the Defendant to work things out with the Seller. The Defendant was still following the advice of Ms. Perkinson at this time and even wanted to help Wells Fargo recover its \$75,000.00. Additional undisputed facts relative to this statement can found in **FACTS I – V** on pages 6-9 in this Pleading.

47. **The Defendant Objects to the Plaintiff's Undisputed Fact in Sentence #26:** The Defendant made two payments as a "Good Faith" effort to show WFHM that she was willing to work with Wells Fargo to legitimize the Plaintiff's illegitimate mortgage and note.

48. However, without cooperation from Wells Fargo to accomplish legitimization, continued payments on the existing loan meant being a knowing and willing participant in an illegally Brokered Loan, an illegal Predatory Lending Scheme that involved the use of "Falsified" documents and an inflated appraisal, a Home Improvement and Mortgage Fraud, Bank Fraud, Insurance Fraud and Securities Fraud that violated South Carolina and Federal law. The Defendant

could not and will not be involved in such a scheme.

49. The Defendant notified WFHM ; via written correspondence *{Exhibits 43-64 & 66}* that the only way out of illegality was to cancel the existing mortgage and note and issue a new mortgage and note based on the actual condition of 423 Bayne Street as it was on the date of the appraisal – October 9, 2007 or its present value. Wells Fargo refused to cooperate. *{Exhibits 166-173}* Consequently, the Defendant will not be a party to Wells Fargo's illegal banking activities.

50. The solution was and still is simple --- Fix the house according to the 7-59 appraisals, or...Write a new mortgage and note based the actual value on October 9, 2007 or the present value. This is still the Defendant's position.. and it is the only equitable thing to do. Any deficiencies WFHM experienced can and should be recovered from the Seller, the Broker and the Appraiser. As stated in paragraph (b) on page 22, Wells Fargo refused to cooperate.

51. In addition, the Plaintiff has not filed any interrogatory, deposition, admission, affidavit or presented any testimony from anyone that has denied or refuted these undeniable facts stated in the aforesaid paragraphs 30-33 in this Pleading.

52. **The Defendant Objects & Disputes the Plaintiff's Undisputed Fact in Sentence #27:** The Plaintiff has misstated a material fact. Wells Fargo Home Mortgage advised the Defendant in June of 2008 to fax all tax notices to Des Moines, Iowa @ 1-866-278-1179 or mail them to POB 10335, Des Moines, IA 50306. *{Filed Exhibits 183 & 216}* State Farm Insurance cancelled the original insurance policy on January 16, 2008 *{Filed Exhibit 44}* and after seeing the property, no local insurance agency will insure 423 Bayne Street for \$75,000.00 in its current condition. In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from anyone that has denied or refuted the aforementioned facts. This is why Wells Fargo is actively engaged in committing Insurance Fraud. *{See Exhibit 113}*

53. **The Defendant Objects & Disputes the Plaintiff's Undisputed Facts in Sentence #28:** The Plaintiff has misstated the facts. The undisputed facts are, the Defendant does not believe or allege anything. The Defendant knows for a fact all the paperwork for the Plaintiff's mortgage loan were delivered and picked up by the Seller - Thomas Jacobs. *{FACTS I - V Pages 6-9}*

54. The Appraiser – Jim H. Austin III LIED. [WF00009 & WF00022] are ABSOLUTE

LIES. No majors repairs were done, could be done, cannot be and have not been done; on September 14, 2007 or on any other date. *{See Exhibit 113 [423 Bayne Street]}* A "Building Permit" is required and the Seller – Thomas Jacobs never had one. *{Call for Verification}* This is why the Defendant's husband can only restore or do minor repairs.

55. David Terre11/Golden Gate Mortgage LIED to WFHM. He never interviewed the Defendant *{WF00032 & WF00035}*. Janet Frotscher LIED. The Defendant has never seen or has ever met the Appraiser – Jim H. Austin III. *{WF00125-126}*

56. Additional undisputed facts relative to this statement can found in **FACTS I – V** on pages 6-9 in this Pleading.

57. In addition, the Plaintiff has not filed any interrogatory, deposition, admission, affidavit or presented any testimony from anyone that has denied or refuted these undeniable facts stated in the aforesaid paragraphs 32-36 in this Pleading.

58. **The Defendant Objects & Disputes the Plaintiff's Undisputed Facts in Sentence #29:**

The Plaintiff has mischaracterized facts. The undisputed fact is, the Defendant admits she has no personal evidence or evidence of her own that she can provide. The evidence comes from Wells Fargo Bank, N.A., and can be found; as the Defendant has consistently demonstrated in her Pleadings, since receiving it from Nelson Mullins Riley & Scarborough, LLP, by examining the documents and knowing what she has told WFHM by phone and in correspondence and the actual condition of 423 Bayne Street. *{Defendant's Filed Exhibits 1-246 & Exhibit 113 (house)}*.

59. **The Defendant Objects & Disputes the Plaintiff's Undisputed Facts in Sentence #30:**

The Plaintiff has misstated the facts. The undisputed facts are, the Defendant does not believe anything. Wells Fargo's documents proves Wells Fargo has been victimized. Wells Fargo's personnel, for whatever reason haven chosen to LIE and believe and support LIES, rather than look for and accept the TRUTH. *{WF00120, WF00121, WF00125-WF00126 & WF00130}* Some of Wells Fargo's personnel; especially Janet Frotscher's Executive Resolution Team, have demonstrated an arrogance and a refusal to admit, correct or accept their errors in judgment or their mistakes and have demonstrated a tremendous capacity to lie. *{WF00125 & Filed Exhibit 235}*

60. **The Defendant Objects & Disputes the Plaintiff's Undisputed Facts in Sentence #31:**

The Plaintiff has misstated the facts. The undisputed facts are, the Defendant does not believe or feel anything. The Defendant knows Wells Fargo would have moved more expeditiously if it were not for the LIES, Misinformation, Misstatements and Mistaken Beliefs of Janet Frotscher – - if it is not a pseudonym. The evidence suggests, she is behind the loan not being cancelled.

61. FDIC policy requires the reporting of all incidents of fraud or suspected fraud and charging off fraudulent loans within 90 days of discovery. *{Policy Statement 5000}* In May of 2008, a representative at Wells Fargo's Loss Mitigation Department chided the Defendant for allowing a foreclosure if her loan were suspected of being obtained by fraudulent means.

62. The Defendant was told to notify WFHM immediately and tell them about the suspected fraud or actual fraud. The Defendant politely told the representative she had already reported it to an Executive Resolution Team. The Defendant was put on hold for several minutes, and then a supervisor came on the line to make inquiries as to how could this have happened.

63. After the conversation, the Defendant was instructed to fax the information to Iowa again. The Defendant did, and was routed back to Janet Frotscher. *{WF00130}* As you can see from the Defendant's documentation, she has been following Wells Fargo's instructions for reporting fraudulent loans since 2007. The following information may no longer be viable. The Defendant refers the Court and law firm to *{Defendant's Exhibit 39, page 2, paragraph 3, dated May 8, 2008 to the phone numbers (800) 416-1472 [TDD: (800) 877-8339] or [888-WISE-PLAN]}* for consumer counseling services. In May of 2008, the office address was as follows:

Wells Fargo Home Mortgage
Attn: Borrower Counseling Services
MAC X7801-03K
3476 Stateview Blvd.
Fort Mill, South Carolina 29715

64. The above information was also included in the Defendant's *Response to Plaintiff's Affidavit* with (800) 569-4287 in order to notify the Court, Senior Counsel Elizabeth S. Hodgson LIED on her filed Affidavit. If she were familiar with the Defendant's loan, she would have and should have known, a loan suspected of being obtained by fraud cannot be modified under any existing Wells Fargo Program. Therefore, the Defendant's case did not qualify for the "Stay". Since Ms. Hodgson was not from the area, she needed a different number for verification.

65. The above information was also included in some of the Defendant's filed responses during the TRO/"Stay" to notify the Court... attorneys James H. Burns and Elizabeth Scott Moise LIED in their Case Status Updates. No one from Wells Fargo contacted the Defendant or tried to contact the Defendant during the "Stay". And it was an ABSOLUTE LIE the Defendant refused to speak with anyone. {See the Defendant's Filed Responses From 2009 – 2012} **Please note:** Based on information and belief, no one has ever called for verification.

66. **The Defendant Objects & Disputes the Plaintiff's Undisputed Facts in Sentence #32:**
The Plaintiff has misstated the facts. The undisputed facts are, the Defendant never believed her loan could be rescinded under Regulation Z. The issue came into being when the Defendant's husband attempted to make an analogy with attorney Galloway. The Defendant's husband said, "Under Regulation Z, loans can be rescinded for violations. This is a true statement. See *Regulation Z* lending requirements and the *Right to Rescind*."

(a) Under *Regulation Z*, the disclosures must be made "before consummation of the transaction," or "before credit is extended." *Nigh v. Koons Buick Pontiac GMC, Inc.*, 319 F.3d 119, 123 (4th Cir. 2003), *rev'd on other grounds*, 543 U.S. 50 (2004).

(b) *Wright v. Mid-Penn Consumer Discount Co.*, 133 B.R. 704 (Pa. 1991). "A violation such as not responding to the TILA rescission letter, no matter how technical, it has no discretion with respect to liability." (Holding that, "The creditor failed to make material disclosures in connection with the loan. Title 15 USCS §1605(c)")

(c) *Moore v. Mid-Penn Consumer Discount Co.*, Civil Action No. 90-6452 U.S. Dist. LEXIS 10324 (Pa. 1991). (The court held that, "Under TILA's Regulation Z, 12 CFR §226.4 (a), a lender had to expressly notify a borrower that he had a choice of insurer."})

67. Attorney Galloway said, "No they can't." Wouldn't want her to be my attorney. The analogy he was explaining to attorney Galloway was this, if a loan can be rescinded for a Regulation Z violation; then, surely a money purchase loan can be rescinded or cancelled for fraud. This is also a true statement. {See Section 36-3-305(a)(1) – SC Code of Laws}

Generally, South Carolina Courts will not enforce contracts that are illegal or violate public policy. See *White v. J.M. Brown Amusement Co., Inc.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) ("The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions."); See also *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (holding that "Illegal contracts are void and unenforceable, such that actions for its breach may not be maintained.").

68. After the Defendant discovered the Seller - Thomas Jacobs - LIED about lowering the price during the closing, *{Fraud in the Inducement & Fraud in Factum}* the Defendant called attorney Galloway... so attorney Galloway could call Wells Fargo.... and tell.... Wells Fargo to put a stop payment order on the check. Attorney Galloway informed the Defendant that she could not do that because it would be a conflict of interest.

69. The Defendant filed a complaint against attorney Galloway because of her (attorney Galloway's) attitude and failure to inform the Defendant about the Federal requirements for older homes built before 1978 relative to lead paint. *{See Filed Exhibit 69}*

70. The Defendant never received a copy of the "Protect Your Family From Lead In Your Home" pamphlet as required by the Player Law Firm; nor, was this explained during the closing. There was no CL-100 Wood Infestation Report completed on the property for the closing that was required by the Player Law Firm and there was no inspection for lead-based paint; also required by the Player Law Firm. *{Call the Law Firm for Verification & See Exhibits 69 & 70}*

71. In addition, attorney Galloway LIED to SCDCA and to the Commission on Lawyer Conduct. She never left any messages on the Defendant's answering machine. The Defendant did not have an answering machine; at the time, to leave messages on. She also LIED about faxing messages to the Defendant. The fax machine logs all calls. To date, there is no call logged from the Player Law Firm or Debra C. Galloway. The Defendant did not follow this up. The Defendant assumed attorney Galloway like the Appraiser, the Broker and Wells Fargo, was just another corrupt friend or business associate of the Seller – Thomas Jacobs. *{See Affidavit of George M. Sistrunk}*

72. **The Defendant Objects & Disputes the Plaintiff's Undisputed Facts in Sentence #33:** The Plaintiff has misstated the facts. The undisputed facts are, the Plaintiff's mortgage and loan was not an arms-length transaction between Wells Fargo and the Defendant. Wells Fargo dealt exclusively with the Broker. *{See RESPA Requirements for Brokered Loans}* The Defendant never borrowed any money and Wells Fargo never paid the Defendant any money. In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from anyone that has.. or can deny or refute the aforementioned undisputed facts.

73. The \$75,000.00; to which attorney Caleb is referring, was paid directly or indirectly to the Seller - Thomas Jacobs – {WF00088} in exchange for a “Security Interest” in 423 Bayne Street. Borrower refers to the liability under the “Security Instrument”. {WF00042(A) & (B)}

74. The liability for the actual money paid; \$75,000.00 is with the Seller – Thomas Jacobs. If the lender – Wells Fargo – wants to recover its \$75,000.00 in actual dollars paid, the lender’s cause of action is with the Seller not the Defendant.

75. The lender’s “Security Instrument” is based on the “Seller’s representations. If the Seller’s representations are based on fraud, misrepresentations of material facts, omissions and OUTRIGHT LIES, the Defendant has no responsibility or liability for the representations the lender – Wells Fargo {WF00042(C)} accepted from the Seller – Thomas Jacobs... or for Wells Fargo’s errors in judgment with respect to the \$75,000.00 Wells Fargo paid the Seller for the Seller’s “Security Interest”. {See also **FACTS I - V** on pages 6-9 in this Pleading}

76. Wells Fargo did not rely on any property representations or supporting documentation from the Defendant relative to the “Security Interest” the Plaintiff purchased from the Seller – Thomas Jacobs. {WF0001-WF00027, WF00028-WF00029, Filed Exhibits 140-141 & WF00088}

77. In the Deposition, the Defendant was referring to a “Security Interest” of \$30,000.00, not actual cash money. In addition, since the date of the Deposition, the property’s condition has gotten considerable worst. Therefore, the Defendant will not even accept a “Security Interest” for \$30,000.00 knowing the last sales price is \$14,000.00. {Filed Exhibit 115} However, the Defendant is still willing to negotiate with the Plaintiff for any reasonable and mutually beneficial agreement or settlement, since the delinquent tax sale price for the previous owner is \$154.00.

78. **The Defendant Objects & Disputes the Plaintiff’s Undisputed Facts in Sentence #34:**

The Plaintiff has misstated the facts. The undisputed facts are, the Defendant never agreed to repay the mortgage and loan under any existing terms and the “Falsified” 7-59 Appraisals that do not accurately describe 423 Bayne Street {See Exhibit 113 – the Property} are not the only reasons... the Defendant will not participate in the Plaintiff’s perpetuation of the Seller’s Home Improvement and Mortgage Fraud or any of the Plaintiff’s **complicit** illegal banking activities.

79. The reasons why have been stated and restated *ad nauseam* in numerous court filings, in

hundreds of pages of Pleadings and in over 100 Exhibits, that are incorporated by reference as though fully set forth herein verbatim. Additional reasons can be found in **FACTS I - V** on pages 6-9 in this Pleading.

80. **The Defendant Does Not Object to the Plaintiff's Undisputed Facts in Sentence #35:**

This final statement is absolutely true and this situation could have ended years ago if the Plaintiff had cooperated and cancelled this illegally gotten and fraudulent mortgage loan.

SUMMATION

81. For all the reasons outlined and stated in paragraphs 1-39, the Plaintiff's Motion for Summary Judgment must be denied and this case sent to a Jury or Dismissed with Prejudice.

REBUTTAL TO PLAINTIFF'S STANDARD FOR DECISION

82. *Section 36-3-305 -- SC Code of Laws*, clearly states the following in pertinent parts..."(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (1) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms.."

83. Generally, South Carolina Courts will not enforce contracts that are illegal or violate public policy. See *White v. J.M. Brown Amusement Co., Inc.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) ("The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions."); See also *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (Holding that, Illegal contracts are void and unenforceable, such that actions for its breach may not be maintained. ")

84. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 619, 602 S.E.2d 747, 749 (2004). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v.*

Cobb, 362 S.C. 588, 595, 608 S.E.2d 587, 591 (Ct. App. 2005).

85. “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 59, 518 S.E.2d 301, 305 (Ct. App. 1999). “All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party.” Bayle v. S.C. Dep’t of Transp., 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). Summary judgment is a drastic remedy; it should therefore be cautiously invoked to prevent the improper deprivation of a trial of the disputed factual issues. Lanham v. Blue Cross & Blue Shield, 349 S.C. 356, 363, 563 S.E.2d 331, 336 (2002).”

REBUTTAL & COUNTER TO PLAINTIFF’S ARGUMENT

86. For any one of the Counter Arguments to the Plaintiff’s reasons for Summary Judgment. Summary Judgment must be denied and this case sent to a Jury or Dismissed with Prejudice including Punitive Damages for the Plaintiff’s willing participation and perpetuation of an illegally Brokered Loan, a Home Improvement and Mortgage Fraud, Insurance Fraud, Bank Fraud, Securities Fraud and an illegal Predatory Lending Scheme all involving a “Security Instrument” that is based on undeniable and verifiable Forgery {WF00029} and/or Forgery by Substitution {WF00014-WF00026}, LIES {WF00009, WF00022, WF00032, WF00035 & WF00125}, Falsity, Misstatement of Material Facts, Misrepresentation of Material Facts, Omissions and Non disclosure of Material Facts. {WF00001-WF00013 & See Exhibit 113 – the Property for Verification}

I. REBUTTAL & COUNTER TO PLAINTIFF’S DEMANDS THAT ALL COUNTERCLAIMS MUST BE DISMISSED BECAUSE DEFENDANT CANNOT PROVE A FRAUD CLAIM AGAINST WELLS FARGO

87. **Objection to Paragraph #1:** The Plaintiff has misstated the facts. All the Defendants claims are not based on Jim H. Austin, III’s “Fraudulent Appraisals”. {WF00001-WF00026} The Defendant’s counterclaims are based on the entirety of the transaction and how it was obtained in violation of State law, Federal law and the applicable provisions of the Uniform Commercial Code. See Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis. 550, 279 NW 79 (1938). (Holding that, “The contract is void if it is only in part connected with the illegal transaction and the promise single or entire.”) & {See Sections 16-13-10, 34-3-110, 36-3-305(a)(1), 37-23-40

(1), 40-58-30, 40-58-50, 40-58-70, 40-58-78 – SC Code of Laws, 15 USC §1681n(a), 18 USC § 656, §1001, §1005, §1007, §1014, §1344 & UCC §305(a)(1)}

88. **Objection to Paragraph #2:** The Defendant has already proven Wells Fargo's mortgage and note is a fraudulent loan transaction according to South Carolina's judicial standards, {See Pgs 12-14 in the Defendant's Legal Memorandum that is attached to this Pleading}

89. In South Carolina Courts, to establish a cause of action for fraud, the following elements must be proven by clear, cogent, and convincing evidence: "(1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Kahn Constr. Co. v. S.C. Nat'l Bank of Charleston*, 275 S.C. 381, 271 S.E.2d 414 (1980). The failure to prove any element of fraud or misrepresentation is fatal to the claim." *Id.*

90. As previously stated in this Pleading, the Defendant's loan should have been canceled and charged off years ago pursuant to *FDIC Policy Statement 5000* that clearly states in pertinent parts..., "-- fraudulent loans should be charged off within 90 days of discovery..."

91. The Plaintiff was put on notice in December of 2007 and continuously notified there-after that loan #0174072777 is a fraudulent loan and notification includes this Pleading.

92.. **Objection to Paragraph #3:** The Plaintiff is mischaracterizing the facts. The undisputed facts are the Defendant's admission that there was no communication verifies Wells Fargo dealt exclusively with the Broker and the Defendant was not a party to any negotiations or responsible for any representations that Wells Fargo relied upon and/or re-ceived from the Broker. The Defendant is responsible or liable for anything of which she had no personal knowledge.

93. Wells Fargo was duly notified by phone and in writing that its loan was brokered and delivered by an unlicensed broker and/or an unlicensed loan originator and Wells Fargo is **complicit** in maintaining and defending it. Any mortgage obtained in violation of South Carolina and / or Federal law renders it void and unenforceable. The Defendant is not the issue in this case.

94. The issue in this case is the illegality of Wells Fargo's "Security Interest" and "Security Instrument". Therefore, all the Defendant's claims and/or counterclaims are valid and remain triable issues or Dismissed with Prejudice and the Defendant awarded Punitive Damages.

95. "The general rule is that contracts for performance of illegal conduct are unenforceable and void. The Minnesota Court of Appeals addressed this, stating "the application of the doctrine of *in pari delicto* is appropriate for (1) preventing enforcement of a contract the performance of which is illegal.'" Brubaker v. Hi-Banks Resort Corp., 415 N.W.2d 680, 684 (Minn. App. 1987). The Supreme Court of Minnesota has held "anyone who engages in a fraudulent scheme forfeits all right to protection, either at law or in equity." State by Head v. AAMCO Automatic Transmissions, Inc., 293 Minn. 342, 347 (1972).

Rebuttal & Counter To: A. Defendant cannot recover against Wells Fargo because the Plaintiff did not participate in the alleged fraud.

96. **Objection to Paragraphs #4 & #5:** The Plaintiff is mischaracterizing the facts. Wells Fargo's personnel accepted, approved, funded and are actively defending a mortgage loan that was obtained in violation of South Carolina Law and Federal Law. Wells Fargo is **complicit** in these violations not only by misrepresenting the Broker – Golden Gate Mortgage - as a lender {WF000-74, WF00077, WF00084-WF00085} and studiously ignoring the Defendant statements of fact that the unlicensed Seller – Thomas Jacobs – brokered the loan with the acceptance and approval of Golden Gate Mortgage {File Exhibits 43-66}, Wells Fargo's personnel are **complicit** because they were duly notified and made aware of the fraudulent conduct and documentation of the Seller, the Appraiser and the Broker and had the ability to report it or cancel it and have failed to do so since 2007. {Filed Exhibits 4, 8-14, 43-66 & Exhibit 113 – the Property}

97 As such, Wells Fargo effectively perpetuated and is still perpetuating the Home Improvement and Mortgage Fraud, the Predatory Lending Scheme and the illegal Brokering activity of the Seller despite having the ability and legal authority to stop it.

98 As early as December 24, 2007, Kathryn R. Perkinson {WF00042} should have directly or indirectly stopped the transaction by contacting the appropriate authorities. Thus, Wells Fargo is a de facto accessory to the unlawful activity of the Seller, Broker and Appraiser; rather than, an innocent bystander. See Pinkerton v. United States, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed.

-33-1489 (1946) The legal “Doctrine of In Pari Delicto,” effectively bars Summary Judgment for the Plaintiff. As stated earlier in this pleading, Wells Fargo is equally guilty of “Fraud”.

99. "The doctrine of *in pari delicto* is '[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing.'" Myatt v. RHBT Fin. Corp., 370 S.C. 391, 395, 635 S.E.2d 545, 547 (Ct. App. 2006) (quoting *Black's Law Dictionary* 794 (7th ed. 1999)).

Rebuttal & Counter to:
Authority: Moseley v. All Things Possible, Inc

100. (c) The Plaintiff's argues Moseley v. All Things Possible Inc., 388 S.C. 31, 694 S.E.2d 43 (Ct. App. 2010). Moseley v. All Things Possible, Inc., does not apply to this case for several reasons. (1) Moseley was reversed because the truth was discoverable in the public records. (2) Moseley was not a brokered loan, (3) An unlicensed Seller was not involved in the transaction that was using the loan paperwork of a licensed broker, and finally, (4) There is no evidence in the Law of the Case, that Moseley was duly notified by a second or third party of misrepresentations, falsity, misstatements, deceit, deception, errors, omissions and/or non disclosure of material facts. (5) From reading the case file, no unauthorized credit report was used. (6) There are no false accusations by bank personnel falsely accusing the Moseley; and (7) No unlawful brokering, and outright lies and Moseley still proceeded with the purchase anyway; demonstrating willful intent and **complicity** to perpetuate the fraud after all the facts were known. Nor is there a forged and altered Contract of Sale. Wells Fargo was duly notified of all the foregoing facts and still would not cancel the loan. Therefore, Wells Fargo is **complicit** in the unlawful activities of the Broker, the Seller and the Appraiser. Moseley v. All Things Possible, Inc., fails as relevant case law and therefore Summary Judgment should be denied and this case sent to a jury or Dismissed with Prejudice and Punitive Damages awarded to the Defendant.

Rebuttal & Counter to:
Authority: Herrod v. First Republic Mortg. Corp.

101. The Plaintiff is also arguing Herrod v. First Republic Mortg. Corp., 625 S.E.2d 373 (W. Va. 2005). This authority fails as a relevant case for the same reasons as Moseley V. All Thins Possible. There is no evidence in the Law of the Case that remotely resembles **complicity** as evident in this case. Gordon v. Busbee, 397 S.C. 119, 723 S.E.2d 822 (Ct. App. 2012) fails as

relevant case law for the same reasons. Consequently, the Plaintiff has failed to present a reason for Summary Judgment based on precedent. Therefore, Summary Judgment must be denied and this case Dismissed with Prejudice and Punitive and Statutory Damages awarded to the Defendant due to the Plaintiff's **complicity** in numerous violations of State and Federal law.

Rebuttal & Counter To: B. Defendant cannot recover against Wells Fargo because she had actual knowledge of any alleged falsity in the appraisal and took no steps to protect herself.

102. **Objection to Paragraphs #6, #7 & #8:** The Plaintiff has misstated the facts. The Defendant became aware of the "Falsified 7-59 Appraisals on Saturday, January 12, 2008 and notified WFHM by phone on Monday, January 14, 2008 that the Appraisal was falsified and the Satisfaction Completion Certificate was an ABSOLUTE LIE. After no one from WFHM called her back as promised, On February 5, 2008, the Defendant faxed evidence of the "Falsified" Appraisals to WFHM and stated in plain English why the Certificate was an ABSOLUTE LIE. {See Filed Exhibit 4} On February 8, 2008, the Defendant's husband faxed the documented evidence of fraud, falsity and OUTRIGHT LIES on the Appraisals. {Filed Exhibits 8-14}

103. From the explanation given by the Defendant in 9 pages, it is absolutely clear to any person with reasonable intelligence that 423 Bayne Street was not repaired and the Appraisal and the Certificate were documentary scams. The Plaintiff's arguments and case law fails as a matter of law, reason, reality and precedent when compared to the facts in this case and will not support Summary Judgment for the Plaintiff. In addition, the Defendant's reliance on an Appraisal has no relationship to Wells Fargo **complicity** in violating Federal and State Law after notification.

104. Consequently, Summary Judgment must be denied and this case sent to a Jury or Dismissed with Prejudice and Punitive Damages awarded to the Defendant due to the Plaintiff's **complicity** in numerous violations of State and Federal law and the Uniform Commercial Code.

Rebuttal & Counter To: C. Defendant cannot recover against Wells Fargo because she admits that she did not rely on the appraisal.

105. **Objection to Paragraphs #9, #10 & #11:** The case law cited by the Plaintiff as authorities; Schnellmann v. Rottger and Robertson v. First Union Bank, do apply to this case. There are few; if any, cases in American jurisprudence that are as unique as Wells Fargo Bank N.A., v.

Dorothy Sistrunk. This is probably the only case in American legal history where bank employees not only ignored fraud, but actively defended the illegal brokering activities of an unlicensed broker and/or unlicensed loan originator, actively perpetuated his Home Improvement and Mortgage Fraud and his illegal Predatory Lending Scheme with full knowledge that the documents supporting their "Security Interest" and "Security Instrument" are ABSOLUTE SCAMS.

(a) In addition, because the "Security Interest", 423 Bayne Street, {Exhibit 113} is supported by.... not suspected.....but known falsified documentation..., the Bank's own employees are actively engaged in promoting Bank Fraud, Insurance Fraud and Securities Fraud on an unsuspecting public, unsuspecting investors and unsuspecting auditors and/or regulators.

(b) Based on the facts and evidence, Wells Fargo Bank, as a corporate entity, is actively defending its right to engage in illegal banking activity by whatever means necessary and without the restrictions of State laws. A foreclosure action is not only a convenient legal proceeding to hide a substandard loan, it is also a convenient legal tool to hide an; otherwise, "Toxic Asset", from public view and regulatory scrutiny. This case must be sent to a jury or Dismissed with Prejudice and Punitive and Statutory Damages awarded the Defendant to quell this kind of banking corruption and arrogance that is happening in full view of America's legal system.

(c) **It is important to note:** No one has refuted or denied the Defendant's or Witness statements of undisputed facts in 5 years.

II. REBUTTAL & COUNTER TO PLAINTIFF'S ASSERTION THAT FCRA CLAIMS MUST BE DISMISSED BECAUSE THERE IS NO PROVABLE PRIVATE RIGHT OF ACTION.

Rebuttal & Counter To: A. **There is no private right of action for any alleged transmission of purported inaccurate credit information.**

Rebuttal & Counter To: B. **Defendant lacks any evidence to prove a private right of action under 15 U.S.C. § 1681s-2(b).**

106. **Objections to Paragraphs #12, #13, #14, #15, #16 & #17:** The Plaintiff has misstated the facts and even admits § 1681n is an exception. The Defendant's Counterclaim is not based in whole or in part on the reporting of inaccurate credit information - § 1681s-2(a) or § 1681s-2(b). The Defendant's counterclaim is based on the documented evidence that Wells Fargo used an unauthorized credit report {WF00066-WF00073} that was obtained in violation of FCRA's §

1681n(a). Being an accessory and/or **complicit** in an illegal act before, during and after the fact carries the same legal penalty as committing the act. The Plaintiff was duly notified of the offense by phone and in writing and did absolutely nothing [WF00066-WF00073]. See Pinkerton v. United States, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed. 1489 (1946)

(a) The unauthorized report was used in whole or in part to approve the Plaintiff's loan that was obtained in violation of Federal and State law. The Seller never brought the paperwork for his authorization and the Seller did not bring Golden Gate's authorizing documents until November 26, 2007. {See WF00063-WF00064 & WF00074 & WF00065 for Wells Fargo}

15 USC § 1681n(a) states the following in pertinent parts., "Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of— (1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or (B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater; (2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court..."

(b) South Carolina's Courts hold and recognize that the rules of statutory construction must give way to the cardinal rule of legislative intent. Holley v. Mount Vernon Mills, Inc., 312 S.C. 320, 440 S.E.2d 373 (1994); Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993); Gardner v. Biggart, 308 S.C. 331, 417 S.E.2d 858 (1992); See also Bell Finance Co. v. S.C. Dept. Of Consumer Affairs, 297 S.C. 111, 374 S.E.2d 918 (Ct. App. 1988)(holding that penal statutes should not be subjected to strained interpretation in order to exclude from their operation cases which would otherwise be encompassed).

(c) The Plaintiff's argument and reliance on 15 USC 1681s-2a(1)(A), Chiang v. Verizon New England, Inc., 595 F.3d 26, 35 (1st Cir. 2010), 15 USC § 1681s-2(b) and DeAndrade v. Trans Union LLC, 523 F.3d 61, 68 (1st Cir. 2008) are misplaced and not relevant to Wells Fargo's **complicity** with the Seller's, Broker's or Appraiser's illegal activity and after being duly notified by phone and in writing of the Broker's violation dated 10/03/2007, {WF00066-WF00073} As stated previously, the Plaintiff did absolutely nothing. {Pinkerton Liability Rule}

(d) Again, the Plaintiff's failure to take meaningful action after being duly notified,

demonstrates **complicity** and support for the Broker's and Seller's violation of a Federal law. Therefore, based on the facts, the law and verifiable non compliance with the requirements of *15 USC § 1681n(a)*, the Defendant is statutorily entitled to recover any losses and punitive damages because of the Broker's, Seller's and Wells Fargo's unauthorized activity. Consequently, Summary Judgment is appropriately denied and this case sent to a Jury or Dismissed with Prejudice and Punitive Damages awarded to the Defendant.

III. REBUTTAL & COUNTER TO THE PLAINTIFF'S DEMAND THAT THE COUNTERCLAIM FOR UNJUST ENRICHMENT MUST BE DISMISSED BECAUSE WELLS FARGO IS ENTITLED TO COLLECT AMOUNTS OWED UNDER THE NOTE SIGNED BY THE DEFENDANT

107. **Objections to Paragraphs #18 & #19:** Wells Fargo is not entitled to collect anything. If the Defendant would have continued monthly payments, the Plaintiff would have been "Unjustly Enriched" for its illegally Brokered Loan, its Home Improvement and Mortgage Fraud and its illegal Predatory Scheme that involves the use and reliance upon "Falsified", "Forged" and "Altered" documents and an overly inflated property value. *{Defendant's [Exhibit 113 – the Property], Exhibit 115 & WF00003}* The Defendant owes nothing on the Plaintiff's note due to the Plaintiff's verifiable **complicity** in the numerous Federal and State violations of the Seller, Broker and Appraiser. In addition to maintaining "Unjust Enrichment" as an equity claim, the Defendant will also seek punitive damages. Summary Judgment must be denied and this case sent to a Jury or Dismissed with Prejudice and Punitive Damages awarded to the Defendant.

108. **Objections to Paragraphs #20 & #21:** The Plaintiff is misstating facts, mischaracterizing facts and going beyond the pale until his statement has approached the threshold of being an ABSOLUTE LIE. The undisputed facts in this case proves the Defendant never borrowed any money and Wells Fargo never paid the Defendant any money. *{WF00088}* In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from anyone that has stated or will state Wells Fargo paid the Defendant \$75,000.00.

(a) The \$75,000.00; that is referred to in this paragraph is the same \$75,000.00 that has already been addressed in paragraphs 63-77 on pages 26-29 in this Pleading. The \$75,000.00 was paid directly or indirectly to the Seller - Thomas Jacobs – *{WF00088}* in exchange for a "Security Interest" in 423 Bayne Street. Borrower refers to the liability under the "Security In-

strument” not the \$75,000.00 that was actually paid the Seller. *{See WF00042(A) & (B)}*

(b) The liability for the actual money paid; \$75,000.00 is with the Seller – Thomas Jacobs. If the lender – Wells Fargo – wants to recover its \$75,000.00 in actual dollars paid, the lender’s cause of action is with the Seller not the Defendant.

(c) The lender’s “Security Instrument” is based on the Seller’s representations, not the Defendant’s. If the Seller’s representations are based on fraud, misrepresentations of material facts, omissions and OUTRIGHT LIES, and if this were discovered to be the actual state of the representations on which Wells Fargo’s “Security Instrument” is based, the Defendant has no legal obligation to be bound by such an agreement signed or not. *{UCC § 305(a)(1)}*

(d) Wells Fargo’s denial of truth or failing to acknowledge truth does not mean the Truth relative to these matters does not exist. Therefore, it is the lender’s duty and responsibility to have legitimate and verifiable support for its “Security Instrument” that forms the basis for the obligation to pay. It is not the Defendant’s responsibility, it is the lender’s --- Wells Fargo’s --- responsibility to make sure, as far as humanly possible, the supporting systems; i.e., appraisals, documentation, contracts and agreements on which it’s “Security Instrument” rely are not based on fraudulent and/or misleading representations.

(e) The Borrower is not the mortgagor under the loan. The Borrower is the mortgagor under the “Security Instrument”. *{WF00042(C)}* Therefore, in order for the lender – Wells Fargo to have a legitimate right to recovery, the “Security Instrument” cannot be tainted with illegality or fraud. The Defendant is not responsible or has any liability for the representations Wells Fargo accepted from the Seller – Thomas Jacobs... or for Wells Fargo’s errors in judgment with respect to the \$75,000.00 Wells Fargo paid the Seller for the Seller’s “Security Interest”.

1) *Section 36-3-305 – SC Code of Laws* clearly states, in pertinent parts... “(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (1) a defense of the obligor based on---, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms----;” *{See also FACTS I - V on pages 6-9 in this Pleading}*

2) *Section 34-3-110 – SC Code of Laws* clearly states in pertinent parts; “A person knowingly may not execute, or attempt to execute, a scheme or artifice to:

defraud a federally chartered or insured financial institution; or obtain monies, funds, credits, assets, securities, or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretenses, representations, or promises. A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than five years, or both.”

3) *Section 16-13-10 – SC Code of Laws* states in relevant parts.... “(A) It is unlawful for a person to: (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing; (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing; (3) falsely make, forge, counterfeit, alter, change, deface, or erase; or cause or procure to be falsely made, forged, counterfeited, altered, changed, defaced, or erased any record or plat of land; or (4) willingly act or assist in any of the premises, with an intention to defraud any person. (B) A person who violates the provisions of this section is guilty of a: (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the amount of the forgery is ten thousand dollars or more;”

4) The Plaintiff has been **complicit** in the illegal activities of the Seller, the Broker and the Appraiser. In all the case law cited by the Plaintiff, there is not a single precedent that demonstrated **complicity** after being duly notified, given verifiable documentation of falsity and after all the facts were known.. **Complicity** in criminal or civil law refers to a person/s or an entity/ies that are legally accountable, or liable for a criminal offense or tort, based upon the behavior of another. **Complicity** may arise in the following situations: --- (3) having a legal duty to prevent the commission of the offense and fails to make an effort he is legally required to make.” The Supreme Court of Minnesota has held “anyone who engages in a fraudulent scheme forfeits all right to protection, either at law or in equity.” *State by Head v. AAMCO Automatic Transmissions, Inc.*, 293 Minn. 342, 347 (1972).

109. “Restitution is a remedy designed to prevent unjust enrichment.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003); *See also* Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the Plaintiff has been unjustly enriched at the expense of the Defendant. “A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.” *Ellis v. Smith Grading and Paving, Inc.*, 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988). “The legal issues are determined by a jury while equitable issues are for the judge.” *Floyd v. Floyd*, 306 S.C. 376, 379, 412 S.E.2d 397, 398-99 (1991).

110. Therefore, based on the facts, the law and the Plaintiff's verifiable **complicity** in the illegal activity of the Seller, the Broker and the Appraiser {See the *Pinkerton Liability Rule*}, the Defendant is entitled to any "Unjust Enrichment" deemed appropriate or any restitution deemed appropriate by the court or by a jury verdict. After being duly notified by phone and in writing with extensive documentation of falsity, the Plaintiff failed to take any meaningful action, other than to perpetuate the illegal brokering activities of the Seller, actively defend his illegal Predatory Lending Scheme and his illegal Home Improvement and Mortgage Fraud; while actively engaging in Bank Fraud, Securities Fraud and Insurance Fraud of its own. Consequently, The Plaintiff's Motion for Summary Judgment is appropriately denied and this case sent to a Jury or Dismissed with Prejudice and Punitive Damages awarded to the Defendant.

IV. REBUTTAL & COUNTER TO THE PLAINTIFF'S DEMAND THAT THE COUNTERCLAIM FOR NEGLIGENCE AND GROSS NEGLIGENCE FAILS AS A MATTER OF LAW BECAUSE (A) WELLS FARGO OWES NO DUTY TO DEFENDANT AND (B) WELLS FARGO'S RELIANCE ON THE APPRAISAL DID NOT CAUSE ANY DAMAGES

History

111. Before addressing the Plaintiff's demands, a brief history is necessary. When the Defendant filed her *Answer to Complaint* on July 18, 2008, Gross & Inherent Negligence were the Defendant's 4th Affirmative Defense and not a Counterclaim. (See *Answer Pg. 13*)

(a) When the Defendant filed her *First Amendment to Answer to Complaint with Counterclaims*, Gross and Inherent Negligence were added to Counterclaims on July 31, 2008 (See 1st *Amendment to Answer Pg. 48*)

"Gross negligence is defined as 'the failure to exercise slight care.'" *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 71, 651 S.E.2d 305, 309 (2007) (quoting *Steinke v. South Carolina Dep't of Labor, Licensing & Reg.*, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999)). "It has also been defined as 'the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.'" *Id.* "Gross negligence 'is a relative term, and means the absence of care that is necessary under the circumstances.'" *Id.* Punitive damages are appropriate where there is evidence the tortfeasor's conduct was reckless, willful, or wanton. *Cartee v. Lesley*, 290 .

(b) The word "Inherent" was meant to convey "Self-Inflicted" from within. Not having

access to a Black's Law Dictionary, the Defendant used Webster's Collegiate, 10th Edition and decided on the word "Inherent". Later, with access to a Black's Law Dictionary, the Defendant discovered the word that best conveyed "Self-Inflicted" was "Contributory".

(c) Before the Defendant could replace and use the words "Contributory Negligence", the Defendant discovered South Carolina abolished "Contributory Negligence" and replaced it with "Comparative Negligence" and/or "Comparative Fault".

1) "In 1991, South Carolina abolished the doctrine of contributory negligence and adopted comparative negligence as its tort standard in Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991). In Nelson, this Court stated that, under comparative negligence "a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant." Id. at 245, 399 S.E.2d at 784. "The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his or her negligence."

2) "South Carolina's system is essentially a comparative fault system, but comparative negligence is the term most often used in this state, and we recognize the terms as equivalent. Further, although there is a divergence of opinion in courts that have considered the question, we hold the sounder reasoning supports the determination that comparative negligence encompasses the comparison of ordinary negligence with heightened forms of misconduct such as recklessness, willfulness, and wantonness." {See Annotation, Application of Comparative Negligence in Action Based on Gross Negligence, Recklessness, or the Like, 10 A.L.R.4th 946 (1981 & Supp. 2010); 57A Am. Jur. 2d Negligence § 243 (2004) (stating reckless, willful, or wanton conduct "constitute merely a higher level of negligence" and, although the concepts are technically distinct, they "can be thought of as extensions of the law of negligence" (citing Stockman v. Marlowe, 271 S.C. 334, 247 S.E.2d 340 (1978))

112. **Objections to Paragraph #22:** The Plaintiff is mischaracterizing the Defendant's Argument. The Defendant's Argument is not based on any duty Wells Fargo owes the Defendant. The Defendant's Argument is based on the duty Wells Fargo owes to itself to avoid being **complicit** in the illegal activities of Sellers, Brokers and Appraisers or anyone else's scheme and/or artifice to defraud a banking institution and this includes **complicity** by its own employees. Therefore, any loss Wells Fargo has incurred is due to the negligence of its own employees. The Bank has a legitimate cause of action against them and not the Defendant; especially, after being duly notified by phone and in writing and presented the documented evidence of the fraud. Based on the facts and the evidence, in addition to a cause of action against the Seller, Appraiser and the Broker, a cause of action also exists against its own underwriters for negligence. {*Exhibits 4 & 8-14*}

113. By law, "A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives." *Travelers Ins. v. Roof Doctor*, 325 S.C. 614, 615-616, 481 S.E.2d 451, 452 (Ct. App. 1997) Wells Fargo Bank's representatives, officers and employees have a duty and responsibility to protect Wells Fargo's assets and fully disclose information relative to its home loans and mortgage backed securities to its investors and/or regulatory authorities. Failing to disclose "Fraudulent Loans" is a breach of Fiduciary duty and responsibility to its own Board of Directors this is a special relationship mandated by law. {WF00117}

114. Therefore, based on these facts, the evidence and legal precedent, the Defendant's Argument is based on the "Contributory", "Gross" or "Comparative Negligence" of Wells Fargo's employees and underwriting department. The Defendant is not responsible or liable for any loss the Plaintiff has incurred. The Plaintiff has no legitimate cause of action against the Defendant for its fraudulent loan. A legitimate cause of action exists against the Seller, Broker and Appraiser and its own employees because they were duly notified and failed to act responsibly.

115. The Plaintiff's filed Exhibit [WF00130] is the most important response from Janet Frotscher. This letter is dated June 17, 2008 and deserves special consideration. This letter arrived after Wells Fargo's Loss Mitigation Department instructed the Defendant to resend and refax the information about her fraudulent loan (#708-0174072777) to Des Moines, Iowa in order to avoid foreclosure. If the mortgage and note were suspected of relying on falsified documents, the loan is to be cancelled and any known fraudulent loan is to be cancelled. This was the policy in May of 2008. {Perhaps the Court can encourage an attorney or someone else to have some courage and guts to call Wells Fargo for a copy of... or clarification relative to its current policy on "Fraudulent Loans" and it's policy in May of 2008 for known "Fraudulent Loans".}

Rebuttal & Counter To: A. The negligence and gross negligence counterclaims fail because Wells Fargo owes no duty to the Defendant.

116. **Response to Paragraphs #23 & #24:** Every cited authority in paragraphs #23 & #24, supports the Defendant's Argument, not the Plaintiff's. It would be madness, insanity and legal suicide to admit and/or assume an individual and/or a corporate entity does not have a moral, legal and a fiduciary obligation and responsibility to protect himself/herself/itself from the ne-

farious criminal and/or illegal activities of others, and this includes members of his/her or its own family, staff, executives, officers, agents and/or employees. These are all special relationships as defined by statute, contract, birth and just plain "Common Sense" reasoning.

(a) The Plaintiff's citation in Andrade v. Johnson, 365 S.C. 238, 245, 588 S.E.2d 588, 592 (2003) supports the Defendant's Argument by stating, "[i]t is essential to liability for negligence that the parties have some relationship recognized by law to support the duty owed to the tortfeasor.")

(b) The Plaintiff's remaining citations, Regions Bank v. Schmauch, 354 S.C. 648, 670-71, 582, S.E.2d 432, 443 (Ct. App. 2003); Parker v. Columbia Bank, 604 A.2d 521, 535 (Md. Ct. Spec. App. 1992) ("[A] lender owes no duty of care to its borrower.") Baskins v. Mortgage & Trust, Inc., 837 S.W.2d 743, 747-48 (Tex. App. 1992) ("Regarding [lender's] liability for its own negligence, if any, the relationship between a borrower and its lender generally does not create a fiduciary duty or impose a duty of good faith and fair dealing.") and Commercial Nat'l Bank v. Audubon Meadow P'ship, 566 So. 2d 1136, 1140 (La. Ct. App. 1990) ("[W]e find no source of a duty in tort which would impose liability upon a bank.") clearly support the Defendant's Argument that the Bank has no obligation to the Defendant and the Defendant is not responsible or liable for any losses incurred by Wells Fargo due to its **complicity** and negligence relative to the illegal brokering activity of the Seller, Broker and the Appraiser.

(c) Finally, in Nelson v. Production Credit Ass'n of the Midlands, 930 F.2d 599, 605 (8th Cir. 1991) (The Court held the following, "Court would not impose a duty on a lender to use reasonable care in making a loan.")

(d) Consequently, the Plaintiff's demands that the Defendant be held responsible for Wells Fargo's negligence and irresponsible lending behavior fails as a matter of law. There is no duty imposed on a bank and/or lender to use reasonable care in making loans.

(e) Any losses Wells Fargo has incurred, including any Punitive Damages, are due to its own negligence and errors in judgment. Accordingly, the Plaintiff's demands fail as a matter of law. Therefore, Summary Judgment is appropriately denied and this case sent to a Jury or Dismissed with Prejudice and Punitive Damages awarded to the Defendant for Wells Fargo's **complicity** in violating State and Federal law after being duly notified of the illegal brokering activities of the Seller, Broker and Appraiser....and after all the facts were known. {See Filed Exhibits

1, 4, 8-14, 37, 39, 43-66, 68-70, 81, 113 – the Property, 166-173 & WF00120-WF00130}

Rebuttal & Counter To: B. Any reliance on the appraisal for 423 Bayne Street cannot be the cause of any damages alleged.

117. **Objections to Paragraphs #25:** The Plaintiff's attempt to shift burden and blame to the Defendant fails because of the evidence and the facts. On the contrary, the Defendant is not responsible or has any liability for any proximate cause of injury to Wells Fargo. Wells Fargo's injuries are "Self-Inflicted" and are the direct result of relying upon the representations and/or statements from the Broker, Seller and Appraiser and being **complicit** in the illegal brokering activity of the Seller after all the facts were known.

(a) Wells Fargo has already admitted, relying in whole or in part on the Appraisal, Satisfaction Completion Certificate, the Contract of Sale, the Application and the Credit Report to approve loan #708-0174072777. As you can plainly see, Wells Fargo's underwriters did not rely on any representations from the Defendant for its lending decision. **(Income or employment)**

- 1) The 7-59 **Appraisals** are Forgeries by Substitution and Falsified. {WF0001-WF00026} and belong to the Seller. {WF00027}
- 2) The 7-59 **Satisfaction Completion Certificate** is an OUTRIGHT LIE and Scam. {WF00009 & WF00022} The Seller did not have a "Building Permit".
- 3) The **Contract of Sale** is "Altered" and "Forged" {WF00028-WF00029 & Exhibits 140-141}; either by Thomas Jacobs, or someone at WFHM.
- 4) The **Credit Report** is unauthorized and a violation of FCRA § 1681n(a) {WF00066-WF00073 - See WF00074 for Verification} and.....
- 5) The Broker LIED on the **Application** to conceal the illegal brokering activity of the Seller. {WF00032, WF00035, call SCDCA for verification the Seller was not employed by the Broker & See the Affidavit of George M. Sistrunk}

(b) The information in this section is dispositive for paragraphs #26 & #27 and need not be discussed. In addition, the Plaintiff has not filed any interrogatories, depositions, admissions, affidavits or presented any testimony from anyone; including Wells Fargo, that has denied or refuted any statement/s by George M. Sistrunk or Dorothy Sistrunk in five (5) years. If any statement/s or even documents were to suddenly appear, the Court must assume collusion to present false testimony and/or OUTRIGHT LIES to protect the illegal activities of the Seller, the Broker, the Appraiser and someone at Wells Fargo after this Pleading is date stamped and filed.

(c) In Nelson v. Production Credit Ass'n of the Midlands, 930 F.2d 599, 605 (8th Cir. 1991) (The Court held the following, "Court would not impose a duty on a lender to use

reasonable care in making a loan.”). Therefore, it has been firmly established by “Stare Decisis” that courts cannot impose a duty on banks or any other lender to use reasonable care when making a loan.

(d) It has also been firmly established by the evidence and the facts that Wells Fargo did not rely on any representations from the Defendant in its lending decision. Therefore, the Defendant has no liability or responsibility for the Plaintiff’s fraudulent loan, note and mortgage that came into existence as a direct result of the illegal brokering activity of the Seller, with help from the Broker, the Appraiser and the **complicity** of Wells Fargo’s own personnel.

(e) The evidence is clear, the facts are clear, Wells Fargo’s personnel were negligent in their responsibilities and duties and reckless in their behavior when they turned a blind eye to the illegal brokering activity of the Seller, with help from the Broker and the Appraiser. Wells Fargo’s personnel bear the bulk of the blame, burden and responsibility; if not all of the blame, burden and responsibility for any losses Wells Fargo has incurred.... and not the Defendant.

1) “[N]egligence is the failure to use due care,” i.e., “that degree of care which a person of ordinary prudence and reason would exercise under the same circumstances.” *Hart v. Doe*, 261 S.C. 116, 122, 198 S.E.2d 526, 529 (1973). It is often referred to as either ordinary negligence or simple negligence.”

2) “Recklessness implies the doing of a negligent act knowingly; it is a conscious failure to exercise due care.” *Yaun v. Baldridge*, 243 S.C. 414, 419, 134 S.E.2d 248, 251 (1964) (citation omitted). “If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning—the conscious failure to exercise due care.” *Id.*; see also *Rogers v. Florence Printing Co.*, 233 S.C. 567, 577, 106 S.E.2d 258, 263 (1958) (“The test by which a tort is to be characterized as reckless, wil[l]ful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff’s rights.”). “The element distinguishing actionable negligence from willful tort is inadvertence.” *Rogers*, 233 S.C. at 578, 106 S.E.2d at 264.

“It is well settled that negligence may be so gross as to amount to recklessness, and when it does, it ceases to be mere negligence and assumes very much the nature of willfulness.” *Jeffers v. Hardeman*, 231 S.C. 578, 582-83, 99 S.E.2d 402, 404 (1957) (quoting *Hicks v. McCandlish*, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952)).

118. **Response to Paragraph #28:** Wells Fargo finally admitted in the third sentence in paragraph #28 on page 19 in the Plaintiff’s legal brief, exactly what the Defendant has been trying to

get Wells Fargo to see and admit since December 24, 2007. "Wells Fargo could not have foreseen that reliance on the [7-59 added] appraisal used to underwrite the Defendant's loan could have caused any damages." {Exhibit 113 – the Property & WF00001-WF00026}

(a) Even if not overtly stated, Wells Fargo has tacitly admitted, it is a victim of "*Fraud in Factum and/or Fraud in the Inducement*" that occurred prior to December 21, 2007 and justifiably relied on the representations of the Broker, Seller and the Appraiser. As a direct result of this admission, Summary Judgment is denied and this case can be Dismissed with Prejudice in order for Wells Fargo to finally do the right thing and pursue the Seller, Broker and Appraiser.

(b) This admission is now documented and filed in the Court of Common Pleas as evidence. The Defendant has no liability or responsibility for the Plaintiff's fraudulent loan, note and mortgage that came into existence as a direct result of the illegal brokering activity of the Seller, with help from the Broker, the Appraiser and the **complicity** of Wells Fargo's personnel.

V. REBUTTAL & COUNTER TO COUNTERCLAIMS FOR (1) FAILURE TO EXERCISE DUE DILIGENCE (2) FAILURE TO EXERCISE FIDUCIARY RESPONSIBILITY, AND (3) FAILURE TO SAFEGUARD FINANCIAL INTEREST OF CUSTOMERS MUST BE DISMISSED BECAUSE WELLS FARGO OWES NO FIDUCIARY TO DEFENDANT.

119. **Objections to Paragraphs #29 & #30:** Again, the Plaintiff is mischaracterizing the Defendant's Argument. The Defendant's Argument is not based on any fiduciary duty Wells Fargo owes the Defendant. The Defendant's Argument is based on the fiduciary duty Wells Fargo owes to itself, so it can avoid being **complicit** in the illegal activities of Sellers, Brokers and Appraisers or anyone else's scheme and/or artifice to defraud a banking institution and this includes **complicity** by its own employees. This must be repeated, rather than incorporated by reference. "A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives." *Travelers Ins. v. Roof Doctor*, 325 S.C. 614, 615-616, 481 S.E.2d 451, 452 (Ct. App. 1997) Wells Fargo Bank's representatives, officers and employees have a duty and responsibility to protect Wells Fargo's assets and fully disclose information relative to its home loans and mortgage backed securities to its investors and/or regulatory authorities. Failure to disclose "Fraudulent Loans" are packaged into mortgage backed securities is a breach of Fiduciary duty and responsibility to its own Board of Directors. This is a special relationship mandated by law,

even if the mandatory reporting requirements of the OCC, the FDIC, the Federal Reserve Board of Governors and the Securities Exchange Commission are excluded. { *Exhibit WF00117* }

120. **Response to Paragraphs #31 & #32:** It has already been firmly established in *Nelson v. Production Credit Ass'n of the Midlands*, 930 F.2d 599, 605 (8th Cir. 1991) and by “Stare Decisis” that courts cannot impose a duty on banks or any other lender to use reasonable care when making a loan. Therefore, Wells Fargo’s employees, staff, officers and/or executives are liable and responsible for any losses they incur if their lending behavior becomes reckless and/or inappropriate. Neither the Defendant nor the Courts can make a bank lend responsibly. Nor can the Courts impose a duty on the Defendant to make a bank or lender act responsibly.

(a) In sentence #3, paragraph #31, citing *Regions*, 354 S.C. at 671, 582 S.E.2d at 444, the Plaintiff admits, “a bank may be held to a fiduciary duty if it undertakes to advise a depositor as part of the services the bank offers. Wells Fargo not only advises, Wells Fargo offers investment instruments as a service to its depositors and offers itself as an investment instrument on the New York Stock Exchange. {**Judicial Notice Requested** for Paragraph 120(a) Sentence #2}

(b) Therefore, based on the facts, the evidence and legal precedent, the Defendant’s counterclaim that Wells Fargo’s personnel violated their Fiduciary responsibility to its Board of Directors, failed to exercise due diligence and failed to safeguard the interest of its investor-customer or client by maintaining a fraudulent loan on its books and/or packaging that same fraudulent loan in a mortgage back security, with full knowledge and the documented evidence that the value is inflated and based on misrepresentations, misstatements, omissions and non disclosure of material facts and OUTRIGHT LIES, by legal definition.. this is Securities Fraud and Bank Fraud.

1) “We hold that, under our comparative negligence system, all forms of conduct amounting to negligence in any form, including, but not limited to, ordinary negligence, gross negligence, and reckless, willful, or wanton conduct, may be compared to and offset by any conduct that falls short of conduct intended to cause injury or damage. By this method, each party's relative fault in causing the plaintiff's injury will be given due consideration. A trial court should instruct the jury on the definitions of these various terms, in addition to ordinary negligence, when so requested by a party, even if punitive damages are not at issue.

2) Due diligence is the “diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.” “Diligence looks not to what the litigant actually discovered, but

what he or she could have discovered.”

(c) The Defendant being a customer by virtue of the “Security Instrument” for 423 Bayne Street, knows this for a fact because she lives in 423 Bayne Street and knows for a fact that the “Security Instrument” for 423 Bayne Street is based on falsity, inflated value, misrepresentation of material facts and OUTRIGHT LIES. Accordingly, the Plaintiff’s demands fail as a matter of law because of the evidence and the facts. {Judicial Notice Requested for Paragraph 120(c)}

(d) In addition, the Defendant’s counterclaims verify, the Defendant is not responsible or liable for any loss Wells Fargo has incurred because of its own negligence, reckless and inappropriate lending behavior and Wells Fargo’s **complicity** in the violations of Federal and State law and **complicity** in the illegal brokering activities of the Seller with help from the Appraiser, the Broker and Wells Fargo’s own employees. {See the Pinkerton Liability Rule, Exhibits 1, 4, 8-14, 39, 43-66, Exhibit 113 –the Property, 166-173 & WF00120-WF00130}

“in negligence cases, the duty is always the same--to conform to the legal standard of reasonable conduct in the light of the apparent risk.” Huggins v. Citibank, N.A., 355 S.C. 329, 333, 585 S.E.2d 275, 277 (2003). “What the defendant must do, or must not do, is a question of the standard of conduct required to satisfy the duty.” *Id.* “An affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.” Carson v. Adgar, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1997).

(e) Even if not overtly stated, Wells Fargo has tacitly admitted in its legal brief in sentence #2, in paragraph #1 on page 19, it is a victim of “*Fraud in Factum and/or Fraud in the Inducement*” that occurred prior to December 21, 2007 and justifiably relied on the representations of the Broker, Seller and the Appraiser by admitting, “Wells Fargo could not have foreseen that reliance on the appraisal used to underwrite Defendant’s loan could have caused any damages.” Even though referring to the Defendant, as a direct result of this admission in sentence #2, paragraph #1 on page 19, Summary Judgment must be denied and this case Dismissed with Prejudice and the Defendant awarded Punitive Damages so Wells Fargo can finally do the right thing and pursue the Seller, Broker and Appraiser to recover the losses it has incurred.

(f) The Defendant has no liability or responsibility for the Plaintiff’s fraudulent loan, note and mortgage that came into existence as a direct result of the illegal brokering activity of the Seller in violation of State and Federal law, with help from the Broker, the Appraiser and the

negligence of Wells Fargo's own personnel. {WF00001- WF00137}

VI. REBUTTAL & COUNTER TO DEFENDANT'S COUNTERCLAIM FOR EMOTIONAL DISTRESS FAILS AS A MATTER LAW BECAUSE SOUTH CAROLINA LAW DOES NOT ALLOW THE RECOVERY OF DAMAGES FOR EMOTIONAL DISTRESS FOR CASES THAT ONLY INVOLVE ECONOMIC LOSS.

121. **Objections to Paragraph #33**: The Plaintiff has misstated and mischaracterized the facts. All the Defendant's counterclaims are not based on the alleged fraudulent acts of the seller and appraiser. This must be repeated, rather than incorporated by reference. The Defendant's Claims, Counterclaims and Affirmative Defenses are based on...

A. THE VERIFIABLE COMPLICITY, SUPPORT AND APPROVAL OF THE SELLER'S ILLEGAL LOAN BROKERING ACTIVITY BY THE APPRAISER, THE BROKER AND THE PLAINTIFF, WELLS FARGO BANK, N. A., IN VIOLATION OF STATE AND FEDERAL LAW AND THE UNIFORM COMMERCIAL CODE.

B. THE PLAINTIFF'S MORTGAGE LOAN WAS BROKERED ENTIRELY BY THE SELLER IN VIOLATION OF STATE AND FEDERAL LAW, WITH HELP FROM THE BROKER, THE APPRAISER AND SOMEONE AT WELLS FARGO BANK'S SUBSIDIARY - WFHM. Note: Only an investigation can reveal who this person is or was.

C. WELLS FARGO BANK, N.A. IS COMPLICIT IN THE ACCEPTANCE, PROCESSING, APPROVING, FUNDING, MAINTAINING AND ACTIVELY DEFENDING THE SELLER'S ILLEGAL HOME IMPROVEMENT AND MORTGAGE FRAUD, HIS ILLEGAL PREDATORY LENDING SCHEME AND HIS ILLEGALLY BROKERED LOAN #708-0174072777.

D. ON TWO SEPARATE OCCASSIONS IN DECEMBER OF 2007 AND IN MAY OF 2008; FOLLOWING THE ADVICE OF WELLS FARGO'S PERSONNEL, THE DEFENDANT WAS INSTRUCTED TO MAIL OR FAX EVIDENCE OF THE FRAUD TO DES MOINES, IOWA - 1-866-278-1179 OR TO: POB 10335, DES MOINES, IA 50306. AFTER FAXING THE INFORMATION AND LETTER, THE LOAN WAS NOT CANCELLED BY THE SAME PERSON - JANET FROTSCHER. {WF00125 FOR DECEMBER OF 2007 & WF00130 FOR MAY OF 2008}

E. JANET FROTSCHER HAS CONSISTENTLY MISSTATED THE FACTS BY ACCUSING THE DEFENDANT OF BEING THE PERSON THAT ORDERED APPRAISALS, MET WITH THE APPRAISER AND CONTACTED THE BROKER. NONE OF HER INFORMATION IS TRUE. IT IS BASED ON SPECULATION AND THE GOLDEN GATE DOCUMENTS THE SELLER PROVIDED FOR FUNDING A HOME LOAN..... NOT BROKERING..... A HOME LOAN.

NOTE: In 5 years no one has presented any evidence, documentation or testimony to refute or deny any statement made by Dorothy Sistrunk relative to the undisputed facts relative to loan #708-017472777, including how the brokering agreement and all related paperwork were signed by fraudulent inducement.

F. AS FAR AS THE DEFENDANT IS CONCERNED, BASED ON STATEMENTS BY THOMAS JACOBS, WELLS FARGO BANK, N.A. IS A BUSINESS ASSOCIATE OF THOMAS JACOBS. THE DEFENDANT'S LOAN WAS GOING TO BE HANDLED BY HIS FRIENDS AND BUSINESS ASSOCIATES. THE DEFENDANT HAS NO REASON TO BELIEVE THIS IS NOT TRUE.

122. The Defendant's counterclaim for stress is not based on any purported economic loss arising from any loan closing. None of the case law cited is relevant to the actual undisputed facts that have yet to be tried by a jury. The undisputed facts are, shortly after this foreclosure action began the Defendant began to lose her hair and develop body rashes. Dr. Yunis, the attending physician, said it was caused by some stress in her life. He prescribed Triamcinolone Acetonide Cream USP for the rashes and to date there is no remedy for the hair loss.

123. **Objections to Paragraph #34:** The Plaintiff has misstated and mischaracterized the facts. The undisputed facts are the Defendant's Counterclaim is not entirely based on the contents to any appraisal and the Defendant does not need to plead bystander liability when her physical condition is real, even though the hair loss and rashes are not as frequent.

(a) There are only three elements the Defendant must prove for a finding of negligent infliction of emotional distress:

- 1) The Plaintiff engaged in conduct that the Plaintiff should have realized involved an unreasonable risk of causing emotional distress and that that distress, if it were caused, might result in illness;
- 2) The Plaintiff's conduct caused the emotional distress to the Defendant; and...
- 3) The distress was of such a nature as might result in an illness.

(b) As to the first element, the Plaintiff engaged in the conduct of misstating facts and false accusations {WF00125} that the Plaintiff should have realized involved an unreasonable risk of causing emotional distress and that that distress, if it were caused, might result in illness.

(c) As to the second element, the Defendant need not prove the Plaintiff intended to cause any harm or distress to the Defendant by LIES, Persecution and Misstatements only that the Plaintiff should have known that it was likely that a reasonable person under the circumstances would be distressed by the Plaintiff's conduct and that.. that distress might result in illness. Damages may be recovered for serious emotional distress unaccompanied by physical injury: "We agree that the unqualified requirement of physical injury is no longer justifiable." (*Molien, supra*, 27 Cal.3d at p. 928.)

(d) As to the third element, the Defendant need only prove her distress was reasonable in light of the Plaintiff's conduct. Larobina v. McDonald, 274 Conn. 394, 410 (2005); Carrol v. Allstate Ins. Co., 262 Conn. 433, 446-47 (2003); Restatement (Second) of Torts, § 313 (2007).

(e) Since the Defendant's counterclaim is based on the Plaintiff's conduct and not economic loss, this matter has yet to be decided by a Jury. South Carolina's Constitution provides "[t]he right of trial by jury shall be preserved inviolate." S.C. Const. art. I, § 14. "The right to a trial by jury is guaranteed in every case in which the right to a jury was secured at the time of the adoption of the Constitution in 1868." Mims Amusement Co., 366 S.C. at 149, 621 S.E.2d at 348 (citation omitted)

(f) The Plaintiff has persecuted the Defendant for the Seller's illegal activity that she has been trying to stop for over five (5) years. Janet Frotscher has consistently misrepresented facts and prevented cancellation of the mortgage by her unremitting belief in her own LIES and Misstatement of Material Facts. {WF00120 - Stopped the December 2007 Cancellation; WF00130 - Stopped the May 2008 Cancellation; See WF00125}

(g) Finally, Wells Fargo's admission in sentence #2, paragraph #1 on page 19 in its Motion for Summary Judgment bars any Summary Judgment in favor of Wells Fargo and this case can be Dismissed with Prejudice and the Defendant awarded Punitive and Statutory Damages. Wells Fargo can finally pursue the Seller, Broker and Appraiser. Based on the evidence, the facts and the Defendant's right to a trial by Jury on all triable issues, the Defendant's counterclaim for *Negligent Infliction of Emotional Stress* must be tried separately.

VII. REBUTTAL & COUNTER TO DEFENDANT'S MORTGAGE LOAN CANNOT BE RESCINDED BECAUSE DEFENDANT HAS NO RIGHT TO RESCIND UNDER TILA.

124. **Objections to Paragraph #35:** The Defendant concedes her lack of legal experience, training and choice of words may be the reason for the Plaintiff's confusion. In 2008, the Defendant relied exclusively on Webster's 10th Edition for vocabulary selection. Therefore, the Plaintiff may not be misstating facts in this particular instance, it might be a misunderstanding of the meaning the Defendant is conveying. There is no need to discuss the Plaintiff's citations because the Defendant is not referring to herself. The Defendant is referring to Wells Fargo. Wells Fargo must rescind or cancel loan #0174072777 before it is sold, transferred or conveyed to another

person or entity because of verifiable fraud. Expressly stated or not, the Truth in Lending Act (TILA) mandates accurate and complete disclosure relative to any credit transaction. This is also a requirement of the Compliance Agreement. {See Filed Exhibit WF00117}

The Compliance Agreement clearly states in pertinent parts..., “---to sell, convey, seek guaranty or market said loan to any entity including but not limited to any investor, Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) Federal Home Loan Mortgage Corporation, Department of Housing and Urban Development, Veterans Administration or any Municipal Bonding Authority ---- in order to assure that **the loan documentation** executed this date **will conform and be acceptable to the marketplace in the instance of transfer, sale or conveyance** by the lender of its interest in and to said loan documentation...” [Boldness added for emphasis] {Exhibit WF00117}

(a) The key words and phrases are: (1) the loan documentation; (2) be acceptable to the marketplace in the instance of transfer, sale or conveyance; (3) to any entity; (4) identification of entities - including some major institutional investors. The loan documentation includes the documents used to approve and close the loan: (1) the appraisal, (2) contract of sale, (3) satisfaction completion certificate, (4) loan application; (5) the credit report. {See **FACTS I - V** on Pgs. 6-9, Paragraph 114 on Pg. 43 in this Pleading & Exhibit 113 – the Property}

(b) The Defendant’s income and employment history are immaterial and ancillary. If the credit report failed, income, employment, a driver’s license ID photo and a Taxpayer ID number are irrelevant – the loan is dead. {File Exhibits WF00061-WF00062, WF00113 & WF00118}

(c) The Plaintiff’s Security Fraud would be massive if loan #0174072777 were sold separately or packaged in mortgage backed securities to investors worldwide. The Defendant has consistently demanded Wells Fargo verify the loan documentation so that the “Fraud” can be exposed and proven and this loan rescinded or cancelled before it is sold, transferred, conveyed or sent into the marketplace. {See Defendant’s Exhibits 1-246 & Exhibit 113 – the Property}

(d) Millions of people would be impacted if this happened; especially, veterans and government employees at every level. Janet Frotscher has consistently refused to accept the truth or validate the Seller’s, Broker’s or Appraiser’s information, statement/s and/or representations. Even in this court proceeding, Wells Fargo’s attorneys have refused to speak the undisputed truth or discover and/or acknowledge any undisputed truth relative to loan #0174072777. {See Well Fargo’s Reply to the Defendant’s Request for Discovery & Admissions}.

(e) Loan #0174072777 should not be a security in anyone's retirement fund or IRA. No security, mortgage and/or note can be based on falsified, forged and altered documentation. This is not acceptable to the marketplace; and especially, one that was obtained in violation of Federal and State law. In addition, under the terms of the Compliance Agreement the Defendant is only required to adjust for errors and omissions in any and all closing documents. The Defendant is not required to adjust for misrepresentations and/or misstatements of material facts, falsity, forgery, deceit, deception and/or OUTRIGHT LIES. {WF00001-WF00038 & WF00063-WF00074}

(f) Under the terms of the Compliance Agreement, the Defendant must cooperate with anyone acting on behalf of the lender in order to assure **the loan documentation** that was executed **conforms and be acceptable to the marketplace in the instance of transfer, sale or conveyance** to any entity including but not limited to any investor, Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) Federal Home Loan Mortgage Corporation, Department of Housing and Urban Development, Veterans Administration or any Municipal Bonding Authority. The Burden of Proof and adjustments for errors and omissions is on the Plaintiff and anyone representing the Plaintiff or acting on behalf of the Plaintiff. {See Filed Exhibit WF00117}

(g) Wells Fargo [reps.] have a Fiduciary responsibility to tell investors the truth about its securities. (Regions, 354 S.C. at 671, 582 S.E.2d at 444) (*Holding that, "a bank may be held to a fiduciary duty if it undertakes to advise a depositor as part of the services the bank offers."*)

(h) In addition; if Wells Fargo fails to disclose the undisputed truth and nothing but the truth relative to its mortgage backed securities and/or "Security Instruments", Wells Fargo is violating mandated disclosure requirements of the Securities and Exchange Commission relative to securities. {**Judicial Notice Requested** for Paragraph 124(h) Pursuant to Rule 201(b), SCRE}

(i) Wells Fargo is violating the terms of the Compliance Agreement with the Defendant to assure **the loan documentation conform and be acceptable to the marketplace in the instance of transfer, sale or conveyance** to any entity. The only legitimate adjustment for errors and omissions in the loan's documentation is Rescission or Cancellation.

1) "Generally, South Carolina Courts will not enforce contracts that are illegal or violate public policy. See White v. J.M. Brown Amusement Co., Inc., 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) (*"The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter*

of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.”); See also *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (holding that illegal contracts are void and unenforceable, such that actions for its breach may not be maintained).

2) “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor*, 325 S.C. 614, 615-616, 481 S.E.2d 451, 452 (Ct. App. 1997)

(j) As agents and/or representatives of Wells Fargo, pursuant to the Compliance Agreement and “Attorney-Client Privilege”, the attorneys at Nelson Mullins Riley & Scarborough, LLP, acting of behalf of Wells Fargo, have requested information in the form of admissions, document production, interrogatories and depositions in order to determine whether or not ~~the loan documentation conforms~~ and is ~~acceptable to the marketplace in the instance of transfer, sale or conveyance~~ to any entity and they are duty bound to report to Wells Fargo; an entity created by law, that based on the information received from the Defendant and a Witness pursuant to the Compliance Agreement, loan #0174072777 cannot be adjusted for errors and omissions, cannot conform and is not acceptable to the marketplace for conveyance, transfer or sale due to fraudulent documentation from the Seller, Broker and Appraiser. {WF00001-WF00038}

(k) The Defendant has cooperated fully and resisted unnecessary depositions and document production because the evidence is already in the Plaintiff’s documents and the truth about the Seller’s and Broker’s illegal activities can be verified from local and state agencies. Consequently, Summary Judgment must be denied and this case Dismissed with Prejudice and Punitive Damages Awarded the Defendant.

VIII. REBUTTAL & COUNTER TO DEFENDANT’S COUNTERCLAIM FOR UNFAIR LENDING AND BANKING PRACTICES MUST BE DISMISSED BECAUSE IT FAILS TO STATE ANY VIABLE CLAIMS FOR RELIEF.

125. **Objections to Paragraphs #36, #37 & #38:** This must be repeated rather than incorporated by reference. Forcing the Defendant to make monthly payments on an illegal loan by an unlicensed Seller, be a party to the Broker’s and Appraiser’s illegal Home Improvement and Mortgage Fraud, illegal Predatory Lending Scheme and forcing the Defendant to overlook what she has discovered about the Seller’s and Broker’s illegal brokering activities that were done in

violation of State and Federal law; and after Wells Fargo was duly notified by phone and in writing, *IS* an unfair lending and banking practice and a violation of South Carolina's Unfair Trade Practices Act (SCUTPA). {Request Judicial Notice of Paragraph 125}

(a) The Defendant has already proven Wells Fargo's **complicity**; under the *Pinkerton Liability Rule*, in using, ...and Wells Fargo continues to use the Broker's unauthorized credit report dated 10/3/2007 {WF00063-WF00074} and even had the audacity to use it in this litigation. Wells Fargo and its attorneys continue to treat the Defendant like she is a subhuman being by ignoring everything the Defendant writes or says. {Request Judicial Notice of Plaintiff's Exhibits WF00120, WF00121, WF00125-WF00126, WF00130 & Rules 401 - 402, SCRE}

(b) If the Defendant had known the truth, this sad state of affairs would not exist. Attorneys are only doing what they are paid to do. However, when it comes to Wells Fargo's employees, that's an entirely different matter. Once they were notified by phone and in writing that loan #708-0174072777 was the product of an unauthorized credit report and the Defendant wanted it cancelled, the Defendant's loan should have been cancelled and every detail relative to this loan thoroughly investigated. {See Filed Exhibit 43 & WF00121} {Request Judicial Notice of Sentences #2 & #3 in Paragraph 125(b)}

(c) Even if the *Pinkerton Liability Rule* did not exist, an authorized credit report was used to approve the loan. {WF00063-WF00074} Once it was known, Thomas Jacobs, (an unlicensed broker and/or loan originator) brokered the loan and not Golden Gate Mortgage, "Red Flags" should have been flying all over loan #0174072777. {WF00032, WF00035, WF00030-WF00038 & WF00077-WF00085}

(d) Once Wells Fargo had verbal and written verification that Golden Gate Mortgage did not broker the loan, documents were falsified, the contract of sale was forged and altered, the "Brokering Agreement" was signed as part of Golden Gate Mortgage's funding requirement {WF00080-WF00081} and the Broker LIED, because he never interviewed the Defendant {WF00032, WF00035 & WF00038}..... this should have severed all ties with legitimacy and the loan cancelled. This did not happen. Janet Frotscher LIED on the Defendant. {WF00125}

(e) Both Thomas Jacobs and Wells Fargo represented Golden Gate Mortgage as a lender and Wells Fargo still represents Golden Gate Mortgage as a lender. {WF00001-WF00027 & WF00084-WF00085} and this is after the facts were known. Wells Fargo should have cancelled

the loan and taken immediate steps to have the Attorney General of South Carolina and/or the FBI or some law enforcement agency investigate the brokering activities of Golden Gate Mortgage. {Defendant's Exhibits 4, 8-14, 39, 43, 52-66 & 70}.

(f) Up until March of 2008, the Defendant was still trying to cooperate to work things out with the Seller and Wells Fargo, per Kathryn R. Perkinson's {WF00042} instructions. There are numerous Pleadings and Exhibits that will verify this from the Plaintiff and the Defendant and they are incorporated by reference as though fully set forth herein verbatim. Wells Fargo's **complicity** and approval of the Seller's illegal brokering activity is no longer a debatable legal or moral issue. {See Exhibit 52, Plaintiff's Exhibit D} In addition,

1) Federal courts have held that unfair or deceptive acts as defined in the FTC Act need not constitute ordinary fraud. Federal Trade Commission v. Algoma Lumber Co., 291 U.S. 67, 54 S.Ct. 315, 78 L.Ed. 655 (1934); D.D.D. Corp. v. Federal Trade Commission, 125 F. (2d) 679 (7th Cir. 1942). Under the statute there is no need to show that a claim or representation was intended to deceive, but only that it had the capacity or effect or tendency to deceive. *Id.* See also Hardy v. Toler, 288 N.C. 303, 218 S.E. (2d) 342 (1975); Heller v. Silverbranch Construction Corp., 376 Mass. 621, 382 N.E. (2d) 1065 (1978)

2) Actual knowledge is not required under SCUTPA to hold Wells Fargo liable for the misrepresentations of Janet Frotscher {WF00125}, Senior Attorney Elizabeth S. Hodgson {Exhibit 235} and Wells Fargo's employees {WF00001-WF00027 & WF00084-WF00085} after the facts were known. At common law actual knowledge is not necessary to hold a principal liable, if misrepresentations are made by the agent while acting within the scope of his agency. {Exhibit 235} See, West v. Service Life & Health Insurance Co., 220 S.C. 198, 66 S.E. (2d) 816 (1951); See also, Restatement (Second) of Agency § 261, comment a (1958)

(g) To be actionable under SCUTPA, the alleged unfair or deceptive act or practice must have an impact upon the public interest. Noack Enterprises, Inc. v. Country Corner Interiors, 351 S.E.2d 347 (S.C.Ct.App. 1986).

MORTGAGE FRAUD'S IMPACT ON THE PUBLIC INTEREST

1) Mortgage fraud is one of the fastest growing financial crimes in the history of the United States (*Mortgage Asset Research Institute*)

2) Prosecutors consider mortgage fraud to be among the most "economically destructive crimes prosecuted by their offices," according to *Patrick Leahy, co-sponsor of the Fraud Enforcement and Recovery Act*.

3) According to the FBI, numerous forms of mortgage fraud fall into two categories: fraud for housing and fraud for profit.

4) Effects of mortgage fraud and foreclosure have proven to devastate communities, creating dangerous conditions that fuel crime, lower property values and foster despair among residents who watch their neighborhoods deteriorate around them. (*National Crime Prevention Council*)

5) In February of 2012, [49] state attorneys general and the Federal government reached agreement on a historic joint state-federal settlement with the country's five largest loan servicers: Ally/GMAC, Bank of America, Citi, JPMorgan Chase and *Wells Fargo*. {*NBC News February of 2012*}

MORTGAGE FRAUD IS A CRIME

6) The Plaintiff's perpetuation of the Seller's Home Improvement and Mortgage "Fraud" is a crime that materially misrepresents or omits information and gives a "False Constructive Notice" in violation of *Section 30-7-10 SC Code of Laws* by concealing and misrepresenting the truth relative to 423 Bayne St. See {*National Bank of Newberry v. Livingston*, 155 S.C. 264, 284, 152 S.E. 410, 417-19 (1930)} relative to the value of proper filing and indexing pursuant to South Carolina law.

PERPETUATING A FRAUD ON ORANGEBURG COUNTY, THE DEFENDANT AND THE CITY OF ORANGEBURG

(h) Wells Fargo's fraudulent mortgage is deceiving tax collectors in Orangeburg County, and the City of Orangeburg that 423 Bayne Street is worth more than \$14,000.00 for the house and approximately \$15,000.00 for the lot. The lot is worth more than the house sitting on it. {*Exhibits 115, 113 [House], 183, 215, 216 & 250*} Even though Wells Fargo wants to maintain a tax lien priority against the property by paying the taxes, the Defendant would gladly pay the taxes on any legitimate home she was purchasing. Currently, Wells Fargo is perpetrating a fraud upon the Defendant.... **And..**

1) Collecting money on an illegally brokered loan, after the facts were known. {*WF00122-WF00124, WF00127, WF00129 & WF00131*} This is also a violation of the *Fair Debt Collection Practices Act (FDCPA) 15 USC 1692(f)*.

a) 15 USC § 1692f (FDCPA) clearly states in pertinent parts, "A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: "(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. (6) Taking or threatening to take any nonjudicial action to effect dispossession possession or disablement of property if— (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest..."

b) This would be consistent with South Carolina legal precedent, “no person is permitted to acquire a right of action from an unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act.” *See Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and maintained by bribery). “This rule applies at both law and in equity and whether the cause of action is in contract or in tort.” *Jackson*, 313 S.C. at 276, 437 S.E.2d at 170.

2) Misrepresented an illegal Predatory Lending Scheme that is based on falsified documentation, {WF00001-WF00027} forged and altered documents {WF00028-WF00029 & Exhibits 140-141}, OUTRIGHT LIES {WF00009 & WF00022} and on an unauthorized credit report {WF00063-WF00074} As a legitimate mortgage in Orangeburg County’s Office of the Register Deeds.

3) Misrepresented the Defendant’s illegally brokered loan as a legitimate loan, after the facts were known, to South Carolina’s Department of Consumer Affairs case #08-02371-B2. {WF00132-WF00133}

4) Misrepresented the Defendant’s illegally brokered loan as a legitimate loan to the Office of the Comptroller of the Currency (OCC) case #785593, after the facts were known {Exhibits 31, 139, 162 & 163}

SCUPTA

(i) SCUPTA states “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” S.C. Code Ann. § 39-5-20 (Supp. 2005). “An act is ‘unfair’ when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is ‘deceptive’ when it has a tendency to deceive.” *Johnson v. Collins Entm’t Co., Inc.*, 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002).

(j) Section 39-5-140 – SC Code of Laws states: “Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages. Section 39-5-140 only protects a “person who suffers any ascertainable loss of money or property, real or personal.”

NO LOSS PLEADED - LET THE JURY DECIDE ASCERTAINABLE LOSS

(k) The Act provides that: “[a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or

deceptive method, act or practice ... may bring an action ... to recover actual damages. *S.C. Code Ann. § 39-5-140(a) (2002)*.” The Defendant must allege and prove that the Plaintiff’s actions adversely affected the public interest. *Daisy Outdoor Adver. Co., Inc. v. Abbott*, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996) This has been done and stated in Pleadings as verified re-responses to Wells Fargo’s Court filings. All relevant filings are incorporated by reference as though fully set forth herein verbatim. In addition, the national public record verifies Wells Fargo is still in Court for mortgage fraud violations and banks are still peddling fraudulent securities as legitimate. **{Judicial Notice Requested for Sentence #5, Paragraph 125(k)}**

(l) An impact on the public interest may be shown if the acts or practices have the potential for repetition. *Singleton v. Stokes Motors, Inc.*, 595 S.E.2d 461, 466 (S.C. 2004); *Crary v. Djebelli*, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998); *Wright v. Craft*, 640 S.E.2d 486, 498 (S.C. Ct. App. 2006)(citing S.C. Code Ann. §§ 39-5-10 to 560).

(m) The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company’s procedures created a potential for repetition of the unfair and deceptive acts. *Id.* at 388, 496 S.E.2d at 23. and (3) The Defendant suffered monetary or property loss as a result of the Plaintiff’s unfair or deceptive act(s).” However, these two ways are not the only means for showing the potential for repetition or public impact, and each case must be evaluated on its own merits to determine what the Defendant must show to satisfy the potential for repetition. No loss can be pleaded because the case is ongoing and the amount of time and money the Defendant has expended yet to be determined. Every dollar spent on this lawsuit is a loss to the family. The Defendant cannot print money or was given billions in relief by the Federal Reserve Banking System. In addition, the Defendant is perfectly willing to let a jury decide what is an [ascertainable loss]. In the Defendant’s *Legal Memorandum Supporting the Defendant’s Motion to Dismiss with Prejudice* filed and date stamped on August 15, 2011 at 11:30 a.m., on page 34, the Defendant projected settlement for all damages is \$7,500,000.00.

(n) Even asking the Defendant to make monthly payments on a known illegally brokered loan, with known violations of Federal and State law, a known Predatory Lending Scheme that is based on a verifiable “Forged” and “Altered” Contract of Sale is Unconscionable. The Plaintiff offered the Defendant no legitimate choice. No sane and rational person would make payments

on a mortgage loan under these conditions or be hounded to violate State and Federal law.. This is a violation of *Section 37-5-108 – SC Code of Laws*.

UNCONSCIONABLE

1) *Section 37-5-108 – SC Code of Laws* clearly states, “(1) With respect to a transaction that is, gives rise to, or leads the debtor to believe will give rise to, a consumer credit transaction, if the court as a matter of law finds: (a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or (b) any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result and award the consumer any actual damages he has sustained. (2) With respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction. In addition, the consumer has a cause of action to recover actual damages and, in an action other than a class action, a right to recover from the person violating this section a penalty in the amount determined by the court of not less than one hundred dollars nor more than one thousand dollars....”

2) “Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Carolina Care Plan, Inc. v. United Health-Care Services, Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004).

(o) Penal statutes must be strictly construed, *Bostic v. Am. Home Mortg. Servicing, Inc.*, 375 S.C. 143, 149, 650 S.E.2d 479, 482 (Ct. App. 2007) (“South Carolina has long recognized the principle that penal statutes are to be strictly construed.”). The Court of Appeals in *Rorrer v. P.J. Club, Inc.*, 347 S.C. 560, 567, 556 S.E.2d 726, 730 (Ct. App. 2001) clearly stated, “When a law imposes a punishment which acts upon the offender alone, and not as a reparation to the party injured, ...it is entirely within the discretion of the lawgiver.”

(p) Based on the facts, the evidence and the law relative to these matters, Summary Judgment must be denied and this case sent to a Jury or Dismissed with Prejudice and Punitive and Statutory Damages Awarded the Defendant. Punitive damages have been successfully awarded to defendants in the same or similar court actions for Wells Fargo’s violations.

**IX. REBUTTAL & COUNTER TO DEFENDANT'S COUNTERCLAIMS FAIL
AS A MATTER OF LAW BECAUSE SHE HAS FAILED TO JOIN
INDISPENSIBLE PARTIES TO THIS ACTION.**

126. **Objections to Paragraphs #39 & #40:** On the contrary, *Rule 12(b)(7)*, *SCRCP* and *Rule 19(a)(2)*, *SCRCP* apply to the Plaintiff, not the Defendant. *Spanish Wells Property Ass'n v. Board of Adjustments of Town of Hilton Head*, 295 S.C. 67, 367 S.E.2d 160 (1988) does even remotely resemble this case. There is no major bank claiming its fraudulent loan package is legal; while exonerating and/or excusing and/or protecting and/or defending the rights of the tortfeasors and/or culprits to continue their illegality with impunity and immunity from prosecution while the Plaintiff hounds and persecutes the Defendant. In addition at no time, AT NO TIME, UNDER NO CIRCUMSTANCE, DAY OR NIGHT, did the Defendant ever say or even hint, Wells Fargo's mortgage and/or note were legal or obtained legally.

(a) Wells Fargo has insisted, LIED and Misrepresented Material Facts, in order to put LIPSTICK ON A PIG... AND AN... EVENING GOWN...but..underneath it is still a PIG. Therefore, it is Wells Fargo that has "Failed to Joinder Indispensible Parties" to defend themselves from the Defendant. It is Wells Fargo that is verifiably **complicit** in their illegality. Therefore,

(b) It is Wells Fargo that needs to joinder Thomas Jacobs, Janet Frotscher, Jim H. Austin III, David Terrell, Deborah C. Galloway, Elizabeth S. Hodgson, Elizabeth Scott Moise and James H. Burns – Responsible for the **Massive Filing Fraud** – Misstatements and Misrepresentation of Material Facts and OUTRIGHT LIES during the Stay/TRO. Attorney Brian A. Calub is excluded from this **ROGUES GALLERY OF VERIFIABLE LIARS** simply because the Defendant now believes he simply misspoke when he filed a brief, claiming in his **Introduction** on page 1, in paragraph 1, in sentence #3, that the Seller gave the Defendant an appraisal. The brief is dated December 5, 2011 and filed shortly thereafter. The Defendant's response was filed on December 16, 2011 and is incorporated by reference as though fully set forth herein verbatim. According to Webster's 10th Edition, on page 1312, verifiable / from verify literally means capable of **establishing the truth with accuracy**. Kathryn R. Perkinson is legitimately excluded because her straight forward honesty, even though her advice was misguided.

1) **The Seller** - Thomas Jacobs, LIED to the Defendant {See Affidavits}, and LIED to SCDCA {See Filed Exhibit 35}

2) **The Broker** – David Terrell / Golden Gate Mortgage never interviewed the

Defendant. {See Affidavits} The Broker LIED to WHFM that he was the interviewer on 11/26/2007 {WF00032 & WF00035} and he LIED to SCDCA {Exhibit 36}

3) The Closing Attorney - Deborah C. Galloway LIED to the Commission {See Filed Exhibit 69 [Reason for the Complaint]} Lied about the filed complaint. {Exhibit 70} Attorney Galloway never left any messages on the Defendant's answering machine. The Defendant did not have one at the time. {Exhibit 70} Never received any fax messages from attorney Galloway. {Exhibit 70}

4) The Appraiser - Jim H. Austin, III LIED on the Appraisals {WF00001-WF00026} and LIED on the Satisfaction Completion Certificates. {WF00009 & WF00022}

5) Wells Fargo Personnel - Janet Frotscher - **Misstatements** on the Defendant. The Defendant has never seen or met the Broker and has never seen or met the Appraiser. Misstated and concealed facts from SCDCA & OCC {WF00125}

6) Wells Fargo Senior Counsel - Elizabeth S. Hodgson LIED on her May 15, 2009 Affidavit. Filed on May 18, 2009. The Defendant's loan never qualified for HMP. The Defendant's complaint and allegation was and still is fraud. {Filed Exhibit 235 and See Response to Plaintiff's Affidavit filed on May 26, 2009}

7) Attorneys - James H. Burns, Elizabeth Scott Moise & Brian Calub. **Misstatements & LIES**. The Defendant never refused to speak to anyone & no one contacted the Defendant or attempted to contact the Defendant during the TRO/ Stay. The Seller did not give the Defendant an appraisal and the Defendant did not submit any documents to Wells Fargo. Golden Gate Mortgage never brokered any loan for the Defendant. Thomas Jacobs brokered the loan including obtaining the Defendant's signature on the Broker's Agreement {Burns & Moise Case Status Updates 2009-2010 - a Massive Filing Fraud & Court Filings 2008-Present}

(c) Since BIRDS OF A FEATHER DO FLOCK TOGETHER, it is only appropriate to use the Rules of Civil Procedure, 12(b)(7) and 19, as intended, to bring this Rogues Gallery of Liars together in one place...so they can be cleansed by the "Light of Truth" and their character flaws exposed and then,...forgiven in open court. In keeping with established legal precedent, Summary Judgment must be denied and this case sent to a Jury or Dismissed with Prejudice.

X. REBUTTAL & COUNTER TO WELLS FARGO SHOULD BE AWARDED SUMMARY JUDGMENT FOR ITS FORECLOUSE ACTION BECAUSE DEFENDANT HAS FAILED TO REPAY AMOUNTS OWED UNDER THE MORTGAGE LOAN.

127. Objections to Paragraphs #40 & #41: On the contrary, the evidence for this case firm-

ly and clearly establishes Thomas Jacobs, Jim H. Austin, III and David Terrell / Golden Gate Mortgage should have been sitting behind bars, doing hard time, in a Federal Prison, since 2007. The evidence of this case firmly and clearly establishes Debra C. Galloway, Elizabeth Scott Moise and James H. Burns should be Disbarred for life from the legal profession and if Chief Justice Toal is forgiving – Suspension and a Severe Public Reprimand. Elizabeth S. Hodgson, escapes simply because the Defendant has no evidence that can verify that she is qualified to practice law in South Carolina. Otherwise, the same for her. In addition, Moise finally admitted Wells Fargo did not have a program, policy or procedure to modify a fraudulent mortgage.

(a) As for Wells Fargo, the evidence firmly and clearly establishes it is no more or less than a Gangster Operation masquerading as a National Bank. The only appropriate award for Wells Fargo is revocation of its National Bank charter and a state by state investigation into its corrupt banking practices like many state Attorney Generals are doing now.

(b) As for the Defendant, the Defendant should have been rewarded for exposing the fraud, trying to protect the public from substandard and fraudulent mortgage backed securities and from corrupt banking employees more interested in profit than human decency. The evidence clearly establishes the Defendant did the right thing as her conscious dictated and not support the illegal activity of the Seller, the Broker, the Appraiser and Wells Fargo's employees. The Defendant owes the bank nothing except another lawsuit for "Defamation of Character" and "Slander of Title". The money the Defendant paid as a "Good Faith" gesture, following Kathryn R. Perkinson's advice must be returned as well.

(c) In, Menominee River Co. v. Augustus Spies L & C Co., the court decided; "If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." Menominee River Co. v. Augustus Spies L & C Co., 147 Wis. 559 at p. 572; 132 NW 1118 (1912).

(d) In 1879, South Carolina's Supreme Court held, "There can be no doubt of the correctness of the legal proposition that, where money is paid under a mistake of fact, to a person who has no ground in conscience to claim it, the person paying it may recover it back. Glenn v. Shannon, 12 S.C. 570, 570 (1879); See also Pilot Life Ins. Co. v. Cudd, 208 S.C. 6, 36 S.E.2d 860 (1945) (holding the general rule is that money paid to another under a mistake of fact may be

recovered because the money belongs, in equity and good conscience, to the person who paid it). See Castock Corp. v. Bailey, 492 N.Y.S.2d 921 (Sup. Ct. 1985) (the fact that recipient has parted with the money is an insufficient excuse to forgive repayment); 70 Am. Jur. 2d Payment § 114(c) (1987) (no defense where money has been paid to another or spent). Whipp v. Iverson, 43 Wis. 2d 166, 168 N.W.2d 201 (1969) (holding that, "It is not necessary for rescission of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations."); Leonard v. Springer, 197 Ill 532. 64 NE 299 (1902). (holding that "Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." (The seller or lender) "He is liable, not upon any idea of benefit to himself, but because of his wrongful act and the consequent injury to the other party.") Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis. 550, 279 NW 79 (1938) (holding that "The contract is void if it is only in part connected with the illegal transaction and the promise single or entire.")

(e) The Plaintiff has characteristically misstated the facts, the "Security Instrument" is the basis for this foreclosure action, {WF00042} not the Defendant or the loan. The Defendant has consistently proven to the Plaintiff, since December 22, 2007 and now..in this court.... that loan #708- 0174072777 was already fraudulent and an illegal transaction before the Defendant arrived on 12/21/2007. {WF0030-WF00032, WF00065, WF00086, WF00103 & WF00115}

1) Generally, South Carolina Courts will not enforce contracts that are illegal or violate public policy. See White v. J.M. Brown Amusement Co., Inc., 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) ("The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions."); see also Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (holding that illegal contracts are void and unenforceable, such that actions for its breach may not be maintained).

FRAUD IN FACTUM

(f) As the Defendant has stated and consistently repeated in all her Pleadings, that are incorporated by reference as though fully set forth herein verbatim, the first tort in this case is

“Fraud in the Factum” by the Seller, the Broker and the Appraiser. This means the Plaintiff’s mortgage and fixed-rate note were void *ab initio* since 12/04/27 {WF00065} because they are a product of “Fraud in the Factum” and legal violations. A “Forged” and “Altered” Contract of Sale is void. “Forged” and “Falsified” Appraisals are void and a Satisfaction Complete Certificate that is an OUTRIGHT LIE is void. {No citations are necessary this is well settled law}

(g) “Fraud in the Factum” has been described as the kind of fraud that arises when a party signs a document without full knowledge of the character, supporting documentation, representations or the essential elements that brought the agreement into existence. McLemore v. Landry, 898 F.2d 996, 1002 (5th Cir.), cert. denied sub no; River Villa Pts. v. Sun Belt Fed. Bank, F.S.B., 111 S.Ct. 428 (1990). “This kind of fraud renders any underlying agreement void.” FDIC v. Gordy, 928 F.2d 1558, 1565 (11th Cir.1991).

1) “[T]he parol evidence rule was designed to prevent frauds, not to promote frauds by immunizing a party from claims arising out of his fraudulent misrepresentations. Pinken, 704 F.2d at 1023.”

2) “Parol evidence is admissible to ascertain the true meaning of the contract and the intent of the parties. Klutts Resort Realty, 268 S.C. at 89, 232 S.E.2d at 25.”

3) “Fraud is, and has been for a long time, an exception to virtually every known legal doctrine. See, e.g., Drinkard v. Ingram, 21 Tex. 650 (1858). The reason is that fraud undermines the process, the foundation, of all transactions. Thus, fraud in the inducement vitiates contracts. Fraud is an exception to the parol evidence rule. Fraud tolls statutes of limitation. Fraud can revoke wills and divisions of community property. Fraud will undo real estate conveyances. There is no reason to sanctify fraud in any litigation...”

4) Delaware’s Trial Handbook states, “Parol evidence relating to circumstances surrounding the formation of the contract is admissible.” [Scott-Douglas Corp. v. Greyhound Corp., 304 A.2d 309, 315 (Del. Super. 1973). See also Glenn v. Tide Water Associated Oil Co., 101 A.2d 339, 342 (Del. Ch. 1953) (time, place and circumstances of execution of contract may be proved by parol evidence); Cochran v. Denton, C.A. No. 11826, slip op. at 5-6, Allen, C. (Del. Ch. Oct. 9, 1991), aff’d mem., 612 A.2d 157 (Del. 1992) (parol evidence admissible to determine intent of parties to enter into a contract)]

5) Section 34-3-110 – SC Code of Laws clearly states in pertinent parts; “A person knowingly may not execute, or attempt to execute, a scheme or artifice to: defraud a federally chartered or insured financial institution; or obtain monies, funds, credits, as-sets, securities, or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretenses, representations, or promises. A person who violates

the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than five years, or both.”

6) *Section 36-3-305 – SC Code of Laws* stating in pertinent parts “(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (1) a defense of the obligor based on ----- (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms,

WELLS FARGO’S COMPLICITY

6) The legal definition of **Complicity** in criminal or civil law “refers to a person/s or an entity/ies that are legally accountable, or liable for a criminal offense or tort, based upon the behavior of another. **Complicity** may arise in the following situations: With the intent to promote or assist the commission of the offense: (1) a person procures, induces or causes such other person to commit the offense; or (2) a person aids or abets such other person in committing the offense; or (3) having a legal duty to prevent the commission of the offense and fails to make an effort he is legally required to make.”

7) The Doctrine of In Pari Delicto is “[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing.” *Black’s Law Dictionary* 794 (7th ed. 1999). The Doctrine of In Pari Delicto is “[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing.” *Myatt v. RHBT Fin. Corp.*, 370 S.C. 391, 395, 635 S.E.2d 545, 547 (Ct. App. 2006) (quoting *Black’s Law Dictionary* 794 (7th ed. 1999)).

8) “Thus, the parol evidence rule does not preclude evidence of fraud, duress, mutual mistake, misrepresentation or overreaching in the making of a contract..” [*Anglin v. Bergold*, No. 185, 1988, slip op. at 4-5, Walsh, J. (Del. June 26, 1989) (ORDER), disposition reported at 565 A.2d 279 (Del. 1989) (TABLE); *Esso Standard Oil Co. v. Cunningham*, 114 A.2d 380, 383 (Del. Ch. 1955), *aff’d*, 118 A.2d 611 (Del. 1955); *Reeder v. Sanford School, Inc.*, 397 A.2d 139, 141 (Del. Super. 1979); *Ed Fine Oldsmobile, Inc. v. Knisley*, 319 A.2d 33, 36-37 (Del. Super. 1974); *Scott-Douglas Corp. v. Greyhound Corp.*, 304 A.2d 309, 315 (Del. Super. 1973); *New Castle County v. Crescenzo*, C.A. No. 7087, slip op. at 7, Hartnett, V.C. (Del. Ch. Feb. 11, 1985), *aff’d mem.*, 505 A.2d 454 (Del. 1985); *Ft. Howard Cup Corp. v. Quality Kitchen Corp.*, C.A. No. 89C-DE-34, slip op. at 5, Steele, J. (Del. Super. Aug. 17, 1992).]

EXCERPTS FROM THE DEPOSITIONS NOT PRESENTED TO THE COURT

128. The following Excerpts from the Defendant’s Deposition were not presented to the Court.

(a) 63:1-25 – The Defendant assumed and still believes Wells Fargo is a business associate of Thomas Jacobs.

(b) 69:12-24 – Verifying Wells Fargo dealt exclusively with the Broker and never contacted the Defendant. Kathryn R. Perkinson was the Defendant's first contact with Wells Fargo.

(c) 76:1-15 - Attorney Calub discovers the Wells Fargo's Contract of Sale {WF00028-WF00029} and {Exhibit 140-141} is not the Contract of Sale the Defendant signed for Thomas Jacobs on 11/26/07. There was no AS IS Clause on the Contract of Sale she signed.

(d) 77:15-20 – The Defendant's husband was cleaning up 423 Bayne Street to rent not purchase. {Defendant's Exhibit 30}

(e) 91:1-8 – Attorney Calub discovers the Defendant tried to cancel the loan within 24 hours of closing. {Defendant's Exhibit 1}

(f) 91:22-25 – The appraisal the Defendant received did not match 423 Bayne Street.

(g) 92:1-25 – Attorney Calub learns of the falsity on the appraisals and that the Defendant told Wells Fargo about the suspected fraud and the need to contact an Executive Resolution Team. {WF00001-WF00026}

(h) 98:1-4 - The first appraisal the Defendant received from Wells Fargo is WF00014-WF00026, her name was not even on the appraisal. The borrower is Jacobs and owner is Sis-trunk.

(i) 99:1 - Defendant clearly states all she knows is the appraisal came from Wells Fargo.

(j) 99:13-14 – Attorney Calub discovers the Defendant has never met David Terrell. The remaining statements on pages 102 -214 can be found in the Defendant's Pleadings already filed and they are incorporated by reference as though fully set forth herein verbatim. **Note: No statement of fact by the Defendant or the Witness has ever been refuted or denied in 5 years. Any contradictory statement filed by attorneys after this Pleading is filed will be an ABSOLUTE LIE.**

EXPLANATION OF THE DEFENDANT'S EXHIBITS 1-297 AND PLAINTIFF'S EXHIBITS 1-7

129. Exhibits 1-7 filed with the Plaintiff's Motion for Summary Judgment are the undeniable evidence of the Fraud associated with loan #780-0174072777. The Defendant's Exhibits identified in this opposition to Summary Judgment is the undisputed evidence of the Defendant's 5 year fight to have this fraudulent loan cancelled and the perpetrators of it brought to justice, so the wrong that has been done can be corrected.

130. A misrepresentation is an assertion that is not in accord with the facts. Concealment, and

in some cases non-disclosure of a fact are equivalent to such an assertion. As evident from the presentation to the court, Wells Fargo is perfectly willing and supportive of letting the illegal activity of the Broker, Seller and Appraiser go unpunished while persecuting the Defendant.

131. Wells Fargo is not interested in truth, only in the perpetuation of the illegal activities of the Seller, Broker and Appraiser and their illegal Home Improvement and Mortgage Fraud, illegal Predatory Scheme and the Seller's illegally Brokered loan. Wells Fargo is demonstrating by words and deeds **complicity** in the illegal activities of the Seller, Broker and Appraiser and getting paid on it by whatever means possible. As a direct result of Wells Fargo **complicity** Wells Fargo is equally guilty of defrauding the Defendant.

132. "Fraud vitiates all transactions," so that nothing can hide fraud. Therefore, those guilty of fraud cannot sue on the contract, which is now void for illegality (as that word is used in the law of contracts: void as a matter of public policy), and punitive damages, including attorney's fees is appropriate. Wells Fargo is a guilty party to an illegally obtained contract. Accordingly, as a guilty party to an illegal contract, Wells Fargo's motion for Summary Judgment fails on any theory law. {See Section 36-3-305 – SC Code of Laws}

133. In South Carolina "no person is permitted to acquire a right of action from an unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act." *See Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and maintained by bribery). "This rule applies at both law and in equity and whether the cause of action is in contract or in tort." *Jackson*, 313 S.C. at 276, 437 S.E.2d at 170.

OBSERVATIONS BEFORE ANSWERING PLAINTIFF'S CONCLUSION

134. Before Rebutting and Countering the Plaintiff's Conclusion, the Defendant reminds the Court, that this is a Landmark Case. In 5 years, the Defendant has seen thousands of cases and there is no case like this anywhere in American legal history. The Plaintiff, did not present any relevant case law to support his motion for Summary Judgment: The reason: None exist.

(a) The most interesting case presented was *Herrod v. First Republic Mortg. Corp.*, 625 S.E.2d 373 (W. Va. 2005). At first glance, *Herrod*, seems similar to *Wells Fargo Bank v. Doro-*

thy Sistrunk. “In discussing the question of fraud and misrepresentation, the dissenting and the circuit court focused on an asserted lack of direct evidence of any direct misrepresentations by Washtenaw. This case, however, concerns whether Washtenaw can use brokers who do engage in fraud, suppressions, and misrepresentations to induce borrowers into predatory loans _ and then enforce the predatory loans against the borrowers.”

(b) “The Herrods presented substantial evidence that they were fraudulently induced into the loan. The evidence, taken in a light most favorable to the Herrods, tended to show the broker and the appraiser had an arrangement _ arguably a conspiracy _ to provide inflated appraisals to justify predatory loans. The evidence of this scheme was sufficient enough for the circuit court to deny summary judgment to the appraiser. While the Herrods have produced no evidence to hold Washtenaw directly liable for fraud as a tort, they nonetheless have the ability to maintain an action for recoupment for fraudulent misrepresentation in contract, and for damages in joint venture, conspiracy, or agency, as explained by the Opinion of the Court.”

(c) “The Herrods also allege the broker engaged in unfair and deceptive acts or practices in the origination of the loan in violation of *W.Va. Code, 46A-6-101 et seq.* These claims were made against the broker, not the lender.” This is where it ends. There is nothing else in the Case Law file that relates to Wells Fargo Bank v. Dorothy Sistrunk.

(d) No unlicensed Seller using a licensed broker as a conduit to defraud banks. No bank notification by phone and in writing concerning the Seller’s, Broker’s and Appraiser’s fraudulent conduct and documentation. No documented evidence of fraud was sent to the bank. The bank did not falsely accuse the Herrods and the bank did not represent the broker as a lender. No bank maintaining the fraud after all the facts were known and finally, no loan obtained with a verifiably unauthorized credit report. Wells Fargo v. Sistrunk is a one-of-a-kind-case for law journals.

COUNTERCLAIMS BASED SOLELY ON THE PLEADINGS

COUNTERCLAIM VI

135. **Concealment of Material Facts & Cover-up.** In addition to what has already been stated in previous Pleadings that are incorporated by reference as though fully set forth herein verbatim, as of the date of this Pleading, Wells Fargo Bank has concealed from bank regulators the fact that loan #017407277 was approved with an unauthorized credit report. {WF00063-WF00074}

(a) the bank accepted, approved, funded and is actively defending a mortgage loan that was obtained from an unlicensed loan broker and/or unlicensed loan originator in violation of South Carolina law, Federal law and the UC Code. By concealment, the Plaintiff is an active participant in Mortgage Fraud. {WF00042-WF00060}

(b) Wells Fargo Bank has concealed from the Security and Exchange Commission that any mortgage backed security with loan #708-0174072777 is supported by documents that can be verified as "Falsified", "Forged" and "Altered". By concealment, the Plaintiff is an active participant in Securities Fraud. {WF00039-WF00060}

(c) the bank has concealed from its property and casualty insurers the value of 423 Bayne is inflated and based on a "Falsified" & "Forged" Appraisals and meets the FBI's definition of an illegal Predatory Lending Scheme. By concealment, the Plaintiff is an active participant in Insurance Fraud. {Filed Exhibit 42}

(d) By concealment of material facts, the Plaintiff is actively engaged in Fraudulent Conduct. *Leonard v. Springer*, 197 Ill 532. 64 NE 299 (1902 (Holding that, "Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." [The seller or lender] "He is liable, not upon any idea of benefit to himself, but because of his wrongful act and the consequent injury to the other party.")

(e) Wells Fargo personnel misstated, misrepresented, omitted and concealed material facts and covered up the truth from OCC, after the facts were known. Wells Fargo has known since February of 2008 that Thomas Jacobs brokered the loan. {Exhibit 162 & Exhibit 163}

(f) Wells Fargo personnel misstated, misrepresented, omitted and concealed material facts and covered up the truth to SCDCA, after the facts were known. {WF00132}

To Date: No one has ever denied or refuted the Defendant's and Witness' statement of facts.

COUNTERCLAIM XI

Violation of Section 37-5-108 –SC Code of Laws

136. Forcing payment on an illegally brokered loan, obtained by an unauthorized credit report is unconscionable. *Section 37-5-108 – SC Code of Laws* clearly states, "(1) With respect to a transaction that is, gives rise to, or leads the debtor to believe will give rise to, a consumer credit

transaction, if the court as a matter of law finds: (a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or (b) any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result and award the consumer any actual damages he has sustained. (2) With respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction. In addition, the consumer has a cause of action to recover actual damages and, in an action other than a class action, a right to recover from the person violating this section a penalty in the amount determined by the court of not less than one hundred dollars nor more than one thousand dollars....”

COUNTERCLAIM XII
Violation of 15 USC Section 1692f

137 15 USC § 1692f (FDCPA) clearly states in pertinent parts, “A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: “(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if— (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest...;” Wells Fargo has no legitimate enforceable right. Loan #0174072777 was obtained by an unlicensed broker or loan originator – Thomas Jacobs with an unauthorized credit report. {WF00063-WF00074}

COUNTERCLAIM XIII
Violation of Section 39-5-20 – SC Code of Laws

138. Forcing payment on an illegally brokered loan, an illegal Predatory Lending Scheme based on falsified and forged documents and obtained with an unauthorized credit report is an

unfair lending practice and a violation of South Carolina's unfair Trade practices Act. SCUPTA states "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." *S.C. Code Ann. § 39-5-20 (Supp. 2005)*. "An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is 'deceptive' when it has a tendency to deceive." All filed Pleadings relative to the Plaintiff's unfair lending and banking practices are incorporated by reference as though fully set forth herein verbatim.

COUNTERCLAIM XIV
Violation of 15 USC Section 1681n(a)

139. Loan #708-0174072777 was obtained with an unauthorized credit report. *15 USC § 1681n(a)* states the following in pertinent parts., "Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of— (1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or (B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater; (2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court..."

COUNTERCLAIM XV
Violation of Section 30-9-40 – SC Code of Laws

140. Wells Fargo Bank is perpetrating and perpetuating a fraud upon the Defendant by filing and maintaining an inflated mortgage on the books in Orangeburg County's Office of the Register of Deeds in violation of *South Carolina Code Annotated Section 30-9-40 (Supp. 2001)*, that governs the indexing of instruments filed for recording, *Section 30-9-40* provides: "The register of deeds . . . shall immediately upon the filing for record of any deed, mortgage, or other written instrument of the character mentioned in *Section 30-7-10* or *Chapter 9 of Title 36* enter it upon the proper indexes in his office, which constitute an integral, necessary, and inseparable part of the recordation of the deed, mortgage, or other written instrument for any and all purposes

whatsoever”

(a) The importance of proper recording practices as an integral part of providing notice to subsequent creditors has been previously addressed by South Carolina’s Supreme Court. In *National Bank of Newberry v. Livingston*, 155 S.C. 264, 284, 152 S.E. 410, 417-19 (1930) (citations omitted). (Holding that, “The rule supported by the best authority is that the record [of a mortgage] is constructive notice to creditors . . . [as to] such facts as they would have learned from the record, if examined. A mortgage duly recorded is notice not only of the existence of the mortgage, but of all its contents It is notice not only to purchasers but to the subsequent creditors as well The record imparts notice of all the facts which could have been ascertained by an actual examination thereof, including not only those recited in the record, but also material matters suggested thereby, which might be disclosed by reasonable inquiry.”)

(b) The indexing of recorded mortgages is intended to provide notice to persons making subsequent inquiries. Wells Fargo’s fraudulent mortgage that is based on misrepresentations of material facts, misstatements of material facts, omissions, falsity and OUTRIGHT LIES, fails to provide constructive notice to subsequent creditors or the general public pursuant to the laws of the State of South Carolina. Judges are employees of the State and Officer’s of the Court sworn by oath to uphold the law and the Constitution. Therefore, the Court has a duty and legal responsibility to void or cancel Wells Fargo’s fraudulent mortgage in order to defend, protect and preserve the integrity of the mortgage filing and indexing system currently operating in the State of South Carolina.”

COUNTERCLAIM XVI

Wells Fargo’s Attorneys Are & Misleading The Plaintiff & Defrauding The Defendant By Violating The Compliance Agreement

141. Wells Fargo’s Compliance Agreement {Exhibit WF00117} does not specifically exclude attorneys as representatives in order to adjust any and all closing documents for errors and omission. Accordingly, Wells Fargo’s attorneys are Misleading the Plaintiff & Defrauding the Defendant by per-petuating the illegal brokering activities of the Seller, Appraiser and the Broker, after the facts are known. Under the terms of Wells Fargo’s Compliance Agreement, the Defendant must cooperate with anyone acting on behalf of the lender in order to assure the loan documentation that was executed conforms and be acceptable to the marketplace in the

instance of transfer, sale or conveyance to any entity including but not limited to any investor, Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) Federal Home Loan Mortgage Corporation, Department of Housing and Urban Development, Veterans Administration or any Municipal Bonding Authority. The Burden of Proof and adjustments for errors and omissions is on the Plaintiff and anyone representing the Plaintiff or acting on behalf of the Plaintiff. *{See Filed Exhibit WF00117}*

(a) Wells Fargo's attorneys are violating the terms of the Compliance Agreement with the Defendant to assure **the loan documentation conform and be acceptable to the marketplace in the instance of transfer, sale or conveyance** to any entity by not disclosing to Wells Fargo that based on the Compliance Agreement, the information received from Dorothy Sistrunk, with whom, they have a written and signed Compliance Agreement, the only legitimate adjustment for errors and omissions in the loan's documentation is Rescission or Cancellation. According to the information received from Dorothy Sistrunk by admissions, depositions, record production, sworn testimony and in sworn affidavits, loan #0174072777 was brokered entirely by Thomas Jacobs. Golden Gate Mortgage, based on your own documents, was a paperwork conduit for the illegal brokering activities of the Seller - Thomas Jacobs, with help from the Appraiser – Jim H. Austin, III. There is also evidence of **complicity** by your employees.

(b) Based on verifiable information that can be obtained from local and state agencies, and the sworn statements from Dorothy Sistrunk, Thomas Jacobs had no "Building Permit" to do repairs at 423 Bayne Street. Jim H. Austin III, LIED. the broker, David Terrell LIED. The Satisfaction Completion Certification used by underwriters in whole or in part to approve the loan is a Scam. No repairs were completed, the appraisal is falsified and the property value inflated. The loan was void **ab initio**. In addition to being obtained in violation of state and federal law, it was also obtained with an unauthorized credit report. If the law firm fails to accurately disclose this information to Wells Fargo, the law firm is knowingly perpetuating the fraud for financial gain at the expense of the Defendant and the Plaintiff and are committing another fraud upon the litigants ; in addition to the Massive Filing Fraud of attorneys Elizabeth Scott Moise and James H. Burns during the Stay/TRO.

COUNTERCLAIM XVII
Violation of Section 34-3-110 – SC Code of Laws

142. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor*. Wells Fargo’s personnel **complicity** and support of the illegal brokering activity of the Seller, with help from the Broker and the Appraiser have violated *Section 34-3-110 – SC Code of Laws* that clearly states in pertinent parts; “A person knowingly may not execute, or attempt to execute, a scheme or artifice to: de-fraud a federally chartered or insured financial institution; or obtain monies, funds, credits, as-sets, securities, or other property owned by or under the cus-tody or control of a federally chart-ered or insured financial institution by means of false or fraudulent pretenses, representations, or promises. A person who violates the provisions of sub-section (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than five years, or both.”

COUNTERCLAIM XVIII

Violation of Section 16-3-10 – SC Code of Laws

143. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor*. Wells Fargo personnel’s **complicity** and support of the illegal brokering activity of the Seller, with help from the Broker have violated *Section 16-13-10 – SC Code of Laws* states in relevant parts.... “(A) It is unlawful for a person to: (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing; (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing; (3) falsely make, forge, counterfeit, alter, change, deface, or erase; or cause or procure to be falsely made, forged, counterfeited, altered, changed, defaced, or erased any record or plat of land; or (4) willingly act or assist in any of the premises, with an intention to de-fraud any person. (B) A person who violates the provisions of this section is guilty of a: (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the amount of the forgery is ten thousand dollars or more;”

COUNTERCLAIM XIX

Violation of 18 USC Section 1005

144. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor*. Wells Fargo’s personnel **complicity** and support of the illegal brokering activity of the Seller, with help from the Broker and the Appraiser have violated 18 USC § 1005 that states in pertinent parts, “Whoever, being an officer, director, agent or employee of any Federal Reserve bank, member bank, depository institution holding company national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a)(1) of the Federal Reserve Act, without authority from the directors of such bank, branch, agency, or organization or company, issues or puts in circulation any notes of such bank, branch, agency, or organization or company; or Whoever, without such authority, makes, draws, issues, puts forth, or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond, or other obligation, or mortgage, judgment or decree; or Whoever makes any false entry in any book, report, or state-ment of such bank, company, branch, agency, or organization with intent to injure or defraud such bank, company, branch, agency, or organization, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, company, branch, agency, or organization, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank, company, branch, agency, or organization, or the Board of Governors of the Federal Reserve System; or Whoever with intent to defraud the United States or any agency thereof, or any financial institution referred to in this section, participates or shares in or receives (directly or indirectly) any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such financial institution - Shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.....”

COUNTERCLAIM XX
Complicity In Violating 18 USC Section 1344

145. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor*. Wells Fargo’s personnel **complicity** and support of the illegal brokering activity of the Seller, with help from the Broker and Appraiser; after the

facts were known, have violated *18 USC § 1344* that states in pertinent parts..., “Whoever knowingly executes, or attempts to execute, a scheme or artifice - (1) to defraud a financial institution; or (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”

COUNTERCLAIM XXI

Violation of Section 37-23-40(1) – SC Code of Laws

146. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor*. Wells Fargo’s personnel have violated *Section 37-23-40(1) – SC Code of Laws* that states in pertinent parts...”The lender of a high--cost home loan may not: (1) 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;”

COUNTERCLAIM XXII

Violation of 18 USC Section 656

147. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor*. Wells Fargo’s personnel; by being **complicit** in the illegal brokering activities of the Seller, with help from the Broker and Appraiser; after the facts were known, have violated *18 USC § 656* that clearly states in pertinent parts, “Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) of the Federal Reserve Act, or a receiver of a national bank, insured bank, branch, agency, or organization or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve

System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank, branch, agency, or organization or holding company or any moneys, funds, assets or securities intrusted to the custody or care of such bank, branch, agency, or organization, or holding company or to the custody or care of any such agent, officer, director, employee or receiver, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.” Funding a money purchase home mortgage that is based on “Falsified”, “Altered” and/or “Forged” documents is a misapplication of money, funds or credit of such bank.

COUNTERCLAIM XXIII

Complicity In Violating 18 USC Section 1001 et seq

148. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor*. Wells Fargo’s personnel; by continuing to use verifiably (capable of establishing the truth with accuracy) falsified and forged appraisals that Wells Fargo’s personnel refuse to verify after the facts were known, are **complicit** in the illegal activities of the Appraiser. It is ironic this Federal law is #25, on page 6 of 6, on the signature page where Jim H. Austin, III purportedly signed his name. Consequently, this violation is willful; with full knowledge {WF00008 & WF00021}. 18 USC § 1001(a) clearly states in pertinent parts, “Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both. If the matter relates to an offense under 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall not be more than 8 years.”

COUNTERCLAIM XXIV

Violation of 18 USC Section 1007 et seq

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149. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor*. Wells Fargo’s personnel **complicity** and support of the illegal brokering activity of the Seller, with help from the Broker and Appraiser; after the facts were known, have violated *18 U.S.C. 1007* that states in pertinent parts..., “Whoever, for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation, knowingly makes or invites reliance on a false, forged, or counter-feit statement, document, or thing shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”

COUNTERCLAIM XXV

Complicity In Violating 18 USC Section 1014 et seq

150. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor*. Wells Fargo’s personnel support of the illegal brokering activity of the Seller, with help from the Broker and Appraiser; after the facts were known, are **complicit** in violating *18 U.S.C. 1014* that states in relevant parts, “Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of ----- a Federal Reserve bank ----, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, --- the Federal Deposit Insurance Corporation,-----, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both ----.”

COUNTERCLAIM XXVI

Complicity In Violating Section 40-58-30(B) – SC Code of Laws

151. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor*. Pursuant to the *Pinkerton Liability Rule*, Wells Fargo’s personnel support of the illegal brokering activity of the Seller, with help from the Broker and Appraiser; after the facts were known, are **complicit** in violating *Section 40-58-30(B) – SC Code of Laws* states in relevant parts... (B) It is unlawful for a person to employ, to compen-

sate, or to appoint as its agent a loan originator unless the loan originator is licensed pursuant to this chapter. The license of a loan originator is not effective during any period when that person is not employed by a mortgage broker licensed pursuant to this chapter. When a loan originator ceases to be employed by a licensed mortgage broker, the loan originator and the mortgage broker by whom that person was employed shall notify promptly the administrator in writing....”

COUNTERCLAIM XXVI

Complicity In Violating Section 40-58-30(E)(1) – SC Code of Laws

152. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor. Pursuant to the Pinkerton Liability Rule*, Wells Fargo’s personnel support of the illegal brokering activity of the Seller, with help from the Broker and Appraiser; after the facts were known, are **complicit** in violating *Section 40-58-50 (E)(1) – SC Code of Laws* that clearly states in relevant parts, “A person may not act as a qualified loan originator in this State without first being licensed with the administrator. It is unlawful for a person to employ, to compensate, or to appoint as its agent a qualified loan originator unless the qualified loan originator is licensed pursuant to this chapter. The license of a qualified loan originator is not effective during any period when that person is not supervised pursuant to an exclusive written contract by a mortgage broker licensed pursuant to this chapter. When a qualified loan originator ceases to be supervised by a licensed mortgage broker, the qualified loan originator and the mortgage broker shall notify promptly the administrator in writing...”

COUNTERCLAIM XXVII

Complicity In Violating Section 40-58-70 – SC Code of Laws

153. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor. Pursuant to the Pinkerton Liability Rule*, Wells Fargo’s personnel support of the illegal brokering activity of the Seller, with help from the Broker and Appraiser; after the facts were known, are **complicit** in violating *Section 40-58-70 – SC Code of Laws* that states in relevant portions.... “In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person in the course of a mortgage loan transaction to: (1) misrepresent the material facts or make false promises likely to influence,

persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan. This includes presenting the broker in the guise of a lender or pursuing a course of misrepresentation through agents or otherwise; (2) intentionally misrepresent or conceal a material factor, term, or condition of a transaction to which he is a party, pertinent to an applicant for a mortgage loan or a mortgagor; (3) engage in a trans-action, practice, or course of business which is unconscionable, as provided in Section 37-5-108, or which operates a fraud upon a person in connection with the making of or purchase or sale of a mortgage loan; ----- (6) ---- This item does not prohibit a mortgage broker or mortgage lender from asking the appraiser to do one or more of the following: (a) consider additional appropriate property information; (c) correct errors in the appraisal report; and ----- (9) fail to provide disclosures as required by state or federal law....;”

COUNTERCLAIM XXVII

Complicity In Violating Section 40-58-78 – SC Code of Laws

154. “A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives.” *Travelers Ins. v. Roof Doctor. Pursuant to the Pinkerton Liability Rule*, Wells Fargo’s personnel support of the illegal brokering activity of the Seller, with help from the Broker and Appraiser; after the facts were known, are **complicit** in violating *Section 40-58-78 – SC Code of Laws* that states in relevant parts... “(A) A mortgage broker fee agreement with a mortgage broker or loan originator must contain an explicit statement that: (1) the mortgage broker or loan originator is acting as the agent of the borrower in providing brokerage services to the borrower; (2) when acting as agent for the borrower, it owes to that borrower a duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the mortgage broker or loan originator is authorized to act as an agent for any other person, the mortgage broker fee agreement must contain a statement of that fact and identification of that person; ---- (B) If a mortgage broker or loan originator violates the provisions of subsection (A), the borrower may recover from the mortgage broker or loan originator charged with the violation: (1) 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; (2) fees paid by the borrower to the mortgage broker or loan originator for services rendered by the agreement; and (3) actual costs, including attorney's fees. for enforcing the borrower's rights....”

COUNTERCLAIM XXVIII

Defamation of Character

155. Even though Defamation of Character has been Pleaded throughout the Pleadings and all relevant Pleadings are incorporated by reference as though fully set forth herein verbatim, it has never been specifically stated as a Counterclaim. The law of defamation protects the Defendant against untrue statements that could damage her reputation. As stated in previous Pleadings, the insistent misstatements, misrepresentation of material facts, relentless persecution by Wells Fargo's attorneys, false accusations by Wells Fargo's personnel {WF00125} and the OUT-RIGHT LIES filed in court by attorneys Burns and Moise relative to the HMP {See Case Status Updates 2009 – 2010 filed in the Court of Common Pleas & the Defendant's Responses} have all served to defame the character of the Defendant.

(a) These misstatements and misrepresentations even found their way to the Office of the Comptroller of the Currency (OCC) {Filed Exhibits 162 & 163} and South Carolina's Department of Consumer Affairs (SCDCA). Damages in defamation cases are decided by juries. To succeed in an action for defamation, the Defendant must prove three things: (1) the statement was not true; (2) the statement referred to the Defendant and (3) the statement is in writing. The Defendant can prove all 3 elements with verifiable (capable of establishing the truth with accuracy) documentation.

(b) McBride and Bagshaw in their textbook *Tort Law, 3rd Edition, (Longman, 2008)* defines a statement that is defamatory, as.... "if reading it or hearing it would make an ordinary, reasonable person tend to think less of the person being referred to"; to this can also be added "has committed an act the person referred to did not commit." This has happened in this case.

(c) The Defendant does not have to prove that the words actually had any of these effects on any particular people or the public in general, only that the statement could *tend* to have that effect on an ordinary, reasonable listener or reader. Nor does the Defendant need to prove that she has lost money, or suffered any other kind of loss or damage.

(d) The evidence should be sufficient to "enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). "Proof with mathematical certainty of the amount of loss or damage is not required."

AFFIRMATIVE DEFENSES BASED SOLELY ON THE PLEADINGS

156. **Note:** The Defendant's Third, Fifth, Seventh and Eighth Affirmative Defenses in the Defendant's 1st Amendment to Answer to Complaint have been abandoned because they were poorly conceived and had no real basis in substantive or procedural law with few if any real court victories.. The Ninth Affirmative Defense; "Breach of Trust" has been abandoned and replaced with "Failure to Mitigate Losses"

(a) As with her Counterclaims, the Defendant will include Affirmative Defenses that are written in the Pleadings but not specifically stated as an Affirmative Defense and there is no specific rule of civil procedure, Federal or State, that addresses this issue.

(b) In addition, the Defendant will maintain the original numerical order, exclude Affirmative Defenses that have been abandoned and include Affirmative Defenses that have been acquired since the original Complaint and Answer were filed. A judgment must conform to the pleadings and be in accordance with the theory of action upon which the case was tried."

Chandler v. Merrel, 291 S.C. 227, 228, 353 S.E.2d 135, 136 (1987).

1) In addition; South Carolina's Appeals Courts and Supreme Court have stated repeatedly, "matters not raised or ruled upon by the trial judge, are not preserved for review." *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (holding, to be preserved for appellate review, an issue must have been: (1) raised to and ruled upon by the trial court, 2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity);

2) See *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (stating imposing preservation requirements on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments, and noting that the purpose of an appeal is to determine whether the trial court erroneously acted or failed to act, and when appellant's contentions are not presented or passed upon by the trial court, such contentions will not be considered on appeal).

3) See also *Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 74 n. 1, 698 S.E.2d 244, 247 n. 1 (Ct. App. 2010) (finding appellant's argument on appeal, that respondent was barred from raising affirmative defense of unclean hands, was not preserved where master did not address the procedural issue when he ruled appellant had unclean hands, and appellant failed to raise the matter in a Rule 59(e) motion).

4) "Preserving issues for appellate review is a fundamental component of appel-

late practice." *Toal, Vafai, Muckenfuss Appellate Procedure in South Carolina* (1999) 65.

CAUSE OF ACTIONS IN 1ST AMENDMENT TO ANSWER ARE ABANDONED

157. Before identifying the Pleadings that are in essence Affirmative Defenses, but not stated as such, the Defendant is notifying the Plaintiff and the Court that she has abandoned her First, Second, Third, Fifth, Sixth and Seventh "Causes of Action" in the Defendant's 1st Amendment to Answer that was filed in July of 2008. The reason: In July of 2008, the Defendant was completely ignorant as to legal matters and simply wrote down what she believed was necessary to come into Court and tell the truth. Since July of 2008, the Defendant has discovered that telling the Truth means nothing in a Court of law without documentation. You can tell the Truth to Christ comes. It means nothing.

(a) In addition, she has discovered what really matters in Courts of law is not truth, but Authoritative Sources, the Rules of Court, the Precedents, i.e., Case Law and/or the Law of the Case, Admissible Evidence and the Undisputed facts. She also learned, Courts are firmly rooted in the intellectual, technical and scholarly application of law and not its practical or Common Sense application. As a result, attorneys can debate for hours the difference between a fact and a material fact. The Defendant has no legal training or skill to debate such matters.

(b) The Defendant is not a seasoned litigator and has no desire to be one. Attorneys are practiced litigators not Pro Se. Litigating is a requirement in the legal profession. The following are Affirmative Defenses that are already in the Pleadings but not expressly identified or stated as an Affirmative Defense; others are simply being restated to save the Court time.

FIRST AFFIRMATIVE DEFENSE

Willful Intent to Perpetuate a Predatory Scheme In Which a Falsified Document Was used and Still Being Used.

158. The Plaintiff's willful intent to perpetuate an illegal Predatory Lending Scheme; based on the acceptance and use of falsified documents, an illegally Brokered Loan and an illegal Home Improvement and Mortgage Fraud; based on the same falsified, forged and altered documents has been thoroughly discussed and documented in all the Defendant's Pleadings and every filed Pleading since 2008 is incorporated by reference as though fully set forth herein verbatim, including pages 1-83 in this Pleading.

SECOND AFFIRMATIVE DEFENSE “Unclean Hands”

159. The Plaintiff's hands are not clean because the Plaintiff is complicit in the illegal brokering activities of the Seller, with help from the Broker and Appraiser, after all the undisputed facts were known. To date: No one from Wells Fargo has come forward, or the Broker, Appraiser or Seller to deny or refute any undisputed statement of fact by the Defendant or Witness in over 5 years. Every local and state agency will verify (capable of establishing the truth with accuracy) the Seller had no “Building Permit”, no Broker or Loan Originator License and was not employed as a Loan Originator by David Terrell / Golden Gate Mortgage. Unfortunately two additional witnesses have met with tragedy. Lee Orr has passed on into the next life and Earl Lambright is suffering from a stroke. However, the Truth can withstand a lie any day.

(a) The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998). "The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." *Arnold v. City of Spartanburg*, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity. *Id.*

(b) If a party has unclean hands, it is precluded from recovering in equity. A party will be found to have unclean hands where the party behaves “unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” *Ingram v. Kasey's Assoc's.*, 340 S.C. 98, 107, 531 S.E.2d 287, 292 (2000).

(c) This is consistent with South Carolina precedent asserting that “no person be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act.” “This rule applies at both law and in equity and whether the cause of action is in contract or in tort.” *Jackson*, 313 S.C. at 276, 437 S.E.2d at 170.

FOURTH AFFIRMATIVE DEFENSE “Inherent Negligence / Gross Negligence / Comparative Negligence / Fault”

160. This is also a Counterclaim that has been discussed in this Pleading on pages 8-9 and 38-43, Paragraphs 16(d)(1)-(3) and 108-115 in this Pleading. This also has been discussed in every Pleading since 2008 and those Pleadings are incorporated by reference as though fully set forth herein verbatim. Whether it is classified as “Inherent Negligence, Gross Negligence, Contributory Negligence, Comparative Negligence and/or Comparative Fault”, the Defendant is not responsible for the Plaintiff’s reckless lending behavior, errors in judgment, **complicity** in the illegal brokering activities of the Seller, with help from the Broker and Appraiser, and/or relying on Janet Frotscher’s misstatements and misrepresentations of material facts, false accusations and/or OUTRIGHT LIES. {WF00125}

July 20 (Bloomberg) -- Wells Fargo & Co., the largest U.S. home lender, agreed to pay a record \$85 million fine to settle Federal Reserve claims it steered borrowers into costlier loans and falsified data in mortgage applications. Employees at Wells Fargo Financial, the lender's consumer- finance unit, pushed customers who may have been eligible for prime interest rates into loans carrying higher rates intended for riskier borrowers, the Fed said today in a statement announcing the settlement. Separately, sales personnel used false documents to make it appear borrowers qualified for loans when their incomes made them ineligible. *Dakin Campbell – Bloomberg – Business Week, July 20, 2011.*

SIXTH AFFIRMATIVE DEFENSE

“In Pari Delicto”

161. The doctrine of in pari delicto is “[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing.” *Black’s Law Dictionary* 794 (7th ed. 1999). “ *Myatt v. RHBT Fin. Corp.*, 370 S.C. 391, 395, 635 S.E.2d 545, 547 (Ct. App. 2006) (quoting *Black’s Law Dictionary* 794 (7th ed. 1999)). The Defendant has presented ample evidence of the Plaintiff’s actions after the facts were known in this Pleading from pages 1-85 and every Pleading since 2008, expressly stated as an Affirmative Defense or not. The Plaintiff’s **complicity** in the illegal brokering activities of the Seller, with help from the Broker and Appraiser, has been Pleaded with specificity and particularity since July of 2008, and those Pleadings are incorporated by reference as though fully set forth herein verbatim.. This is consistent with South Carolina precedent asserting that “no person be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act.” This rule applies at both law and in equity and whether the cause of action is in contract or in tort.” *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993)

SEVENTH AFFIRMATIVE DEFENSE
“Unlawful Conduct”

162. The Plaintiff has demonstrated unlawful conduct by misrepresenting Golden Gate Mortgage as a Lender , just like the Seller – Thomas Jacobs. The Plaintiff has accepted, processed, approved, funded, supports and defends the illegal brokering activities of the Seller, with help from the Broker and Appraiser. {WF00001-WF00137} The Plaintiff has used an unauthorized credit report to fund an illegal Predatory Lending Scheme and a Home Improvement and Mortgage Fraud; while engaging in Bank, Securities and Insurance Fraud. The loan supporting documents are known to be fraudulent; and after the facts were known, including documented evidence, the Plaintiff continued to misstate and misrepresent material facts and conceal material facts even from SCDCA and OCC; while falsely accusing the Defendant.

EIGHTH AFFIRMATIVE DEFENSE
“Failure to Substantially Comply with Lawful Statutes”

163. The Plaintiff has not only consistently failed to comply with lawfully enacted State and Federal Statutes, the Plaintiff with and without **complicity** with the Seller, Broker and/or Appraiser, has violated them individually. This is well documented in this Pleading and every Pleading since 2008 and all relevant Pleadings are incorporated by reference as though fully set forth herein verbatim.

NINETH AFFIRMATIVE DEFENSE
“Failure to Mitigate Losses”

164. The Plaintiff has failed to mitigate losses and damages by taking the appropriate action that would have avoided past, present and future damages and/or financial losses; especially, after being duly notified and after all the facts were known to end its **complicity** in the illegal activities of the Seller, with help from the Broker and a Appraiser.

TENTH AFFIRMATIVE DEFENSE
“Malicious Prosecution”

165. 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 know-

ingly participate in an illegal Predatory Lending Scheme based upon and supported by falsified or fraudulent documents. 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 Letters WF00120, WF00121, WF00125-WF00126 & WF00130}. Fraud is neither mentioned nor acknowledged and this is after the facts were known.

ELEVENTH AFFIRMATIVE DEFENSE

"Violation of the Fair Debt Collection Practices Act 15 USC § 1692f (FDCPA)"

166. By virtue of unlawful conduct, **complicity** in illegality, unauthorized use of the Defendant's credit information to fund a fraudulent loan and the Plaintiff's failure to "Substantially Comply" with lawful Statutes, Wells Fargo never had a legitimate claim to 423 Bayne Street.

TWELVETH AFFIRMATIVE DEFENSE

"Rule 12(b)(6), SCRPC"

167. The Plaintiff cannot state facts sufficient to constitute a cause of action. The Plaintiff's filed mortgage is unenforceable due to illegality and predatory lending. "See HUD-Treasury National Predatory Lending Task Force, Joint Report: "Curbing Predatory Home Mortgage Lending" (2000). According to this report, "predatory lending involves providing a borrower a loan with limited or no benefit, often characterized by high fees, that erodes the borrower's equity through (1) deception or fraud, (2) manipulating the borrower through aggressive sale tactics, or (3) taking unfair advantage of a borrower's lack of understanding of loan terms."

(a) "As Justice Maynard explained in *Toppings v. Meritch Mtg. Servs., Inc.*, 212 W. Va. 73, 74, 569 S.E.2d 149, 150 (2002) (Maynard, J. concurring): "Subprime lenders loan to those borrowers with past credit problems or low income at a higher cost than conventional mortgage loans. . . . The transformation from subprime lending to predatory lending occurs when lenders employ unethical and/or illegal tactics to secure the loans or offer subprime loans to those who qualify for prime loans." *Herrod v. First Republic Mortg. Corp.*

(b) "banking transactions -- cannot be permitted to avoid liability by those who are actually providing the funding and often controlling the transaction. See *Kurt Eggert, Held up in Due Course: Predatory Lending, Securitization, and the Holder in Due Course Doctrine*, 35 Creighton L. Rev. 503 (2002)." *Herrod v. First Republic Mortg. Corp.*, 625 S.E.2d 373 (W. Va. 2005)"

THIRTEETH AFFIRMATIVE DEFENSE
Failed To Adjust Closing Documentation for Errors & Omissions
Pursuant To Wells Fargo's Own Compliance Agreement
Exhibit WF00117

168. Under Wells Fargo's Compliance Agreement, the Plaintiff had a duty to adjust any all closing documents to **conform** and is **acceptable to the marketplace in the instance of transfer, sale or conveyance** to any entity. "[D]uty' is a question of whether the Plaintiff is under any obligation for the benefit of the particular Defendant; and in negligence cases, the duty is always the same--to conform to the legal standard of reasonable conduct in the light of the apparent risk." *Huggins v. Citibank, N.A.*, 355 S.C. 329, 333, 585 S.E.2d 275, 277 (2003). "What the Plaintiff must do, or must not do, is a question of the standard of conduct required to satisfy the duty." *Id.* "An affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Carson v. Adgar*, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1997).

FOURTEENTH AFFIRMATIVE DEFENSE
"Abuse of Process"

169. South Carolina Courts do not exist to legitimize illegally brokered loans, obtained by unauthorized credit reports... and based on falsified documents; especially, after the facts are known and the evidence has been reviewed. {Exhibits 8-14 & WF00120} Wells Fargo is abusing the legal processing by using it for purposes for which the process is not intended.

1) The abuse of process tort provides a remedy for one damaged by another's perversion of a legal procedure for a purpose not intended by the procedure. See *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 210, 153 S.E.2d 693, 695 (1967) ("[A]n abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect -- the improper use of a regularly issued process."); W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 121 at 897 (5th ed. 1984) ("[T]he gist of the tort is ... misusing, or misapplying process justified in itself for an end other than that which it was designed to accomplish.").

2) "The purpose itself, though ulterior, need not be illegitimate; rather, the abuse occurs when the purpose is accomplished by using the process in a manner in which it was not intended to be used. See *Fowler W. Harper et al., The Law of Torts* § 4.9 (3d ed. 1996)."

3) In our view, "process," as it pertains to the abuse of process tort, embraces the full range of activities and procedures attendant to litigation. See Hart v. O' Malley, 647 A.2d 542, 551 (Pa. Super. Ct. 1994) ("The word 'process' as used in the tort of abuse of process has been interpreted broadly and encompasses the entire range of procedures incident to the litigation process.") (citation omitted); Nienstedt v. Wetzel, 651 P.2d 876, 880 (Ariz. 1982) ("'[P]rocess' as used in the tort . . . is not restricted to the [traditionally] narrow sense of that term."); 72 C.J.S. §106 at 694 ("For purposes of the tort, the word 'process' may encompass a range of court procedures incident to the litigation."); Harper, *supra*, § 4.9 at 4:104, n.52 ("That a tort action, loosely called 'abuse of process,' requires the use of the word process as that word is technically defined in other contexts is no more self-evident than that a tort action loosely called 'false imprisonment' should require a 'prison.'").

4) A defendant alleging abuse of process in South Carolina must assert two essential elements: 1) an "ulterior purpose," and 2) a "willful act in the use of the process not proper in the conduct of the proceeding." Hainer v. Am. Med. Int'l. Inc., 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997); See LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988). "An ulterior purpose exists if the process is used to gain an objective not legitimate in the use of the process." First Union Mortgage Corp. v. Thomas, 317 S.C. 63, 74, 451 S.E.2d 907, 914 (Ct. App. 1994);

(a) The first element, "ulterior motive"; unlike Davis v. Epting, 317 S.C. 315, 454 S.E.2d 325 (Ct. App. 1994) (finding no ulterior purpose where the record presented no evidence the process was used to gain anything other than a right to access disputed property); and Rycroft v. Gaddy, 281 S.C. 119, 125, 314 S.E.2d 39, 44 (Ct. App. 1984) (holding no ulterior purpose was shown where defendants' use of subpoena to obtain bank records was for the "entirely legitimate purpose" of gathering evidence"). The Plaintiff's ulterior purpose and motive, is to legitimize a Toxic Asset, like Thomas Jacobs' illegal Home improvement and Mortgage Fraud as a legitimate foreclosure.

(b) South Carolina Courts do not exist to legalize illegality, at least they didn't until the February of 2012 Settlement. This is precisely why Chief Justice Toal, deserves the respect and praise from every South Carolinian. The Chief Justice did everything within reason to maintain the integrity of South Carolina's judicial system. As far as the Defendant can tell, the Chief Justice did not sell out to absolute lawlessness, like California, Michigan, New Jersey and other states – that were and still are on the brink of bankruptcy. "So what if these mortgages are illegal and violate state and federal law?... the state needs money!! Get the Chief Justice on the Phone!"

(c) The Plaintiff's illegal loan is a "Toxic Asset" that not only looks bad and smells bad, hence, "LIPSTICK ON A PIG", these illegal Predatory Lending Schemes that fueled "subprime lending", "credit default swaps" and unthinkable illegality in the banking and mortgage industry, of which the Defendant is still a victim, are ticking legal time bombs; especially if loan # 708-0174072777 has already been sold to unsuspecting investors in a mortgage backed security. What better way to legitimize illegality, than in a foreclosure proceeding. TRUTH IS ALWAYS FATAL TO A LIE and ONE BAD APPLE...you already know the remaining words to this maxim.

"Bank of America Corp. (BAC) and Wells Fargo & Co. (WFC) were ordered to pay about \$5.2 million in fines and restitution by the Financial Industry Regulatory Authority over sales of loan funds. Brokers at units of the two banks recommended funds that invested in floating-rate debt to customers who weren't looking for risky deals, the industry-funded regulatory group said today in a statement. Bank of America was fined \$900,000 and ordered to reimburse \$1.1 million in losses, while San Francisco-based Wells Fargo was ordered to pay a \$1.25 million fine and about \$2 million in restitution. " *Bloomberg – Zeke Faux – June 4, 2013 -10:33 AM. EST*

(d) The second element, "willful act in the use of the process not proper in the conduct of the proceeding." Look no further than the **Massive Filing Fraud** of Elizabeth Scott Moise and James H. Burns and the ABSOLUTE LIE of Senior Counsel - Elizabeth S. Hodgson in her Affidavit filed on May 18, 2009 in the Court of Common Pleas. Wells Fargo never had a program to legitimize a fraudulent loan. The Defendant's loan never qualified for the HMP, i.e., the Home Affordable Mortgage Program. {See *Burns & Moise's Filed Case Status Updates from 2009-2011, the Defendant's Filed Responses from 2009 – 2012, Exhibit 235 and the Defendant's Filed Response to Elizabeth S. Hodgson's Sham Affidavit Filed on May 26, 2009*}

(e) Successful foreclosures by whatever means necessary and/or by whatever LIE is necessary. The **Massive Filing Fraud** of Burns & Moise is indicative of this philosophy.

1. "The nation's fourth largest bank will pay over \$6.5 million to settle charges by the SEC that it sold mortgage-backed securities to investors without disclosing their actual risks. " The SEC charged Wells Fargo and a former vice president for improperly selling asset-backed commercial paper (ABCP) structured with high-risk mortgage-backed securities and collateralized debt obligations (CDOs) to municipalities, non-profit institutions and other customers." *Halah Touryalai, Forbes Staff . 8/14/2012 @ 1:34 PM EST*

2. 'In a scathing opinion issued last week, Elizabeth Magner, a federal bankruptcy judge in the Eastern District of Louisiana, characterized as "highly reprehensible" Wells Fargo's behavior over more than five years of litigation with a single homeowner and ordered the bank to pay the New Orleans man a whopping \$3.1 million in punitive damages, one of the biggest fines ever for mortgage servicing misconduct. "Only through litigation was this

practice discovered," Magner writes. "Wells Fargo admitted to the same practices for all other loans in bankruptcy or default. As a result, it is unlikely that most debtors will be able to discern problems with their accounts without extensive discovery." Magner wrote that the bank still refuses to come clean with homeowners about mistakes it made in the accounting of home loans. This is particularly troublesome in her district, where more than 80 percent of the borrowers who file for bankruptcy have incomes of less than \$40,000, and consequently are often unable to hire the kind of legal firepower necessary to counter Wells Fargo's army of lawyers. "[W]hen exposed, [Wells Fargo] revealed its true corporate character by denying any obligation to correct its past transgressions and mounting a legal assault ensure it never had to," Magner wrote." *Ben Hallman – Huffington Post - 04/9/2012 2:57 pm*

(f) A LIE IS ANY STATEMENT THAT IS NOT TRUE. Press releases, the SEC and the Federal Reserve Bank, have corroborated the Defendant's undisputed facts, testimony, sworn Affidavits and eyewitness account. Local government agencies can verify the rest. The Defendant has been exonerated and proven to have been telling the truth from the very beginning while everyone else involved in this litigation, including attorneys, have been proven to be verifiable LIARS, by their own documents and statements. {WF00001-WF00137 – *The Case Status Updates of Burns and/or Moise, the Affidavit of Senior Counsel Elizabeth S. Hodgson and the Defendant's Filed Replies, Responses & Exhibits from July of 2008 to Present*}

FIFTEENTH AFFIRMATIVE DEFENSE
"Violation of FDIC Policy Statement 5000"

170. The FDIC's Policy Statement 5000 states in pertinent parts... "The Uniform Retail Credit Classification and Account Management Policy establishes standards for the classification and treatment of retail credit in financial institutions. ---- For purposes of this policy, retail credit also includes loans to individuals secured by their personal residence, including first mortgage, home equity, and home improvement loans. ----- Actual credit losses on individual retail credits should be recorded when the institution becomes aware of the loss, but in no case should the charge-off exceed the time frames stated in this policy. This policy does not preclude an institution from adopting a more conservative internal policy."

"Loans in bankruptcy should be classified Loss and charged off within 60 days of receipt of notification of filing from the bankruptcy court or within the time frames specified in this classification policy, whichever is shorter, unless the institution can clearly demonstrate and document that repayment is likely to occur. ----- **Fraudulent loans should be classified Loss and**

charged off no later than 90 days of discovery or within the time frames adopted in this classification policy, whichever is shorter. [Boldness and underlining added for emphasis]

**PUNITIVE DAMAGES MUST BE
AWARDED TO DETER FUTURE PRACTICES**

171. In order to recover punitive damages, the Defendant has the burden of proving by clear and convincing evidence the Plaintiff's conduct was willful, wanton, or in reckless disregard of the Defendant's rights. *S.C. Code Ann. § 15-33-135 (2005)*; *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). The trial court should conduct a post-trial review of punitive damages to determine whether the award of punitive damages was proper. *Gamble v. Stevenson*, 305 S.C. 104, 111, 406 S.E.2d 350, 354 (1991). In conducting such a review the trial court may consider the following factors:

(a) (1) Plaintiff's degree of culpability; (2) duration of the conduct; (3) Plaintiff's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the Plaintiff or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) Plaintiff's ability to pay; and finally, (8) . . . "other factors" deemed appropriate. *Gamble*, 305 S.C. at 111-12, 406 S.E.2d at 354.

(b) The trial court is not required to make findings of fact for each factor to uphold a punitive damage award. *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 468 S.E.2d 633 (1996). *Welch v. Epstein*, 342 S.C. at 306, 536 S.E.2d at 422. The trial judge has considerable discretion regarding the amount of damages both actual or punitive awarded. *Id.* at 305, 536 S.E.2d at 421.

(c) Due to the Plaintiff's pattern of consistent violations of federal and state law, rules and/or regulations, the Defendant seeks Punitive Damages and all relevant Statutory Penalties. In addition to denying the Plaintiff's Motion for Summary Judgment, Dismissing this case with Prejudice and awarding all Statutory damages, the Trial Court **MUST** consider "Punitive Damages" to deter the Plaintiff in the future from repeating being **complicit** with illegality.

(d) South Carolina's Appeals Court and Supreme Court have determine the following, "The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future," as well as "to vindicate a private right of the injured party by requiring the wrongdoer to pay money

to the injured party." Clark v. Cantrell, 39 S.C. 369, 378-79, 529 S.E.2d 528, 533 (2000).

(e) "Recklessness implies the doing of a negligent act knowingly"; it is a 'conscious failure to exercise due care.'" Berberich v. Jack, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011) (quoting Yaun v. Baldridge, 243 S.C. 414, 419, 134 S.E.2d 248, 251 (1964)).

(f) "If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning—the conscious failure to exercise due care." Id. "It is this present consciousness of wrongdoing that justifies the assessment of punitive damages against the tortfeasor" Cody P. v. Bank of Am., N.A., Op No. 4875 (S.C. Ct. App. Filed Aug. 23, 2011) (Shearouse Adv. Sh. No. 29 at 93) (quoting Rogers v. Florence Printing Co., 233 S.C. 567, 578, 106 S.E.2d 258, 263 (1958))."

(g) "In other words, 'at the time of his act or omission to act the tortfeasor [must] be conscious, or chargeable with consciousness, of his wrongdoing.'" Id. (quoting Rogers, 233 S.C. at 578, 106 S.E.2d at 264) (alteration by court). "A conscious failure to exercise due care constitutes willfulness." Mishoe v. OHG of Lake City, Inc., 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005). "In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct. App. 2004) (quoting S.C. Code Ann. § 15-33-135)."

(h) In order to recover punitive damages, the Defendant has the burden of proving by clear and convincing evidence the Plaintiff's conduct was willful, wanton, or in reckless disregard of the Defendant's rights. S.C. Code Ann. § 15-33-135 (2005); Taylor v. Medenica, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). The trial court should conduct a post-trial review of punitive damages to determine whether the award of punitive damages is proper. Gamble v. Stevenson, 305 S.C. 104, 111, 406 S.E.2d 350, 354 (1991).

(i) What the Plaintiff has done to the Sistrunk family should never happen again. The Defendant has already proven with clear and convincing documentation that has already been filed in the Court of Common Pleas along with Affidavits and over 100 Exhibits, the Plaintiff's **complicity** in the Seller's illegal brokering activity, with help from the Broker and Appraiser. In 5 years no one has come forward to refute or deny any sworn statement by the Defendant or the

witness. After this Pleading is filed... and if statements start appearing literally out of nowhere, the Court must assume collusion to enter false testimony to discredit the Defendant and the Witness to protect the illegal brokering activity of the Seller, with help from the Broker and Appraiser and Wells Fargo's personnel from being prosecuted for their unconscionable acts.

REBUTTAL & COUNTER TO PLAINTIFF'S CONCLUSIONS

172. The unauthorized Credit Report established Wells Fargo's **complicity** in the illegal activities of the Seller – Thomas Jacobs - with help from the Broker – Golden Gate Mortgage / David Terrell and the Appraiser – Jim H. Austin, III on October 3, 2007 {WF00063-WF00074}. After being duly notified by phone and in writing that it was not authorized, the Plaintiff still used it, still uses it without any regard for the Defendant's right not to be violated by Wells Fargo or anyone else.

(a) As the Defendant has already noted; Wells Fargo's attorneys had the unmitigated gall and the audacity to bring it to Court and number it as an Exhibit. The Defendant's loan should have been cancelled years ago because of it.

(b) Based on the foregoing repudiation of all the Plaintiff's facts that never were undisputed, the exhibits that are the consummation of the Seller's illegal brokering activity and violation of Federal and State laws, with help from the Broker / David Terrell, the Appraiser – Jim H. Austin, III and the **complicity** of Wells Fargo's personnel by accepting, processing, approving, funding and actively perpetuating and defending the Seller's illegal Predatory Lending Scheme and his illegal Home Improvement and Mortgage Fraud.. Summary Judgment is appropriately denied, this case Dismissed with Prejudice and Punitive Damages awarded the Defendant.

RELIEF SOUGHT

173. Under the direction and by order of this Court.....

- (a) Deny Summary Judgment for the Plaintiff
- (b) Dismiss this foreclosure action with Prejudice
- (c) Award any and all Statutory Penalties to the Defendant
- (d) Award Punitive Damages to the Defendant Based on Precedent
- (e) Remove any and all Derogatory Credit Information sent by Wells Fargo to CRA's.
- (f) By Court Order no set-off or recoupment for Wells Fargo's tax payments. There is a reason why the Defendant must send tax notices to Iowa.
- (g) Let a Jury decide Ascertainable Loss, Defamation of Character & Negligent Infliction of Emotional Stress.

NOTIFICATION

A copy of the Defendant's Opposition to the Plaintiff's Motion for Summary Judgment that has been filed with the Clerk of Court will be mailed to the following:

Nelson Mullins Riley & Scarborough, LLP
Elizabeth Scott Moise
SC Bar No. 012945
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401 -2239
803-853-5200

James H. Burns
SC Bar No. 70313
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Wells Fargo Bank, N.A.

NOTARY VERIFICATION

IN WITNESS WHEREOF, The undersigned, being duly **SWORN**, and under the **PENALTY OF PERJURY** has signed and sealed these attestations this 17th day of July in the year 2013 in City of Orangeburg, State of South Carolina.

Affiant Signature: Dorothy H. Sistrunk

Notary's Signature as Witness (1): Sullivan D. Buck

Signed, sealed and delivered in the presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On 7/17/2013 before me appeared Dorothy H. Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within document and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on this Pleading presents this Pleading to the Court.

WITNESS my hand and official seal.

Notary's Signature Sullivan D. Buck

My Commission Expires
July 24, 2022

Commission Expires _____