

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

DEC 04 2015

SC Court of Appeals

James B. Jackson, Jr., Master in Equity

Case No. 2015-001112

South Carolina Federal Credit Union,

Respondent

v.

Dorothy Harley Sistrunk aka Dorothy
Harley-Sistrunk aka Dorothy A. Harley
aka Dorothy Sistrunk

Appellant.

RECORD ON APPEAL

December 2, 2015

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-38-01392

South Carolina Federal Credit Union	vs	Dorothy Harley Sistrunk
PLAINTIFF(S)		DEFENDANT(S)
Submitted by: Master-In-Equity Judge		Attorney for : ☐ Plaintiff or ☐ Self-Represented Liantant Defendant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE**

BOX):

- ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

By consent of the parties at the hearing of their Motions for Summary Judgment, they each agreed to have this case referred to The Honorable James B. Jackson, Jr., Master-in-Equity for Orangeburg County. AS A RESULT, the matter is referred to the Master-in-Equity.

This order ☐ ends ☐ does not end the case.	
Additional Information for the Clerk :	

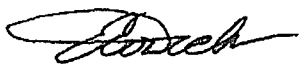
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes —below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		Exhibit 50

If applicable, describe the property, including tax map information and address, referenced in the order:

Information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge 	Judge's Code: 2153	Date: 4/25/14
--	-----------------------	------------------

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)		ATTORNEY(S) FOR THE DEFENDANT(S)
		CLERK OF COURT

Court Reporter:

Exhibit 50

STATE OF SOUTH CAROLINA,)
)
COUNTY OF ORANGEBURG)

COURT OF COMMON PLEAS
C.A. No.: 2011-CP-38-01392
and
C.A. No.: 2011-CP-38-01481

South Carolina Federal Credit Union,)
)
Plaintiff,)
)
vs.)
)
Dorothy Harley Sistrunk a/k/a Dorothy)
Harley-Sistrunk a/k/a Dorothy A.)
Harley a/k/a Dorothy Sistrunk,)
)
Defendant.)

ORDER OF JUDGMENT

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

FILED FOR RECORD
WINNIE A. B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2015 MAR 26 AM 9:11

This matter comes before the Court on a Summons and Complaint filed by the Plaintiff seeking judgment against the Defendant on November 14, 2011, on an open ended line of credit. The Defendant filed her answer to the matter in which she denied she owed any additional money. A final hearing was held before me on February 18, 2015 which was attend by the Plaintiff and their counsel, Reid E. Dyer and by the Defendant who represented herself, Pro Se.

Based on the testimony and evidence presented at the hearing and on the pleadings filed herein, I find this Court has jurisdiction over the parties hereto and the subject matter hereof and that the final hearing was properly held. I find that the Defendant borrowed money from the Plaintiff pursuant to a Loan Liner open ended disbursement agreement dated February 28 2003. I find that the loan was for the original amount of \$5,500.00 and that the original payment was for \$110.00 per month. I find that at this time the Plaintiff included credit life and credit disability in this loan pursuant to a previous loan that was made by the Plaintiff to the Defendant. The previous loan was paid in full and included credit life an credit disability.

QBM #1

Exhibit 41

According to the supporting documents submitted by the Plaintiff, any subsequent loans would automatically include credit life and credit disability and this subsequent loan of \$5,500.00 did include those items.

I find that that there was substantial confusion between the Plaintiff and the Defendant in that the Defendant thought she was receiving a closed ended loan that was similar to the previous loan in which she financed her automobile. The Defendant used these loan proceeds of \$5,500.00 to purchase a mobile home and it was her belief that this was a home loan rather than an open ended loan.

I find that the Defendant made substantial payments over the years in the amount \$110.00 per month but when the premiums for credit life and credit disability were paid and when the interest at the rate of 15% per annum was assessed, there was very little of the payment remaining to reduce the principal over this period of time. As a result, the Plaintiff has submitted evidence which shows that the Defendant now owes a total of \$4,625.82 on the principal amount of this original loan. I find that the Plaintiff seeks judgment in this amount plus attorney fees and court costs.

I find that the payment history in regards to this matter submitted by the Plaintiff does appear to be accurate and that they are entitled to judgment against the Defendant in the amount of \$4,625.82. I find that this was clearly an open ended line of credit and that credit life and disability were canceled a later time at the request of the Defendant, they were properly included in with the original loan.

I find that the Plaintiff submitted no Affidavit for attorney's fees, nor any time sheets setting forth the amount of time that they spent on this case, and simply submitted the issue of attorney's fees to this Court for a determination without any evidentiary support. As a result, I find that the Court should deny attorney's fees and court costs in this matter. As a result, I find the Court should award judgment to the Plaintiff against the Defendant in the amount of \$4,625.82.

IT IS THEREFORE ORDERED that the Plaintiff shall have judgment against the Defendant in the amount of \$4,625.82 as set forth herein.

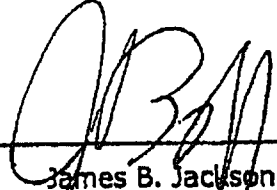
JPM #2

Exhibit 41

IT IS ORDERED.

Orangeburg, S.C.

March 26, 2015


James B. Jackson, Jr.
Master in Equity
Orangeburg County

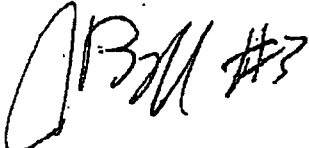


Exhibit 41

JUDGMENT IN A CIVIL CASE

CASE NO. : 2011-CP-38-01392

South Carolina Federal Credit Union	Dorothy Harley-Sistrunk
PLAINTIFF(S)	DEFENDANT(S)
Master-in-Equity.	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

Disposition Type (Check One) ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

ORDER INFORMATION

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

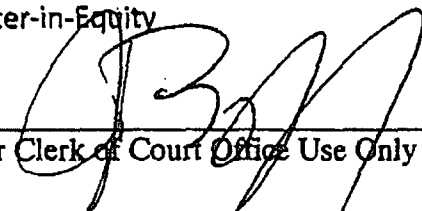
The Court has considered Petitioner's Motion for Reconsideration and Motion For New Trial. I find that neither Motion raises any new issues not already considered by the Court in the previous Order of March 26, 2015. Therefore, the Court denies these Motions without a hearing.

This order ☒ ends ☐ does not end the case.	
Additional Information for the Clerk :	

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes ———below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		Exhibit 46

Applicant, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Master-in-Equity 	Judge's Code: 3077	Date: April 20, 2014
---	-----------------------	-------------------------

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
Reid E. Dyer, Esquire PO Box 22828 Charleston, SC 29401-1428	Dorothy Harley-Sistrunk 423 Bayne Street Orangeburg, SC 29115
	CLERK OF COURT

Court Reporter:

Exhibit 46

JUDGMENT IN A CIVIL CASE

CASE NO. : 2011-CP-38-01392

and 2011-CP-38-01481

South Carolina Federal Credit Union	Dorothy Harley Sistrunk a/k/a Dorothy Harley-Sistrunk a/k/a Dorothy A. Harlety a/k/a Dorothy Sistrunk
PLAINTIFF(S)	DEFENDANT(S)
Master-in-Equity.	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

Disposition Type (Check One) ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court.

The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

ATTEST: TRUE COPY

W. J. B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC.

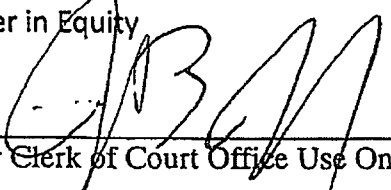
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

ORDER INFORMATION

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

This order ☒ ends ☐ does not end the case.		
Additional Information for the Clerk :		
INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes -----below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		Exhibit 47
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Master in Equity 	Judge's Code: 3211	Date: May 21, 2015
---	-----------------------	-----------------------

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or

to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)		ATTORNEY(S) FOR THE DEFENDANT(S)
		CLERK OF COURT

Court Reporter:

Exhibit 47

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

COURT OF COMMON PLEAS

C.A. No.: 2111-CP-38-01392

and

C.A. No.: 2011-CP-38-01481

South Carolina Federal Credit Union,)

Plaintiff,)

vs.)

Dorothy Harley Sistrunk a/k/a Dorothy)

Harley-Sistrunk a/k/a Dorothy A. Harley)

a/k/a Dorothy Sistrunk,)

Defendant.)

ATTEST: TRUE COPY

Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

2015 MAY 21

14 30 21

This Court had previously issued an Order of Judgment in the above referenced matter dated on March 26, 2015, and filed on March 26, 2015, in which the Court granted Judgment to the Plaintiff against the Defendant in the amount of \$4, 625.82. The Defendant then filed what the Court deemed to be a Motion for Reconsideration and a Motion for a New Trial. The Court denied both of these Motions by an Order dated April 20, 2015 and filed April 20, 2015.

Now the Defendant has filed a Notice of Motion and a Motion To Set Aside the Judgment and Vacate the Order Ending this Case Due to Judicial Errors That Do Not Comply with Rules 42(b), 52(b), 54(b), 56(c)-(d), 60 (b)(3), SCRCP, South Carolina's Policies of Law, Precedents and the 7th Amend. To The Constitution of the United States of America. In this Motion, the defendant alleges that she did not file a Motion for Reconsideration; instead she filed a Motion to Amend the judgment Pursuant to 59(e), SCRCP. Additionally, the Defendant alleges that this Court erred in that she did not file a Motion for a New Trial but

Exhibit 48

QBA #1

rather filed a New Trial Motion pursuant to Rule 52(b), SCRPC. The Defendant alleges that these are Judicial errors made by this Court.

This Order is being issued for the purpose of notifying the parties that this Court denies any and all Motions filed by the Defendant including any Motion to Alter or Amend the Judgment pursuant to Rule 59(e), SCRPC; any new Trial Motion pursuant to Rule 52(b), SCRPC and the Defendant's most recent Motion to Set Aside Judgment and Vacate the Order as set forth herein. This Court fully considered all of the arguments made by Ms. Sistrunk during the trial of this case and seriously considered each and everyone of her arguments. All of Ms. Sistrunk's post trial Motions repeat the same argument that she made during the trial of this case. As a result, this Court must deny all of Ms. Sistrunk's Motions and reaffirm the original judgment issued by this Court dated March 26, 2015 and recorded March 26, 2015. Additionally, this Court would deny each and every counterclaim that may have been filed by Ms. Sistrunk in this case that may not have been previously addressed in the Orders issued by this Court. I have considered all of the matters raised by Ms. Sistrunk and I have determined that Judgment should be issued against her in favor of the Plaintiff in the amount of \$4,625.82.

The further purpose of this Order is to advise the parties, that this Court will not consider any additionally post Trial Motions that may be made by either party and any further action taken in this case must be in the form of an Appeal to the South Carolina Court of Appeals.

IT IS THEREFORE ORDERED that the Defendant's Motion to Alter or Amend the Judgment, New Trial Motion, Motion to Set Aside the Judgment and Vacating the Order Ending this Case Due to Judicial Errors That Do Not Comply with Rules 42(b), 52(b), 54(b), 56(c)-(d), 60 (b)(3), SCRPC, South Carolina's Policies of Law, Precedents and the 7th Amend. To The Constitution of the United States of America and any other Motions or Counterclaims that may have been filed by the Defendant in this case are hereby denied . Any appeal of this Order or any previous Orders issued by this Court must be made to the South Carolina Court of Appeals.

Exhibit 48

JB #2

IT IS SO ORDERED.

Orangeburg, South Carolina
Dated: May 21, 2015

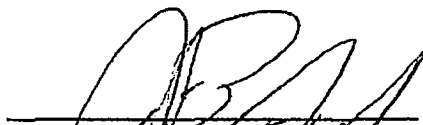

James B. Jackson, Jr.
Master in Equity
Orangeburg County

Exhibit 48

JB#3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Judge James B. Jackson, Jr., Master in Equity

Case No. 2011-CP-38-1392

South Carolina Federal Credit Union
(SCFCU),

Respondent,

v.

Dorothy Sistrunk,

Appellant.

NOTICE OF APPEAL

Dorothy Sistrunk appeals the Master's Order of Judgment. No Motion for Consideration was filed by the Appellant. The Motion the Appellant filed is to Alter or Amend. There is no Complaint or an Amended Complaint filed for a LOANLINER® loan dated February 28, 2003. The Plaintiff's, SCFCU's Complaint and Debt Collection are based on an Open-End Disbursement Receipt Plus LOANLINER® Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars (\$5,556.44) that is now in default with an amount due and payable of \$5,274.84. The Appellant retrieved the written notice of entry of this Order from the mailbox at 423 Bayne Street on April 23, 2015. The Order is dated April 20, 2015 {See Attached Exhibits 41 & 46}

May 20, 2015

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

Respondent SCFCU's Attorney/s

cc: Moore & Van Allen, PLLC
Reid E. Dyer
78 Wentworth Street
Office Box 22828 (29413-2828)
Charleston, SC 29401-1428
Ph: 843-579-7045 Fx: 843-579-8754

Note: Rule 203(b)(1), SCACR, in pertinent parts states; "[A] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." Receipt date: April 23, 2015.

2011CV3810701394

CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

South Carolina Federal Credit Union)

PLAINTIFF)

PO Box 190012)

STREET ADDRESS)

N. Charleston, SC 29406)

CITY, STATE ZIP)

TELEPHONE)

VS.)

Dorothy Harley Sistrunk)

DEFENDANT(S))

423 Bayne Street)

STREET ADDRESS)

Orangeburg, SC 29115)

CITY, STATE ZIP)

TELEPHONE)

IN THE MAGISTRATE'S COURT

COMPLAINT

I, Amy L Hewitt, agent of South Carolina Federal, the plaintiff in this civil action do make the following claims:

1. I believe the defendant, Dorothy Harley Sistrunk, is a resident of Orangeburg County, and resides at 423 Bayne Street, Orangeburg, SC 29115 which is within Judge 03's magisterial jurisdiction or this Complaint is properly filed in Orangeburg County.

2. I make this complaint on the following:

This is a suit on a note. Defendant has defaulted in payment of said note leaving an unpaid balance of \$4,999.19 now due and payable.

Plaintiff is exempt Notice of Right to Cure requirements section 37-5-110 pursuant to section 37-1-202 (10). (Attach supplement if necessary)

3. I believe, because of the above information, that I am entitled to and do request a judgment for \$4,999.19 and/or other relief as below requested:

Accrued Interest, Court Cost

including any costs resulting in this action.

I state under penalty of perjury that the above is correct and truthful, except those based on my information and belief.

Exhibit II (Page 1 of 2)

Dated: May 11, 2011

Ammy R. Hewitt
Signature of Plaintiff (or his attorney)

2012 JUN 13 AM 8:30
CLERK OF COURT
FRANKLIN COUNTY

ATTEST: TRUE CC
Wingja S. L.
CLERK OF COURT
FRANKLIN COUNTY

Exhibit II (Page 2 of 2)

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
South Carolina Federal Credit Union)
PLAINTIFF(S))
VS.)
Dorothy Harley Sistrunk)
DEFENDANT(S).)

CIVIL CASE NUMBER
IN THE MAGISTRATE'S COURT
AFFIDAVIT AND ITEMIZATION
OF ACCOUNTS

Plaintiff, Amy L Hewitt, Agent for South Carolina Federal Credit Union, personally appearing before me, who, being duly sworn, states that he is the plaintiff in this action, and that the itemization of accounts which follows is true and correct.

He further states that no part of the sum included in the itemization below has been paid or satisfied in any fashion, and is today due and owed to him.

ITEMIZATION OF ACCOUNTS

***9448-10

\$4999.19
\$0.00
\$0.00
\$0.00
\$0.00

TOTAL \$4999.19

(Copies of bills, papers or other proof of any of the above accounts should be attached to this document.)

Sworn to and Subscribed before me
this 11th day of May, 2011.
Magistrate or Notary Public for South Carolina
My Commission expires 7/9/2018

PLAINTIFF (or his attorney)

ATTEST: TRUE COPY

Exhibit V (Page 1 of 2)

LOIN	9448-10	SISTRUNK/DOROTHY H	LN:	BR:	6 DT:051111
Current Balance	4625.82	Due Date	10/31/10	Coll Code	999 VRLCode 0
Payoff Int	373.37	Sched Pmt	92.00	Descr:	PERSONAL ACCESS LI
Payoff LC	.00	Past Due	.00	APR	15.0000
Payoff Amount	4999.19	Unpaid LC	.00	Daily Interest	1.90102
Cur Escrow Bal	.00	Unpaid Int	183.27	Insurance Code	0
Pend Distrib	.00	Last Int Date	01/31/11	Entry Date	02/24/03
Unpaid Div	.00	Term	108	Credit Avail	.00
Adjusted Escrow	.00	Unpd PP Int	.00		
Payoff W/Escrow	4999.19	Cred Limit	0		
App Date	02/24/03	Loan Off/DecTell	EBB/AIR	Collector	
Review Date	02/24/11	Original Amt	5556.44	Census Tract	.00
		Pledge Amt	.00	Meth/Freq/Skip	C/M/
Alt Pmt	.00	Pledge Code	0	Action	0 Status N
Alt Pmts Left	0	X Pledge	0-00	Ln Dr Acct	0
Co Makers	0	Last PBF Amt	.00		
Credit Score 650 Pur	4	Last PBF Date	00/00/00	Paid off Date	00/00/00
C/O Date	01/31/11	YTD Int	.00	Last Pmt Amt	1.00
C/O Reason		NYPD Int	.00	Last Pmt Date	11/02/10
LOAN INSURANCE CODE IS PRESENT					

Print

2012 JUN 13 AM 8:30

TEST. TRUE COPY

Wingy R. L. L.

CLERK OF COURT

Exhibit V (Page 2 of 2)

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

2011CV3810701394
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS

SC Federal Credit Union
Post Office Box 190012
North Charleston, SC 29419
(843) 569-5045

PLAINTIFF(S)

Vs

Dorothy Harley
Sistrunk
423 Bayne Street
Orangeburg, SC
29115

DEFENDANT(S)

TO THE DEFENDANT(S) NAMED ABOVE:

YOU ARE SUMMONED and required to Answer the allegations and present any appropriate Counterclaims/Crossclaims to the attached Complaint/Counterclaim within THIRTY days from the first day after receipt of this Summons. Your Answer must be received by the:

Orangeburg County
Central Region Magistrate
1540 Ellis Avenue P. O. Box 9000
Orangeburg, SC 29116
Phone: (803) 533-5844 Fax: (803) 516-4011

ATTEST: TRUE COPY
Virginia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

If you fail to Answer within the prescribed time, a Judgment by Default will be rendered against you for the amount or other remedy requested in the attached Complaint, plus interest and costs. If you desire a jury trial, you must request one within five (5) days before the date of trial. If no jury trial is timely requested, the matter will be heard and decided by the Judge.

Given under my hand:

Derrick H. [Signature]
JUDGE

READ ATTACHED INSTRUCTIONS CAREFULLY

May 18, 2011

Exhibit I

STATE OF SOUTH CAROLINA)

2011CV3810701394
CIVIL CASE NUMBER

COUNTY OF ORANGEBURG)

IN THE MAGISTRATE'S COURT

ANSWER

SC Federal Credit Union
Post Office Box 190012
North Charleston, SC 29419
(843) 569-5045

PLAINTIFF(S)

Vs

Dorothy Harley Mailing address & telephone number
Sistrunk needed
423 Bayne Street
Orangeburg, SC 29115
DEFENDANT(S)

On June 9, 2011 I was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer, which is hereby filed with the **Orangeburg County Summary Court**, is as follows:

CHECK ONE:

- A. ☒ I contest the jurisdiction of the court based on the following: (use additional pages if necessary)
The amount in controversy exceeds \$7,500.00.
See attached pleading for background information, points of law, counterclaims and affirmative defenses.
- B. ☐ I admit everything in the complaint and do not want a trial.
- C. ☐ I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary)

D. ☒ I deny that I am responsible at all because: (use additional pages if necessary)
Due to acts, omissions, misinformation, misrepresentations, courses of conduct, deception, unfair trade practices, fraud in the inducement, fraud in factum, and misleading me for over 7 years that I had a Standard Installment Loan Account.
YOU MUST FILE THIS DOCUMENT WITH THE COURT WITHIN THIRTY DAYS

THE DEFENDANT/PLAINTIFF STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE.

DATED: June 28, 2011

Dorothy Harley-Sistrunk
SIGNATURE OF DEFENDANT(S) (OR ATTORNEY)

IF MORE THAN ONE DEFENDANT, ALL MUST FILE ANSWER

PLEASE RETURN TO:

Central Region Magistrate
1540 Ellis Avenue, P. O. Box 9000
Orangeburg, SC 29116
Phone: (803) 533-5844 Fax: (803) 516-4011

ATTEST: A TRUE COPY
MAGISTRATE, ORANGEBURG COUNTY
SOUTH CAROLINA

Exhibit III

JUN 28 2011

J. Edwards

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF ORANGEBURG

CIVIL CASE NUMBER

South Carolina Federal Credit Union
PLAINTIFF

2011CV3810701394

PO Box 190012
N. Charleston, SC 29406

RESPONSE TO SUMMONS
AND COMPLAINT WITH
COUNTERCLAIMS,
AFFIRMATIVE DEFENSES
AND A DEMAND FOR A
TRIAL BY JURY
JUNE 28, 2011

Vs.

Dorothy Harley Sistrunk;
DEFENDANT(S)
423 Bayne Street
Orangeburg, SC 29115

Comes now the Defendant Dorothy Harley Sistrunk to file this RESPONSE WITH COUNTERCLAIMS AND AFFIRMATIVE DEFENSES TO THE MAGISTRATE'S COURT SUMMONS AND TO THE PLAINTIFF'S COMPLAINT that is dated May 18, 2011 and delivered by a Law Enforcement Personnel to 423 Bayne Street in Orangeburg, South Carolina on June 9, 2011 and to demand a TRIAL BY JURY for reasons that shall be stated herein.

TO: THE PLAINTIFF; SOUTH CAROLINA FEDERAL CREDIT UNION & AGENT FOR THE PLAINTIFF - AMY L. HEWITT

1. Response to opening statement of claim: No Response Required.
2. Response to sentence #1: No Response Required.
3. Response to sentence #2: The Plaintiff's claim of an unpaid balance of \$4,999.19 is erroneous because the Plaintiff owes the Defendant over \$9,240.00. The Defendant does not dispute the Plaintiff is exempt from Notice of Right to Cure requirements, Re: Section 37-5-110 because the Plaintiff is a Federally Chartered Credit Union pursuant to section 37-1-202, subsection 10 and is therefore excluded from the provisions of Title 37.
4. Response to sentence #3: The Plaintiff's claim for judgment for \$4,999.19 and other relief, such as Accrued Interest, Court Cost and any other costs must be denied because the Plaintiff must return over \$9,240.00 to the Defendant.

Exhibit IV

-1-

Background

5. On or about February 28, 2003, the Defendant obtained a loan for \$5,500.00 from South Carolina Federal Credit Union, (hereafter called SCFCU or the Plaintiff). The Defendant was led to believe the Loan was a Standard Installment Contract {See Exhibits 4, 5 and 6}. The Defendant paid SCFCU, \$110.00 a month for over 7 years. {See Exhibit 7} \$110.00 a month times 12 months times 7 years equals a total payment of \$9,240.00. As the evidence will show, the Plaintiff was not only paid back the original loan of \$5,500.00, the Plaintiff also received a profit of \$3,740.00 directly from the Defendant. Because the Defendant was misled and misinformed [*Fraud in the Inducement*] as to the true nature of the loan agreement [*Fraud in Factum*] , the Plaintiff must return over \$9,240.00 to the Defendant. As a matter of Law, agreements and/or contracts that come into existence due to "Fraud" are rendered null and void.

6. Shortly after October 31, 2010, the Defendant began to question the accounting practices of SCFCU. What happened to the \$9,240.00 the Defendant paid SCFCU? Why wasn't a portion of the \$9,240.00 the Defendant paid SCFCU applied to the Defendant's loan balance? If the Defendant had a Standard Loan Installment Contract like she was led to believe and at a 15% Fixed Interest Rate, and after 7 years of payments, the Defendant's loan balance should have and would have been considerably lower {See Exhibits 4 and 5}. The more the Defendant inquired about the nature of the loan and the kind of loan she (the Defendant) really had, the more hostile some personnel at SCFCU became. The Defendant was not aware of the true nature of her (the Defendant's) loan until this claim was filed. In fact, the lowest balance the Defendant can recall and has a record of is \$4,614.45. {See Exhibit 1} Consequently, because of "Fraud", the Plaintiff must return over \$9,240.00 to the Defendant.

7. On December 23, 2010, Sabrina Gaskins from SCFCU and whose email address is sgaskins@scfederal.org wrote an email to the Defendant stating that in order to continue working with the Defendant, SCFCU could not accept nothing less than one payment of \$92.00 to clear the Defendant's October 2010 payment {See Exhibit 2}. This one payment of \$92.00 later became the minimum payment of \$92.00 SCFCU would accept from the Defendant.

8. On January 1, 2011, the Defendant wrote Sabrina Gaskins an email stating she

(the Defendant) could not pay more than \$20.00 a month. Since SCFCU would not accept the Defendant's "Good Faith" gesture of \$20.00 a month, there was no need for the Defendant to send SCFCU any more monthly payments {See Exhibits 2 and 3}.

9. Eventually reduced income and the rapidly increasing cost of living began to dramatically impact the Defendant's financial situation. Consequently, the Defendant could not afford to send SCFCU \$110.00 a month any longer. In fact, the Defendant could not afford to send SCFCU \$20.00 a month. Even though the Defendant explained her (the Defendant's) financial situation to SCFCU, an SCFCU representative informed the Defendant, SCFCU could not accept anything less than \$92.00 a month. The Defendant could not send SCFCU \$92.00 a month for several reasons.

A. In 2010, the Defendant's fuel cost was 3 times greater than it was in 2003.

B. In 2010, the Defendant's cost for food, phone service, lights, gas, car maintenance and other necessary items had also increased greatly.

C. In 2010, the Defendant's medical expenses for her son's health problems had also increased. These same ailments caused an extended hospitalization during 2007. In fact, her son was in and out of the hospital and in and out of Pediatric Clinics from 2003 to 2011.

D. In 2010, the Defendant's husband's health and income had also deteriorated further eroding financial support systems. In fact, the mobile home industry, where her husband had worked as a salesman for over 6 years collapsed entirely in 2003. Employment of any kind has been difficult for him. In fact, he has not had steady or consistent employment, since 2003. A severe groin injury has handicapped her husband since that time and the operation her (the Defendant's) husband had in 2006 only slightly improved his physical condition. He still cannot sit, stand or walk for long periods of time.

10. Despite these difficulties, the Defendant still paid SCFCU \$110.00 a month until her (the Defendant's) income was reduced by mandatory furloughs and cutbacks in actual take home pay. This is the primary and the most important reason why the Defendant did not and cannot pay SCFCU \$110.00 a month or \$92.00 a month any longer. {See Exhibit 2}

However, because of "Fraud in the Inducement" and "Fraud in Factum", the Defendant does not need to pay the Plaintiff anymore money. In fact, the Plaintiff must return over \$9,240.00 to the Defendant.

Arguments Relative To The Plaintiff's Affidavit And Itemization Of Accounts

11. The Plaintiff's request for judgment must be denied and a JURY TRIAL scheduled because the Plaintiff's AFFIDAVIT AND ITEMIZATION OF ACCOUNTS is woefully inadequate. An AFFIDAVIT AND ITEMIZATION OF ACCOUNTS should show a complete transaction history. The Defendant argues that the AFFIDAVIT AND ITEMIZATION OF ACCOUNTS that is attached to the Plaintiff's COMPLAINT that was filed by Amy L. Hewitt does not reflect any of the \$9,240.00 plus, the Defendant has already paid the Plaintiff for the \$5,500.00 loan and because of "Fraud in the Inducement and Factum", the Plaintiff must return over \$9,240.00 back to the Defendant.

12. The Plaintiff's request for judgment must be denied and a JURY TRIAL scheduled because of the following additional reasons.

A. The Plaintiff's ITEMIZATION OF ACCOUNTS failed to show the Defendant's 7-year payment history or record of payments {See Exhibits 4 and 6}.

B. The Plaintiff's request for judgment must be denied because the Plaintiff's AFFIDAVIT AND ITEMIZATION OF ACCOUNTS failed to explain what happened to the \$9,240.00 the Defendant has already paid the Plaintiff {See Exhibit 4 and 6}. Due to "Fraud" this money must be returned in its entirety.

C. The Plaintiff's request for judgment must be denied and a JURY TRIAL scheduled because the Plaintiff did not provide any evidence, at the time this COMPLAINT was filed, that the Plaintiff did not apply the Defendant's payments to a Revolving Charge Account or similar Open-end Account, rather than a Standard Installment Loan Account. This would be a deceptive business practice and "Fraud in the Inducement".

D. The Plaintiff's request for judgment should be denied because it is evident the Defendant is also the victim of "Fraud in Factum".

E. The Plaintiff's request for judgment must be denied and a JURY TRIAL scheduled because the Plaintiff did not provide any evidence with the filed COMPLAINT that the Plaintiff did not change, redact, alter, replace, white out, misstate, mislabel or mischaracterize transactions relative to the Defendant's actual account history. The Plaintiff did not provide any explanation as to what happened to the \$9,240.00 plus, the Defendant has already paid.

F. The Plaintiff's request for judgment must be denied and a JURY TRIAL scheduled because at the time the COMPLAINT was filed, the Plaintiff did not provide any

evidence that the Plaintiff did not mix and match accounts from another source and then applied them to the Defendant's account, thus presenting an inaccurate payment and/or transaction history. Such mixing and matching of loan accounts would create an inaccurate loan payment history that would lead a person of reasonable intelligence to believe the Defendant has only paid \$500.81 on her (the Defendant's) loan, when in actuality; the Defendant has already paid the Plaintiff over \$9,240.00 on a \$5,500.00 Loan, **and because of "Fraud" this money must be returned.**

G. The Plaintiff's request for judgment must be denied and a JURY TRIAL scheduled because at the time the COMPLAINT was filed, the Plaintiff did not provide any evidence that the Plaintiff did not create an inaccurate loan balance and payoff amount. This might explain why the Plaintiff claims the Defendant owes the Plaintiff \$4,999.19 after paying the Plaintiff over \$9,240.00, **and because of "Fraud" this money must be returned.**

H. The Plaintiff's request for judgment must be denied and a JURY TRIAL scheduled because at the time the COMPLAINT was filed, the Plaintiff did not provide any evidence the Plaintiff did not over-calculate the Defendant's interest payments. Such an over-calculation would allow the Plaintiff to use more of the Defendant's payment for interest payments rather than payment on principle. This might explain why the Defendant's loan balance, including late fees and penalties, has only moved \$500.81 (\$5,500.00 - \$4,999.19) in 7 years and after paying the Plaintiff over \$9,240.00, **and because of "Fraud" this money must be returned.**

I. The Plaintiff's request for judgment must be denied and a JURY TRIAL scheduled because at the time the COMPLAINT was filed, the Plaintiff did not provide any evidence the Plaintiff did not give the Court and the Defendant an inflated and inaccurate payoff.

J. The Plaintiff's request for judgment must be denied and a JURY TRIAL scheduled because at the time the COMPLAINT was filed, the Plaintiff did not provide any evidence the Plaintiff did not refuse to accept payments from the Defendant, when the Defendant desired to pay on her (the Defendant's) loan account. There is ample evidence that the Plaintiff did refuse to accept payments from the Defendant. **and because of "Fraud" no further payments are required and the Plaintiff must return over \$9,240.00 to the Defendant.**

13. **WHEREFORE**, the Defendant concludes her (the Defendant's) arguments relative to the Plaintiff's AFFIDAVIT AND ITEMIZATION OF ACCOUNTS. The Plaintiff

claim for judgment must be denied because of the following COUNTERCLAIMS against the Plaintiff.

14. **COUNTERCLAIM I**
(The Defendant Alleges the Plaintiff Has Engaged In a Deceptive Business Practice)

As stated previously, the Defendant was led to believe she (the Defendant) was agreeing to and signing a Standard Loan Installment Contract, when in fact the agreement executed is similar to and is virtually the same as a Revolving Charge Account or similar Open-Ended Account. Such accounts are rarely paid off with a minimum monthly payment. The nature and character of this type loan was never explained or fully disclosed to the Defendant by the Plaintiff. This is a deceptive business practice; and such practices are illegal in the State of South Carolina under Section 39-5-20. **Consequently, the Plaintiff must return over \$9,240.00 to the Defendant.**

15. **COUNTERCLAIM II**
(The Defendant Alleges the Plaintiff Is Being Unjustly Enriched)

As a direct result of "Fraud in the Inducement", "Fraud in Factum", deception, disclosure failures relative to the Defendant's loan and being misled by the loan officer, the Defendant paid the Plaintiff over \$9,240.00. Consequently, granting the Plaintiff's claim would unjustly enriched the Plaintiff at the expense of the Defendant. Unjust enrichment results when the facts display an enrichment and a corresponding deprivation in the absence of any juristic reason for the enrichment. This "Unjust Enrichment" due to "Fraud", omissions, misinformation, misrepresentation, deception and unfair business practices is illegal in South Carolina. Therefore, the Plaintiff must return over \$9,240.00 back to the Defendant.

16. **COUNTERCLAIM III**
(The Defendant Alleges the Plaintiff Has Violated the Federal Truth In Lending Act)

Under the Federal Truth In Lending Act, in an open-ended or revolving credit account, like the one the Defendant got misled into, the Plaintiff must disclose the annual percentage rate including any variable rates, and how they are determined; the method of computing the finance charge and what division of the balance is charged that amount; the amount of any fees, including late fees and over-the-limit fees; any security provided for the account or transaction; and a statement of consumer rights and the dispute resolution procedure.

The Defendant does not recall any of this information being disclosed or provided. This omission of material facts constitutes "Fraud in the Inducement". **Consequently, the Plaintiff must return over \$9,240.00 back to the Defendant.**

17.

COUNTERCLAIM IV

(The Defendant Alleges the Plaintiff Has Perpetrated and Perpetuated a Fraud)

Since the contract executed is not what the Defendant was led to believe {See **Exhibit 5**}, by definition and legal precedent this is "Fraud in the Inducement". This type of "Fraud" uses deceit; deception and/or trickery to cause an individual to act, or make decisions that are detrimental to the individual. The Defendant was deceived into signing a loan agreement that is not a Standard Installment Loan Contract. The heart of this type of "Fraud" is misleading or failing to disclose all the facts upon which an individual would base his/ her decision to act as required by the Truth in Lending Act. {See **Exhibit 5**}.

As stated in paragraph 12, subpart 12D, the Defendant has also been victimized by "Fraud in Factum". This "Fraud" occurs when the legal instrument that is actually executed differs from the one intended for execution by the person who executes it. This type of "Fraud" induces an individual to sign an instrument without a reasonable opportunity to learn of its true character, nature or essential terms nor is the true nature of the loan agreement explained by the lender {See **Exhibit 5**}.

As in the Defendant's case, the Defendant was led to believe she (the Defendant) was agreeing to and signing a Standard Loan Installment Contract, when in fact the agreement executed is similar to and is virtually the same as a Revolving Charge or Open-Ended Account. As stated previously, such accounts are rarely paid off with a minimum monthly payment. The deception in this type of loan is the supposedly fixed interest rate. "Fraud in the Factum" voids the instrument under state law. "Fraud in Factum" is also termed as "Fraud in the Execution" or "Fraud in the Making" also voids the agreement and/or contract {See **Exhibit 5**}. **Consequently, because of "Fraud in the Inducement" and "Fraud in Factum" the Plaintiff must return over \$9,240.00 back to the Defendant.**

17.

COUNTERCLAIM V

(The Defendant Alleges the Plaintiff Has Violated SC Code of Laws Section 39-5-20)

Because the Defendant was misled and misinformed, the Plaintiff has violated South Carolina Code of Laws Section 39-5-20 relative to unfair or deceptive acts or practices.

By steering the Defendant into a loan agreement the Defendant neither wanted nor completely understood, the Plaintiff, knowingly or unknowingly engaged in an unfair and deceptive act or practice that is unlawful in the State of South Carolina. Consequently, because of this violation of Law, the Plaintiff must return over \$9,240.00 back to the Defendant.

18. **COUNTERCLAIM VI**
(The Plaintiff Must Return \$9,240.00 or More to The Defendant)

As stated throughout this pleading, because of "Fraud in the Inducement", "Fraud in Factum", "Omission of Facts", "Misrepresentation of Facts", "Misinformation" and "Misleading" the Defendant for over 7 years as to the true nature of her (the Defendant's) loan, the Defendant asserts the Plaintiff must return all the money paid to the Plaintiff that the Plaintiff received because of the "Fraud" perpetrated and perpetuated against the Defendant by the Plaintiff.

19. **COUNTERCLAIM VII**
(Infliction of Unnecessary Emotional Distress)

The Defendant asserts that the strain of this proceeding has created mental anguish, anxiety and this action by the Plaintiff has caused the Defendant to experience and endure unnecessary emotional distress.

20. **WHEREFORE**, the Defendant concludes her (the Defendant's) COUNTERCLAIMS and firmly asserts that the Plaintiff's request for judgment must be denied and a JURY TRIAL scheduled, because of the following AFFIRMATIVE DEFENSES.

21. **FIRST AFFIRMATIVE DEFENSE**
(Failure to Cooperate and Negotiate in Good Faith)

At no time prior to this COMPLAINT did the Plaintiff show any inclination to cooperate, negotiate in "Good Faith" (*honesty and best effort in dealings with others*) or explain to the Defendant what happened to the \$9,240.00 plus, the Defendant paid the Plaintiff. Because the Defendant's loan came into existence because of "Fraud" and "Deception", the Plaintiff must make restitution and pay the Defendant over \$9,240.00.

22. **SECOND AFFIRMATIVE DEFENSE**
(Unclean Hands)

The Defendant asserts that the Plaintiff's conduct in misinforming her (the Defendant) as to the true nature of the loan agreement she signed and misleading her (the Defendant) for over 7 years that she (the Defendant) had a Standard Installment Loan Account demonstrates "Unclean Hands". Consequently, the Plaintiff must return over \$9,240.00 to the Defendant because of the Plaintiff's "Fraud" and "Deception".

23.

THIRD AFFIRMATIVE DEFENSE
(Waiver)

The Defendant asserts that the Plaintiff's willful conduct in misleading, misinforming and failing to disclose to her (the Defendant) the true nature of the loan agreement she signed constitutes a waiver of the Plaintiff's right(s) under that agreement because such deceptive business practices are unlawful in the State of South Carolina; and by reason of said waiver, the Defendant is excused and exempted from any further performance or obligation under the loan agreement that came into existence due to "Fraud" and "Deception" and the Plaintiff must return over \$9,240.00 to the Defendant.

23.

FOURTH AFFIRMATIVE DEFENSE
(The Plaintiff Failed to Present or State a Claim For Which Relief Can Be Granted)

The AFFIDAVIT AND ITEMIZATION OF ACCOUNTS presented by the Plaintiff's representative, Amy L. Hewitt, is woefully inadequate and grossly insufficient to deny the Defendant her (the Defendant's) Constitutional Right to a JURY TRIAL. The AFFIDAVIT AND ITEMIZATION OF ACCOUNTS did not include the Defendant's account and/or payment history, nor did the Plaintiff's representative present a record of the Defendant's payment and/or account history. Therefore, the AFFIDAVIT AND ITEMIZATION OF ACCOUNTS lack the necessary substantive value to support a claim for which relief can be granted.

24.

FIFTH AFFIRMATIVE DEFENSE
(Release)

The Defendant alleges that the Plaintiff's deceptive and illegal practices under SC Code of Laws Section 39-5-20 constitute a full release by the Plaintiff of any and all claims which the Plaintiff may have had against the Defendant and therefore the loan must be cancelled and the Defendant must be paid over \$9,240.00 and JUSTLY and FAIRLY COMPENSATED for her (the Defendant's) legal defense and cost associated with her (the Defendant's) defense against any claim/s made by the Plaintiff.

25.

**SIXTH AFFIRMATIVE DEFENSE
(In Pari Delicto)**

The Defendant alleges that the Plaintiff herein and each and every purported Cause of Action by the Plaintiff and authorized representatives, personnel and/or employees have engaged in acts and courses of conduct which rendered them "In Pari Delicto", equally guilty. This legal Doctrine effectively bars the Plaintiff from profiting from wrongdoing. Consequently, the Plaintiff must return over \$9,240.00 to the Defendant.

26.

**SEVENTH AFFIRMATIVE DEFENSE
(Estoppel)**

The Defendant alleges that the Plaintiff, and each and every Cause of Action contained in the COMPLAINT is barred from pursuing judicial relief of any kind by reason of acts, omissions, misrepresentations, courses of conduct, deception and unfair trade practices that have defrauded the Defendant out of more than \$9,240.00.

27.

**EIGHTH AFFIRMATIVE DEFENSE
(Fraud)**

Because of the Plaintiff's "Fraud in the Inducement" and "Fraud in Factum", the Defendant alleges the Plaintiff is barred from filing a COMPLAINT and/or seeking any judicial relief from any claim filed against the Defendant. Agreements and/or contracts brought into existence by misinformation, omissions, misrepresentations, deception and/or unfair trade and/or business practices are rendered null and void as a matter of Law. Consequently, the Plaintiff must return over \$9,240.00 to the Defendant.

28.

**NINTH AFFIRMATIVE DEFENSE
(Bad Faith)**

The Defendant alleges that the Plaintiff, and each and every Cause of Action contained in the COMPLAINT is barred from pursuing judicial relief of any kind by reason of acts, omissions, misinformation, misrepresentations, courses of conduct, deception, unfair trade practices, "Fraud in the Inducement", "Fraud in Factum", and misleading the Defendant for over 7 years that she (the Defendant) had a Standard Installment Loan Account, instead of the all to obvious Open-Ended or Revolving Account constitute "Bad Faith" (*dishonesty or fraud in a*

transaction). Due to "Bad Faith", the Plaintiff must return over \$9,240.00 to the Defendant.

29.

TENTH AFFIRMATIVE DEFENSE
(The Defendant Alleges the Plaintiff Committed a Willful Tort)

The Defendant alleges that the Plaintiff, and each and every Cause of Action contained in the COMPLAINT is barred from pursuing judicial relief of any kind by reason of acts, omissions, misinformation, misrepresentations, courses of conduct, deception, unfair trade practices, "Fraud in the Inducement", "Fraud in Factum", and misleading the Defendant for over 7 years that she (the Defendant) had a Standard Installment Loan Account, instead of the all to obvious Open-Ended or Revolving Account. Such acts by the Plaintiff constitute a "Willful Tort". (*a civil wrong that is done consciously and intentionally*). Therefore, the Plaintiff must return over \$9,240.00 back to the Defendant.

30. **WHEREFORE**, the Defendant concludes her (the Defendant's) AFFIRMATIVE DEFENSES, and enters the following Argument into the record for a change in Venue and Jurisdiction.

Argument For Change In Venue and Jurisdiction

31. Because the dollar amount in controversy now exceeds \$7,500.00, because of "Bad Faith", "the Plaintiff's Willful Tort", "Fraud in the Inducement", "Fraud in the Factum" and the recent discovery that the Plaintiff misled the Defendant for over 7 years as to the true nature of her (the Defendant's) loan, the Plaintiff's request for judgment must be denied and a JURY TRIAL scheduled in the COURT OF COMMON PLEAS in the FIRST JUDICIAL CIRCUIT.

Keeping this case in the Magistrate's Court would violate South Carolina Code of Laws Section 22-3-10. Since the dollar amount in question now exceeds the legal limit, the Magistrate's Court or Summary Court lacks jurisdiction. Therefore, the Magistrate's Court is no longer the proper venue for a JURY TRIAL. The Defendant's argument for a change of venue and jurisdiction complies with South Carolina Law. The Defendant's COUNTERCLAIM for damages exceeds \$9,420.00 and this does not include legal defense fees and any other cost the Defendant may incur to recover losses from the Plaintiff.

32. **WHEREFORE**, the Defendant concludes her (the Defendant's) Argument for a

change in Venue and Jurisdiction that is pursuant to South Carolina Law, and enters the following Argument into the record for a JURY TRIAL.

Argument for a Jury Trial

33. As a Pro Se Litigant, the "Evidence Rules" inherit in a JURY TRIAL gives the Defendant the legal authority to compel the Plaintiff to comply with the Defendants request for depositions, discovery, interrogatories, admissions and/or Certifications the Defendant will need in order to have a just, fair and impartial presentation of the evidence to a JURY.

SCRCP Rule 38(b) clearly states; "Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party".

34. **WHEREFORE**, the Defendant concludes her (the Defendant's) Argument for a JURY TRIAL and enter the following "Settlement Options" into the record.

Settlement

35. In the event and after review, the Magistrate Judge deems it proper, conforming, compliant and/or in accordance with existing and/or established law, precedent/s and/or Court ruling/s to transfer this case to the Circuit Court in the Court of Common Pleas and DISMISS the Plaintiff's request for judgment because the Magistrate's Court lacks jurisdiction in this matter or for any other justifiable cause, reason and/or purpose, and/or if the Plaintiff decides 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 any such settlement, agreement and/or accord.

Conclusion

36. The Defendant has over 84 plus checks at BB&T (Branch Banking & Trust Company) that will prove beyond any reasonable doubt that she (the Defendant) paid the Plaintiff \$110.00 a month for over 7 years. These cancelled checks will be subpoenaed as evidence in this case. {See Exhibit 7} By reason of acts, omissions, misinformation, misrepresentations, courses of conduct, deception, unfair trade practices, "Fraud in the Inducement", "Fraud in Factum", and misleading the Defendant for over 7 years that she (the Defendant) had a Standard Installment Loan Account, instead of the all to obvious Open-Ended or Revolving Account, the Defendant enters the following "Prayer for Relief" into the record.

Prayer for Relief

37. **WHEREFORE**, the Defendant having fully set forth her (the Defendant's) RESPONSE TO THE MAGISTRATE'S COURT SUMMONS AND TO THE PLAINTIFF'S COMPLAINT that is dated May 18, 2011 and delivered by a Law Enforcement Personnel to 423 Bayne Street in Orangeburg, South Carolina on June 9, 2011 pray that this honorable Court, in the absence of withdrawal and/or settlement and/or DISMISSAL will ORDER A CHANGE IN VENUE AND JURISDICTION so that the COURT OF COMMON PLEAS can set a date and time for a JURY TRIAL in order to prevent this injustice by the Plaintiff from continuing and:

(A) Under the direction of this Court, ascertain the amount of attorney fees and cost of action that shall be paid to the Defendants because of the Plaintiff's unwarranted and unjustified legal proceeding and the misinformation given to this Court relative to the Defendant's account with the Plaintiff.

(B) Deny the Plaintiff's claim for judgment and ORDER A CHANGE IN VENUE AND JURISDICTION so that the COURT OF COMMON PLEAS can set a date and time for a JURY TRIAL.

(C) Order the reimbursement of any and all cost that may be due to the Defendant because of the Plaintiff's failure to act professionally, responsibly, honorably and truthfully.

(D) Deny any claim by the Plaintiff for any additional payments from the Defendant on a "Fraudulently Induced" loan until this matter is settled to the letter and spirit of the law.

38. **WHEREFORE**, the Defendant prays the Complaint has been sufficiently answered, the Defendant's position clearly stated and properly defended and the Defendant is entitled to recover costs of suit herein incurred, and such other relief as the court may deem proper.

NOTIFICATION

A copy of the Defendant's RESPONSE TO THE MAGISTRATE'S COURT SUMMONS AND TO THE PLAINTIFF'S COMPLAINT that is dated May 18, 2011 and delivered by a Law Enforcement Personnel to 423 Bayne Street in Orangeburg, South Carolina on June 9, 2011 that has been filed with the Magistrate's Court will be mailed to the Plaintiff and to the Plaintiff's representative Amy L. Hewitt @ South Carolina Federal Credit Union, since no other is available for Amy L. Hewitt.

SC Federal Credit Union
ATTN: Amy L. Hewitt
POB 190012
North Charleston, SC 29419
Tel: 843-569-5045

Orangeburg County
Central Region Magistrate
1540 Ellis Avenue
POB 9000
Orangeburg, SC 29116
Phone: 803-533-5844
Fax: 803-516-4011

ATTEST: A TRUE COPY
MAGISTRATE, ORANGEBURG COUNTY
SOUTH CAROLINA

JUN 28 2011

J. Edwards

IN WITNESS WHEREOF, The undersigned has signed and sealed these attestations this June
day of 28 in the year 2011 in City of Orangeburg, State of South Carolina.

Signed, sealed and delivered in the presence of:

Print Name: Dorothy Harley - Sistrunk

Signature: Dorothy Harley - Sistrunk

Notary Witness (1): Robin S. Kralz
(Signature)

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

On 6-28-11 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 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 Robin S. Kralz
(Signature)

Commission Expires 11-18-14

(Seal)

Exhibit IV

-15-

COPY

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SOUTH CAROLINA FEDERAL
CREDIT UNION,

Plaintiff,

vs.

DOROTHY HARLEY SISTRUNK
A/K/A DOROTHY HARLEY-
SISTRUNK A/K/A DOROTHY A.
HARLEY A/K/A DOROTHY
SISTRUNK,

Defendant.

) IN THE COURT OF COMMON PLEAS

)

) CIVIL CASE NUMBER: 11-CP-38- 1392

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COMPLAINT
(COLLECTION -NONJURY)

FILED FOR STENOGRAPHY
CLERK OF COURT
ORANGEBURG COUNTY, SC
2011 NOV 23 AM 9:12

South Carolina Federal Credit Union, Plaintiff herein, through its undersigned counsel,
complaining of the Defendant herein, alleges and says as follows:

1. That the Plaintiff, South Carolina Federal Credit Union (hereinafter "SCFCU"), is a federal credit union organized and existing under the laws of the United States, with its principal place of business in North Charleston, South Carolina and authorized to do business in the State of South Carolina.

2. That upon information and belief the Defendant, Dorothy Harley Sistrunk a/k/a Dorothy Harley-Sistrunk a/k/a Dorothy A. Harley a/k/a Dorothy Sistrunk, is a resident of Orangeburg County, State of South Carolina, and is neither an infant nor incompetent and is not in the military service.

3. That any aliases listed for any Defendant are being included because a review of credit, personal and real property reports and records supports its validity.

4. **THIS IS AN ACTION TO COLLECT A CONSUMER DEBT OWED BY DEFENDANT TO PLAINTIFF AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. FURTHER, THE NOTICE REQUIRED BY THE COURT**

ATTEST: TRUE COPY
W. B. B. B. B.
CLERK OF COURT
EXHIBIT 36
ORANGEBURG COUNTY, SC

DEBT COLLECTION PRACTICES ACT IS ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN.

5. That pursuant to § 37-1-202(10) of the South Carolina Code of Laws (1976) as amended, the Plaintiff is exempt from the provisions of the South Carolina Consumer Protection Code (§ 37-1-101 et. seq).

6. That this Court has jurisdiction over the subject matter and parties to this action pursuant to South Carolina Code Ann. § 36-2-802.

* 7. That on or about February 24, 2003, the Defendant executed and delivered to South Carolina Federal Credit Union that certain Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Agreement") calling for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference.

8. That said Fixed Interest Agreement provided for an interest rate upon the outstanding principal balance, for the payment of principal and interest and for such other terms as may be seen by reference to said document.

9. That said Fixed Interest Agreement further provided that in the event of default of the payment required, the Plaintiff would have the right to acceleration of the amount due.

10. That in said Fixed Interest Agreement, it was agreed by and between the parties that if default occurred, the Defendant shall pay all costs of collection, including court costs, and reasonable attorneys' fees, and that this matter has been turned over to the firm of Moore & Van Allen, PLLC, for collection, and the Defendant is hereby given notice by Plaintiff of its intention to collect such attorneys fees.

EXHIBIT 36

11. That the terms of Fixed Interest Agreement have been breached in that no payments have been tendered as required since on or about January 31, 2011, and the obligation is now in default.

12. That due demand has been made for the payment of said indebtedness, and that Defendant has refused to make same following which and in accordance with the terms of said Fixed Interest Agreement, Plaintiff has elected to accelerate and has declared the full amount due and payable. The full amount due and payable as of October 3, 2011 is Five Thousand Two Hundred Seventy-Four and 84/100 (\$5,274.84) Dollars, as shown on the Statement of Account, a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference, plus interest thereafter at a rate of 15.00% per centum per annum until paid, plus late charges, reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff prays judgment against Defendant, Dorothy Harley Sistrunk a/k/a Dorothy Harley-Sistrunk a/k/a Dorothy A. Harley a/k/a Dorothy Sistrunk, as follows:

(a) For judgment against the Defendant in the amount of Five Thousand Two Hundred Seventy-Four and 84/100 (\$5,274.84) Dollars, plus interest at the rate of 15.00% per centum per annum from October 3, 2011 until paid.

(b) For attorneys' fees associated with this action;

(c) For the costs of this action; and

(d) For such other and further relief as this Honorable Court deems just and proper.

Colleen McConnell

Cynthia Jordan Lowery

Colleen A. McConnell

MOORE & VAN ALLEN, PLLC

40 Calhoun Street, Suite 300

Post Office Box 22828

Charleston, SC 29413-2828

Telephone: (843) 579-7000

Facsimile: (843) 579-8714

Email: cynthialowery@mvalaw.com

Email: colleenmcconnell@mvalaw.com

ATTORNEYS FOR PLAINTIFF

SOUTH CAROLINA FEDERAL CREDIT UNION

November 14, 2011
CHARLESTON, SC

EXHIBIT 36

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SOUTH CAROLINA FEDERAL CREDIT
UNION,

Plaintiff,

vs.

DOROTHY HARLEY SISTRUNK A/K/A
DOROTHY HARLEY-SISTRUNK A/K/A
DOROTHY A. HARLEY A/K/A
DOROTHY SISTRUNK,

Defendant.

) IN THE COURT OF COMMON PLEAS

)

) CIVIL CASE NUMBER: 11-CP-38-1392

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CORPORATE VERIFICATION OF
ACCOUNT

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2011 NOV 23 AM 9:43

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned affiant, who, being duly sworn, deposes and says that she is an agent of Plaintiff named herein, and that she is familiar with the transactions and facts stated in the above pleadings; that she has read the said pleadings; that the facts therein stated are true, except those matters stated on information and belief, and as to those, she believes them to be true; that Plaintiff is a credit union and it is necessary for deponent to make this verification on its behalf.

The undersigned affiant, the agent of the Plaintiff, does hereby verify that the Statement of Account attached to the Complaint and made a part hereof, is true and correct and that no part of the sum sued for has been paid by discount or otherwise.

SOUTH CAROLINA FEDERAL CREDIT UNION

By:

Amy Rogers

Its: Credit Counselor

SWORN to before me this

26 day of October, 2011.

[Signature] (LS)

Notary Public for South Carolina

My Commission Expires: 1-29-2013

ATTEST: TRUE COPY

Winnie B. Clark
CLERK OF COURT

EXHIBIT 37

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT COMMON PLEAS
CIVIL CASE NUMBER

South Carolina Federal Credit Union

C/A Case No. 2011-CP-38-1392

Plaintiff,

ANSWER TO SUMMONS
COMPLAINT, FAIR DEBT
COLLECTION NOTICE AND
CORPORATE VERIFICATION
OF ACCOUNT
WITH COUNTERCLAIMS,
AFFIRMATIVE DEFENSES
AND A DEMAND FOR A
TRIAL BY JURY
December 21, 2011

vs.

Dorothy Harley Sistrunk, A/K/A;
Dorothy Harley-Sistrunk, A/K/A;
Dorothy A. Harley,

Defendant,

2011 DEC 21 PM 2:31

Comes now the Defendant Dorothy Harley Sistrunk to file this ANSWER to the PLAINTIFF'S SUMMONS (COLLECTION-NONJURY), COMPLAINT (COLLECTION-NONJURY); FAIR DEBT COLLECTION NOTICE AND CORPORATE VERIFICATION OF ACCOUNT WITH COUNTERCLAIMS AND AFFIRMATIVE DEFENSES that is dated November 14, 2011, filed on November 23, 2011 and delivered by a server of process to 423 Bayne Street in Orangeburg, South Carolina on December 9, 2011 and to demand a TRIAL BY JURY for reasons that shall be stated herein.

To: South Carolina Federal Credit Union (hereafter also called the Plaintiff) & Counsel for the Plaintiff – Moore & Van Allen, PLLC and/or Amy L. Hewitt (hereafter also called the law firm)

BACKGROUND

1. On or about February 28, 2003, the Defendant obtained a loan for \$5,500.00 from SCFCU. The Defendant was led to believe the Loan was a Standard Installment Contract ["Fixed Rate"]. {See Exhibits 5, 9 & 11}. The Defendant paid SCFCU, \$110.00 a month for over 7 years. {See Exhibit 7 x 94} \$110.00 a month times 94 months equals a total payment of \$10,340.00. As the evidence will show, SCFCU was not only paid back the original loan of \$5,500.00, SCFCU also received a profit of \$4,840.00 directly from the Defendant. Because the Defendant was misled and misinformed [*Fraud in the Inducement*] as to the true nature of the loan agreement [*Fraud in Factum*], SCFCU must return over \$10,340.00 to the Defendant. As a matter of law, agreements and/or contracts that come into existence due to "Fraud" are rendered null and void. Consequently, SCFCU can keep the \$5,500.00 SCFCU loaned the Defendant

ATTEST: TRUE COPY
-1- Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

and return the overpayment, \$4,840.00, back to the Defendant.

II. Shortly after October 31, 2010, the Defendant began to question the accounting practices of SCFCU. What happened to the \$10,340.00 the Defendant paid SCFCU? Why wasn't a portion of the \$10,340.00 the Defendant paid SCFCU applied to the Defendant's loan balance? If the Defendant had a Standard Loan Installment Contract [Fixed Rate] like she was led to believe, at a 15% Fixed Interest Rate, and after 94 payments, the Defendant's loan balance should have and would have been considerably lower *{See Exhibits 5 & 9}*. The more the Defendant inquired about the nature of the loan and the kind of loan she (the Defendant) really had, the more hostile some personnel at SCFCU became. The Defendant was not aware of the true nature of her (the Defendant's) loan until this claim was filed. In fact, the lowest balance the Defendant can recall and has a record of is \$4,614.45. *{See Exhibit 1}* Because of SCFCU's misrepresentation of material facts, SCFCU can keep the \$5,500.00 SCFCU loaned the Defendant and return the overpayment, \$4,840.00, back to the Defendant.

III. On December 23, 2010, Sabrina Gaskins from SCFCU and whose email address is sgaskins@scfederal.org wrote an email to the Defendant stating that in order to continue working with the Defendant, SCFCU could not accept anything less than one payment of \$92.00 to clear the Defendant's October 2010 payment *{See Exhibit 2}*. This one payment of \$92.00 later became the minimum payment of \$92.00 SCFCU would accept from the Defendant. *{See Exhibit 2}*

IV. On January 3, 2011, the Defendant wrote Sabrina Gaskins an email stating she (the Defendant) could not pay more than \$20.00 a month. Since SCFCU would not accept the Defendant's "Good Faith" gesture of \$20.00 a month, there was no need for the Defendant to send SCFCU any more monthly payments *{See Exhibits 2 & 3}*.

VI. Eventually reduced income and the rapidly increasing cost of living began to dramatically impact the Defendant's financial situation. Consequently, the Defendant could not afford to send SCFCU \$110.00 a month any longer. In fact, the Defendant could barely afford to send SCFCU \$20.00 a month. Even though the Defendant explained her (the Defendant's) financial situation to SCFCU, an SCFCU personnel informed the Defendant, SCFCU could not accept anything less than \$92.00 a month. The Defendant had to reduce the monthly payment to \$20.00 a month. The Defendant could not afford the \$92.00 a month for several reasons.

(A) In 2010, the Defendant's fuel cost was 3 times greater than it was in 2003.

(B) In 2010, the Defendant's cost for food, phone service, lights, gas, car maintenance and other necessary items had also increased greatly.

(C) In 2010, the Defendant's medical expenses for her son's health problems had also increased. These same ailments caused an extended hospitalization during 2007. In fact, her son was in and out of the hospital and in and out of Pediatric Clinics from 2003 to 2011.

(D) In 2010, the Defendant's husband's health and income had also deteriorated further eroding financial support systems. In fact, the mobile home industry, where her husband had worked as a salesman for over 6 years collapsed entirely in 2003. Employment of any kind has been difficult for him. In fact, he has not had steady or consistent employment, since 2003. A severe groin injury has handicapped her husband since that time and the operation her (the Defendant's) husband had in 2006 only slightly improved his physical condition. He still cannot sit, stand or walk for long periods of time. {See Exhibit 230}

VII. Despite these difficulties, the Defendant still paid SCFCU \$110.00 a month until her (the Defendant's) income was reduced by mandatory furloughs and cutbacks in actual take home pay. This is the primary and the most important reason why the Defendant did not and cannot pay SCFCU \$110.00 a month or \$92.00 a month any longer. {See Exhibit 2} However, because of "SCFCU's misrepresentation of material facts, the Defendant does not need to pay the Plaintiff any more money. In fact, the Plaintiff must return \$10,340.00 to the Defendant. However under the principle of "Equitable Maxim", SCFCU can keep the \$5,500.00 SCFCU loaned the Defendant and return the overpayment of \$4,840.00, back to the Defendant and this matter can be over.

EQUITABLE MAXIM

I. "This equitable maxim is commonly phrased as "[h]e who seeks equity must do equity." Provident Life & Accident Ins. Co. v. Driver, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (1994). This principle applies to one who affirmatively seeks equitable relief. City of Columbus v. Mercantile Trust & Deposit Co., 218 U.S. 645, 662 (1910). In order for justice to be done between parties, a party is required to do equity when asking the court to invoke the aid of equity. See Ingram v. Kasey's Assocs., 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) (declining to grant a plaintiff's request for specific performance where the plaintiff misled the defendants); Anderson v. Marion, 274 S.C. 40, 43, 260 S.E.2d 715, 716 (1979) (finding defendants who sought equity against the plaintiffs for specific performance were required to do equity and pay plaintiffs money they asserted they were willing and able to pay); Shumaker v. Shumaker, 234 S.C. 421, 427, 108 S.E.2d 682, 686 (1959) ("Plaintiffs who come into Court invoking the aid of equity should be required to do equity in order that justice might be done between the parties."); Anderson v. Purvis, 211 S.C. 255, 266, 44 S.E.2d 611, 616 (1947) (discussing the maxim that he who seeks equity should do equity)"

II. "The principle "equity regards as done that which ought to be done" applies in cases where the party seeking equitable relief establishes "a clear obligation based upon a valuable consideration that another do some act which he has failed to perform." Wilkie v. Phila. Life Ins. Co., 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938). The notion "equity looks to substance rather than form" evolved out of judicial regard for that which ought to be done. Id. at 393, 197 S.E. at 380. This maxim applies by "dispensing with pure formalities which would otherwise defeat the equity." Id.; see also Kerr v. City of Columbia, 232 S.C. 405, 410, 102 S.E.

2d 364, 366 (1958) (finding the court must consider the controversy as though town council had issued a business permit, even though the town claimed the area was a residential zone, because town officials told the owner his property was in a commercial zone). When applying this principle, courts look to the substance and intent of the parties, and give a construction consistent with such intent. Harpending v. Reformed Protestant Dutch Church of City of N.Y., 41 U.S. 455, 480 (1842)."

III. After the Defendant has established an equitable right to relief based upon the evidence and the facts, the court may dispense with pure formalities which would otherwise defeat the equity. Wilkie, 187 S.C. at 393, 197 S.E. at 380. A court of equity should scrutinize the conduct of the Plaintiff, SCFCU, with the utmost care, to determine whether or not SCFCU did everything which ought to have been done. Corbus v. Alaska Treadwell Gold Mining Co., 187 U.S. 455, 465 (1903). "This maxim has at times guided a court to relieve a party from the consequences of accident, mistake, and fraud. Camp v. Boyd, 229 U.S. 530, 559 (1913).

(A) "The rule that equity considers as done that which should be done cannot be invoked to create a right contrary to the agreement of the parties." Good v. Jarrard, 93 S.C. 229, 239, 76 S.E. 698, 702 (1912)."

(B) Applying the principle of the "Equitable Maxim", the Defendant also deducts \$600.00 for advances. Therefore, SCFCU only has to return \$4,240.00 (\$10,340.00 - \$6,100.00 = \$4,240.00); plus any payments less than \$110.00.

IV. **WHEREFORE**, the Defendant concludes the Defendant's background information and now address the Plaintiff's, SCFCU's, Summons, Complaint, Verification of Debt, Mandated ADR Counties and Fair Debt Collection Notice.

ANSWER TO SUMMONS

1. **Answer to the unnumbered paragraph:** The law firm did not present any valid evidence with its Summons, Notice, Complaint, Fair Debt Collection Notice and Corporate Verification of Account that remotely suggest the Plaintiff is entitled to any judgment by default.
2. The Plaintiff has failed to state a cause of action that justifies any relief.
3. The Defendant, however, has ample evidence from SCFCU proving SCFCU owes the Defendant over \$10,340.00 (\$110.00 x 94 payments) that the Defendant will seek to recover in its entirety; including any legal defense cost. {See Exhibit 7 x 94} SCFCU must submit a record of payment to the Court for an accurate repayment assessment. However, the Defendant shall apply the principle of "Equitable Maxim" and SCFCU need only return \$4,240.00 (\$10,340.00 - [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00, plus any payments less than \$110.00.

ANSWER TO COMPLAINT

4. **Answering the allegation in the unnumbered sentence #1:** No Answer Required. The Plaintiff's complaint is not supported by the real evidence or the real facts.
5. **Answering the allegation in Paragraph #1:** The Defendant is without sufficient knowledge or information to form a belief as to the truth of the Plaintiff's allegations and; therefore, does not dispute the allegations in paragraph #1.
6. **Answering the allegation in Paragraph #2:** The Defendant does not dispute the allegations in paragraph #2.
7. **Answering the allegation in Paragraph #3:** Based upon the information that was delivered to the Defendant by a server of process on December 9, 2011, SCFCU did not present any supporting documentation to verify the Plaintiff's allegations. Since an answer is required, The Defendant is without sufficient knowledge or information to form a belief as to the truth of these allegations and; therefore, does not dispute the allegations in paragraph #3.
8. **Answering the allegation in Paragraph #4:** The Defendant denies the allegations in paragraph #4. SCFCU owes the Defendant over \$10,340.00 and must return it. The Plaintiff's allegation that this is an action to collect a consumer debt owed by the Defendant cannot be substantiated by the real facts and the real evidence. SCFCU's claim of an unpaid balance of \$4,625.82; with a payoff of \$5,274.94, is a misrepresentation of existing material facts. The Plaintiff owes the Defendant over \$10,340.00 (\$110.00 x 94 payments) and must return it to the Defendant. *{See Exhibit 7 x [94]}* However, the Defendant shall apply the principle of "Equitable Maxim" and SCFCU only has to return \$4,240.00 (\$10,340.00 - [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00, plus any payments less than \$110.00 and comply with the demands, 93(d), (e) & (g) in the Defendant's "Prayer for Relief".
9. **Answering the allegation in Paragraph #5:** The Defendant read § 37-1-202(10) in South Carolina's Code of Laws and confirms the Plaintiff's exemption under the statute. Since an answer is required as to the remaining allegations; the Defendant does not have sufficient information to form an opinion or belief; and, therefore, cannot dispute these allegations. However, based upon information and belief;

(a) The Defendant alleges SCFCU is not exempt from the provisions of Section 39-5-20. That states in pertinent parts...

"Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

(b) The Defendant alleges allowing the Defendant or any credit union member to believe open-end and close-end installment plans work the same way is not only unfair and deceptive.... such a practice conforms to the legal definition of fraud – *[to deprive by deceit and deception.]*

(c) The Defendant alleges the nature of "Fraud" encompasses a broad range of human behavior, including anything calculated to deceive, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth or by look or gesture. *Fraud includes the suppression of the truth, as well as the presentation of false information.*

10. **Answering the allegations in Paragraph #6:** The Defendant is without sufficient knowledge or information to form a belief as to the truth of the Plaintiff's allegations and; therefore, does not dispute the allegations in paragraph #6.

11. **Answering the allegations in Paragraph #7:** The Defendant denies the allegations in paragraph #7. SCFCU's allegation is reckless and cannot be substantiated by the real evidence and the real facts. The Defendant did not sign any LoanLiner Credit and Security Agreement (hereafter also called LLCASA) (Fixed Interest Agreement) that calls for the payment of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) with SCFCU . {See Exhibits 5, 9, 10, 11, 16, Line #1 & Exhibit 17, page 21}.

(a) Therefore, SCFCU must prove LLCASA is a "Fixed Rate Agreement" and not an Open-End Agreement as identified on the application. If SCFCU cannot prove LLCASA is a "Fixed Rate Agreement", SCFCU has misrepresented an existing material fact and SCFCU's complaint must be dismissed pursuant to Rule 12(b)(6) SCRPC "failure to state facts sufficient to constitute a cause of action."

(b) As a direct result of SCFCU's false accusations, the Defendant must be Justly and Fairly Compensated; including any punitive damages if the Court deems it proper. {See Exhibits 5, 9, 10, 11, 16, Line #1 & Exhibit 17, page 21} However, the Defendant will apply the principle of "Equitable Maxim" and SCFCU only has to return \$4,240.00 (\$10,340.00 – [\$5,500

Loan + \$600.00 in Advances] = \$4,240.00, plus any payments less than \$110.00 and comply with the Defendant's "Prayer for Relief"; **93(d), (e) & (g)**.

12. The Plaintiff must prove by the presentation of the evidence that the Defendant's original loan was \$5,556.44. *{See Exhibits 9, 10, 11, 16, Line #1 & Exhibit 17, page 21}* Otherwise; SCFCU has misstated an existing material fact and has falsely accused the Defendant.

(a) Therefore, SCFCU must prove the Defendant's original loan was Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) If SCFCU cannot prove the Defendant's original loan was \$5,556.44, SCFCU has misrepresented an existing material fact and SCFCU's complaint must be dismissed pursuant to *Rule 12(b)(6) SCRCF* "failure to state facts sufficient to constitute a cause of action." *{See Exhibits 9, 10, 11, 16, Line #1 & Exhibit 17, page 21}*

(b) As a direct result of SCFCU's misrepresentation of existing material facts and false accusations, SCFCU must return \$10,340.00 back to the Defendant and; the Defendant will also seek Just and Fair Compensation; including any punitive damages if the Court deems it proper. *{See Exhibits 5, 9, 10, 11 & Exhibit 16, Line #1}*

(c) Despite SCFCU's false accusations and misstatement of existing material facts, the Defendant will apply the principle of "Equitable Maxim" and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00, plus any payments less than \$110.00 and comply with the Defendant's demands in the Defendant's "Prayer for Relief".

13. Under the rules, the Defendant may move to dismiss a complaint based on SCFCU's failure to state facts sufficient to constitute a cause of action. *Rule 12(b)(6), SCRCF; Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "The Court's decision to grant a *Rule 12(b)(6)* motion to dismiss must be based solely upon the allegations set forth in the complaint. *Spence*, 368 S.C. at 116, 628 S.E.2d at 874; *Clearwater Trust v. Bunting*, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006). If material outside the pleading is considered by the Court, the motion becomes one for summary judgment. *McDonnell v. The Consolidated School Dist. of Aiken*, 315 S.C. 487, 489, 445 S.E.2d 639, 639 n.2 (1994); *Gilbert v. Miller*, 356 S.C. 25,

586 S.E.2d 861 (Ct. App. 2003).” If *misrepresentation* is verified and proven, SCFCU must return \$10,340.00 back to the Defendant. However, the Defendant will apply the principle of “Equitable Maxim” and SCFCU only has to return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00 plus any payments less than \$110.00 and comply with the Defendant’s demands, 93(d), (e) & (g) in the Defendant’s “Prayer for Relief”.

14. South Carolina’s Appellate Court has clearly stated, “in reviewing a motion to dismiss, the court must accept as true the well-pleaded facts in the complaint. See Gressette v. S.C. Elec. & Gas Co., 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006). However, the court will not admit inferences drawn by the plaintiff from such facts, nor will it admit conclusions of law. See Fireman’s Ins. Co. of Newark, New Jersey v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990).”

(a) Essentially, “the plaintiff must describe each element of the cause of action in terms of the facts of the case. This requires the plaintiff “to plead the ultimate facts which will be proved at trial, not evidence which will be used to prove those facts. Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987).”

(b) Except for personal documents, the Defendant’s evidence also comes from the Plaintiff, SCFCU. SCFCU is accused by its own documents. If *misrepresentation* is verified and proven, SCFCU must return \$10,340.00 back to the Defendant. SCFCU has failed to state facts sufficient to constitute a cause of action. {See Exhibits A-C, 4-6, & 8-18}

(c) The Defendant did not deliver any such “Agreement” that is referred to in SCFCU’s complaint. Since SCFCU cannot prove the Defendant delivered and executed the “Agreement” that is identified in SCFCU’s complaint on 02/24/2003, SCFCU misrepresented existing material facts and falsely accused the Defendant. Therefore, SCFCU’s complaint must be dismissed pursuant to *Rule 12(b)(6) SCRPC*. “**failure to state facts sufficient to constitute a cause of action.**”

(d) Despite SCFCU’s acts, the Defendant will apply the principle of “Equitable Maxim” and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00 and comply with the Defendant’s request in the “Prayer for Relief”.

15. SCFCU has stated with specificity and particularity in its complaint that the Defendant executed and delivered an “Agreement” to SCFCU on February 24, 2003 for

\$5,556.44. These statements have been proven false by the evidence and the facts. *{See Exhibits 5, 9, 10, 11, Exhibit 16, Line #1 and Exhibit 17, page 21}*

(a) SCFCU is effectively “Estoppelled” from changing the facts SCFCU filed in its complaint on November 23, 2011. Therefore, any loss SCFCU incurs as a result of SCFCU’s complaint is due to SCFCU’s misstatement of existing material facts and false accusations. The proximate damage done to the Defendant as a direct result of SCFCU’s false accusations and misrepresentations are to SCFCU’s own detriment.

(b) Consequently, SCFCU must return \$10,340.00 back to the Defendant. Despite SCFCU’s indiscretions, the Defendant will apply the principle of “Equitable Maxim” and SCFCU need only return \$4,240.00 ($\$10,340.00 - [\$5,500 \text{ Loan} + \$600.00 \text{ in Advances}] = \$4,240.00$) and comply with the Defendant’s request in the “Prayer for Relief”.

16. The real facts and the real evidence show the Defendant completed an online application on 02/24/2003 and was notified by email that she (the Defendant) was approved for a loan. *{See Exhibit 11}* The approval notification identified the Defendant’s loan as a “Personal Access Line” for \$5,500.00 at 15%, not an Open-End Disbursement Receipt Plus Loan Liner Credit and Security Agreement (LLCASA). *{See Exhibit 11}*.

(a) The Defendant’s evidence clearly shows the email the Defendant received from SCFCU’s personnel did not identify the Defendant’s approved loan for \$5,500.00 at 15% as an Open-End Disbursement Receipt Plus Loan Liner Credit and Security Agreement (LLCASA). SCFCU’s complaint misrepresented existing material facts and SCFCU’s presentation has been proven by SCFCU’s own evidence to be a false accusation and a false statement. Therefore, SCFCU must return \$10,340.00 back to the Defendant. *{Exhibit 7 x 94 payments}*

(b) SCFCU’s complaint must be dismissed pursuant *Rule 12(b)(6) SCRCF* because SCFCU has **failed to state facts sufficient to constitute a cause of action.** *{id at 12-15}*. However, the Defendant will apply the principle of “Equitable Maxim” and SCFCU need only return \$4,240.00 ($\$10,340.00 - [\$5,500 \text{ Loan} + \$600.00 \text{ in Advances}] = \$4,240.00$); plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

17. **Answering paragraphs 8 & 9:** The Defendant denies the allegations in paragraphs #8 and #9. SCFCU does not have a “Fixed Interest Agreement” to accelerate. The

Defendant's loan came into existence by "*misrepresentation*". The Defendant has no intention of being involved in a SCFCU's LLCASA deception. Even though the application has open-end written on it and the handbook clearly states it, SCFCU identified LLCASA as a being a 15% fixed rate loan. The Defendant was led to believe her car loan and "Personal Access Line" were fixed rate loans and not open-end loans. {See Exhibits 5, 9, 11 & 12} .

18. Consequently, SCFCU is effectively barred from accelerating a debt that does not exist in reality, actuality or fact and that came into existence due to "*misrepresentation*".

Therefore, the Defendant does not have a legitimate debt with SCFCU.

(a) The Defendant never had a "Fixed Interest Agreement" or a "Fixed Rate Interest" loan. The Defendant paid SCFCU over \$10,340.00 [Exhibit 7 x [94]] on the "Personal Access Line" loan and over \$6,800.00 on the Car Loan. {Exhibits 13-15}

(b) Even though SCFCU has misstated facts, falsely accused the Defendant, and misled the Defendant as to the type of loan, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's requests in the Defendant's "Prayer for Relief".

19. **Answering paragraph 10:** The Defendant denies the allegations in paragraph #10. The Defendant never agreed to pay back any loan based on deception. The legal precedents dealing with misrepresentation are firmly established in state Appellate Courts, Supreme Courts, Federal District Courts and the United States Supreme Court.

(a) "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." *Whipp v. Iverson*, 43 Wis. 2d 166, 168 N.W.2d 201 (1969)."

(b) "Any conduct capable of being turned into a statement of fact is a 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.” *Leonard v. Springer*, 197 Ill 532. 64 NE 299 (1902).

(c) “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).

(d) “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).”

(e) “The contract is void if it is only in part connected with the illegal transaction and the promise single or entire. *Guardian Agency v. Guardian Mut. Savings Bank*, 227 Wis. 550, 279 NW 79 (1938).”

20. **Answering the allegation in Paragraph #11:** The Defendant denies the allegation in paragraph #11. The Plaintiff, SCFCU, failed to present a legitimate debt in the filed complaint, falsely accused the Defendant in its complaint and misstated existing material facts. Therefore, SCFCU’s complaint must be dismissed due to the SCFCU’s failure to state facts that support SCFCU’s cause of action. *SCFCU’s factual misrepresentations demand SCFCU return the Defendant’s money. All of it!!* However, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

21. **Answering the allegation in Paragraph #12:** The Defendant denies the allegations in paragraph #12. Based on the facts alleged in SCFCU’s complaint, the Plaintiff, is barred from seeking any relief. The Plaintiff, SCFCU has failed to state a claim for which relief can be granted. *SCFCU’s wrongful acts demand a return of the money. All of it!!* However, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00;

plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

22. **Answering the allegations in the paragraph that begins with Wherefore:** The Defendant objects to the Plaintiff's request for relief that has been identified in this paragraph and in subparts (a) through (d). The Plaintiff, SCFCU, has failed to state facts that justify relief. *Factual misrepresentations demand SCFCU return all the money.* However, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

RESPONSE TO MANDATED ADR COUNTIES ONLY

23. **Responding to the Notification for Mandated ADR Counties:** No response required. Orangeburg County is not listed as an ADR county.

RESPONSE TO THE FAIR DEBT COLLECTION PRACTICE ACT NOTICE

24. **Answering the allegation in Paragraph #1:** The Defendant denies the allegation in paragraph #1.

25. **Answering the allegation in Paragraph #2:** The Defendant denies the allegation in paragraph #2.

26. **Answering the allegation in Paragraph #3:** The Defendant denies the allegation in paragraph #3. The Plaintiff, SCFCU, failed to present a legitimate debt.

27. **Answering the allegation in Paragraph #4:** The Defendant denies the allegation in paragraph #4. The Plaintiff, SCFCU, failed to present a legitimate debt. The answers to the questions set forth herein shall be considered as notice.

28. **Answering the allegation in Paragraph #5:** The Defendant denies the allegation in paragraph #5. Based on the complaint, the debt in the complaint does not exist.

29. **Answering the allegation in Paragraph #6:** The Defendant denies the allegation in paragraph #6. The Plaintiff, SCFCU, failed to present a legitimate debt based on the evidence and the facts.

**SCFCU'S
UNACCEPTABLE VERIFICATION OF DEBT**

30. SCFCU has sent the Defendant two (2) so-called debt verifications that are unacceptable. SCFCU has two different amounts; neither of which is an accurate reflection of debt owed. {See Exhibits 4 & 6 and Exhibit 8} A genuine verification of debt includes a record of payment. SCFCU did not include a record of the Defendant's actual payments on the account.

(a) SCFCU's account record simply shows how the Defendant's payments were applied or used by SCFCU, not the dollar amount the Defendant actually paid. {See Exhibit 16} In addition, the words "*Fixed Rate Agreement*" cannot be found in LLCASA's finance section. If SCFCU cannot prove LLCASA is a "*Fixed Rate Agreement*", SCFCU has misrepresented even more existing material facts and SCFCU's complaint must be dismissed pursuant to *Rule 12(b)(6) SCRPC*. "**failure to state facts sufficient to constitute a cause of action.**" *id* at 12-21}.

(b) *Misrepresenting facts in a legal proceeding demands SCFCU return the Defendant's money. All of it!!* However, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

31. To avoid the Defendant's allegation of misrepresentation, SCFCU must prove the words "**Fixed Rate**" are in the Membership and Account Agreement (MAAA) in the finance section on page 21; and the Defendant's loan is Close-End, without a daily periodic rate being used to calculate an annual percentage rate. SCFCU's evidence clearly shows the word "**Fixed**" is only found on the loan application. This is the essence of LLCASA's deceptive lending activity. A "*Fixed Rate Interest Agreement*" denotes a Close-End Loan by definition. A loan transaction that is not Open-End is "Close-End". Closed-End loans are defined by Regulation Z as "consumer credit other than open-end credit." {See 12 C.F.R. § 226.2(a)(10)}.

32. If SCFCU cannot prove the words "**Fixed Rate**" are in the LLCASA's finance section, SCFCU has misrepresented another existing material fact and SCFCU's complaint must be dismissed pursuant to *Rule 12(b)(6) SCRPC*. "**failure to state facts sufficient to constitute a cause of action.**" *id* at 12-15 and 12-21}. However, the Defendant will apply the principle of

“Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00
($\$10,340.00 - [\$5,500 \text{ Loan} + \$600.00 \text{ in Advances}] = \$4,240.00$; plus, any payments less than
\$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

33. **WHEREFORE**, the Defendant concludes the Defendant’s Background Information, answers to SCFCU’s, Summons, Complaint, Verification of Debt, Mandated ADR Counties and Fair Debt Collection Notice. The Defendant shall now address the various aspects of LLCASA’s deception.

LLCASA’S DECEPTIVE FINANCE CHARGE

34. Additional evidence that LLCASA is not a “*Fixed Rate Agreement*” can be found in SCFCU’s Membership and Account Agreement (MAAA) on *page 21 in Exhibit 17* under - **How This Plan Works** - it clearly states in pertinent parts....

“This is an open-end multi-featured credit Plan.” “The current rate for each subaccount expressed as a daily periodic rate and corresponding annual percentage rate and other charges.”

This means the annual percentage rate is a product of the daily periodic rate and is not a “Fixed Interest Rate”. Further evidence that SCFCU has misstated existing material facts in its complaint can also be found on page 21, under **FINANCE CHARGE** that states in pertinent parts....,

“To compute the finance charge, the unpaid balance for each day since your last payment (or since an advance if you have not yet made a payment) is multiplied by the applicable daily periodic rate. The sum of these amounts is the finance charge owed. The balance used to compute the finance charge is the unpaid balance each day after payments and credits to that balance have been subtracted and any additions to the balance have been made...” {See Exhibit 17, Page 21}

35. Under a Fixed Rate Loan, the Addendum’s variable rate explanation would not apply to the Defendant nor the daily periodic rate. SCFCU misrepresents the true nature of LLCASA on the loan application. The application says the Defendant’s rate is fixed at 15%; but MAAA says it is a daily periodic rate. This is not a “Fixed Rate.” {See Exhibits 5, 9 & 11}

(a) Additional evidence that corroborates the Defendant was led to believe she (the Defendant) had a fixed rate loan; is SCFCUP’s email letter dated Monday, 24 Feb 2003 12:40:36 -0500 and printed on 2/26/2003. {See Exhibit 11}

(b) The Defendant has provided documented evidence of a deceptive lending practice. Even more evidence is found in SCFCU’s complaint itself. {See 11-CP-38-1392, paragraphs 7-12} The evidence is clear. The evidence is convincing and beyond any reasonable

doubt that SCFCU has failed to state facts sufficient to constitute a cause of action. *There is no relief for misrepresenting facts during a legal proceeding.* LLCASA is not a "Fixed Rate" loan Agreement; never was and never will be under the "Plan". *{id at 12-21}*.

36. The original loan application also verifies the Defendant was led to believe her (the Defendant's) loan rate was fixed at 15% and not subject to a daily periodic rate. SCFCU's loan personnel did not highlight the daily periodic rate on the Defendant's agreement. *{See Exhibit 9, Page 1 of 2}*

37. If deception is SCFCU's and LLCASA's standard operating procedure to earn interest profits from SCFCU's members, then the Defendant's loan meets the statutory requirement to have the Defendant's case adjudicated under SCUPTA (South Carolina's Unfair Trade and Practices Act And... this is in addition to the Defendant's COUNTERCLAIMS and AFFIRMATIVE DEFENSES.

38. 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).

(a) The Defendant is not offering any conclusions of law. What SCFCU is... or is not doing is for a jury or a Judge to decide as trier of the facts, not the Defendant. The Defendant is presenting the documented evidence of SCFCU's acts that are unethical, deceptive and have a tendency to deceive. The Defendant has already been deceived and SCFCU's complaint is evidence of even more deception that is associated with the actual marketing of LoanLiner's Open-End Disbursement Receipt Plus (LLCASA).

(b) SCFCU's deceptive lending practices can have a direct impact on credit union members and the general public seeking loans. No Court/Judge can deny it is in the best public interest not to allow innocent people to be deceived by a lender's cleverly concealed and deceptive tactics; and this includes SCFCU. SCFCU's actions have the potential for repetition and can be repeated indefinitely unless stopped by the Rule of Law. *{SC ST Sec 39-5-20 et seq.}*

39. **Section 39-5-140** of the South Carolina's Code states the following in pertinent parts....[Boldness added for emphasis.]

"(a) 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. If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs."

"(b) Upon commencement of any action brought under subsection (a) of this section, the clerk of court shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General."

"(c) Any permanent injunction, judgment or order of the court made under Section 39-5-50 shall be prima facie evidence in an action brought under Section 39-5-140 that the respondent used or employed a method, act or practice declared unlawful by Section 39-5-20."

"(d) For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 39-5-20."

40. 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)."

41. Consequently, if a daily periodic rate was applied to the Defendant's loan, the Defendant was misled by SCFCU and relied upon information that is not true..., negligently made... or a deceptive and unfair lending practice. *{id at 12-21}* If SCFCU used a daily periodic rate and applied it to the Defendant's unpaid balance, this is not a *fixed interest rate* like the Defendant was led to believe. *{See Exhibits 9, 10 & 11}*

42. Therefore, the Court/Judge must decide whether or not SCFCU has violated South Carolina's Code of Laws **Section 39-5-20**. The Court/Judge must decide whether or not SCFCU is engaging in a deceptive lending practice; and has filed verifiable misstatements of existing material facts, in Court, as a complaint. *{id at 12-21}* If SCFCU cannot prove LLCASA is a "Fixed Rate Agreement" as identified in the email to the Defendant on 02/24/2003 and in this complaint,, SCFCU has misrepresented existing material facts and SCFCU's complaint must be dismissed pursuant to *Rule 12(b)(6) SCRCP*. "failure to state facts sufficient to constitute a cause of action." *{See Exhibit 11}*.

43. The loan was not \$5,556.44; and, any additions to the Defendant's loan were not authorized by the Defendant. SCFCU did not notify the Defendant of any additions to the original loan of Five Thousand Five Hundred and 00/100 (\$5,500.00). *{See Exhibits 9, 10 & 11}*

**LLCASA'S CREDIT LIFE
& CREDIT DISABILITY UNAUTHORIZED ADDITION**

44. Credit life and Credit Disability were not included as an option with the Defendant's original loan application in 2003. *{See Exhibit 9 & Exhibit 16, Page 1 of 2, Line #1 and Line #2}* The Defendant never signed and returned the Credit Life enrollment form SCFCU sent the Defendant with the check. *{See Exhibit C}* If the Defendant had known the \$5,500.00 loan was not "Fixed" at 15%, the Defendant never would have endorsed the check. *{9 & 10}*

45. SCFCU added Credit Life and Credit Disability to the Defendant's loan balance during March of 2003. The Defendant did not authorize this addition and the Defendant was not notified by SCFCU of this addition to the Defendant's loan. *{ See Exhibit 16, Page 1 of 2, line #2}* SCFCU must explain what it means by "Loan Stops". The car loan was paid out.

46. Therefore, SCFCU must prove SCFCU notified the Defendant by written correspondence after 02/28/2003 and prior to March 1, 2003, that Credit Life and Credit Disability were being added to the loan. If not, SCFCU has engaged in a deceptive practice and another verifiable violation of **Section 39-5-20**. *{id at 12-21 & Exhibit C}*. Regardless of SCFCU's explanation and/or excuse, the addition was not authorized. The Defendant's insurance obligation on the car should have ended when the car was paid off. *{See Exhibits 13, 14 & 15}*

47. **Section 37-4-201** clearly states in pertinent parts..

"the term of the insurance shall commence no later than when the debtor becomes obligated to the creditor or when the debtor applies for the insurance, whichever is later, except as follows:

(3) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt, except as follows:

(a) if the insurance relates to a revolving charge account or revolving loan account, the term need extend only until the payment of the debt...."

Under **WHEN INSURANCE STOPS** in the handbook on page 29; and on the Credit Life/Credit Disability Certificate of Insurance, there is no written indication that the insurance is cancelled

when the debt is cancelled or paid off. *{See Exhibit 18, Page 2 of 2}* The Defendant assumed “Loan Stops” meant paid out or paid off. Cause to cease is an accepted meaning of “Stop”.

(a) The Membership and Account Agreement (hereafter also called MAAA) does not state the procedure for transferring Credit Life/Credit Disability from one account to another. The Defendant demands SCFCU furnish the Court/Judge a copy of the 2002 handbook SCFCU gave the Defendant. The Court/Judge can also verify facts.

(b) SCFCU’s Credit Life/Credit Disability Insurance certificate is inconsistent with 37-4-201(3)(a); and therefore, does not represent “Substantial Compliance” to South Carolina’s Code relative to the last scheduled payment of debt. SCFCU’s insurance can continue indefinitely and this is not stated in the MAAA or on the certificate. *{SC ST 37-4-201}*

(c) Extending and applying Credit Life/Credit Disability without authorization is an unfair trade practice. When the loan has been paid, the Credit/Disability Life should end relative to that particular account. SCFCU should be required to provide notification when the loan is paid out. Even if SCFCU uses the Credit Life/Credit Disability group policy to cover all the Defendant’s active accounts, Credit life/Credit Disability is still optional protection not mandatory protection.

48. The Defendant alleges, the Loanliner application is the mechanism by which SCFCU misrepresented the LLCASA. LoanLiner was presented as a “Fixed Rate” loan instead of an Open-End loan. Even though “**Open-End**” is written on the application in plain sight, members from the general public can still be sucked into the scheme by the word “**Fixed**”. The Defendant’s loan is not “**Fixed**”. It is open-end and subject to a finance charge calculated by using a daily periodic rate. This is how SCFCU’s deception misled the Defendant into paying over \$10,340.00 (\$110.00 x 94 payments). And, SCFCU with unmitigated gall, has the audacity to claim the Defendant owes SCFCU more money than the original loan was actually worth. And... this is after 7 years of payments. *{See Exhibits 5, 9, 11, 12, 16 and Exhibit 17 page 21}*

49. As a consumer, the Defendant can basically explain how a fix interest rate works in a traditional closed-end loan. The interest is calculated by the rate and time and added to the loan. The monthly payment pays off the interest and the principle. However, as a consumer, the Defendant has no idea how SCFCU’s daily periodic rate is calculated and the Defendant suspects

neither does the average credit union member. The BAIT is the word “Fixed”. {See Exhibits 5, 9, 11 & 12}

50. Now, go to MAAA and see if you can find the word “Fixed” anywhere in the “Finance Charge” section of MAAA. Get the handbook (MAAA) and see if you can find the phrase – “Annual Percentage Rate” written more than once. {See Exhibits 5 & 9 and MAAA pages 1-31} The Defendant’s loan application misrepresented LLCASA as being a “Fixed Rate” loan. This difference was not explained to the Defendant in 2002 or 2003. {See MAAA pages 1-31}

51. **WHEREFORE**, the Defendant concludes the Defendant’s Background Information, answers to SCFCU’s, Summons, Complaint, Verification of Debt, Mandated ADR Counties and Fair Debt Collection Notice. The Defendant shall now address the various aspects of LLCASA’s deception and shall enter into the Court’s record, the Defendant’s Counterclaims and Affirmative Defenses.

COUNTERCLAIM I (Deceptive Business Practice)

52. The Defendant was led to believe she (the Defendant) was agreeing to and signing a Standard “Fixed Rate” Loan Agreement {Exhibits 5, 9 & 11}; when in fact, the agreement executed is Open-End, not “Fixed”, and operates similar to and is virtually the same as a “Revolving Charge Account” or similar Open-Ended Account. {See Exhibit 17, page 21}

(a) The Defendant alleges, such accounts are rarely paid off with a minimum monthly payment. The nature and character of this type loan was never explained or fully disclosed to the Defendant by SCFCU. The Defendant has presented the evidence and the facts. It is up to the jury and/or Court/Judge to determine whether or not this is a deceptive business practice. Deceptive lending practices are unlawful in South Carolina under *Section 39-5-20*.

(b) *Misrepresenting facts in a legal proceeding demands SCFCU return the Defendant’s money. All of it!!* However, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

COUNTERCLAIM II (Unjustly Enriched)

53. As a direct result of SCFCU's misrepresentations and disclosure failures, the Defendant was misled.... and paid SCFCU over \$10,340.00. Consequently, granting SCFCU's claim would continue to unjustly enriched SCFCU at the expense of the Defendant.

(a) Unjust enrichment results when the facts display an enrichment and a corresponding deprivation in the absence of any juristic reason for the enrichment. This "Unjust Enrichment" is due to SCFCU's omissions, misinformation and misrepresentations.

(b) However, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

COUNTERCLAIM III (Misrepresentation of Material Facts)

54. Since the contract executed is not what the Defendant was led to believe {*See Exhibit 5, 9, 11 & Exhibit 17, page 21*}, by definition and legal precedent this is misrepresentation". This type of "Fraud" in the inducement uses deceit; deception and/or trickery to cause an individual to act, or make decisions that are detrimental to the individual.

(a) The Defendant was deceived into signing a loan agreement that is not a "Fixed Rate" agreement. The heart of this type of "Fraud" is misleading or failing to disclose all the facts upon which an individual would base his/ her decision to act as required by the Truth in Lending Act. {*See Exhibit 5, 9, 11 & Exhibit 17, page 21*}

(b) *Misrepresenting facts in a legal proceeding demands SCFCU return the Defendant's money. All of it!!!* However, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

COUNTERCLAIM IV (Unclean Hands)

55. "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 (Cl.

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)."

(a) "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. *See Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Cl. 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."

(d) However, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

COUNTERCLAIM V (Fraud in Factum)

56. The Defendant has also been victimized by "*Fraud in Factum*". This "Fraud" occurs when the legal instrument that is actually executed differs from the one intended for execution by the person who executes it. {*See MAAA, pages 1-31*} This type of "Fraud" induces an individual to sign an instrument without a reasonable opportunity to learn of its true character, nature or essential terms nor is the true nature of the loan agreement explained by the lender {*See Exhibit 5, 9, 11 and Exhibit 17, page 21*}.

(a) The deception in this type of loan is the supposedly fixed interest rate.

“*Fraud in the Factum*” voids the instrument under state law. “*Fraud in Factum*” is also termed as “*Fraud in the Execution*” or “*Fraud in the Making*” also voids the agreement and/or contract.” {See Exhibit 5, 9, 11 and Exhibit 17, page 21}.

(b) *Misrepresenting facts in a legal proceeding demands SCFCU return the Defendant’s money. All of it!!* However, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

COUNTERCLAIM V (Fraud in the Inducement)

57. “Fraud is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to her or to surrender a legal right.” *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Cl. App. 2003) (citing *Black’s Law Dictionary* 660 (6th ed.1990)).”

(a) 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...”

(b) “...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).”

(c) “In South Carolina, the statute of limitations for causes of action for fraud is governed by the ‘discovery rule,’ and does not begin to run until discovery of the fraud itself or of ‘such facts as would have led to the knowledge thereof, if pursued with reasonable diligence.’” *Burgess v. Am. Cancer Soc., S.C. Div., Inc.*, 300 S.C. 182, 185, 386 S.E.2d 798, 799

(Ct. App. 1989) (external citations omitted). ”

(d) However, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

COUNTERCLAIM VI (Restitution)

65. SCFCU must return all the money SCFCU received from the Defendant because of SCFCU’s misrepresentation of it’s Open-End Loan Agreement as a Fixed Rate Loan.

Restitution is appropriate. “Restitution is a remedy designed to prevent unjust enrichment.

Stanley Smith & Sons v. Limestone College, 283 S.C. 430, 435 n. 1, 322 S.E.2d 474, 478 n. 1 (Ct.App.1984).” To recover on a theory of restitution, the Defendant must show that:

(a) The Defendant conferred a non-gratuitous benefit to SCFCU due to SCFCU’s misrepresenting LLCASA as a “Fixed Rate” loan. {Exhibits 5, 9, 11 and Exhibit 17, page 21} SCFCU received interest earnings from the Defendant’s \$10,340.00 {Exhibit 16} and paid unauthorized Credit Life and Credit Disability premiums with the Defendant’s payments on the Defendant’s loan. {Exhibits 16 & 18}

(b) SCFCU realized some value from the benefit, [interest earnings] and

(c) It would be inequitable for SCFCU to retain the benefit [interest earnings] and unauthorized insurance premiums and not repay the Defendant. [\$1,776.04 see, Exhibit 16, page 2-CD & CL]. Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 581 S.E.2d 161 (2003).

(d) “The terms ‘restitution’ and ‘unjust enrichment’ are modern designations for the older doctrine of quasi-contracts. Ellis, 294 S.C. at 473, 366 S.E.2d at 14. “[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy.” OHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004) (internal quotation marks and citations omitted).”

(e) Implied in law or quasi-contracts are not considered contracts at all, but are akin to restitution which permits recovery of that amount SCFCU has been benefitted at the expense of the Defendant in order to preclude unjust enrichment. Costa & Sons Constr. Co. v. Long, 306 S.C. 465, 468 n.1, 412 S.E.2d 450, 452 n.1 (Ct. App. 1991).

(f) "Absent an express contract, recovery under quantum meruit is based on quasi-contract." *Earthscapes Unlimited, Inc.*, 390 S.C. at 616, 703 S.E.2d at 225. "This Court has recognized quantum meruit as an equitable doctrine to allow recovery for unjust enrichment. *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 466, 684 S.E.2d 756, 764 (2009) (internal quotation marks and citations omitted)."

(g) Despite SCFCU's misstatements, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

COUNTERCLAIM VII (Infliction of Unnecessary Emotional Distress)

66. The Defendant asserts that the strain of this proceeding has created mental anguish, anxiety and this action by SCFCU has caused the Defendant to experience and endure unnecessary emotional distress and stress. However, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

COUNTERCLAIM VIII (Unconscionability)

67. "Section 37-5-108 of the South Carolina Code (Supp. 2005) outlines factors utilized to determine if unconscionable conduct has occurred and the remedies the court may provide. 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 HealthCare Services, Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004)."

(a) "Unconscionable conduct is also found in acts of fraud and deceit, where the deliberate misrepresentation of fact deprives someone of a valuable possession. Whenever someone takes unconscionable advantage of another person, the action may be treated as criminal fraud or the civil action of deceit."

(b) “When a court uses the word *unconscionable* to describe conduct, it means that the conduct does not conform to the dictates of conscience. In addition, when something is judged unconscionable, a court will refuse to allow the perpetrator of the conduct to benefit.”

(c) “An unconscionable contract is one that no person who is mentally competent would enter into and that no fair and honest person would accept.” *West's Encyclopedia of American Law, Edition 2*. No reasonable person; when disclosed the actual facts, would enter into a LLCASA daily periodic interest rate plan that adds unauthorized Credit Life, Credit Disability and creates a debt equal to or greater than the original loan.

(d) However, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

COUNTERCLAIM IX (Negligent Misrepresentation)

68. To maintain a claim for negligent misrepresentation, the Defendant must show by a preponderance of the evidence: (A) SCFCU made a false representation to the Defendant {*Exhibits 5, 9 & 11*}; (B) SCFCU had a pecuniary or monetary interest in making the statement; [interest earnings from loans] {*Exhibit 16*} (C) SCFCU owed a duty of care to see that SCFCU and/or SCFCUP communicated truthful information to the Defendant; {*Exhibit 17, page 21*} (D) SCFCU breached that duty by failing to exercise due care; {*Exhibits 5, 9 & 11*} (E) the Defendant justifiably relied on the representation; {*Exhibit 10*} and (F) the Defendant suffered a pecuniary or monetary loss as the proximate result of his reliance upon the representation. {*Exhibit 7x 94*} *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 473-74, 581 S.E.2d 496, 504 (Ct. App. 2003). *AMA Management Corp. v. Strasburger*, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992). “Evidence of a mere broken promise is not sufficient to prove negligent misrepresentation.” *Winburn v. Insurance Co. of North America*, 287 S.C. 435, 443, 339 S.E.2d 142, 147 (Ct. App. 1985). SCFCU’s documents are presentations and material, not promises.

(a) “The key difference between fraud and negligent misrepresentation is that fraud requires the conveyance of a known falsity, while negligent misrepresentation is predicated upon transmission of a negligently made false statement. *Armstrong v. Collins*, 366 S.C. 204,

219-20, 621 S.E.2d 368, 375-76 (Ct. App. 2005) (internal quotations and citations omitted).”

While the two causes of action differ, both fraud and negligent misrepresentation contain “the necessary element that the hearer had the right to rely upon the misrepresentation or fraud.” *Id.*

(b) “To establish liability for negligent misrepresentation, the plaintiff must show “(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the representation; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation.” {Exhibits 7 x 94 payments}

(c) “Negligent misrepresentation is predicated upon the transmission of a negligently made false statement. See *Armstrong v. Collins*, 366 S.C. 204, 220, 621 S.E.2d 368, 376 (Ct. App. 2005); *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003); *Robertson v. First Union Nat’l Bank*, 350 S.C. 339, 349, 565 S.E.2d 309, 315 (Ct. App. 2002); *Brown v. Stewart*, 348 S.C. 33, 42, 557 S.E.2d 676, 680-81 (Ct. App. 2001); *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000).”

(d) However, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

COUNTERCLAIM X (Fraudulent Misrepresentation)

69. “Like negligent misrepresentation, an actionable fraudulent misrepresentation case requires there first be a false representation predicated upon misstatements of fact rather than upon expression of opinion, intent, or confidence that the deal would be satisfactory. See *Bishop Logging Co. v. John Deere Indus. Equip. Co.*, 317 S.C. 520, 526-27, 455 S.E.2d 183, 187 (Ct. App. 1995) (finding statements by equipment seller concerning expected performance of logging system were opinions as to future performance and could not be basis for claim of fraud). SCFCU’s loan application is a factual representation, not an opinion. Therefore, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and

SCFCU need only return will apply the \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

COUNTERCLAIM XI

(Fraud)

70. To maintain a claim for fraud, the Defendant must show by clear and convincing evidence: (A) SCFCU's representation; {Exhibits 5, 9 & 11} (B) its falsity; {Exhibit 17, page 21} (C) its materiality; {Exhibit 10} (D) SCFCU's knowledge of its falsity or a reckless disregard for its truth or falsity; {Exhibit 17, page 21} (E) intent that the Defendant act upon the representation; {Exhibits 9 & 10} (F) the Defendant's ignorance of its falsity; {Exhibits 5, 9, 10 & 11} (G) the Defendant's reliance on its truth; {Exhibit 10} (H) the Defendant's right to rely thereon; {Exhibit 5, 9, 10 & 11} and (I) the Defendant's consequent and proximate injury. {Exhibit 7 x 94} Hendricks v. Hicks, 374 S.C. 616, 620, 649 S.E.2d 151, 152-53 (Ct. App. 2007).

(a) "In an action at law tried without a jury, the court's findings of fact will be upheld on appeal when the findings are reasonably supported by the evidence. Butler Contracting, Inc., v. Court Street, LLC, 369 S.C. 121, 127, 631 S.E.2d 252, 255 (2006). The court's findings of fact will not be disturbed on appeal unless wholly unsupported by the evidence or clearly influenced or controlled by an error of law. Id. at 127, 631 S.E.2d at 255-56.

(b) "The recipient of a fraudulent misrepresentation of fact is justified in relying on its truth.... The person committing the fraud cannot defeat a claim for misrepresentation ... particularly where the misrepresented facts are peculiarly within the representor's knowledge."

(c) "To establish fraud, a party must prove by clear and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or 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. "

(d) However, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

71. **WHEREFORE**, the Defendant concludes her (the Defendant's) Counterclaims and firmly asserts that SCFCU's request for judgment must be denied and a JURY TRIAL scheduled, because of the following AFFIRMATIVE DEFENSES.

FIRST AFFIRMATIVE DEFENSE
(Failure to Cooperate and Negotiate in Good Faith)

72. At no time prior to this COMPLAINT did SCFCU show any inclination to cooperate, negotiate in "Good Faith" (*honesty and best effort in dealings with others*) or explain to the Defendant what happened to the \$10,340.00 plus, the Defendant paid SCFCU. However, despite SCFCU's failure to cooperate in "Good Faith", the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 ($\$10,340.00 - [\$5,500 \text{ Loan} + \$600.00 \text{ in Advances}] = \$4,240.00$; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

SECOND AFFIRMATIVE DEFENSE
(Deceptive Lending Practice)

73. "The statute clearly requires that in order to recover pursuant to the UTPA one must prove . . . : 1) a violation of the Act [by the commission of an unfair or deceptive act in trade or commerce], 2) proximate cause, and 3) damages. Charleston Lumber Co. v. Miller Housing Corp., 318 S.C. 471, 482, 458 S.E.2d 431, 438 (Cl. App. 1995)." To be associated with trade or commerce, SCFCU's acts must impact the public interest. Daisy Outdoor Adver. Co. v. Abbott, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996).

(a) "An impact on the public interest may be shown if the acts or practices have the potential for repetition. Crary v. Djebelli, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998). The potential for repetition may be shown by proving that the same kind of actions occurred in the past or by showing that the procedures employed by the defendant create a potential for repetition of the deceptive practices. Id. at 388, 496 S.E.2d at 23. "

(b) Despite SCFCU's deceptive lending practices and unauthorized use of the Defendant's payments for insurance premiums, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 ($\$10,340.00 - [\$5,500 \text{ Loan} + \$600.00 \text{ in Advances}] = \$4,240.00$; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

THIRD AFFIRMATIVE DEFENSE
(Parole Evidence Rule)

74. "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.").

75. "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."

76. “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.*”

(a) “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.”

(b) Despite SCFCU’s misrepresentations, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

FOURTH AFFIRMATIVE DEFENSE

(Failed to State Facts Sufficient to Constitute a Cause of Action.)

77. SCFCU’s complaint is woefully inadequate, grossly insufficient and riddled with false accusations, misstatement of material facts and misrepresentation of material facts and SCFCU’s Debt Verification lacks meaningful relevance.

(a) SCFCU’s Debt Verification did not include the Defendant’s account and/or payment history; nor did SCFCU present a record of the Defendant’s payment and/or account history. Therefore, the Verification of Debt lacks the necessary substantive value to support SCFCU claim for relief.

(b) Even though SCFCU has failed to state a justifiable claim for relief, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

FIFTH AFFIRMATIVE DEFENSE
(Failure to Disclose)

78. The Defendant's never had a loan with SCFCU for Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44). This additional loan amount is an unauthorized addition that SCFCU did not disclose to the Defendant. The Defendant never signed and returned the Credit Life enrollment form SCFCU sent the Defendant with the check. {See Exhibit C} If the Defendant had known the \$5,500.00 loan was not "Fixed" at 15%, the Defendant never would have endorsed the check. {9 & 10}

(a) SCFCU added Credit Life and Credit Disability to the Defendant's loan balance during March of 2003. The Defendant did not authorize this addition and the Defendant was not notified by SCFCU of this addition to the Defendant's loan. { See Exhibit 16, Page 1 of 2, line #2} SCFCU must explain what it means by "Loan Stops". These account additions and inclusions were not disclosed to the Defendant.

(b) Even though SCFCU did not disclose the truth about LLCASA, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 - [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's "Prayer for Relief".

SIXTH AFFIRMATIVE DEFENSE
(In Pari Delicto)

79. The Defendant alleges that SCFCU herein and each and every purported Cause of Action by SCFCU's authorized representatives, personnel and/or employees have engaged in acts and courses of conduct which rendered them "In Pari Delicto", equally guilty. This legal Doctrine effectively bars SCFCU from profiting from wrongdoing. Even though the Defendant alleges SCFCU did not act with honor, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 - [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

SEVENTH AFFIRMATIVE DEFENSE
(Estoppel)

80. The Defendant alleges SCFCU is "Estopped" from changing the facts in

SCFCU's complaint that was filed on November 23, 2011. Therefore, for each and every Cause of Action contained in the complaint that is an omission of a material fact, misrepresentation of a material, courses of misconduct, identified deception and an unfair trade practice that is contained in the complaint effectively bars SCFCU from any judicial. Even though SCFCU is effectively barred from changing the facts in its complaint, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 - [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

EIGHTH AFFIRMATIVE DEFENSE
(Statute of Frauds)

81. The "Fixed Rate" Agreement identified in SCFCU's complaint represents a class of contracts that must be in writing to be enforce. The alleged "Fixed Rate Agreement" is not in writing and the Defendant never signed such an Agreement. *{See Exhibit 17, Page 21}*

(a) Therefore, SCFCU is barred by the provisions of the Statute of Frauds from filing a complaint and/or seeking any judicial relief from any claim filed against the Defendant.

(b) Agreements and/or contracts brought into existence by misinformation, omissions, misrepresentations, deception and/or unfair trade and/or business practices are rendered null and void as a matter of law. Consequently, the Plaintiff must return over \$10,340.00 back to the Defendant.

(c) Even though the Defendant alleges SCFCU violated the Statute of Frauds with a "Fixed Rate Agreement" the Defendant did not sign, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 - [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

NINTH AFFIRMATIVE DEFENSE
(Bad Faith)

82. The Defendant alleges SCFCU misled the Defendant for over 7 years that she (the Defendant) had a "Fixed Rate" loan and her (the Defendant's) loan was a Personal Access Line instead of an Open-End loan that applied interest at a daily periodic rate. *{See Exhibits 9 & 11}*

This is "Bad Faith" (*dishonesty or fraud in a transaction*). Due to "Bad Faith" {See Exhibits 9 & 11} SCFCU must return over \$10,340.00 to the Defendant. Even though the Defendant alleges SCFCU has shown "Bad Faith", the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

TENTH AFFIRMATIVE DEFENSE
(Willful Tort)

83. The Defendant alleges that SCFCU, and each and every cause of action contained in SCFCU's complaint, is barred from pursuing judicial relief of any kind by reason of acts, omissions, misinformation, misrepresentations, courses of conduct, deception, unfair trade practices, and misleading the Defendant for over 7 years that she (the Defendant) had a "Fixed Rate" loan, instead of an Open-Ended loan that applied interest at as daily periodic rate. {See Exhibits 9 & 11} Such acts by the Plaintiff constitute a "Willful Tort". (*a civil wrong that is done consciously and intentionally*). Therefore, SCFCU must return over \$10,340.00 back to the Defendant. Even though the Defendant alleges SCFCU's action constitute a willful tort, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

ELEVENTH AFFIRMATIVE DEFENSE
(Violation of Truth In Lending)

84. The Defendant alleges the language in MAAA is misleading. The LoanLiner Open-End Disbursement Receipt Plus (hereafter also called LL) so called subaccounts are a clever method to by-pass TILA and most state laws governing revolving charge loans. LL's charges on the Defendant's account at SCFCU represent a revolving charge card's daily periodic interest rate. {See Exhibits 5, 9, 11, 16 & Exhibit 17, page 21}

(a) The difference is, there is no actual credit card. The Defendant alleges LL is an unconscionable means to utilize daily periodic revolving charge card interest rates without using the words "Revolving Charge". There is no warning to credit union members that... "A

Minimum Monthly Payment Will Never Payoff This Account. The Monthly Interest Can Be Greater Than Your Monthly Payment.” The Defendant alleges LL is a horrendous lending scheme that borders on criminality. Even though the Defendant alleges SCFCU’s actions constitute a willful tort, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 ($\$10,340.00 - [\$5,500 \text{ Loan} + \$600.00 \text{ in Advances}] = \$4,240.00$; plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

TWELVETH AFFIRMATIVE DEFENSE
(Scienti Et Volenti Non Fit Injuria)

85. The Defendant invokes the Doctrines of Scienti et volenti non fit injuria means "a person who knowledgeably consents to legal wrong has no legal right" to recover damages. Because of SCFCU’s misrepresentation of material facts in SCFCU’s complaint, SCFCU has no legal right to recover any damages, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 ($\$10,340.00 - [\$5,500 \text{ Loan} + \$600.00 \text{ in Advances}] = \$4,240.00$; plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

THIRTEENTH AFFIRMATIVE DEFENSE
(Usurious Interest)

86. Even though LLCASA will never admit to an usually high revolving charge daily periodic interest rate, the Defendant alleges SCFCU’s daily periodic revolving charge interest rate is usurious and violates state and federal law. How else can any person with reasonable intelligence explain SCFCU’s purported unpaid balance of \$4,625.00; with a purported interest charge of \$649.00 after 7 years and over \$10,340.00 actually paid on a \$5,500 loan. Despite SCFCU’s misstatements of fact, the Defendant will apply the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 ($\$10,340.00 - [\$5,500 \text{ Loan} + \$600.00 \text{ in Advances}] = \$4,240.00$; plus, any payments less than \$110.00 and comply with the Defendant’s request in the Defendant’s “Prayer for Relief”.

FOURTEENTH AFFIRMATIVE DEFENSE
(An Unlawful Bait & Switch Credit Scheme)

87. The BAIT is a "Fixed Interest Rate" loan application that SWITCHES to an open-end daily periodic rate plan and this is only the beginning of this scheme. The Defendant further alleges that she (the Defendant) has been victimized by a cleverly crafted lending scheme that has been researched and developed and relies on a thorough understanding of human nature and America's legal system. The Defendant alleges LLCASA is wrapped in a legalese package so all inclusive that only the best legal minds can unravel its intricate parts. {See MAAA pages 1- 32}

(a) The Defendant alleges what makes LL so effective in its deception of the uninformed; is LL's BAITING & SWITCHING looks innocent, but in reality, LL is a wolf in sheep's clothing. The Defendant alleges LL is no more than an updated, repackaged, modernized, high tech version of the oldest con game in the world and the daily periodic rate is the biggest scam in the financial services industry. Luring the unsuspecting with the illusion of a "Fixed Interest Rate" loan into this open-end credit scheme is criminal.

(b) The Defendant alleges LL operates just like... the age old sales con game of BAIT & SWITCH, except there is no attempt to sell a much higher priced item or interest rate. LL, by utilizing its "Fixed Rate" loan application to lure the unsuspected into its open-end credit plan, can manipulate its daily periodic rate and SWITCH rates everyday it operates. The Defendant further alleges LL will never identify itself as a BAIT & SWITCH con game. A "multi-featured credit Plan" is much more respectable, acceptable and euphemistic to the public, federal regulators and state law enforcement. {See MAAA page 21}

(c) Despite the Defendant's regrets, suspicions and misgivings about SCFCU and LoanLiner, the Defendant will apply the principle of "Equitable Maxim" to SCFCU's indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 - [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with the Defendant's request in the Defendant's "Prayer for Relief".

FIFTEENTH AFFIRMATIVE DEFENSE (Reservation of Rights)

88. The Defendant reserves the right to amend replies and responses pursuant to South Carolina and the Federal Rules Civil Procedure. The Defendant also reserves the right to add additional AFFIRMATIVE DEFENSES and COUNTERCLAIMS as this litigation progresses if the circumstances warrant such additions.

89. **WHEREFORE**, the Defendant concludes her (the Defendant's) AFFIRMATIVE DEFENSES and COUNTERCLAIMS and enters the following Argument for a Jury Trial, Settlement. Conclusion and "Prayer for Relief" into the record.

ARGUMENT FOR JURY TRIAL

90. As a Pro Se Litigant, the "Evidence Rules" inherit in a JURY TRIAL gives the Defendant the legal authority to compel SCFCU to comply with the Defendants request for depositions, discovery, interrogatories, admissions and/or Certifications the Defendant will need in order to have a just, fair and impartial presentation of the evidence to a Jury.

SCRCP Rule 38(b) clearly states; "Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party".

SETTLEMENT

91. Throughout this pleading, SCFCU was offered the "Equitable Maxim" to end this matter without Greed. Therefore, in the event and after review, the Court/Judge deems it proper, conforming, compliant and/or in accordance with existing and/or established law, precedent/s and/or Court ruling/s to dismiss SCFCU's complaint for any other justifiable cause, reason and/or purpose, and/or if SCFCU decides on the advice of Counsel and/or of SCFCU'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 any such settlement, agreement and/or accord.

CONCLUSION

92. The Defendant has over 84 plus checks at BB&T (Branch Banking & Trust Company) that will prove beyond any reasonable doubt that she (the Defendant) paid the Plaintiff \$110.00 a month for over 7years. SCFCU can subpoena these cancelled checks at its own expense as evidence in this case. {See Exhibit 7} By reason of acts, omissions, misinformation, misrepresentations, courses of conduct, deception, unfair trade practices, "Fraud

in the Inducement”, “Fraud in Factum”, and misleading the Defendant for over 7 years that she (the Defendant) had a “Fixed Rate” loan, instead of the Open-End or Revolving Account that created this situation, the Defendant enters the following “Prayer for Relief” into the record.

PRAYER FOR RELIEF

93. **WHEREFORE**, the Defendant having fully set forth her (the Defendant’s) Answer to SCFCU’s Summons, Complaint, Verification of Debt and Fair Debt Collection Notice that is dated November 14, 2011, filed on November 23, 2011 and delivered by Server of Process to 423 Bayne Street in Orangeburg, South Carolina on December 9, 2011 pray that this honorable Court, in the absence of withdrawal and/or settlement and/or dismissal will set a date and time for a JURY TRIAL in order to prevent this injustice by SCFCU from continuing and:

(a) Under the direction of this Court, ascertain the amount of legal defense fees and cost of action that shall be paid to the Defendants because of SCFCU’s complaint.

(b) Deny SCFCU’s claim for judgment.

(c) Order the reimbursement of any and all cost that may be due to the Defendant because of SCFCU’s complaint.

(d) Order SCFCU to provide the Court/Judge with a copy of SCFCU’s handbook.

(e) Order SCFCU to provide the Court and the Defendant a complete record of the Defendant’s payments from 2003 to the last payment date.

(f) Deny any claim by the Plaintiff for any additional payments from the Defendant.

(g) Render a judgment against SCFCU to have all derogatory credit information removed from Credit Reporting Agencies to which SCFCU may have sent such information.

(h) Render a judgment against SCFCU for just and fair compensation, including any punitive damages the Court deems is proper.

95. **WHEREFORE**, the Defendant prays SCFCU’s complaint has been sufficiently answered, the Defendant’s position clearly stated, properly defended and the Defendant is entitled to recover costs of suit herein incurred, and such other relief as the court may deem proper.

NOTIFICATION

A copy of the Defendant's Answer to SCFCU's Summons, Complaint, Verification of Debt and Fair Debt Collection Notice that are dated 11/14/2011, filed on 11/23/2011 and delivered by a server of process to 423 Bayne Street in Orangeburg, South Carolina on 12/09/2011 that has been filed with the Clerk of Court will be mailed to SCFCU's attorney/s:

SC Federal Credit Union
ATTN: Amy L. Hewitt
POB 190012
North Charleston, SC 29419
Tel: 843-569-5045

Moore & Van Allen, PLLC
ATTN: Colleen A. McConnell
40 Calhoun Street
POB 22828
Charleston, SC 29413-2828
Phone: 843-579-7000 Fax: 843-579-8714

2011 DEC 21 PM 2:32
FILED
CLERK OF COURT
ORANGEBURG, SC

IN WITNESS WHEREOF, The undersigned, being **SWORN**, has signed and sealed these attestations this 21st day of December in the year 2011 in City of ORANGEBURG State of South Carolina.

Signed, sealed and delivered in the presence of:

Signature: Dorothy Harley-Sistrunk

Notary Witness (1): Sullivan D. Buck
(Signature)

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG

On Dec. 21, 2011 before me appeared Dorothy Harley-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 Shirley A. Hines
(Signature)

My Commission Expires
Commission Expires August 1st, 2017

ATTEST: TRUE COPY
Winnifred B. Clark
(Seal)
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

South Carolina Federal Credit Union

Plaintiff,

vs.

Dorothy Harley Sistrunk, A/K/A; Dorothy
Harley-Sistrunk, A/K/A; Dorothy A.
Harley,

Defendant,

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

DEFENDANT
DOROTHY HARLEY SISTRUNK'S
NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT

April 25, 2012

2012 APR 25 PM 1:15

Comes now the Defendant Dorothy Harley Sistrunk to file this NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT..

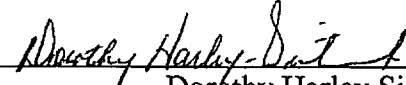
TO: SOUTH CAROLINA FEDERAL CREDIT UNION, PLAINTIFF...

1. **YOU WILL PLEASE TAKE NOTICE** that the above named Defendant has filed this Motion pursuant to South Carolina's Rules of Civil Procedure in order to grant the Defendant Summary Judgment in this matter. On the tenth (10th) day after service; or as soon as the Defendant can be heard; the Defendant will move the Court for a Summary Judgment Order that is pursuant to *Rule 56, SCRCP*.
2. This Motion is being made upon the grounds that the Plaintiff's Complaint and Debt Collection are for an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") [hereafter also called OEDRP-LLCASA] that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. This loan and debt was verified by Amy Rogers on 10/26/2011 and filed in Court on 11/23/2011. The Defendant never had, never signed and never agreed to any loan for \$5,556.44 on February 24, 2003.
3. The Plaintiff has not and did not present any evidence of this loan. Since no genuine issue remains as to any material fact/s, the Defendant is entitled to a judgment as a matter of law pursuant to *Rule 56, SCRCP* and Just and Fair Compensation.

ATTEST: TRUE COPY
J. L. L. L.
CLERK OF COURT
ORANGEBURG COUNTY

4. The Defendant's Motion is supported by South Carolina's Rules of Civil Procedure, relevant case law, South Carolina's Code of Laws, Public Law, the Plaintiff's filed documents, the Defendant's Exhibits, Statement of Material Facts That Are Not In Dispute and Legal Memorandum that supports the Motion for Summary Judgement. In the event, the Motion for Summary Judgment is denied because of some unforeseen technicality or reason, the Defendant will demand a Trial by Jury.

Dorothy Harley Sistrunk
423 Bayne Street
POB 217
Orangeburg, SC 29115


Dorothy Harley Sistrunk

Dated: 4/25/12
Orangeburg, South Carolina

NOTIFICATION

A copy of the Defendant's Notice of Motion and Motion for Summary Judgment that has been filed with the Clerk of Court will be mailed to the Plaintiff's Attorney/s:

SC Federal Credit Union
ATTN: Amy L. Hewitt
POB 190012
North Charleston, SC 29419
Tel: 843-569-5045

Moore & Van Allen, PLLC
ATTN: Colleen A. McConnell
40 Calhoun Street
POB 22828
Charleston, SC 29413-2828
Phone: 843-579-7000 Fax: 843-579-8714

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

South Carolina Federal Credit Union

Plaintiff,

vs.

Dorothy Harley Sistrunk, A/K/A; Dorothy
Harley-Sistrunk, A/K/A; Dorothy A.
Harley,

Defendant,

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

**DEFENDANT
DOROTHY HARLEY SISTRUNK'S
STATEMENT OF MATERIAL
FACTS THAT ARE NOT IN
DISPUTE.**

April 25, 2012

2012 APR 25 PM 1:15

Comes now the Defendant Dorothy Harley Sistrunk to file this STATEMENT OF MATERIAL FACTS THAT ARE NOT IN DISPUTE IN SUPPORT OF NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT.

TO: SOUTH CAROLINA FEDERAL CREDIT UNION, PLAINTIFF...

1. **YOU WILL PLEASE TAKE NOTICE** that the above named Defendant has filed a Notice of Motion and Motion for Summary Judgment and a Legal Memorandum in Support of Notice of Motion and Motion for Summary Judgment. The Defendant shall now state the following material facts that are not in dispute. Below is a table of abbreviations that will be used throughout the Defendant's Statement of Material Facts.

TABLE OF ABBREVIATIONS

2.	Aff.	Affidavit
	Affs.	Affidavits
	Ans.	Answer
	&	And
	Def.	Defendant
	Doc.	Document
	Docs.	Documents
	Dt.	Date
	Dtd.	Dated
	CA	Civil Action
	Compl.	Complaint
	Exh.	Exhibit
	Exhs.	Exhibits

TRUE COPY

-1-

CLERK OF COURT
ORANGEBURG COUNTY

LLCASA.....	LoanLiner Credit And Security Agreement
MAAA.....	Membership And Account Agreement
No. & #.....	Number
Nos. & #s.....	Numbers
OEDRP.....	Open-End Disbursement Receipt Plus
Pg.	Page
Pgs.	Pages
¶.....	Paragraph
¶¶.....	Paragraphs
Pl.	Plaintiff
Pldg.	Pleading
Pldgs.	Pleadings
Res.	Response
Rpl	Reply
SAN.....	Summons And Notice
SCFCU.....	South Carolina Federal Credit Union
Sent.	Sentence
Stmp.	Stamped

STANDARD OF REVIEW

3. “Rule 56 SCRPC (explaining summary judgment is properly granted when “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”); *Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 545-46, 694 S.E.2d 1, 4 (2010)”

4. “A fact is ‘material’ if a dispute over it might affect the outcome of a suit under the governing law; factual disputes that are ‘irrelevant or unnecessary’ do not affect the summary judgment determination. {See *Holcomb v. Powell*, 433 F.3d at 895 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248)}. An issue is “genuine” if the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party. {See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248; *Holcomb v. Powell*, 433 F.3d at 895}”

5. “[W]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving [parties], there is ‘no genuine issue for trial.’” {See *Scott v. Harris*, 550 U.S. 372, 380 (2007) (quoting *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986))}

6. “The moving party bears the initial burden of proving that there are no genuine

issues of material fact, thus entitling it to judgment as a matter of law. *Owens Corning v. Nat'l Union Fire Ins. Co.*, 257 F.3d 484, 491 (6th Cir. 2001). The burden then shifts to the nonmoving party to produce specific facts showing a genuine issue for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356 (1986) (citing *FED. R. CIV. P. 56(e)*). The nonmoving party must cite specific evidence and may not merely rely upon allegations contained in the pleadings. *Harris v. Gen. Motors Corp.*, 201 F.3d 800, 802 (6th Cir. 2000)."

7. The facts and all resulting inferences are viewed in a light most favorable to the nonmoving party, and the court will decide whether "the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. *Anderson*, 106 S. Ct. at 2512." "[O]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson*, 106 S. Ct. at 2510."

8. Based on the facts in this case and the filed Complaint, the Plaintiff, South Carolina Federal Credit Union, has not presented any affidavits, declarations or other competent evidence, setting forth specific facts showing that there is a genuine issue for trial. {See *FED. R. CIV. P. 56(e)*; *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)}

(A) In fact, since November 23, 2011, to the date the Defendant Notice of Motion and Motion for Summary Judgment was filed, the Plaintiff has not filed any new documents, depositions, interrogatories, admissions, affidavits or any eyewitness testimony and has not requested any discovery from the Defendant. {Supporting Evidence – Pl.'s filed Docs. #2011-CP-38-1392}

(B) Since the Plaintiff has not and did not file any new affidavit/s, the Defendant shall submit the following Statement of Material Facts That Are Not In Dispute based on the Plaintiff's filed Complaint, Corporate Verification of Account and remaining Supporting Documents, the Defendant's filed Exhibits, Answer to Summons and Notice and Complaint, any additional Pleadings, Replies and/or Responses and the Defendant's Legal Memorandum.

**STATEMENT OF MATERIAL FACTS
THAT ARE NOT IN DISPUTE RELATIVE TO THE PLAINTIFF'S COMPLAINT**

9. The Plaintiff's Complaint is for a purported loan that was entered into on or about

February 24, 2003. *{Supporting Evidence – Pl. 's Compl. Pg. 2, ¶ 7, 11/23/2011}*

10. The Plaintiff's Debt Collection is for \$5,274.84. *{Supporting Evidence – Pl. 's Compl. Pg. 3, ¶ 12, 11/23/2011 & Pl. 's Exh. "A" ¶¶ 1 & 3 & "C"}*

11. The Plaintiff's Complaint and Debt Collection are for an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") [hereafter also called OEDRP-LLCASA] that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Supporting Evidence – Pl. 's Compl. Pg. 2, ¶ 7, 11/23/2011}*

12. The Plaintiff's Debt Collection Notification; i.e., EXHIBIT "A", FAIR DEBT COLLECTION PRACTICES ACT, (the Act), 15 USC SECTION 1601 as Amended, that was attached to the Plaintiff's Complaint is for the amount stated in the Complaint (\$5,274.84) *{Supporting Evidence – Pl. 's Exhibit "A", ¶¶ 1 & 3 & Pl. 's Compl. Pg. 3, ¶ 12 & Exh. "C"}*

13. The Plaintiff's Law Firm of Moore & Van Allen, PLLC, was duly notified in the Defendant's Answer to Complaint, 12/21/2011, that the Defendant never had a loan of any kind with the Plaintiff that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Supporting Evidence – Def. Ans. Pg. 4, ¶¶ 1-3, Pg 5, ¶¶ 7-8, Pg. 6, ¶¶ 11 & 11(a)-11(b), Pg 7, ¶¶ 12 & 12(a)-12(b), Pgs. 8-10, ¶¶ 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Pg. 11, ¶ 20}*

14. Amy Rogers stated in the Plaintiff's Corporate Account Verification that she is an agent of the Plaintiff, familiar with the transaction and the facts stated in the pleadings and she has read the pleadings and the facts stated therein are true. *{Supporting Evidence – Pl. 's Corporate Verification of Account, Pg. 1, ¶ 1, notarized on 10/26/2011 and filed on 11/23/2011}*

15. Amy Rogers verified the Plaintiff's Complaint and Debt Collection are based on an OEDRP-LLCASA that was executed and delivered on or about February 24, 2003 that was for \$5,556.44, that is now in default with an amount due and payable of \$5,274.84. *{Supporting Evidence – Pl. 's Compl. Pg. 2, ¶ 7, Pg. 3, ¶ 12, Amy Rogers' Corporate Account Verification, Pg. 1, ¶ 1, Pl. 's Exh. "A", Pg. 1, ¶¶ 1 & 3 and Pl. 's Exh. "C".}*

16. Amy Rogers loan statement that is attached to the Corporate Verification of Account, {Pl. 's Exh. "C"} authenticates the Plaintiff's filed Complaint and Debt Collection are based on a loan that was purportedly executed and delivered on or about February 24, 2003 that called for the payment of the sum of \$5,556.44 that is now in default. {Supporting Evidence – Pl. 's Compl. Pgs. 2-3, ¶¶ 7-12, Amy Rogers' Corporate Verification of Account, Pg. 1, ¶ 1, Pg. 2, Column 1, Payoff W/Escrow \$5,274.84 & Pl. 's Exh. "A", Pg. 1, ¶¶ 1 & 3}

17. The Plaintiff's supporting document for a \$5,500.00 "Fixed Rate Loan" is signed and dated 9/5/02. {Supporting Evidence – Pl. 's filed Doc. identified as "PAGE 2" of Exh. "B"}

18. The Defendant's car loan with the Plaintiff was for \$5,845.00, not for \$5,500.00 and not for \$5,556.44. {Supporting Evidence – Def. Exhs. 12 & 13}

19. The Defendant's car loan is paid out. {Supporting Evidence – Def. Exhs. 14 & 15}

**STATEMENT OF MATERIAL FACTS
THAT ARE NOT IN DISPUTE RELATIVE TO THE DEFENDANT'S LOAN**

20. The Defendant did not enter into any agreement on 09/5/2002, or on 02/24/2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. {Supporting Averments – Def. Ans. Pg. 4, ¶¶ 1-3, Pg. 5, ¶¶ 7-8, Pg. 6, ¶¶ 11, 11(a)-11(b), Pg. 7, ¶¶ 12 & 12(a)-12(b), Pgs. 8-10, ¶¶ 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Pg. 11, ¶ 20 & Supporting Evidence – Def. Exhs. 5, 9 & 10}

21. The Plaintiff's filed Complaint and Debt Collection are for a loan the Defendant never had, never signed or agreed to repay. {Supporting Averments – Def. Ans. Pg. 4, ¶¶ 1-3, Pg. 5, ¶¶ 7-8, Pg. 6, ¶¶ 11 & 11(a)-11(b), Pg. 7, ¶¶ 12 & 12(a)-12(b), Pgs. 8-10, ¶¶ 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Pg. 11, ¶ 20; Supporting Evidence – Pl. 's Compl. Pgs. 2-3, ¶¶ 7-12, 11/23/2011, Amy Rogers' verification that the Debt Collection is for a 02/24/2003 loan for \$5,556.44 & Pg. 2, Column 1, Payoff W/Escrow \$5,274.84, Pl. 's Compl., Pg. 3, ¶ 12, Sent. 2, & Pl. 's Exh. "A", Pg. 1, ¶¶ 1 & 3 are for the same \$5,556.44 loan}

22. As the following Amortization Schedule shows, even if the Defendant had such a loan, the Plaintiff's \$5,556.44 loan is not a true 15% "Fixed Annual Interest Rate" Loan by definition. {Authority – 15 USC 1601 et. seq.} At \$110.00 a month, such a loan would have been paid out before 02/2010. The Defendant has paid the Plaintiff \$10,340.00. {Exhs. 16 & [7 x 94]}

Amortization Schedule

Loan Amount : \$5,556.44
Number of Years: 7
Annual Rate: 15.000

Total Payments : \$9,006.00
Total Interest : \$3,449.56

Year	Month	Balance	Payment	Principal	Interest	New Balance
2003	3	\$5,556.44	\$107.23	\$37.77	\$69.46	\$5,518.67
	4	\$5,518.67	\$107.23	\$38.25	\$68.98	\$5,480.42
	5	\$5,480.42	\$107.23	\$38.72	\$68.51	\$5,441.70
	6	\$5,441.70	\$107.23	\$39.21	\$68.02	\$5,402.49
	7	\$5,402.49	\$107.23	\$39.70	\$67.53	\$5,362.79
	8	\$5,362.79	\$107.23	\$40.20	\$67.03	\$5,322.59
	9	\$5,322.59	\$107.23	\$40.70	\$66.53	\$5,281.89
	10	\$5,281.89	\$107.23	\$41.21	\$66.02	\$5,240.68
	11	\$5,240.68	\$107.23	\$41.72	\$65.51	\$5,198.96
	12	\$5,198.96	\$107.23	\$42.24	\$64.99	\$5,156.72
2004	1	\$5,156.72	\$107.23	\$42.77	\$64.46	\$5,113.95
	2	\$5,113.95	\$107.23	\$43.31	\$63.92	\$5,070.64
	3	\$5,070.64	\$107.23	\$43.85	\$63.38	\$5,026.79
	4	\$5,026.79	\$107.23	\$44.40	\$62.83	\$4,982.39
	5	\$4,982.39	\$107.23	\$44.95	\$62.28	\$4,937.44
	6	\$4,937.44	\$107.23	\$45.51	\$61.72	\$4,891.93
	7	\$4,891.93	\$107.23	\$46.08	\$61.15	\$4,845.85
	8	\$4,845.85	\$107.23	\$46.66	\$60.57	\$4,799.19
	9	\$4,799.19	\$107.23	\$47.24	\$59.99	\$4,751.95
	10	\$4,751.95	\$107.23	\$47.83	\$59.40	\$4,704.12
	11	\$4,704.12	\$107.23	\$48.43	\$58.80	\$4,655.69
	12	\$4,655.69	\$107.23	\$49.03	\$58.20	\$4,606.66
2005	1	\$4,606.66	\$107.23	\$49.65	\$57.58	\$4,557.01
	2	\$4,557.01	\$107.23	\$50.27	\$56.96	\$4,506.74
	3	\$4,506.74	\$107.23	\$50.90	\$56.33	\$4,455.84
	4	\$4,455.84	\$107.23	\$51.53	\$55.70	\$4,404.31
	5	\$4,404.31	\$107.23	\$52.18	\$55.05	\$4,352.13
	6	\$4,352.13	\$107.23	\$52.83	\$54.40	\$4,299.30
	7	\$4,299.30	\$107.23	\$53.49	\$53.74	\$4,245.81
	8	\$4,245.81	\$107.23	\$54.16	\$53.07	\$4,191.65
	9	\$4,191.65	\$107.23	\$54.83	\$52.40	\$4,136.82
	10	\$4,136.82	\$107.23	\$55.52	\$51.71	\$4,081.30
	11	\$4,081.30	\$107.23	\$56.21	\$51.02	\$4,025.09
	12	\$4,025.09	\$107.23	\$56.92	\$50.31	\$3,968.17
2006	1	\$3,968.17	\$107.23	\$57.63	\$49.60	\$3,910.54
	2	\$3,910.54	\$107.23	\$58.35	\$48.88	\$3,852.19
	3	\$3,852.19	\$107.23	\$59.08	\$48.15	\$3,793.11
	4	\$3,793.11	\$107.23	\$59.82	\$47.41	\$3,733.29
	5	\$3,733.29	\$107.23	\$60.56	\$46.67	\$3,672.73
	6	\$3,672.73	\$107.23	\$61.32	\$45.91	\$3,611.41
	7	\$3,611.41	\$107.23	\$62.09	\$45.14	\$3,549.32
	8	\$3,549.32	\$107.23	\$62.86	\$44.37	\$3,486.46
	9	\$3,486.46	\$107.23	\$63.65	\$43.58	\$3,422.81

Amortization Schedule

Loan Amount : \$5,556.44
Number of Years: 7
Annual Rate: 15.000

Total Payments : \$9,006.00
Total Interest : \$3,449.56

Year	Month	Balance	Payment	Principal	Interest	New Balance
2007	10	\$3,422.81	\$107.23	\$64.44	\$42.79	\$3,358.37
	11	\$3,358.37	\$107.23	\$65.25	\$41.98	\$3,293.12
	12	\$3,293.12	\$107.23	\$66.07	\$41.16	\$3,227.05
	1	\$3,227.05	\$107.23	\$66.89	\$40.34	\$3,160.16
	2	\$3,160.16	\$107.23	\$67.73	\$39.50	\$3,092.43
	3	\$3,092.43	\$107.23	\$68.57	\$38.66	\$3,023.86
	4	\$3,023.86	\$107.23	\$69.43	\$37.80	\$2,954.43
	5	\$2,954.43	\$107.23	\$70.30	\$36.93	\$2,884.13
	6	\$2,884.13	\$107.23	\$71.18	\$36.05	\$2,812.95
	7	\$2,812.95	\$107.23	\$72.07	\$35.16	\$2,740.88
	8	\$2,740.88	\$107.23	\$72.97	\$34.26	\$2,667.91
	9	\$2,667.91	\$107.23	\$73.88	\$33.35	\$2,594.03
2008	10	\$2,594.03	\$107.23	\$74.80	\$32.43	\$2,519.23
	11	\$2,519.23	\$107.23	\$75.74	\$31.49	\$2,443.49
	12	\$2,443.49	\$107.23	\$76.69	\$30.54	\$2,366.80
	1	\$2,366.80	\$107.23	\$77.64	\$29.59	\$2,289.16
	2	\$2,289.16	\$107.23	\$78.62	\$28.61	\$2,210.54
	3	\$2,210.54	\$107.23	\$79.60	\$27.63	\$2,130.94
	4	\$2,130.94	\$107.23	\$80.59	\$26.64	\$2,050.35
	5	\$2,050.35	\$107.23	\$81.60	\$25.63	\$1,968.75
	6	\$1,968.75	\$107.23	\$82.62	\$24.61	\$1,886.13
	7	\$1,886.13	\$107.23	\$83.65	\$23.58	\$1,802.48
	8	\$1,802.48	\$107.23	\$84.70	\$22.53	\$1,717.78
	9	\$1,717.78	\$107.23	\$85.76	\$21.47	\$1,632.02
2009	10	\$1,632.02	\$107.23	\$86.83	\$20.40	\$1,545.19
	11	\$1,545.19	\$107.23	\$87.92	\$19.31	\$1,457.27
	12	\$1,457.27	\$107.23	\$89.01	\$18.22	\$1,368.26
	1	\$1,368.26	\$107.23	\$90.13	\$17.10	\$1,278.13
	2	\$1,278.13	\$107.23	\$91.25	\$15.98	\$1,186.88
	3	\$1,186.88	\$107.23	\$92.39	\$14.84	\$1,094.49
	4	\$1,094.49	\$107.23	\$93.55	\$13.68	\$1,000.94
	5	\$1,000.94	\$107.23	\$94.72	\$12.51	\$906.22
	6	\$906.22	\$107.23	\$95.90	\$11.33	\$810.32
	7	\$810.32	\$107.23	\$97.10	\$10.13	\$713.22
	8	\$713.22	\$107.23	\$98.31	\$8.92	\$614.91
	9	\$614.91	\$107.23	\$99.54	\$7.69	\$515.37
2010	10	\$515.37	\$107.23	\$100.79	\$6.44	\$414.58
	11	\$414.58	\$107.23	\$102.05	\$5.18	\$312.53
	12	\$312.53	\$107.23	\$103.32	\$3.91	\$209.21
	1	\$209.21	\$107.23	\$104.61	\$2.62	\$104.60
	2	\$104.60	\$105.91	\$104.60	\$1.31	\$0.00

**STATEMENT OF MATERIAL FACTS THAT
ARE NOT IN DISPUTE RELATIVE TO THE PLAINTIFF'S DEPOSITION/S**

23. Summary Judgment is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. *{Authority – Rule 56(c), SCRC}*

24. Since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample opportunity for discovery by Deposition/s. *{Authority – Rule 30(a)(1) & 31(a), SCRC}*

25. From 11/23/2011 to the date the Defendant's Notice of Summary Judgment was filed, the Plaintiff has not and did not file any Deposition/s from any person/s disputing Amy Rogers' account verification that the Defendant's loan is a "Fixed Interest Rate Loan" for \$5,556.44; at a 15% Annual Rate....and the loan's payoff matches the Amortization Schedule on pages 6 and 7. A true 15% "Fixed Annual Interest Rate Loan" over the same 7-year period would have been paid out. *{Supporting Evidence - Pl. 's filed Doc. - Statement of Account}*

26. From 11/23/2011 to the date the Defendant's Notice of Summary Judgment was filed, the Plaintiff has not and did not file any Deposition/s from any person/s disputing the Defendant's loan was for \$5,556.44. The Defendant's approved credit limit is only \$5,500.00 *{Supporting Evidence – Pl. 's filed Doc – Statement of Account Credit Limit}*

27. From 11/23/2011 to the date the Defendant's Notice of Summary Judgment was filed, the Plaintiff has not and did not file any Deposition/s from any person/s verifying the Defendant entered into any agreement with the Plaintiff on September 5, 2002, or on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Supporting Averments – Def. Ans. Pg. 4, ¶¶ 1-3, Pg. 5, ¶¶ 7-8, Pg. 6, ¶¶ 11 & 11(a)-11(b), Pg. 7, ¶¶ 12 & 12(a)-12(b), Pgs. 8-10, ¶¶ 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Pg. 11, ¶ 20 & Supporting Evidence – Pl. 's filed Doc. - Statement of Account Credit Limit}*

28. From 11/23/2011 to 04/24/2012, the Plaintiff has not presented any supporting Deposition/s disputing a 02/24/2003 loan for \$5,556.44. *{Supporting Evidence - Pl. 's filed Doc. Statement of Account Credit Limit}*

**STATEMENT OF MATERIAL FACTS THAT
ARE NOT IN DISPUTE RELATIVE TO THE PLAINTIFF'S ADMISSION/S**

29. Summary Judgement is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. *{Authority – Rule 56(c), SCRC}*
30. Since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample opportunity for discovery by Admission/s. *{Authority – Rule 36(a), SCRC}*
31. From 11/23/2011 to the date the Defendant's Notice of Summary Judgment was filed, the Plaintiff has not and did not file any Admission/s from any person/s disputing Amy Rogers' account verification that the Defendant's loan is a "Fixed Interest Rate Loan" for \$5,556.44; at a 15% Annual Rate....and the payoff matches the Amortization Schedule on pages 6 and 7 for a true 15% "Fixed Interest Annual Rate Loan" over the same 7-year period that the Defendant paid the Plaintiff. *{Supporting Evidence - Pl. 's filed Doc. – Statement of Account}*
32. From 11/23/2011 to the date the Defendant's Notice of Summary Judgment was filed, the Plaintiff has not and did not file any Admission/s from any person/s disputing the Defendant's loan was \$5,556.44. *{Supporting Evidence - Pl. 's filed Doc. Statement of Account Credit Limit}*
33. From 11/23/2011 to the date the Defendant's Notice of Summary Judgment was filed, the Plaintiff has not and did not file any Admission/s from any person/s verifying the Defendant entered into an agreement with the Plaintiff on September 5, 2002, or on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Supporting Averments – Def. Ans. Pg. 4, ¶¶ 1-3, Pg. 5, ¶¶ 7-8, Pg. 6, ¶¶ 11, 11(a)-11(b), Pg. 7, ¶¶ 12, 12(a)-12(b), Pgs. 8-10, ¶¶ 14(b)-14(c), 15, 15(a)-15(b), 16, 16(a)-16(b), 18, 18(a)-18(b), and Pg. 11, ¶ 20 & Supporting Evidence – Pl. 's filed Doc. - Statement of Account & Remaining Docs. CA Case #2011-CP-38-1392}*
34. From 11/23/2011 to 04/24/2012, the Plaintiff has not presented any supporting Admission/s for a 02/24/2003 loan for \$5,556.44. *{Supporting Evidence - Pl. 's filed Docs. #2011-CP-38-1392}*

**STATEMENT OF MATERIAL FACTS THAT
ARE NOT IN DISPUTE RELATIVE TO THE PLAINTIFF'S INTERROGATORIE/S**

35. Summary Judgment is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. *{Authority – Rule 56(c), SCRC}*

36. Since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample opportunity for discovery by Interrogatory/ies. *{Authority – Rule 33(a) & 33(b), SCRC}*

37. From 11/23/2011 to the date the Defendant's Notice of Summary Judgment was filed, the Plaintiff has not and did not file any answered Interrogatory/ies from any other SCFCU personnel disputing Amy Rogers account verification that the Defendant's loan is a "Fixed Interest Rate Loan" for \$5,556.44; at a 15% Annual Rate...and the loan's payoff matches the Amortization Schedule for a true 15% "Fixed Annual Interest Rate Loan" over the same 7-year period that the Defendant paid the Plaintiff. *{Supporting Evidence - Pl.'s filed Docs.}*

38. From 11/23/2011 to the date the Defendant's Notice of Summary Judgment was filed, the Plaintiff has not and did not file any answered Interrogatory/ies from any person/s disputing the Defendant's loan was \$5,556.44. *{Supporting Evidence - Pl.'s filed Docs. #2011-CP-38-1392}*

39. From 11/23/2011 to the date the Defendant's Notice of Summary Judgment was filed, the Plaintiff has not and did not file any answered Interrogatory/ies from any person/s verifying the Defendant entered into an agreement with the Plaintiff on September 5, 2002, or on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Supporting Averments – Def. Ans. Pg. 4, ¶¶ 1-3, Pg. 5, ¶¶ 7-8, Pg. 6, ¶¶ 11, 11(a)-11(b), Pg. 7, ¶¶ 12, 12(a)-12(b), Pgs. 8-10, ¶¶ 14(b)-14(c), 15, 15(a)-15(b), 16, 16(a)-16(b), 18, 18(a)-18(b), and Pg. 11, ¶ 20 & Supporting Evidence – Pl.'s filed Docs. #2011-CP-38-1392}*

40. From 11/23/2011 to 04/24/2012, the Plaintiff has not presented any supporting answered Interrogatory/ies for a 02/24/2003 loan for \$5,556.44. *{Supporting Evidence - Pl.'s filed Docs. #2011-CP-38-1392}*

**STATEMENT OF MATERIAL FACTS THAT ARE
NOT IN DISPUTE RELATIVE TO THE PLAINTIFF'S REQUEST FOR DISCOVERY**

41. Since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample time and opportunity to initiate and conduct discovery {Authority – Rule 26, SCRCP}

42. Since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample opportunity to request a production of documents from the Defendant. {Authority – Rule 34(a) & 34(b), SCRCP}

43. Since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample opportunity to Subpoena the Defendant to give testimony or produce documents for inspection. {Authority – Rule 45(a)(1) & 45(a)(2), SCRCP}

44. The Defendant has motioned for a Summary Judgment because the Defendant has made a prima facie showing that there are no genuine issues of material facts remaining that additional discovery by the Plaintiff can or will reveal. As stated, the Plaintiff has not initiated any discovery since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011. {See 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 (Cl. 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")}

45. The Defendant has no burden to negate or disprove matters on which the Plaintiff will have the burden of proof at trial. The Defendant need only point out to the Court that there is no evidence to support the Plaintiff's Complaint that the Defendant entered into an agreement with the Plaintiff on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. {See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 324, 325 (1986).} {Supporting Evidence - Pl.'s filed Docs. #2011-CP-38-1392, & Amy Rogers verification the Debt Collection is for a \$5,556.44 loan on 02/24/03, Id., at ¶¶ 15 & 16}

**STATEMENT OF MATERIAL FACTS THAT
ARE NOT IN DISPUTE RELATIVE TO THE PLAINTIFF' FILED DOCUMENTS**

46. The burden now shifts to the Plaintiff to “designate ‘specific facts showing that there is a genuine issue for trial.’” *{Id. at 324 (quoting Fed. R. Civ. P. 56(e))}* To carry this burden, the Plaintiff must “do more than simply show that there is some metaphysical doubt as to the material facts.” *{See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The Plaintiff must present documented evidence the Defendant signed a loan agreement with the Plaintiff for \$5,556.44 on February 24, 2003. {Supporting Averments – Def. Ans. Pg. 4, ¶¶ 1-3, Pg. 5, ¶¶ 7-8, Pg. 6, ¶¶ 11, 11(a)-11(b), Pg. 7, ¶¶ 12, 12(a)-12(b), Pgs. 8-10, ¶¶ 14(b)-14(c), 15, 15(a)-15(b), 16, 16(a)-16(b), 18, 18(a)-18(b), and Pg. 11, ¶ 20 & Supporting Evidence – Pl.'s filed Docs. #2011-CP-38-1392 & Amy Rogers verification the Plaintiff's filed Complaint and Debt Collection is for a 02/24/2003 loan for \$5,556.44}*

47. “The mere existence of a scintilla of evidence . . . will be insufficient; there must be evidence on which the jury could reasonably find for the [non-moving party].” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

48. The Plaintiff has not and did not present any material terms or conditions of any agreement that specifically identifies an agreement or contract between the Defendant and the Plaintiff that is in writing for \$5,556.44. Nor has the Plaintiff presented any documentation of a loan agreement or contract for \$5,556.44 dated 02/24/2003 . *{Supporting Averments – Def. Ans. Pg. 4, ¶¶ 1-3, Pg. 5, ¶¶ 7-8, Pg. 6, ¶¶ 11, 11(a)-11(b), Pg. 7, ¶¶ 12, 12(a)-12(b), Pgs. 8-10, ¶¶ 14(b)-14(c), 15, 15(a)-15(b), 16, 16(a)-16(b), 18, 18(a)-18(b), and Pg. 11, ¶ 20 & Supporting Evidence – Pl.'s filed Docs. #2011-CP-38-1392 & Amy Rogers verification the Plaintiff's filed Complaint and Debt Collection is for a 02/24/2003 loan for \$5,556.44, Id., at ¶¶ 15 & 16}*

49. Because the Plaintiff has not and did not provide anything in writing to the Court/Judge or to the Defendant that evidences the material terms and conditions of an alleged promise/s or representation/s made by the Plaintiff to the Defendant for a 02/24/2003 loan for \$5,556.44 that Amy Rogers verified, the Plaintiff's Complaint fails as a matter of law. *{See Carolina First Bank v. Lucas, Case No. 03-CP-10-1907, 2004 WL 5208410 (S.C. Com. Pl. Jun. 14, 2004); see also Robertson v. First Union Nat'l Bank, Case No. 99-CP-10-288, 2000 WL 35722762 (S.C. Com. Pl. Aug. 8, 2000)}*

50. Specifically, the Plaintiff's Complaint did not and has not presented any signed writing by the Plaintiff or from the Plaintiff that contains the material terms and conditions of a promise, undertaking, accepted offer, commitment, or agreement to pay the Plaintiff a monthly payment on a \$5,556.44 loan that was never entered into on February 24, 2003. *{Authority - S.C. Code Ann. § 37-10-107(1) & The Statue of Frauds; Supporting Averments – Def. Ans. Pg. 4, ¶¶ 1-3, Pg. 5, ¶¶ 7-8, Pg. 6, ¶¶ 11, 11(a)-11(b), Pg. 7, ¶¶ 12 & 12(a)-12(b), Pgs. 8-10, ¶¶ 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Pg. 11, ¶ 20; Supporting Evidence – Pl.'s filed Docs. #2011-CP-38-1392 & Amy Rogers verification the Plaintiff's filed Complaint and Debt Collection is for a 02/24/2003 loan for \$5,556.44}*

**STATEMENT OF MATERIAL FACTS THAT
ARE NOT IN DISPUTE RELATIVE TO THE DEFENDANT'S AFFIRMATIVE
DEFENSE – STATUE OF FRAUDS**

51. The 02/24/2003, \$5,556.44 loan agreement that is verified by Amy Rogers and is the basis of the Plaintiff's filed Complaint and Collection represents an installment loan account that falls within a class of contracts and/or agreements that are required to be in writing. There is no contract or agreement between the Plaintiff and the Defendant to repay a loan for \$5,556.44 that was never enter into on February 24, 2003. *{Supporting Averments – Def. Ans. Pg. 4, ¶¶ 1-3, Pg. 5, ¶¶ 7-8, Pg. 6, ¶¶ 11, 11(a)-11(b), Pg. 7, ¶¶ 12 & 12(a)-12(b), Pgs. 8-10, ¶¶ 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Pg. 11, ¶ 20; Supporting Evidence – Pl.'s filed Docs. #2011-CP-38-1392 & Amy Rogers verification the Plaintiff's filed Complaint and Debt Collection is for a 02/24/2003 loan for \$5,556.44}*

**STATEMENT OF MATERIAL FACTS THAT ARE NOT IN
DISPUTE RELATIVE TO THE DEFENDANT'S AFFIRMATIVE DEFENSE – FAILED
TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION**

52. Because the 02/24/2003 loan for \$5,556.44 that was verified by Amy Rogers, and is the basis of the Plaintiff's filed Complaint and Collection never existed between the Defendant and the Plaintiff, the Plaintiff has failed to state facts sufficient to constitute a cause of action. A Summary Judgment is appropriate. *{Supporting Averments – Def. Ans. Pg. 4, ¶¶ 1-3, Pg. 5, ¶¶ 7-8, Pg. 6, ¶¶ 11, 11(a)-11(b), Pg. 7, ¶¶ 12 & 12(a)-12(b), Pgs. 8-10, ¶¶ 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Pg. 11, ¶ 20; Supporting Evidence – Def. Exhs. 4-12 & 16, Pl.'s filed Docs. #2011-CP-38-1392 & Amy Rogers' verification the Plaintiff's Complaint and Debt Collection are for a 02/24/2003 loan for \$5,556.44, Id., at ¶¶ 15 & 16}*

NOTIFICATION

A copy of the Defendant's Statement of Material Facts That Are Not In Dispute that has been filed in Support of Notice of Motion and Motion for Summary Judgment that has been filed with the Clerk of Court will be mailed to the Plaintiff's Attorney/s:

SC Federal Credit Union
ATTN: Amy L. Hewitt
POB 190012
North Charleston, SC 29419
Tel: 843-569-5045

Moore & Van Allen, PLLC
ATTN: Colleen A. McConnell
40 Calhoun Street
POB 22828
Charleston, SC 29413-2828
Phone: 843-579-7000 Fax: 843-579-8714

IN WITNESS WHEREOF, The undersigned, being **DULY SWORN**, has signed and sealed these attestations this 25th day of APRIL in the year 2012 in City of Orangeburg, State of South Carolina.

Signed, sealed and delivered in the presence of:

Signature: Dorothy Sistrunk

Notary Witness (1): Shanita Mayock-Hamilton

(Signature)

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG

On APR. 25, 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 Shanita Mayock-Hamilton

(Signature)

My Commission Expires

Commission Expires August 1st, 2017

(Seal)

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

South Carolina Federal Credit Union

Plaintiff,

vs.

Dorothy Harley Sistrunk, A/K/A; Dorothy
Harley-Sistrunk, A/K/A; Dorothy A.
Harley,

Defendant,

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

**DEFENDANT
DOROTHY HARLEY SISTRUNK 'S
LEGAL MEMORANDUM IN
SUPPORT OF NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT.**

April 25, 2012

Comes now the Defendant Dorothy Harley Sistrunk to file this LEGAL MEMORANDUM IN SUPPORT OF NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT.

TO: SOUTH CAROLINA FEDERAL CREDIT UNION, PLAINTIFF...

1. **YOU WILL PLEASE TAKE NOTICE** that the above named Defendant has filed a Notice of Motion and Motion for Summary Judgment; a Statement of Material Facts That Are Not in Dispute and this Legal Memorandum in Support of Notice of Motion and Motion for Summary Judgment. The Defendant shall state in the Defendant's Legal Memorandum why Summary Judgment is appropriate considering the evidence and the facts relative to the Plaintiff's filed Complaint and Debt Collection and the facts and the evidence that are relative to the pending action. *{Authorities - Rule 56(b & Rule 56(c), SCRPC}*

2. The Defendant's Motion for Summary Judgment has been filed:

(A) Pursuant to *Rule 56(b), SCRPC* – Since November 23, 2011, the Plaintiff did not and has not presented any new evidence to the Court that refutes or defeats the Defendant's Averments and the Plaintiff did not and has not initiated any discovery with the Defendant. Therefore, no genuine issue remains as to any material fact/s that can be resolved by any additional discovery by the Plaintiff. *{Authority - Rule 56(b) & Rule 56(c), SCRPC}*

(B) Based on the Plaintiff's filed Complaint, the Plaintiff has not and did not state any facts that can constitute a cause of action in Court for which relief can be granted. Accordingly, a Summary Judgment is appropriate based on the Plaintiff's pleading and a dismissal of the Plaintiff's Complaint pursuant to *Rule 12(b)(6), SCRPC* with Just and Fair

2012 APR 25 PM 1:15

Compensation for the Defendant is also appropriate and can be legitimately considered by the Court. *{Supporting Evidence - Plaintiff's Complaint, Page 2, Paragraph 7 and Page 3, Paragraphs 11 & 12, Plaintiff's Filed Documents, #2011-CP-38-1392 and the Defendant's Exhibits 5, 9, 10 & 11}*

FACTUAL BACKGROUND

3. The Plaintiff's Complaint and Debt Collection Documentation were filed on November 23, 2011; and are based on an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") [hereafter also called OEDRP-LLCASA] that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Supporting Evidence - Plaintiff's Complaint, Pages 2-3, Paragraphs 7-12, Amy Rogers' Corporate Verification of Account Page 1, Paragraph 1 & Page 2, the Plaintiff's Exhibit "A", Paragraphs 1 & 3 and the Plaintiff's Exhibit "C"}*

4. The OEDRP-LLCASA loan and debt were verified by Amy Rogers on 10/26/2011 and filed on 11/23/2011. *{Supporting Evidence - Plaintiff's Complaint, Pages 2-3, Paragraphs 7-12, Amy Rogers' Corporate Verification of Account Page 1, Paragraph 1 & Page 2, the Plaintiff's Exhibit "A", Paragraphs 1 & 3 and the Plaintiff's Exhibit "C"}*

5. The Defendant cannot submit any more factual background for this Complaint and Debt Collection because the Defendant never had, never signed and never agreed to any loan for \$5,556.44 on February 24, 2003. *{Supporting Evidence - Plaintiff's filed Documents - Statement of Account - Loan Limitation}*

6. The Plaintiff's Exhibit "B", PAGE 2 is dated 9/5/02. *{Supporting Evidence - PAGE 2, Plaintiff's Exhibit "B"}*

7. The Plaintiff's Debt Collection Notification; i.e., EXHIBIT "A", FAIR DEBT COLLECTION PRACTICES ACT, (the Act), 15 USC SECTION 1601 as Amended, that was attached to the Plaintiff's Complaint is for the amount stated in the Complaint (\$5,274.84) *{Supporting Evidence - Amy Rogers Corporate Verification of Account, Page 2, the Plaintiff's Exhibit "A", Paragraphs 1 & 3, the Plaintiff's Complaint, Page 3, Paragraph 12 & the Plaintiff's Exhibit "C"}*

8. The Plaintiff's Law Firm of Moore & Van Allen, PLLC, was duly notified in the Defendant's Answer to Complaint filed on 12/21/2011, that the Defendant never had a loan of any kind with the Plaintiff that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Supporting Evidence – Plaintiff's Statement of Account, the Defendant's Answer, Page 4, Paragraphs 1-3, Page 5, Paragraphs 7-8, Page 6, Paragraphs 11 & 11(a)-11(b), Page 7, Paragraphs 12 & 12(a)-12(b), Pages 8-10, Paragraphs 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), Page 11, Paragraph 20 and Exhibits 5, 9, 10 & 11}*
9. Amy Rogers stated in her Corporate Account Verification that she is an agent of the Plaintiff, familiar with the transaction and the facts stated in the pleadings and she has read the pleadings and the facts stated therein are true. *{Supporting Evidence – Amy Rogers Corporate Verification of Account, Page 1, Paragraph 1, Notarized on 10/26/2011 and Filed on 11/23/2011}*
10. Amy Rogers verified the Plaintiff's Complaint and Debt Collection are based on an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars that is now in default with an amount due and payable of \$5,274.84. *{Supporting Evidence – Plaintiff's Complaint, Page 2, Paragraph 7 & Page 3, Paragraph 12, Amy Rogers' Corporate Account Verification, Page 1, Paragraph 1, Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3 and Plaintiff's Exhibit "C"}*
11. Amy Rogers' default loan statement, *{Page 2}*, that is attached to her Corporate Verification of Account, *{Plaintiff's Exhibit "C"}* authenticates the Plaintiff's filed Complaint and Debt Collection are based on a loan that was purportedly executed and delivered on or about February 24, 2003 that called for the payment of the sum of \$5,556.44 that is now in default. *{Supporting Evidence – Plaintiff's Complaint Pages. 2-3, Paragraphs 7-12, Amy Rogers' Corporate Verification of Account, Page 1, Paragraph 1, Exhibit "C" Column 1, Payoff W/Escrow \$5,274.84 & Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3}*
12. The Plaintiff's supporting document for a \$5,500.00 "Fixed Rate Loan" is signed

and dated 9/5/02. *{Supporting Evidence – Plaintiff's Exhibit "B", "PAGE 2"}*

13. The Defendant's car loan with the Plaintiff was signed on 9/5/02 and the loan was for \$5,845.00, not for \$5,500.00 and not for \$5,556.44. *{Supporting Evidence – Defendant's Exhibits 12 & 13}*

14. The Defendant's car loan is paid out. *{Supporting Evidence – Def. Exhibits 14 & 15}*

15. The Defendant did not enter into any agreement on 9/5/02, or on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Supporting Averments – Defendant's Answer Page 4, Paragraphs 1-3, Page 5, Paragraphs 7-8, Page 6, Paragraphs 11, 11(a)-11(b), Page 7, Paragraphs 12 & 12(a)-12(b), Pages 8-10, Paragraphs 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Page 11, Paragraph 20; Supporting Evidence – Defendant's Exhibits. 5 & 9-15}*

16. The Plaintiff's filed Complaint and Debt Collection are for a loan the Defendant never had, signed for, never received and never agreed to repay. The loan never happened and does not exist. *{Supporting Averments – Defendant's Answer Page 4, Paragraphs 1-3, Page 5, Paragraphs 7-8, Page 6, Paragraphs 11 & 11(a)-11(b), Page 7, Paragraphs 12 & 12(a)-12(b), Pages 8-10, Paragraphs 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Page 11, Paragraph 20; Supporting Evidence – Plaintiff's Complaint Pages 2-3, Paragraphs 7-12, 11/23/2011, Amy Rogers' Corporate Verification of Account, Page 2, identifies the Plaintiff's Debt Collection is for a 02/24/2003 loan for \$5,556.44, Exhibit "C", Column 1, Payoff W/Escrow \$5,274.84, Plaintiff's Complaint, Page 3, Paragraph 12, Sentence 2, & Plaintiff's Exhibit "A", Page 1, Paragraph 1 & 3 identifies the same 02/24/2003 loan for \$5,556.44}*

17. Under the "Doctrine of Preclusion of Inconsistent Positions", the Plaintiff is barred from contradicting a previous declaration made during the same or an earlier proceeding if the change in position would adversely affect the proceeding or constitute a fraud on the court. It is patently wrong to allow a Plaintiff or Defendant to abuse the judicial process by first advocating one position, and later, if it becomes beneficial, to assert the opposite. "The doctrine of preclusion of inconsistent positions is invoked to prevent a party from changing its position

over the course of judicial proceedings when such positional changes have an adverse impact on the judicial process. The policies underlying preclusion of inconsistent positions are 'general consideration of the orderly administration of justice and regard for the dignity of judicial proceedings. It is intended to protect against a litigant playing 'fast and loose with the courts. {Authority Case - Jackson v. County of Los Angeles, 60 Cal. App. 4th 171, 181 (Cal. App. 2d Dist. 1997)}"

**SECTION 37-10-107 SC CODE OF LAWS ALSO EFFECTIVELY
BARS THE PLAINTIFF'S COMPLAINT AGAINST THE DEFENDANT**

18. The Plaintiff's Complaint and Debt Collection against the Defendant are also barred statutorily as a matter of law. Section 37-10-107 bars the enforcement of oral lending agreements and bars fraud and other tort claims based on alleged oral misrepresentations and other non-written conduct concerning loan and credit agreements. {Statutory Authority - S.C. Code § 37-10-107}

19. Specifically, Section 37-10-107 (certain legal or equitable actions prohibited) of South Carolina's Code Annotated states in pertinent parts:

- "(1) No person may maintain an action for legal or equitable relief or a defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment, or agreement:
 - (a) to lend or borrow money;
 - (b) to defer or forbear in the repayment of money; or...."[Subsection (c) may not apply to this case]
- "(2) Failure to comply with subsection (1) precludes an action or defense based on any of the following legal or equitable theories:
 - (a) an implied agreement based on course of dealing or performance or on a fiduciary relationship;
 - (b) promissory or equitable estoppel;
 - (c) part performance, except to the extent that the part performance may be explained only by reference to the alleged promise, undertaking, accepted offer, commitment, or agreement; or
 - (d) negligent misrepresentation."
- "(3) Subsections (1) and (2) do not apply to:
 - (a) a loan of money used primarily for personal, family, or household purposes;
 - (b) an agreement or change in the terms of an agreement relating to a line of consumer credit, lender credit card, or similar arrangement;
 - (c) an overdraft on a demand deposit or other bank account; or
 - (d) promissory notes, real estate mortgages, security agreements, guaranty and surety agreements, and letters of credit."
- "(4) In the event of a conflict between this section and any other provision of law of this State relating to the requirement of a signed writing, the provisions of the other provision of law shall control."

20. Since the Defendant never entered into a loan agreement with the Plaintiff or signed an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement (“Fixed Interest Rate Agreement”) that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars that is now in default with an amount due and payable of \$5,274.84, the Plaintiff’s Complaint against the Defendant cannot be maintained statutorily. . {Statutory Authority - S.C. Code § 37-10-107}

(A) The Plaintiff has not and did not present any material terms or conditions of any agreement that specifically identifies an agreement or contract between the Defendant and SCFCU that is in writing for \$5,556.44 that was signed by the Defendant on February 24, 2003. {Supporting Evidence – Plaintiff’s filed Documents CA Case #2011-CP-38-1392}

(B) The Plaintiff has not presented any evidence of a signed Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement (“Fixed Interest Rate Agreement”) that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. {Supporting Evidence – Plaintiff’s filed Document – Statement of Account – Loan Limit - \$5,500.00 and Defendant’s Exhibits 5 & 9-11}

21. The Plaintiff’s Complaint and Debt Collection cannot defeat the plain wording of Section 37-10-107 which, as stated in pertinent parts, in paragraph 19, ; “(1) no person can maintain an action or defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment, or agreement.”

22. Because the Plaintiff has not and did not provide anything in writing to the Court or to the Defendant that evidences the material terms and conditions of a loan for \$5,556.44 that was executed and delivered on February 24, 2003, the Plaintiff’s Complaint fails as a matter of law. {Supporting Case Law Authority - Carolina First Bank v. Lucas, Case No. 03-CP-10-1907, 2004 WL 5208410 (S.C. Com. Pl. Jun. 14, 2004); see also Robertson v. First Union Nat’l Bank, Case No. 99-CP-10-288, 2000 WL 35722762 (S.C. Com. Pl. Aug. 8, 2000)}

23. Specifically, the Plaintiff’s Complaint did not and has not presented any signed writing from the Defendant that contains the material terms and conditions of a promise,

undertaking, accepted offer, commitment, or agreement to pay the Plaintiff on a loan that executed and delivered on February 24, 2003 for \$5,556.44 {Statutory Authority – S.C. Code Ann. § 37-10-107(1) & the Plaintiff's Filed Documents CA Case #2011-CP-38-1392}

24. Accordingly, as a matter of law, the Plaintiff cannot “maintain an action for legal . . . relief . . . based upon a loan that never existed. {Statutory Authority – S.C. Code Ann. § 37-10-107(1)(b)} Under these circumstances, the Plaintiff cannot establish or state a claim against the Defendant, therefore, a Summary Judgment is appropriate. {Statutory Authority – S.C. Code Ann. § 37-10-107(1)}

STANDARD OF REVIEW FOR SUMMARY JUDGMENT

25. {Authority} As the United States Supreme Court stated in Celotex Corp. v. Catrett (1986), 477 U.S. 317, 327, 106 S.Ct. 2548, 91 L.Ed.2d 265, in reference to the Federal Civil Rule for summary judgment, which is similar in relevant respects to South Carolina’s Rule: “The Federal Rules of Civil Procedure have for almost 50 years authorized motions for summary judgment upon proper showings of the lack of a genuine, triable issue of material fact. Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’ ” “Id., quoting Fed.R.Civ.P. 1.”

26. {Authority} “When reviewing a grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRPC. David v. McLeod Reg’l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is appropriate when “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.”

27. {Authority} “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). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ,

summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).”

28. {Authority} “On the other hand, 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).”

29. {Authority} (“Under Rule 56, SCRCP, when a party makes a motion for summary judgment and supports it by affidavits the adverse party may not rest on the allegations of his pleadings but must respond by affidavits or other evidence demonstrating a genuine issue of material fact.”); {See Higgins v. Med. Univ. of S.C., 326 S.C. 592, 599, 486 S.E.2d 269, 272 (Ct. App. 1997) (holding the trial court ordinarily may not consider factual statements made during argument on the summary judgment issue).”}

30. {Authority} “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

31. {Authority} “In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. Hancock v. Mid-South Mgmt Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. Id. at 330–31, 673 S.E.2d at 803.”

32. The Defendant has motioned for a Summary Judgment because the Defendant has

made a prima facie showing that there are no genuine issues of material facts remaining that additional discovery by the Plaintiff can or will reveal. As stated, the Plaintiff has not initiated any discovery since 11/23/2011. {Authority - 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")}

33. {Authority} "Rule 56 SCRCPP (explaining summary judgment is properly granted when "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"); {Supporting Case Law - Hoard v. Roper Hosp., Inc., 387 S.C. 539, 545-46, 694 S.E.2d 1, 4 (2010)}

STANDARD OF REVIEW FOR A RULE 12(b)(6), SCRCPP DISMISSAL

34. Under Rule 12(b)(6) SCRCPP, the Defendant may move to dismiss a complaint based on SCFCU's failure to state facts sufficient to constitute a cause of action. {Authorities - Rule 12(b)(6), SCRCPP & Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006)}

35. The Court's decision to grant a Rule 12(b)(6), SCRCPP motion to dismiss must be based solely upon the allegations set forth in the complaint. {Authority - Spence, 368 S.C. at 116, 628 S.E.2d at 874; Clearwater Trust v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006).

36. If material outside the pleading is considered by the Court, the motion becomes one for summary judgment. {Authorities - McDonnell v. The Consolidated School Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 639, 639 n.2 (1994); Gilbert v. Miller, 356 S.C. 25, 586 S.E.2d 861 (Ct. App. 2003)}

37. {Authorities} - "in reviewing a motion to dismiss, the court must accept as true the well-pleaded facts in the complaint. See Gressette v. S.C. Elec. & Gas Co., 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006). However, the court will not admit inferences drawn by the plaintiff from such facts, nor will it admit conclusions of law. See Fireman's Ins. Co. of Newark, New

Jersey v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990).”

38. {*Authority*} - “the plaintiff must describe each element of the cause of action in terms of the facts of the case. This requires the plaintiff “to plead the ultimate facts which will be proved at trial, not evidence which will be used to prove those facts. Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987).”

39. {*Authorities*} – “The ruling on a Rule 12(b)(6), SCRPC, motion to dismiss must be based solely upon the allegations set forth in the complaint. Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999); Washington v. Lexington County Jail, 337 S.C. 400, 405, 523 S.E.2d 204, 206 (Ct. App. 1999). A 12(b)(6) motion should not be granted if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The question to be considered is whether, when viewed in the light most favorable to the plaintiff, the complaint states any valid claim for relief. Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail. Gentry, id. at 5, 522 S.E.2d at 139.”

40. {*Authorities*} – “Rule of Civil Procedure 12(b)(6) authorizes a court to dismiss a claim for failure to state facts sufficient to constitute a cause of action. S.C. R. Civ. P. 12(b)(6); Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (2003). The question is whether the pleadings, taken in the light most favorable to the plaintiff, articulate a valid claim for relief. Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). A Rule 12(b)(6) motion “must be granted if the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case. Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (1997).”

EQUITABLE MAXIM

41. Because of the Plaintiff’s false accusations and misrepresentation of material facts, the Defendant does not need to pay the Plaintiff any more money. In fact, the Plaintiff must return \$10,340.00 to the Defendant. {*Supporting Evidence – Defendant’s Exhibit 16, Exhibit 7 x 94 Payments and the Plaintiff’s Filed Document –Itemized Statement of Account*}

42. The Defendant never approved any Credit Life after the car loan was paid out.

{Supporting Evidence – Defendant’s Exhibits “C”, 12 -15 & Exhibit 18, Page 2 of 2 – Under WHEN INSURANCE STOPS – “ the date your loan stops.”}

43. Despite all the Plaintiff’s indiscretions, the Defendant requested the Principle of “Equitable Maxim” be applied to this case. The Plaintiff, South Carolina Federal Credit Union can keep the \$5,500.00 SCFCU loaned the Defendant and return the overpayment of \$4,840.00, back to the Defendant and this matter can be over. {Supporting Evidence – Defendant’s Answer, Pages 3-4, Paragraphs VII & I-III, III(A)-III(B), Page 5, Paragraph 8, Pages 6-7, Paragraph 11(b), Pages 7-8, Paragraphs 12(c) 13 & 14(d), Page 9, Paragraph 9(b), Page 10, Paragraph 18(b), Pages 11-12, Paragraphs 20 & 21, Page 12, Paragraph 22, Pages 13-14, Paragraphs 30(b) & 32, Page 19, Paragraph 52(b), Page 20, Paragraph 54(b), Page 21, Paragraph 55(d), Page 22, Paragraph 56(b), Page 23, Paragraph 57(d), Page 24, Paragraphs 65(g) & 66, Page 25, Paragraph 67(d), Page 26, Paragraph 68(d), Pages 26-27, Paragraph 69, Page 27, Paragraph 70(d), Page 28, Paragraphs, 72 & 73(b), Page 30, Paragraphs 76(b) & 77(b), Pages 31-32, Paragraphs 78(b), 79, 80 & 81(c), Page 33, Paragraph 83, Page 34, Paragraphs 85 & 86 and Page 35, Paragraph 87(c).

STANDARD OF REVIEW EQUITABLE MAXIM

44. { Authorities} - “This equitable maxim is commonly phrased as “[h]e who seeks equity must do equity.” Provident Life & Accident Ins. Co. v. Driver, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (1994). This principle applies to one who affirmatively seeks equitable relief. City of Columbus v. Mercantile Trust & Deposit Co., 218 U.S. 645, 662 (1910). In order for justice to be done between parties, a party is required to do equity when asking the court to invoke the aid of equity. See Ingram v. Kasey’s Assocs., 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) (declining to grant a plaintiff’s request for specific performance where the plaintiff misled the defendants); Anderson v. Marion, 274 S.C. 40, 43, 260 S.E.2d 715, 716 (1979) (finding defendants who sought equity against the plaintiffs for specific performance were required to do equity and pay plaintiffs money they asserted they were willing and able to pay); Shumaker v. Shumaker, 234 S.C. 421, 427, 108 S.E.2d 682, 686 (1959) (“Plaintiffs who come into Court invoking the aid of equity should be required to do equity in order that justice might be done between the parties.”); Anderson v. Purvis, 211 S.C. 255, 266, 44 S.E.2d 611, 616 (1947)..”

45. {Authorities} - "The principle "equity regards as done that which ought to be done" applies in cases where the party seeking equitable relief establishes "a clear obligation based upon a valuable consideration that another do some act which he has failed to perform." Wilkie v. Phila. Life Ins. Co., 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938). The notion "equity looks to substance rather than form" evolved out of judicial regard for that which ought to be done. Id. at 393, 197 S.E. at 380. This maxim applies by "dispensing with pure formalities which would otherwise defeat the equity." Id.; see also Kerr v. City of Columbia, 232 S.C. 405, 410, 102 S.E. 2d 364, 366 (1958) (finding the court must consider the controversy as though town council had issued a business permit, even though the town claimed the area was a residential zone, because town officials told the owner his property was in a commercial zone). When applying this principle, courts look to the substance and intent of the parties, and give a construction consistent with such intent. Harpending v. Reformed Protestant Dutch Church of City of N.Y., 41 U.S. 455, 480 (1842)."

46. After the Defendant has established an equitable right to relief based upon the evidence and the facts, the court may dispense with pure formalities which would otherwise defeat the equity. {Authority - Wilkie, 187 S.C. at 393, 197 S.E. at 380.}

47. A court of equity should scrutinize the conduct of the Plaintiff, SCFCU, with the utmost care, to determine whether or not SCFCU did everything which ought to have been done. {Authority - Corbus v. Alaska Treadwell Gold Mining Co., 187 U.S. 455, 465 (1903).}

48. {Authorities} - "This maxim has at times guided a court to relieve a party from the consequences of accident, mistake, and fraud. Camp v. Boyd, 229 U.S. 530, 559 (1913). "The rule that equity considers as done that which should be done cannot be invoked to create a right contrary to the agreement of the parties." Good v. Jarrard, 93 S.C. 229, 239, 76 S.E. 698, 702 (1912)."

49. As the following Amortization Schedule clearly shows, even if the Defendant had such a loan, the Plaintiff's \$5,556.44 loan is not a true 15% "Fixed Annual Interest Rate" Loan by definition. {Authority - 15 USC 1601 et. seq.} At \$110.00 a month, such a loan would have been paid out before 02/2010.

Amortization Schedule

Loan Amount : \$5,556.44
 Number of Years: 7
 Annual Rate: 15.000

Total Payments : \$9,006.00
 Total Interest : \$3,449.56

Year	Month	Balance	Payment	Principal	Interest	New Balance
2003	3	\$5,556.44	\$107.23	\$37.77	\$69.46	\$5,518.67
	4	\$5,518.67	\$107.23	\$38.25	\$68.98	\$5,480.42
	5	\$5,480.42	\$107.23	\$38.72	\$68.51	\$5,441.70
	6	\$5,441.70	\$107.23	\$39.21	\$68.02	\$5,402.49
	7	\$5,402.49	\$107.23	\$39.70	\$67.53	\$5,362.79
	8	\$5,362.79	\$107.23	\$40.20	\$67.03	\$5,322.59
	9	\$5,322.59	\$107.23	\$40.70	\$66.53	\$5,281.89
	10	\$5,281.89	\$107.23	\$41.21	\$66.02	\$5,240.68
	11	\$5,240.68	\$107.23	\$41.72	\$65.51	\$5,198.96
	12	\$5,198.96	\$107.23	\$42.24	\$64.99	\$5,156.72
2004	1	\$5,156.72	\$107.23	\$42.77	\$64.46	\$5,113.95
	2	\$5,113.95	\$107.23	\$43.31	\$63.92	\$5,070.64
	3	\$5,070.64	\$107.23	\$43.85	\$63.38	\$5,026.79
	4	\$5,026.79	\$107.23	\$44.40	\$62.83	\$4,982.39
	5	\$4,982.39	\$107.23	\$44.95	\$62.28	\$4,937.44
	6	\$4,937.44	\$107.23	\$45.51	\$61.72	\$4,891.93
	7	\$4,891.93	\$107.23	\$46.08	\$61.15	\$4,845.85
	8	\$4,845.85	\$107.23	\$46.66	\$60.57	\$4,799.19
	9	\$4,799.19	\$107.23	\$47.24	\$59.99	\$4,751.95
	10	\$4,751.95	\$107.23	\$47.83	\$59.40	\$4,704.12
	11	\$4,704.12	\$107.23	\$48.43	\$58.80	\$4,655.69
	12	\$4,655.69	\$107.23	\$49.03	\$58.20	\$4,606.66
2005	1	\$4,606.66	\$107.23	\$49.65	\$57.58	\$4,557.01
	2	\$4,557.01	\$107.23	\$50.27	\$56.96	\$4,506.74
	3	\$4,506.74	\$107.23	\$50.90	\$56.33	\$4,455.84
	4	\$4,455.84	\$107.23	\$51.53	\$55.70	\$4,404.31
	5	\$4,404.31	\$107.23	\$52.18	\$55.05	\$4,352.13
	6	\$4,352.13	\$107.23	\$52.83	\$54.40	\$4,299.30
	7	\$4,299.30	\$107.23	\$53.49	\$53.74	\$4,245.81
	8	\$4,245.81	\$107.23	\$54.16	\$53.07	\$4,191.65
	9	\$4,191.65	\$107.23	\$54.83	\$52.40	\$4,136.82
	10	\$4,136.82	\$107.23	\$55.52	\$51.71	\$4,081.30
	11	\$4,081.30	\$107.23	\$56.21	\$51.02	\$4,025.09
	12	\$4,025.09	\$107.23	\$56.92	\$50.31	\$3,968.17
2006	1	\$3,968.17	\$107.23	\$57.63	\$49.60	\$3,910.54
	2	\$3,910.54	\$107.23	\$58.35	\$48.88	\$3,852.19
	3	\$3,852.19	\$107.23	\$59.08	\$48.15	\$3,793.11
	4	\$3,793.11	\$107.23	\$59.82	\$47.41	\$3,733.29
	5	\$3,733.29	\$107.23	\$60.56	\$46.67	\$3,672.73
	6	\$3,672.73	\$107.23	\$61.32	\$45.91	\$3,611.41
	7	\$3,611.41	\$107.23	\$62.09	\$45.14	\$3,549.32
	8	\$3,549.32	\$107.23	\$62.86	\$44.37	\$3,486.46
	9	\$3,486.46	\$107.23	\$63.65	\$43.58	\$3,422.81

Amortization Schedule

Loan Amount : \$5,556.44
 Number of Years: 7
 Annual Rate: 15.000

Total Payments : \$9,006.00
 Total Interest : \$3,449.56

Year	Month	Balance	Payment	Principal	Interest	New Balance
2007	10	\$3,422.81	\$107.23	\$64.44	\$42.79	\$3,358.37
	11	\$3,358.37	\$107.23	\$65.25	\$41.98	\$3,293.12
	12	\$3,293.12	\$107.23	\$66.07	\$41.16	\$3,227.05
	1	\$3,227.05	\$107.23	\$66.89	\$40.34	\$3,160.16
	2	\$3,160.16	\$107.23	\$67.73	\$39.50	\$3,092.43
	3	\$3,092.43	\$107.23	\$68.57	\$38.66	\$3,023.86
	4	\$3,023.86	\$107.23	\$69.43	\$37.80	\$2,954.43
	5	\$2,954.43	\$107.23	\$70.30	\$36.93	\$2,884.13
	6	\$2,884.13	\$107.23	\$71.18	\$36.05	\$2,812.95
	7	\$2,812.95	\$107.23	\$72.07	\$35.16	\$2,740.88
	8	\$2,740.88	\$107.23	\$72.97	\$34.26	\$2,667.91
	9	\$2,667.91	\$107.23	\$73.88	\$33.35	\$2,594.03
2008	10	\$2,594.03	\$107.23	\$74.80	\$32.43	\$2,519.23
	11	\$2,519.23	\$107.23	\$75.74	\$31.49	\$2,443.49
	12	\$2,443.49	\$107.23	\$76.69	\$30.54	\$2,366.80
	1	\$2,366.80	\$107.23	\$77.64	\$29.59	\$2,289.16
	2	\$2,289.16	\$107.23	\$78.62	\$28.61	\$2,210.54
	3	\$2,210.54	\$107.23	\$79.60	\$27.63	\$2,130.94
	4	\$2,130.94	\$107.23	\$80.59	\$26.64	\$2,050.35
	5	\$2,050.35	\$107.23	\$81.60	\$25.63	\$1,968.75
	6	\$1,968.75	\$107.23	\$82.62	\$24.61	\$1,886.13
	7	\$1,886.13	\$107.23	\$83.65	\$23.58	\$1,802.48
	8	\$1,802.48	\$107.23	\$84.70	\$22.53	\$1,717.78
	9	\$1,717.78	\$107.23	\$85.76	\$21.47	\$1,632.02
2009	10	\$1,632.02	\$107.23	\$86.83	\$20.40	\$1,545.19
	11	\$1,545.19	\$107.23	\$87.92	\$19.31	\$1,457.27
	12	\$1,457.27	\$107.23	\$89.01	\$18.22	\$1,368.26
	1	\$1,368.26	\$107.23	\$90.13	\$17.10	\$1,278.13
	2	\$1,278.13	\$107.23	\$91.25	\$15.98	\$1,186.88
	3	\$1,186.88	\$107.23	\$92.39	\$14.84	\$1,094.49
	4	\$1,094.49	\$107.23	\$93.55	\$13.68	\$1,000.94
	5	\$1,000.94	\$107.23	\$94.72	\$12.51	\$906.22
	6	\$906.22	\$107.23	\$95.90	\$11.33	\$810.32
	7	\$810.32	\$107.23	\$97.10	\$10.13	\$713.22
	8	\$713.22	\$107.23	\$98.31	\$8.92	\$614.91
	9	\$614.91	\$107.23	\$99.54	\$7.69	\$515.37
2010	10	\$515.37	\$107.23	\$100.79	\$6.44	\$414.58
	11	\$414.58	\$107.23	\$102.05	\$5.18	\$312.53
	12	\$312.53	\$107.23	\$103.32	\$3.91	\$209.21
	1	\$209.21	\$107.23	\$104.61	\$2.62	\$104.60
	2	\$104.60	\$105.91	\$104.60	\$1.31	\$0.00

The Defendant has paid the Plaintiff \$10,340.00. {Supporting Evidence – Add back the unauthorized Credit Disability Life Insurance Premiums in Exhibit 16 and Exhibit 7 x 94 Payments}

50. The remaining allegations in the Defendant's Answer to the Plaintiff's Complaint are moot. The Defendant is limited to the filed Complaint and Summary Judgment limits the Defendant to the Plaintiff's filed Pleadings, any Exhibits already filed, filed Affidavits, if any and any Interrogatories, Admissions and/or Depositions already filed. *{Authorities - Rule 12(b)(6) & Rule 56(c), SCRC}*

SUMMARY JUDGMENTS SOUGHT

51. The Defendant seeks a Summary Judgment/s on the following;

Failure to state facts sufficient to constitute a cause of action. The Plaintiff has not and did not state any facts sufficient to constitute a cause of action. The Defendant never had, never signed and never entered into any agreement of any kind with the Plaintiff for a \$5,556.44 loan on February 24, 2003. Amy Rogers verified a non-existent loan and the Plaintiff is endeavoring to collect a non-existent debt. *{Supporting Averments – Defendant's Answer Page 4, Paragraphs 1-3, Page 5, Paragraphs 7-8, Page 6, Paragraphs 11 & 11(a)-11(b), Page 7, Paragraphs 12 & 12(a)-12(b), Pages 8-10, Paragraphs 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Page 11, Paragraph 20; Supporting Evidence – Plaintiff's Complaint Pages 2-3, Paragraphs 7-12, 11/23/2011, Amy Rogers' Corporate Verification of Account that authenticates the Plaintiff's Debt Collection is for a 02/24/2003 loan for \$5,556.44 that does not exist in reality, actuality or fact, Exhibit "C", Column 1, Payoff W/Escrow \$5,274.84, the Plaintiff's Complaint, Page 3, Paragraph 12, Sentence 2; the Plaintiff's Exhibit "A", Page 1, Paragraph 1 & 3 identifies the same non-existent 02/24/2003 loan for \$5,556.44}*

RELIEF SOUGHT

52. **WHEREFORE**, the Defendant having fully set forth her (the Defendant's) Legal Memorandum in support of Notice of Motion and Motion for Summary Judgment, pray that this honorable Court, in the absence of a Summary Judgment, withdrawal and/or settlement and/or dismissal will set a date and time for a JURY TRIAL in order to prevent this injustice by the Plaintiff from continuing and:

(a) Under the direction of this Court, ascertain the amount of legal defense fees and cost of action that shall be paid to the Defendant because of the Plaintiff's Complaint.

(b) Deny any judgment claim made by the Plaintiff.

(c) Order the reimbursement of any and all cost that may be due the Defendant because of the Plaintiff's Complaint.

(d) If necessary; in the absence of a Summary Judgment, withdrawal or settlement, order the Plaintiff to provide the Court/Judge with a copy of SCFCU's handbook.

(e) If necessary; in the absence of a Summary Judgment, withdrawal or settlement, order the Plaintiff to provide the Court and the Defendant a complete record of the Defendant's payments from 2003 to the last payment date.

(f) Deny any claim by the Plaintiff for any additional payments from the Defendant and apply the Principle of Equitable Maxim to end this case fairly.

(g) Render a judgment against the Plaintiff to have all derogatory credit information removed from Credit Reporting Agencies to which SCFCU may have sent such information.

(h) Render a judgment against the Plaintiff with Prejudice for just and fair compensation, including any punitive damages the Court deems is proper; if the Principle of Equitable Maxim is applied to end this case.

53. **WHEREFORE**, the Defendant prays the Defendant's Legal Memorandum has been clearly written, stated and properly supported by the evidence, the facts, Public Law, SC Code of Laws, the Defendant's Exhibits, the Plaintiff's filed documents and affidavit and the Defendant's Averments.

NOTIFICATION

A copy of the Defendant's Legal Memorandum in support of Notice of Motion and Motion for a Summary Judgment that has been filed with the Clerk of Court will be mailed to the Plaintiff's attorney/s:

SC Federal Credit Union
ATTN: Amy L. Hewitt
POB 190012
North Charleston, SC 29419
Tel: 843-569-5045

Moore & Van Allen, PLLC
ATTN: Colleen A. McConnell
40 Calhoun Street
POB 22828
Charleston, SC 29413-2828
Phone: 843-579-7000 Fax: 843-579-8714

IN WITNESS WHEREOF, The undersigned, being **DULY SWORN**, has signed and sealed these attestations this 25th day of April in the year 2012 in City of Orangeburg, State of South Carolina.

Signed, sealed and delivered in the presence of:

Signature: Dorothy Sistrunk
Notary Witness (1): Shanita M. Wynn-Hamilton
(Signature)

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG

On APR. 25, 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 Shanita M. Wynn-Hamilton
(Signature)

My Commission Expires
Commission Expires August 1st, 2017

ST. TRUE CO. (Seal)

CLERK OF COURT
ORANGEBURG COUNTY

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO.: 2011-CP-38- 1392
	)	
SOUTH CAROLINA FEDERAL CREDIT	)	
UNION,	)	
	)	
Plaintiff,	)	PLAINTIFF'S REPLY TO DEFENDANTS'
v.	)	ANSWER AND COUNTERCLAIM
	)	
DOROTHY HARLEY SISTRUNK A/K/A	)	
DOROTHY HARLEY-SISTRUNK A/K/A	)	
DOROTHY A. HARLEY,	)	
	)	
Defendants.	)	

TO: DOROTHY HARLEY SISTRUNK A/K/A DOROTHY HARLEY-SISTRUNK A/K/A
DOROTHY A. HARLEY, PRO SE DEFENDANT:

COMES NOW THE PLAINTIFF, South Carolina Federal Credit Union ("Plaintiff"), by
and through its undersigned attorneys, replying to the Answer and Counterclaims of Defendant,
Dorothy Harley Sistrunk a/k/a Dorothy Harley-Sistrunk a/k/a Dorothy A. Harley ("Defendant")
alleges and states as follows:

GENERAL DENIAL

1. Each and every allegation contained in the Answer and Counterclaim inconsistent
with the allegations of the Complaint and/or not hereinafter specifically admitted is denied, and
strict and competent proof of such allegations is demanded.

2. In response to the allegations contained in Paragraphs 1 through 51 of the Answer
and Counterclaim, Plaintiff reasserts the allegations of the Complaint and incorporates the same
herein as if restated verbatim. To the extent a response is required, Plaintiff denies all allegations
contained therein and demands strict proof thereof.

ANSWERING DEFENDANTS COUNTERCLAIMS

COUNTERCLAIM I
(Deceptive Business Practices)

3. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

4. Replying to Paragraph 52 of the Answer and Counterclaim, Plaintiff admits only that the certain Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement attached to its Complaint, is both an Open-End and Fixed Rate of Interest Agreement and specifically denies the remaining allegations in the Paragraph.

COUNTERCLAIM II
(Unjustly Enriched)

5. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

6. The allegations contained in Paragraph 53 of the Answer and Counterclaim are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies the allegations of paragraph 53.

COUNTERCLAIM III
(Misrepresentation of Material Facts)

7. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

8. The allegations contained in Paragraph 54 of the Answer and Counterclaim are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies the allegations of paragraph 54.

COUNTERCLAIM IV
(Unclean Hands)

9. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

10. The allegations contained in Paragraph 55 of the Answer and Counterclaim are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies the allegations of paragraph 55.

COUNTERCLAIM V
(Fraud in the Factum)

11. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

12. The allegations contained in Paragraph 56 of the Answer and Counterclaim are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies the allegations of paragraph 56.

COUNTERCLAIM V
(Fraud in the Inducement)

13. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

14. The allegations contained in Paragraph 57 of the Answer and Counterclaim are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies the allegations of paragraph 57.

COUNTERCLAIM VI
(Restitution)

15. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

16. The allegations contained in Paragraph 65 of the Answer and Counterclaim are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies the allegations of paragraph 65.

COUNTERCLAIM VII
(Infliction of Unnecessary Emotional Distress)

17. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

18. The allegations contained in Paragraph 66 of the Answer and Counterclaim are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies the allegations of paragraph 66.

COUNTERCLAIM VIII
(Unconscionability)

19. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

20. The allegations contained in Paragraph 67 of the Answer and Counterclaim are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies the allegations of paragraph 67.

COUNTERCLAIM IX
(Negligent Misrepresentation)

21. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

22. The allegations contained in Paragraph 68 of the Answer and Counterclaim are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies the allegations of paragraph 68.

COUNTERCLAIM X
(Fraudulent Misrepresentation)

23. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

24. The allegations contained in Paragraph 69 of the Answer and Counterclaim are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies the allegations of paragraph 69.

COUNTERCLAIM XI
(Fraud)

25. Plaintiff repeats the responses in Paragraphs 1 and 2 of this Reply as if restated herein verbatim.

26. The allegations contained in Paragraph 70 of the Answer and Counterclaim are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies the allegations of paragraph 70.

FOR A FIRST DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Failure to State a Claim)

27. Plaintiff reasserts the preceding Paragraphs and incorporates the same herein as if restated verbatim.

28. Plaintiff alleges that the Counterclaims fail to state facts sufficient to constitute a cause of action and therefore should be dismissed.

FOR A SECOND DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Insufficient Allegations of Fraud)

29. Plaintiff reasserts the preceding Paragraphs and incorporates the same herein as if restated verbatim.

30. This action should be dismissed on the ground that the allegations against Plaintiff are not stated with sufficient particularity to constitute a cause of action for fraud or the like.

FOR A THIRD DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Ratification, Consent and Acceptance)

31. Plaintiff reasserts the preceding Paragraphs and incorporates the same herein as if restated verbatim.

32. Defendants' claims are barred by the Defendant's ratification, consent and acceptance of all of the transactions at issue in the lawsuit.

FOR A FOURTH DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Waiver/ Estoppel)

33. Plaintiff reasserts the preceding Paragraphs and incorporates the same herein as if restated verbatim.

34. Defendants' claims are barred, in whole or in part, by the doctrines of waiver and estoppel.

FOR A FIFTH DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Unjust Enrichment)

35. Plaintiff reasserts the preceding Paragraphs and incorporates the same herein as if restated verbatim.

36. Defendants' counterclaims are barred by the doctrine of unjust enrichment.

FOR A SIXTH DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Failure to Mitigate)

37. Plaintiff reasserts the preceding Paragraphs and incorporates the same herein as if restated verbatim.

38. Defendants' counterclaims are barred, in whole or in part, because of Defendants' failure to mitigate any alleged damages.

39. Plaintiff specifically reserves any additional and/or affirmative defenses as may be available to it as are revealed during the course of its investigation and/or discovery in the case and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Answer and Counterclaim of the Defendants, the Plaintiff prays:

- a) that the Defendant's counterclaims be dismissed with prejudice;
- b) for the relief demanded in the Complaint;
- c) for the additional costs and expenses incurred in defending against the counterclaims; and
- d) for such other and further relief as the Court may deem just and proper.



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colleenmcconnell@mvalaw.com
ATTORNEYS FOR PLAINTIFF

May 10th, 2012
Charleston, SC

CERTIFICATE OF SERVICE BY MAILING

This is to certify that I, the undersigned employee of Moore & Van Allen, PLLC, have this 10th day of May, 2012 served a copy of **Plaintiff's Reply to Defendants' Answer and Counterclaim** upon the Defendant by placing same in the United States Mail, with sufficient postage affixed thereon and addressed as follows:

Dorothy Harley Sistrunk a/k/a Dorothy Harley-Sistrunk
a/k/a Dorothy A. Harley
423 Bayne Street
Orangeburg, SC 29115

MOORE & VAN ALLEN, PLLC.



Caitlin C. Astle

"THIS IS AN ATTEMPT TO COLLECT A DEBT AND IS A COMMUNICATION FROM A DEBT COLLECTOR AND ANY FURTHER INFORMATION OBTAINED WILL BE USED FOR THIS PURPOSE."

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	CIVIL CASE NUMBER: 11-CP-38-1392
	)	
SOUTH CAROLINA FEDERAL CREDIT UNION,	)	
	)	
Plaintiff,	)	
vs.	)	MOTION FOR SUMMARY JUDGMENT
	)	
DOROTHY HARLEY SISTRUNK A/K/A	)	
DOROTHY HARLEY-SISTRUNK A/K/A	)	
DOROTHY A. HARLEY A/K/A	)	
DOROTHY SISTRUNK,	)	
	)	
Defendant.	)	

TO: DOROTHY HARLEY SISTRUNK A/K/A DOROTHY HARLEY-SISTRUNK A/K/A
DOROTHY A. HARLEY A/K/A DOROTHY SISTRUNK:

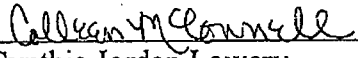
PLEASE TAKE NOTICE that the Plaintiff, through its undersigned attorneys, will move before the presiding Judge for the Court of Common Pleas for Orangeburg County, in the Orangeburg County Courthouse, at 10:00 a.m. on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, as follows:

That the Plaintiff be granted Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as to the within action, for the reason that there is no genuine issue as to any material fact and that the Plaintiff is entitled to judgment as a matter of law on Plaintiff's verified Complaint. Plaintiff is entitled to judgment as a matter of law in its favor as to all counterclaims alleged against it by Defendant.

That if Summary Judgment is granted, Plaintiff be awarded the amount prayed for in Plaintiff's verified Complaint as well as its reasonable attorneys' fees and costs pursuant to the Agreements which are the subject of this action.

That if Summary Judgment is not granted, the Plaintiff requests that the Court determine what issues of material fact must be determined by the trial of this action.

Plaintiff's Motion for Summary Judgment is based upon the pleadings, exhibits, discovery responses and affidavits attached to this Motion and/or filed in this proceeding.


Cynthia Jordan Lowery
Colleen A. McConnell
MOORE & VAN ALLEN PLLC
40 Calhoun Street, Suite 300
Post Office Box 22828
Charleston, SC 29413
Telephone (843) 579-7000

Attorneys for Plaintiff
South Carolina Federal Credit Union

May 10, 2012
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Motion for Summary Judgment has been served upon Dorothy Harley Sistrunk a/k/a Dorothy Harley-Sistrunk a/k/a Dorothy A. Harley a/k/a Dorothy Sistrunk by mailing a copy properly addressed with sufficient postage affixed thereto this 10th day of May, 2012.

Dorothy Harley Sistrunk a/k/a Dorothy Harley-Sistrunk
a/k/a Dorothy A. Harley a/k/a Dorothy Sistrunk
423 Bayne St.
Orangeburg, SC 29115



"THIS IS AN ATTEMPT TO COLLECT A DEBT AND IS A COMMUNICATION FROM A DEBT COLLECTOR AND ANY FURTHER INFORMATION OBTAINED WILL BE USED FOR THIS PURPOSE."

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

South Carolina Federal Credit Union

Plaintiff,

vs.

Dorothy Harley Sistrunk, A/K/A; Dorothy
Harley-Sistrunk, A/K/A; Dorothy A.
Harley,

Defendant,

COURT OF COMMON PLEAS
2012 FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

**DEFENDANT
DOROTHY HARLEY SISTRUNK'S
RESPONSE TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AFFIDAVIT OF AMY ROGERS IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AND
THE PLAINTIFF'S REPLY TO
DEFENDANT'S ANSWER AND
COUNTERCLAIMS**

May 18, 2012

Comes now the Defendant Dorothy Harley Sistrunk to file this RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, AFFIDAVIT OF AMY ROGERS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND THE PLAINTIFF'S REPLY TO DEFENDANT'S ANSWER AND COUNTERCLAIMS.

**RESPONSE TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

1. On 11/23/2011, the Plaintiff filed a Complaint in the Court of Common Pleas for Debt Collection on a 02/24/2003 loan for \$5,556.44. According to the Complaint, the Debt Collection is based on an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was purportedly executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars and this purported loan is now in default with an amount due and payable of \$5,274.84. *{Supporting Evidence – Plaintiff's Filed Complaint, Pages 2-3, Paragraphs 7-12, Amy Rogers' 11/23/2011 Filed Corporate Verification of Account, Pages 1 & 2, the Plaintiff's 11/23/2011 Exhibit "A", Page 1, Paragraphs 1 & 3 and the Plaintiff's 11/23/2011 Exhibits "B" & "C"}*

2. The Defendant never had such a loan and did not enter into any agreement with the Plaintiff for a \$5,556.44 loan on February 24, 2003. The Plaintiff has failed to present any evidence, affidavit/s, deposition/s eyewitness testimony, interrogatory/ies, admission/s and/or documentation of any kind, sort or type that the Defendant signed, executed and delivered an

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

Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty- Six and 44/100 (\$5,556.44) Dollars that is now in default with an amount due and payable of \$5,274.84. *{Supporting Evidence – the Defendant's 11/23/2011 Exhibits "A", "B" "C" & 5-18; the Plaintiff's 11/23/2011 Supporting Documentation & the Plaintiff's Exhibit "B", Pages 1 & 2}*

3. Consequently, based on the Plaintiff's lack of evidence, supporting case law, citations and documentation, the Plaintiff's Motion for Summary Judgment must be denied and dismissed. Other than the Defendant's 09/05/2002 signature for a car loan that is paid out; *{Supporting Evidence – the Defendant's Exhibits "A", "B", 9, 12-15 & the Plaintiff's Exhibit "B", Page 2}*; the Plaintiff has failed to present any evidence of a signed loan agreement for 02/24/2003 or 02/28/2003. The Plaintiff has consistently failed to state facts sufficient to constitute a cause of action. *{Supporting Evidence – the Plaintiff's Filed Complaint, Supporting Documentation, Supporting Exhibits & Amy Rogers' Affidavits}*

4. Accordingly, the Defendant's Motion for Summary Judgment and the Dismissal of the Plaintiff's Complaint with Just and Fair Compensation that was filed on April 25, 2012 that is based on and pursuant to Rule 12(b)(6), SCRPC must be granted forthwith. *{Authorities – Rules 12(b)(6) & 56(b) & (c), SCRPC; See Also Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006) – Supporting Evidence – Exhibits 22 & 23}*

**STANDARD OF REVIEW
& RELEVANT CASE LAW FOR A RULE 12(b)(6), SCRPC DISMISSAL**

5. "[S]ince "a judgment on the pleadings is considered to be a drastic measure," a motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle a plaintiff to any relief under any theory of the case. Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005); Slack v. James, 356 S.C. 479, 589 S.E.2d 772 (Ct. App. 2003). [F]urthermore, the court should not dismiss a complaint merely because the court doubts the plaintiff will prevail in the action. Spence, 328 S.C. at 116-17, 628 S. E.2d at 874."

6. “[I]n reviewing a motion to dismiss, the court must accept as true the well-pleaded facts in the complaint. See Gressette v. S.C. Elec. & Gas Co., 370 S.C. 377, 379, 635 S.E. 2d 538, 538 (2006). [H]owever, the court will not admit inferences drawn by the plaintiff from such facts, nor will it admit conclusions of law. See Fireman's Ins. Co. of Newark, New Jersey v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990).

7. “[E]ssentially, the plaintiff must describe each element of the cause of action in terms of the facts of the case. [T]his requires the plaintiff to plead ‘the ultimate facts which will be proved at trial, not evidence which will be used to prove those facts.’ Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987). [U]ltimate facts fall somewhere between the verbosity of ‘evidentiary facts’ and the sparsity of ‘legal conclusions.’ Watts v. Metro Security Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). [L]egal conclusions ‘describe a legal status, condition, or legal offense.’ Stroud v. Riddle, 260 S.C. 99, 103, 194 S.E.2d 235, 237 (1973). [W]here the facts alleged give rise to competing inferences, dismissal under Rule 12(b)(6) is inappropriate; thus, ‘further development of the facts is [often] necessary before [a] case can be decided.’ Jensen v. Conrad, 297 S.C. 323, 334, 377 S.E.2d 102, 108 (Ct. App. 1988).”

8. “[A] defendant may move to dismiss a complaint based on a plaintiff’s failure to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRCP; Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). [A] court’s decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint. Spence, 368 S.C. at 116, 628 S.E.2d at 874; Clearwater Trust v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006). [I]f material outside the pleading is considered by the court, the motion becomes one for summary judgment. McDonnell v. The Consolidated School Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 639, 639 n.2 (1994); Gilbert v. Miller, 356 S.C. 25, 586 S.E.2d 861 (Ct. App. 2003).” See Also Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); & Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995).”

9. “[T]he trial judge may dismiss the claim if the defendant demonstrates the plaintiff has failed “to state facts sufficient to constitute a cause of action” in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001) (quoting Rule 12(b)(6), SCRCP).”

10. "[A] Rule 12(b)(6) motion "must be granted if the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case." *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 651, 491 S.E.2d 272, 275 (1997)."

**RESPONSE TO AMY ROGER'S
AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

11. **Response to paragraph 1:** The Defendant is without knowledge or information sufficient to form a belief as to the truth of Amy Rogers' averment. Accordingly, the Defendant has no reason or evidence to deny the allegation.

12. **Response to paragraph 2:** The Defendant is without knowledge or information sufficient to form a belief as to the truth of Amy Rogers' averment. Accordingly, the Defendant has no reason or evidence to deny the allegation.

13. **Response to paragraph 3:** The Defendant is without knowledge or information sufficient to form a belief as to the truth of Amy Rogers' averment. Accordingly, the Defendant has no reason or evidence to deny the allegation.

14. **Response to paragraph 4:** The Defendant is without knowledge or information sufficient to form a belief as to the truth of Amy Rogers' averment. Accordingly, the Defendant has no reason or evidence to deny the allegation.

15. **Response to paragraph 5:** The Defendant denies each every averment that Amy Rogers states in paragraph 5. Not only do Amy Rogers' averments misstate and misrepresent the Defendant's statements and the facts in the case, her averments even misstate and misrepresent the facts filed in the Complaint. As a direct result of Amy Rogers' misstatements, her Affidavits cannot support the Plaintiff's Motion for a Summary Judgment. *{Supporting Evidence – the Plaintiff's 11/23/2011 Filed Complaint, Pages 2-3, Paragraphs 7-12, Amy Rogers' 11/23/2011 Corporate Verification of Account Pages 1 & 2, the Plaintiff's Exhibit "A", Paragraphs 1 & 3 and the Plaintiff's Exhibits "B" & "C"}*

16. Amy Rogers' averments in paragraph 5 are also denied for the following reasons:
(A) Amy Rogers stated in her filed Corporate Verification of Account on 11/23/2011 that she is an agent of the Plaintiff, familiar with the transaction and the facts stated

in the pleadings and she has read the pleadings and the facts stated therein are true. *{Supporting Evidence – Amy Rogers Corporate Verification of Account, Page 1, Paragraph 1, Notarized on 10/26/2011 & Filed on 11/23/2011}*

(B) Amy Rogers' Affidavit is a sworn statement that has been notarized in the presence of an Administer of Oaths (A Notary Public). *{Authorities – Section 26-1-80 & 26-1-90 – SC Code of Laws; Supporting Evidence – Amy Rogers' Corporate Verification of Account, Page 1 & the Affidavit of Amy Rogers in Support of Motion for Summary Judgment, Pages 1-3}*

(C) Amy Rogers verified with a sworn Affidavit that the Plaintiff's Complaint and Debt Collection are based on an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars that is now in default with an amount due and payable of \$5,274.84. *{Supporting Evidence – Plaintiff's Complaint, Pages 2-3, Paragraphs 7-12, Amy Rogers' Corporate Verification of Account, Page 1, Paragraph 1, Notarized on 10/26/2011 and Filed on 11/23/2011, the Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3, Plaintiff's Exhibit "C" & the Plaintiff's Exhibits 1-4 Filed on May 10, 2012}*

(D) Amy Rogers' defaulted loan document, *{{Supporting Evidence –Amy Rogers Corporate Verification of Account, Page 2}}*, that is attached to her Corporate Verification of Account, *{Supporting Evidence - Plaintiff's Exhibit "C"}* verified the Plaintiff's filed Complaint and Debt Collection are based on a loan that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of \$5,556.44 that is now in default with a payoff of \$5,274.84. *{Supporting Evidence – Plaintiff's Complaint Pages. 2-3, Paragraphs 7-12, Amy Rogers' Corporate Verification of Account, Pages 1 & 2, Notarized on 10/26/2011, and Filed on 11/23/2011, the Plaintiff's Exhibit "C" Column 1, Payoff W/Escrow \$5,274.84 & the Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3}*

(E) Amy Rogers is now trying to cover up the fatal flaws in the Plaintiff's Complaint. Amy Rogers must have forgotten that she filed a sworn Affidavit on 11/23/2011 verifying the "Subject Matter" of the pleading is a 02/24/2003 loan for \$5,556.44. Amy Rogers then lies outright in her Affidavit supporting the Motion for Summary Judgment or misrepresents the Complaint by going on to state in paragraph 5, "[T]hat the \$5,500.00 loan advance Defendant admits in her [the Defendant's] Answer as having received from Plaintiff on February 28, 2003

is the subject matter of the Complaint...” *{Supporting Evidence – Amy Rogers’ Corporate Verification of Account, Page 1, Paragraph 1 & the Affidavit of Amy Rogers in Support of Motion for Summary Judgment, Page 2, Paragraph 5}* This is an ABSOLUTE LIE!!!

(F) Amy Rogers goes on to state in paragraph 5, “[A] copy of the said Open-End **Fixed Rate of Interest** Agreement was attached to the Complaint as Exhibit “B”, attached in part to the Answer as Exhibits “A”, “B”, “C” and “5” and is attached hereto as Exhibit “1” and incorporated herein by reference.” *{Supporting Evidence - the Affidavit of Amy Rogers in Support of Motion for Summary Judgment, Page 2, Paragraph 5}*

(G) In Paragraph 6, Amy Rogers once again tries to ameliorate the fatal flaws in the Plaintiff’s Complaint by stating, “[T]he highest principal balance due to be repaid by the Defendant to the Plaintiff, pursuant to the terms and conditions of the Open-End Fixed Rate of Interest Agreement was \$5,556.44 and was reached on May 1, 2003, as further evidenced by the Statement of Account, Itemized Statement of Account and Monthly Member Account Statements attached hereto as Exhibits “2”, “3” and “4” and incorporated herein by reference;” Amy Rogers failed to explain how could the Defendant have paid the Plaintiff at least \$110.00 and still have the loan amount increase? *{Supporting Evidence - the Affidavit of Amy Rogers in Support of Motion for Summary Judgment, Page 2, Paragraphs 5 & 6}*

(H) The Plaintiff has not presented any evidence or documentation that verifies the Defendant’s advance was increased by \$56.44. *{Supporting Evidence – the Plaintiff’s 11/23/2011 Filed Complaint & Supporting Documentation}*

(I) The Plaintiff’s and/or Amy Rogers’ Exhibit 1 that was filed on 05/10/2012 to support Amy Rogers’ averment in paragraphs 5-7 for a \$5,500.00 “**Fixed Rate Loan**” has a date of 02/28/2003. The signature date is 9/5/02. The Defendant did not sign for any \$5,500.00 loan on 09/05/02. The 228 pages in Exhibit 4 actually support the \$5,556.44 loan that supposedly occurred on 02/24/2003. *{Supporting Evidence – Plaintiff’s Exhibit “B”, “PAGE 2” and Plaintiff’s Exhibit 1, Pages 1-3 & Exhibit 4 [228 Pages] That were Filed on May 10, 2012}*

(J) **The Plaintiff’s filed documents on 11/23/2011 and filed Exhibits 1-4 on May 10, 2012 impeach and disqualify both of Amy Rogers’ Affidavits and are additional evidence that the Plaintiff misallocated the Defendant’s \$10,340.00 and misrepresented an Open-Ended Revolving Charge/Credit Plan as a 15% Fixed Interest Rate loan.** *{Supporting*

Evidence - the Plaintiff's Statement of Account, the Plaintiff's Exhibit "B", Page 1, Exhibit 1, Page 1 & Page 11 and the Plaintiff's Membership and Account Agreement, Page 21; the Defendant's Exhibits 5-15 and 19-21}

(K) Amy Rogers' Affidavit of May 10, 2012 that was filed to support the Plaintiff's Motion for Summary Judgment is another misstatement and misrepresentation of existing material facts that cannot support the Plaintiff's Complaint or the Plaintiff's Motion for a Summary Judgment. The Defendant never signed for a \$5,500.00 loan with the Plaintiff on 9/5/02 and the loan that was signed for was a \$5,845.00 loan and not a loan for \$5,556.44 or \$5,500.00 *{Supporting Evidence – Defendant's Exhibits 12 & 13}*

(L) The Plaintiff's filed documents on 11/23/2011 and filed Exhibits on May 10, 2012 also impeach and disqualify both of Amy Rogers' Affidavits and are additional evidence that Amy Rogers Affidavits cannot support the Plaintiff's Complaint or the Plaintiff's Motion for a Summary Judgment. The Defendant's car loan is paid out. *{Supporting Evidence – Defendant's Exhibits 14 & 15}*

(J) The Defendant did not enter into any agreement on 9/5/02, or on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred-Fifty-Six and 44/100 (\$5,556.44) Dollars or Five Thousand Five Hundred and 00/100 (\$5,500.00) Dollars. *{Supporting Evidence – Defendant's Exhibits "A", "B", 5 & 9-15}*

17. **Response to paragraph 6:** The Defendant denies each every allegation and/or averment Amy Rogers states in paragraph 6 for reasons already stated in paragraphs 16 and 16(A)-16(J).

18. **Response to paragraph 7:** The Defendant denies each every allegation and/or averment Amy Rogers states in paragraph 7 for reasons already stated in paragraphs 16 and 16(A)-16(J).

19. **Response to paragraph 8:** Amy Rogers and the Plaintiff have not presented any signed Agreement for the Defendant's 15% **Fixed Interest Rate** advance/loan. The Defendant denies each every averment Amy Rogers states in paragraph 8 for reasons already stated in paragraphs 16 and 16(A)-16(J). In addition, it is impossible to enforce collection or collect on a loan for which no signed agreement exists. *{Authority – Statue of Frauds}*

**ADDITIONAL REASONS WHY AMY ROGERS'
AFFIDAVIT CANNOT SUPPORT THE PLAINTIFF'S COMPLAINT, DEBT
COLLECTION OR MOTION FOR SUMMARY JUDGMENT**

20. The Plaintiff's filed Complaint, Debt Collection and Motion for Summary Judgment cannot be supported by any Affidavit that has been presented by Amy Rogers. Amy Rogers' Affidavits verify loans the Defendant never had, never signed for, never received and never agreed to repay. Amy Rogers' Affidavits of 11/23/2011 and 05/10/2012 are for loans that never happened and do not exist in reality. *{Supporting Evidence – the Defendant's Exhibits "A", "B", 5-15, the Plaintiff's Complaint, Pages 2-3, Paragraphs 7-12, 11/23/2011, Amy Rogers' 11/23/2011 Corporate Verification of Account, Pages 1 & 2 identified the Plaintiff's Debt Collection is for a 02/24/2003 loan for \$5,556.44, the Plaintiff's Exhibit "C", Column 1, Payoff W/Escrow \$5,274.84 is the same loan, the Plaintiff's Complaint, Page 3, Paragraph 12, Sentence 2, the Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3 identifies a default payoff of \$5,274.84 for the same 02/24/2003 loan for \$5,556.44 & the Plaintiff's Exhibits 1-4 that were filed on 05/10/2012 identifies the same \$5,556.44 loan on 02/24/2003 that the Defendant never had, never signed for and never received}*

**AMY ROGERS MANY AFFIDAVITS CANNOT SUPPORT THE
PLAINTIFF'S COMPLAINT, DEBT COLLECTION OR ANY MOTION FOR
SUMMARY JUDGMENT BECAUSE OF THE LEGAL DOCTRINE OF PRECLUSION
OF INCONSISTENT POSITIONS**

21. Amy Rogers Affidavits cannot support the Plaintiff's Complaint, Debt Collection or Motion for Summary Judgment due to the Doctrine of Preclusion of Inconsistent Positions. *{Supporting Evidence – Amy Rogers' 2 Different Affidavits for the Same Non-Existent Account}*

(A) Under the Doctrine of Preclusion of Inconsistent Positions, the Plaintiff and Amy Rogers are barred from contradicting previous declarations made during the same or an earlier proceeding if the change in position would adversely affect the proceeding or constitute a fraud on the court. *{Authority - 28 Am. Jur. 2d Estoppel and Waiver §74 ("The fundamental concept of judicial estoppel is that a party in a judicial proceeding is barred from denying or contradicting sworn statements made therein.")}*

(B) It is patently wrong for the Court to allow the Plaintiff and/or Amy Rogers to abuse the judicial process by first advocating one position, and later, if it becomes beneficial, to assert another position. *{Supporting Evidence - the Plaintiff's Complaint, Pages 2-3,*

Paragraphs 7-12, 11/23/2011 states the Complaint is for a 02/24/2003 loan for \$5,556.44, Amy Rogers' 11/23/2011 Corporate Verification of Account on Page 1, verified the Plaintiff's Complaint is for a 02/24/2003 loan for \$5,556.44; Amy Rogers' 11/23/2011 Corporate Verification of Account on Page 2 identified the Plaintiff's Debt Collection of \$5,274.84 is also for the 02/24/2003 loan for \$5,556.44, the Plaintiff's Exhibit "C", Column 1, Payoff W/Escrow also identified the Payoff of \$5,274.84 is for the 02/24/2003 loan. The Plaintiff's Complaint, Page 3, Paragraph 12, Sentence 2 identified the \$5,274.84 Debt Collection is for the 02/24/2003 loan for \$5,556.44, the Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3 also identified the same 02/24/2003 loan for \$5,556.44, the Plaintiff's Exhibits 1-4 that were filed on 05/10/2012 identifies a \$5,500.00 loan on 02/24/2003 & Amy Rogers' File Affidavit in Support of the Plaintiff's Motion for Summary Judgment, Page 2, Paragraphs 5-7, quotes the Defendant's answer and the Defendant's Exhibits, then references documents & Exhibits supporting a \$5,500.00 loan on 02/24/2003 that the Defendant never signed for and never received.}

22. The **Doctrine of Preclusion of Inconsistent Positions** effectively bars Amy Rogers and the Plaintiff from changing or contradicting sworn statements during the course of this judicial proceeding. The policies underlying **Preclusion of Inconsistent Positions** are "[g]eneral considerations of the orderly administration of justice and regard for the dignity of judicial proceedings. It is intended to protect against a litigant playing 'fast and loose' with the courts." {*Authority - Jackson v. County of Los Angeles*, 60 Cal. App. 4th 171, 181 (Cal. App. 2d Dist. 1997) & 28 Am. Jur. 2d Estoppel and Waiver §74 ("The fundamental concept of judicial estoppel is that a party in a judicial proceeding is barred from denying or contradicting sworn statements made therein.")}

23. S.C. Code Ann. § 26-1-90 states a Notary Public may administer oaths, take depositions, affidavits, protests for nonpayment of bonds, notes, drafts and bills of exchange, acknowledgments and proof of deeds and other instruments required by law to be acknowledged and renunciations of dower and perform all other acts provided by law to be performed by Notaries Public. Under S.C. Code Ann. § 26-1-95, if a Notary Public who, in his/her official capacity, falsely certifies to affirming, swearing, or acknowledging of a person or his signature to an instrument, affidavit, or writing, the Notary is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days. Hence,

**AMY ROGERS AFFIDAVITS CANNOT BE USED TO SUPPORT THE PLAINTIFF'S COMPLAINT, DEBT COLLECTION OR ANY MOTION FOR SUMMARY JUDGEMENT BECAUSE AMY ROGERS' FALSE AFFIDAVITS MIGHT BE A VIOLATION OF SECTION 16-9-30 – SC CODE OF LAWS.
(False swearing before persons authorized to administer oaths.)**

24. Since a Notary is authorized to administer oaths and an Affidavit is a sworn statement before an Administer of Oaths, Amy Rogers' sworn statements falsely verify two (2) loans the Defendant never signed for or received. Therefore, her Affidavits cannot be used to support the Plaintiff's Complaint, Debt Collection or Motion for Summary Judgment. Even if her Affidavits are not required by law, Amy Rogers would still be guilty of "Swearing Falsely" before an Administer of Oaths. *{Supporting Evidence - Amy Rogers' 11/23/2011 Corporate Verification of Account verifies the Plaintiff's Complaint is for a 02/24/2003 loan for \$5,556.44, Amy Rogers' 11/23/2011 Corporate Verification of Account, Page 2, Column 1, identifies a Payoff W/Escrow of \$5,274.84 for the 02/24/2003 loan for \$5,556.44. Amy Rogers' 05/10/2012 Affidavit in Support of the Plaintiff's Motion for Summary Judgment, Page 2, Paragraph 5, quotes the Defendant's answer and then blatantly tries to connect Exhibits 1, "A", "B" & "C", to the Defendant's auto loan on 09/05/2002. The Defendant never signed for any loan advance on 09/05/2002 for \$5,500.00 for 02/28/2003 and the Defendant never had, never signed for and never received any \$5,556.44 loan on 02/24/2003.}*

25. Amy Rogers is fortunate that her "Falsely Sworn" Affidavits are not required by law for a Motion for Summary Judgment." If her "Falsely Sworn" Affidavits were required by law, Amy Rogers would be committing a felony. According to **Section 16-9-30 – SC Code of Laws;**

"It is unlawful for a person to wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath. A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both." **It is up to the Court to decide.**

THE PLAINTIFF'S & AMY ROGERS' FILED STATEMENTS OF ACCOUNT DO NOT IDENTIFY THE DEFENDANT'S 15% FIXED RATE LOAN

26. Even if the Defendant had the loan identified in the Plaintiff's Complaint and/or in Amy Rogers' "Falsely Sworn" Affidavits, neither the Plaintiff's loan of \$5,556.44 on 02/24/2003 or Amy Rogers' \$5,500.00 signature loan on 09/05/2002 represents the Defendant's 15%

Fixed Interest Rate loans by definition. *{Authorities – 15 USC 1601 et. seq. & the Office of the Comptroller of the Currency}*

27. At \$110.00 a month, at a 15% **Fixed Interest Rate**, the \$5,556.44 loan would have been paid out before 02/2010 and the \$5,500.00 signature loan would have been paid out in 2009. *{Supporting Evidence – Defendant's Exhibits 19-21}*

28. The Defendant has paid the Plaintiff over \$10,340.00. *{Supporting Evidence – the Plaintiff's Statement of Account [add all the columns together] or Simply Multiply Exhibit 7 x 94 Payments to Calculate the Money the Defendant paid the Plaintiff}*

29. Based on the Plaintiff's Account Statements, the Defendant paid the Plaintiff over \$10,340.00 over a 7-year period for a loan/s that do not exist. *{Supporting Evidence - the Plaintiff's Complaint, Pages 2-3, Paragraphs 7-12, 11/23/2011, Amy Rogers' 11/23/2011 Corporate Verification of Account, Page 2, identified the Plaintiff's debt collection is for a 02/24/2003 loan for \$5,556.44, the Plaintiff's Exhibit "C", Column 1, \$5,274.84 Payoff W/Escrow is for the same 02/24/2003 loan for \$5,556.44, the Plaintiff's Complaint, Page 3, Paragraph 12, Sentence 2 & the Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3 also identified the same 02/24/2003 loan for \$5,556.44, the Plaintiff's Exhibits 1-4 that were filed on 05/10/2012 identifies a \$5,500.00 loan on 02/24/2003 & Amy Rogers' Affidavit in Support of the Plaintiff's Motion for Summary Judgment, Page 2, Paragraphs 5-7, quotes the Defendant's Answer and Exhibits and then tries to connect supporting Exhibits to the Defendant's car loan on 09/05/2002 for a 02/28/2003 \$5,500.00 advance. This never happened}*

30. The Plaintiff's Account Statements and Amy Rogers Affidavits are for loans the Defendant never authorized, signed for or received. *{Supporting Evidence - the Plaintiff's Complaint, Pages 2-3, Paragraphs 7-12, 11/23/2011, Amy Rogers' 11/23/2011 Corporate Verification of Account, Page 2, the Plaintiff's Exhibit "C", Column 1, Payoff W/Escrow \$5,274.84, the Plaintiff's Complaint, Page 3, Paragraph 12, Sentence 2, the Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3, the Plaintiff's Exhibits 1-4 & Amy Rogers' Affidavit in Support of the Plaintiff's Motion for Summary Judgment, Page 2, Paragraphs 5-7, quotes the Defendant's Answer and Exhibits and then tries to connect supporting Exhibits for a 02/28/2003 \$5,500.00 advance to the Defendant's car loan on 09/05/2002. This never happened.}*

**EVEN WITH AMY ROGERS' AFFIDAVITS, THE
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT FAIL AS A MATTER OF LAW**

31. The Plaintiff's Complaint and Debt Collection against the Defendant are barred statutorily. Amy Rogers' Affidavits verify two (2) different loans the Defendant never signed for and never received. The Plaintiff's Motion for Summary Judgment is based on these same non-existent loans. Section 37-10-107 bars the enforcement of oral lending agreements and bars fraud and other tort claims based on alleged oral misrepresentations and other non-written conduct concerning loan and credit agreements. *{Authority - S.C. Code of Laws § 37-10-107(1)(b)}*

32. Since the Defendant never entered into any loan agreement with the Plaintiff or signed any Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars that is now in default with an amount due and payable of \$5,274.84, or any Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about September 05, 2002 that called for the payment of the sum of Five Thousand Five Hundred and 00/100 (\$5,500.00) Dollars that is now in default with an amount due and payable of \$5,274.84, the Plaintiff's Complaint against the Defendant cannot be maintained statutorily and the Plaintiff's Motion for Summary Judgment fails as a matter of law. *{Authority - S.C. Code § 37-10-107(1)(b) & the Statute of Frauds; Supporting Evidence – the Defendant's Exhibits 5-15}*

33. The Plaintiff has not and did not present any material terms or conditions of any signed agreement or contract between the Defendant and the Plaintiff for a February 24, 2003 \$5,556.44 loan or a \$5,500.00 loan on September 09, 2002. The loan the Defendant did sign for on 09/05/2002 was a car loan for \$5,845.00 that has been paid out. *{Supporting Evidence - the Defendant's Exhibits "A" & "B", 9 & 12-15}*

34. The Plaintiff's Complaint, Debt Collection and Motion for Summary Judgment cannot defeat the plain wording of **Section 37-10-107(1) – SC Code of Laws** that states in pertinent parts; "(1) no person can maintain an action or defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment, or agreement."

35. Because the Plaintiff has not and did not provide anything in writing to the Court or to the Defendant that evidences the material terms and conditions of a loan for \$5,556.44 that was signed, executed and delivered on February 24, 2003 or a loan for \$5,500.00 that was signed and executed on 09/05/2002 for deliverance on 02/28/2003, the Plaintiff's Complaint, Debt Collection and Motion for Summary Judgment fail as a matter of law. {Supporting Authorities - the Statue of Frauds, Carolina First Bank v. Lucas, Case No. 03-CP-10-1907, 2004 WL 5208410 (S.C. Com. Pl. Jun. 14, 2004); see also Robertson v. First Union Nat'l Bank, Case No. 99-CP-10-288, 2000 WL 35722762 (S.C. Com. Pl. Aug. 8, 2000)}{ Supporting Evidence – the Plaintiff's Filed Complaint 11/23/2011, Exhibits 1-4, 05/10/2012, Amy Rogers' Affidavits 11/23/2011 & 05/10/2012 & the Defendant's Exhibits "A", "B", 9 & 12-15}

36. Specifically, the Plaintiff's Complaint did not and has not presented any signed writing between the Plaintiff and the Defendant that contains the material terms and conditions of a promise, undertaking, accepted offer, commitment, or agreement to pay the Plaintiff on a loan that was signed, executed and delivered on 02/24/2003 for \$5,556.44; or on a loan for \$5,500.00 that was signed and executed on 09/05/2002 for deliverance on 02/28/2003; and the Defendant did not sign for any Open-Ended Loan on 02/28/2003. Therefore, the Plaintiff's Complaint and Motion fail as a matter of law. {Authority - the Statue of Frauds}

37. Accordingly, as a matter of law, the Plaintiff cannot "maintain an action for legal relief" . . . based upon agreements that were never signed; {Authority - S.C. Code Ann. § 37-10-107(1) & (1)(b)} Consequently, the Plaintiff's Motion for Summary Judgment must be denied.

38. Under these circumstances, the Defendant's Motion for Summary Judgment and Dismissal with Prejudice and Just and Fair compensation must be granted forthwith. {Authorities – S.C. Code Ann. § 37-10-107(1) & (1)(b), Rule 12(b)(6) & Rule 56(b), SCRCF; Celotex Corp. v. Catrett (1986), 477 U.S. 317, 327, 106 S.Ct. 2548, 91 L.Ed.2d 265, David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006), Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006), Clearwater Trust v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006). McDonnell v. The Consolidated School Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 639, 639 n.2 (1994); Gilbert v. Miller, 356 S.C. 25, 586 S.E.2d 861 (Ct. App. 2003) & Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (1997)}

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S ANSWER AND COUNTERCLAIM**

39. **Response to Paragraph 1: Under GENERAL DENIAL:** The Plaintiff has failed to state any facts that can constitute a cause of action on the filed Complaint – the non-existent 02/24/2003 loan for \$5,556.44. The Plaintiff has failed to show a payment history or any signed documents for the Defendant's **15% Fixed Interest Rate Advance** that should have been paid out before March of 2010. *{Supporting Evidence – the Defendant's Exhibits 9-11 & 21}*

(A) The Plaintiff has deceived the Defendant and applied the Defendant's \$110.00 a month payments for the Defendant's **15% Fixed Interest Rate Advance** to a 02/24/2003 Open-Ended Credit Plan that the Defendant never signed for or agreed to. *{Supporting Evidence – the Plaintiff's Statement of Account}*

(B) Consequently, the Plaintiff's Complaint, Debt Collection, Supporting Documentation and Affidavits are for loans the Defendant never signed for or received. Therefore, the Plaintiff's requests for competent proof are: *{Supporting Evidence - the Plaintiff's own documents; own Exhibits 1-4 and the Defendant's Exhibits 5-21}*

40. **Response to Paragraph 2: Under GENERAL DENIAL:** The Plaintiff's has failed to state any facts that can constitute a cause of action on the filed Complaint – the non-existent 02/24/2003 loan for \$5,556.44. The Plaintiff has failed to show a payment history or any signed documents for the Defendant's **15% Fixed Interest Rate Advance** that should have been paid out before March of 2010. *{Supporting Evidence – the Defendant's Exhibits 9-11 & 21}*

(A) The Plaintiff has deceived the Defendant and applied the Defendant's \$110.00 a month payment for the Defendant's **15% Fixed Interest Rate Advance** to a 02/24/2003 Open-Ended Credit Plan that the Defendant never signed for or agreed to. *{Supporting Evidence – the Plaintiff's Statement of Account}*

(B) Consequently, the Plaintiff's Complaint, Debt Collection, Supporting Documentation and Affidavits are for loans the Defendant never signed for or received. Therefore, the Plaintiff's requests for strict proof are: *{Supporting Evidence - the Plaintiff's own documents; own Exhibits 1-4 and the Defendant's Exhibits 5-21}*

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM I
(Deceptive Business Practice)**

41. **Response to Paragraphs 3 & 4:** Amy Rogers' two (2) Falsely Sworn Affidavits verify beyond any reasonable doubt that the Plaintiff has failed to defeat the Defendant's Counterclaim that the Plaintiff is engaged in a **Deceptive Business Practice** of using payments for a **Fixed Interest Rate Advance** and applying it to a 02/24/2003 Open-Ended LoanLiner Credit Plan. The interest rate on these type loans are actually calculated by using a **Daily** or **Monthly Periodic Rate**. *{Supporting Evidence – the Plaintiff's Statements of Accounts}*

(A) According to the Office of the Comptroller of the Currency [**hereafter also called OCC**] – US Department of the Treasury - in its online "Answers & Solutions for Consumers of National Banks, Dictionary of Banking Terms and Phrases", in a **Fixed Rate Loan** "[t]he interest rate and the payment remain the same over the life of the loan. [T]he consumer makes equal monthly payments of principal and interest until the debt is paid in full." *{Supporting Evidence of a Fixed Rate Loan – the Defendant's Exhibits 19-21 & the Comptroller of the Currency Website @ <http://www.helpwithmybank.gov/dictionary/index-dictionary.html>}*

(B) The same OCC website defines **Open-End Credit** as "[a] credit agreement (typically a credit card) that allows a customer to borrow against a preapproved credit line when purchasing goods and services. [T]he borrower is only billed for the amount that is actually borrowed plus any interest due. (Also called a charge account or revolving credit.)" *{Supporting Evidence – the Plaintiff's Membership and Account Agreement, Page 21, the Plaintiff's Statement of Account & the Defendant's Exhibit 16}*

(C) The OCC website also describes a **Periodic Rate** as "[t]he interest rate described in relation to a specific amount of time. [T]he monthly periodic rate, for example, is the cost of credit per month; the daily periodic rate is the cost of credit per day." **Monthly** and/or **Daily Periodic Rates** are not **Fixed Interest Rates** even when described as an Annual Percentage Rate. *{Supporting Evidence – the Plaintiff's Statement of Account}*

(D) **Closed-End Credit** is also not defined or described as a **Fixed Interest Rate** loan by the OCC. The OCC defines **Closed-End Credit** as the following: "Generally, any credit sale agreement in which the amount advanced, plus any finance charges, is expected to be repaid in full by a specified date. Most real estate and automobile loans are closed-end agreements."

(E) The two (2) non-existent loans Amy Rogers verified in her filed Affidavits are not Closed-Ended loans or Fixed Interest Rate loans. Based on the Plaintiff's filed Statement of Accounts, the loans are Open-Ended Revolving Credit type loans that use a Daily Periodic Rate to calculate interest. *{Supporting Evidence – the Plaintiff's Membership and Account Agreement, Page 21, the Plaintiff's Statement of Account & the Plaintiff's Exhibit 3}*

(F) Writing Fixed Interest Rate on an Open-Ended Revolving Credit type loan that uses a Daily Periodic Rate to calculate interest payments is a Deceptive Business Practice. In addition to failing to defeat the Defendant's Counterclaim, the Plaintiff has failed to state any facts that can constitute a cause of action on the filed Complaint – the Plaintiff's non-existent 02/24/2003 loan for \$5,556.44. *{Authority – the Statue of Frauds}*

(G) The Plaintiff's Complaint, Debt Collection, Supporting Documentation and Affidavits are for loans the Defendant never signed for and never received. *{Supporting Evidence – the Plaintiff's Filed Complaint, Amy Rogers' Affidavits & the Defendant's Exhibits 5-15 and 19-21}* Consequently, the Plaintiff's Motion for Summary Judgment must be denied and the Plaintiff's Complaint Dismissed with Prejudice and the Defendant awarded Just and Compensation

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM II
(Unjust Enrichment)**

42. Response to Paragraphs 5 & 6: Since the Defendant has paid the Plaintiff over \$10,340.00; if the Plaintiff allocated the Defendant's payments to an account/s the Defendant never had, never signed for and never received, Amy Rogers' two (2) Falsely Sworn Affidavits not only verify beyond any reasonable doubt that the Plaintiff has been Unjustly Enriched; Amy Rogers' Affidavits inadvertently support the Defendant's Counterclaim of Unjust Enrichment.

(A) In addition to failing to defeat the Defendant's Counterclaim, the Plaintiff has failed to state any facts that can constitute a cause of action on the filed Complaint – the non-existent 02/24/2003 loan for \$5,556.44. *{Authority – the Statue of Frauds}*

(B) Consequently, the Plaintiff's Motion for Summary Judgment must be denied and the Plaintiff's Complaint Dismissed with Prejudice and the Defendant awarded Just and Compensation. *{Supporting Evidence – the Plaintiff's Filed Complaint, Filed Exhibits 1-4, Amy Rogers' filed Affidavits & the Defendant's Exhibits "A", "B", 5-15}*

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM III
(Misrepresentation of Material Facts)**

43. **Response to Paragraphs 7 & 8:** By contradicting her own sworn statements, Amy Rogers' Falsely Sworn Affidavits provide the "Preponderance of the Evidence" the Court needed to verify the Plaintiff has failed to present any evidence and/or state any facts that defeats the Defendant's Counterclaim that the Plaintiff has **Misrepresented Material Facts**.

(A) In addition to failing to defeat the Defendant's Counterclaim, the Plaintiff's has failed to state any facts that can constitute a cause of action on the filed Complaint – the non-existent 02/24/2003 loan for \$5,556.44. *{Authority – the Statue of Frauds}*

(B) Misrepresenting facts in a legal proceeding demands the return of all the Defendant's money. *{Supporting Authority - Whipp v. Iverson, 43 Wis.2d 166, 279 N.W. 79 (1938) – stating; "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."}*

(C) The Plaintiff's Complaint, Debt Collection, Supporting Documentation and Affidavits are for loans the Defendant never signed for and never received. *{Supporting Evidence – the Plaintiff's Filed Complaint, Filed Exhibits 1-4, Amy Rogers' Affidavits & the Defendant's Exhibits 5-15 and 19-21}*

(D) Consequently, the Plaintiff's Motion for Summary Judgment must be denied and the Plaintiff's Complaint Dismissed with Prejudice and the Defendant awarded Just and Compensation.

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM IV
(Unclean Hands)**

44. **Response to Paragraphs 9 & 10:** By contradicting her own sworn statements, Amy Rogers' Falsely Sworn Affidavits verifies the Defendant's Counterclaim that the Plaintiff has **Unclean Hands**. The Defendant did not agree to or signed for any loan on February 24, 2003 for \$5,556.44 and the Defendant did not agree to or sign for any additional loan on September 5, 2002 for \$5,500.00. *{Supporting Evidence – the Defendant's Filed Exhibits 5-15}*

(A) Because Amy Rogers has contradicted her own sworn statements and verified two (2) non-existent loans in separate Affidavits, "[T]he 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 (Cl. App. 1998). "[T]he 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)

(B) By contradicting her own sworn statements, Amy Rogers has verified two (2) non-existent loans in separate Affidavits, "[T]he 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. "

(C) Amy Rogers has contradicted her own sworn statements and verified two (2) non-existent loans in separate Affidavits, "[I]f 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). "

(D) Since Amy Rogers has contradicted her own sworn statement and verified two (2) non-existent loans in separate Affidavits, "[T]his 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. See Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Cl. App. 1993) (applying this policy to a contract secured and maintained by bribery). "[T]his 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." {Additional Supporting Authority – Stachnik v. Winkel, 394 Mich. 375, 387; 230 N.W.2d 529, 534 (1975) – stating, "[I]n determining whether the plaintiffs come before this Court with clean hands, the primary factor to be considered is whether the plaintiffs sought to mislead or deceive the other party, not whether that party relied upon plaintiffs' misrepresentations." }

(E) Therefore, the Plaintiff's Complaint & Motion for Summary Judgment must be dismissed and denied; respectively, with Prejudice and the Defendant's Rule 12(b)(6) SCRCF Motion for Summary Judgment granted.

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM V
(Fraud in Factum)**

45. **Response to Paragraphs 11 & 12:** Amy Rogers has contradicted her own sworn statements and has verified two (2) non-existent loans in separate Affidavits. Her Affidavits provide even more credible evidence to verify the Plaintiff has failed to present any proof and/or state any facts that defeats the Defendant's Counterclaim that the Defendant may be a victim of **Fraud in Factum**. *{Supporting Evidence – Amy Rogers' Corporate Verification of Account}*

(A) The Defendant shall restate the legal definition for "*Fraud in Factum*". This "Fraud" occurs when the legal instrument that is actually executed differs from the one intended for execution by the person who executes it. *{Supporting Evidence - the Plaintiff's Membership and Account Agreement, Pages 1-31 & the Defendant's Exhibits 9-11}*

(B) The words **Fixed Interest Rate** are not in the Plaintiff's Membership Agreement. This type of "Fraud" induces an individual to sign an instrument without a reasonable opportunity to learn of its true character, nature or essential terms nor is the true nature of the loan agreement explained by the lender *{Supporting Evidence – the Plaintiff's Membership and Account Agreement, Pages 1-31}*

(C) The deception in the type of loan Amy Rogers has verified is the supposedly **Fixed Interest Rate** that is not described or defined anywhere the Agreement. *{Supporting Evidence - the Plaintiff's Membership and Account Agreement, Pages 1-31}*

(D) The Defendant has paid the Plaintiff over \$10,300 for loans the Defendant never signed for or received. *{Supporting Evidence – the Defendant's Exhibit 7 x 94 Monthly Payments & the Added Columns in the Plaintiff's Statement of Account}*

(E) The Defendant was not informed of... or signed for any additional loan for \$5,556.44 on February 24, 2003 and the Defendant was not informed of... or signed for any additional loan for \$5,500.00 on September 05, 2002. *{Supporting Evidence – the Defendant's Exhibits "A" & "B" & 5-15; Supporting Authority - Leonard v. Springer, 197 Ill 532. 64 NE 299 (1902) – stating; "[A]ny 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."}*

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM V
(Fraud in the Inducement)**

46. **Response to Paragraphs 13 & 14:** Amy Rogers has contradicted her sworn statements and has verified two (2) loans the Defendant never signed for or received; a \$5,556.44 loan on 02/04/2003 and a \$5,500.00 loan on 09/05/2002. *{Supporting Evidence – Amy Rogers' 11/23/2011 Filed Affidavit & Amy Rogers' 05/10/2012 Affidavit in Support of the Plaintiff's Motion for Summary Judgment}*

(A) The Plaintiff has failed to defeat the Defendant's Counterclaim that the Defendant may be a victim of **Fraud in the Inducement**. The Defendant was not told about any other loan on 09/05/2002. *{Supporting Evidence – Defendant's Exhibits 11 & 12}*

(B) "[F]raud is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to her or to surrender a legal right." *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003) (citing *Black's Law Dictionary* 660 (6th ed.1990))."

(C) Texas' Supreme Court has written in a final ruling: "[F]raud 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). [T]he reason is that fraud undermines the process, the foundation, of all transactions. [T]hus, fraud in the inducement vitiates contracts. Fraud is an exception to the parol evidence rule. [F]raud tolls statutes of limitation. Fraud can revoke wills and divisions of community property. [F]raud will undo real estate conveyances. There is no reason to sanctify fraud in any litigation..."

(D) "...[P]reclusion 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). [T]his 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)."

(E) "[I]n South Carolina, the statute of limitations for causes of action for fraud is governed by the 'discovery rule,' and does not begin to run until discovery of the fraud itself or of 'such facts as would have led to the knowledge thereof, if pursued with reasonable diligence. *Burgess v. Am. Cancer Soc., S.C. Div., Inc.*, 300 S.C. 182, 185, 386 S.E.2d 798, 799 (Ct. App. 1989) (external citations omitted)."

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM VI
(Restitution)**

47. **Response to Paragraphs 15 & 16:** Amy Rogers' Contradicted, "Falsely Sworn and Misleading Affidavits" that the Plaintiff has presented as evidence of a defaulted loan, fail to defeat the Defendant's Counterclaim for **Restitution**. The Defendant has paid the Plaintiff over \$10,340.00 on a **15% Fixed Rate Interest Advance** that the Defendant received in March of 2003 that the Plaintiff applied to non-existent loans the Defendant never signed for or received. *{Supporting Evidence – The Plaintiff's Complaint & Supporting Documents}*

(A) The Plaintiff has presented no signed agreement for the 02/24/2003 loan for \$5,556.44 or the 09/05/2002 for \$5,500.00. *{Supporting Evidence – the Plaintiff's Complaint & Supporting Documents}*

(B) Every loan document the Plaintiff has presented to date is for an Open-Ended – so called Fixed Rate Interest Loan, that is no more or less than a revolving credit plan that was never discussed with the Defendant and the Defendant never signed any loan documents or agreement for an Open-Ended Revolving Credit Plan. *{Supporting Evidence – the Plaintiff's Complaint, Amy Rogers' 11/23/2011 Corporate Verification of Account, Page 2, Amy Rogers' Affidavit in Support of the Plaintiff's Motion for Summary Judgment, Page 2, Paragraphs 5-7; the Plaintiff's Exhibit "C" & the Defendants Exhibits 9-11}*

(C) The Defendant never signed for or received any one of the supposedly **Fixed Interest Rate** loans that Amy Rogers verified in her Affidavits. It is also evident the Plaintiff misrepresented the Open-End LoanLiner Agreement as a **Fixed Rate Loan** and simply has been taking the Defendant's money for 7 years under fraudulent pretenses – **Fixed Rate** is not Open-Ended. *{Supporting Evidence – the Defendant's Exhibits 19-21}*

(D) Based on the Plaintiff's filed Complaint, the evidence and documentation the Plaintiff has filed and Amy Rogers' two (2) Affidavits for non-existent loans, **Restitution is appropriate for the Defendant**. The loan documentation the Plaintiff has presented and Amy Rogers' sworn Affidavits are for loans the Defendant never signed for or received. *{Supporting Evidence – Defendant's Exhibits "A", "B", 5-15, the Plaintiff's Complaint, Pages 2-3, Paragraphs 7-12 dated 11/23/2011 & the Plaintiff's Exhibits 1-4, that were filed with Amy Rogers Affidavit in Support of the Plaintiff's Motion for Summary Judgment that were filed on 05/10/2012}*

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM VII
(Infliction of Unnecessary Emotional Distress)**

48. **Response to Paragraphs 17 & 18:** Even though Amy Rogers has contradicted her sworn Affidavit, Amy Rogers' "Falsely Sworn and Misleading Affidavits"; relative to the two (2) loans the Plaintiff has presented in Court as evidence of a defaulted loan; have provided additional reasons and evidence to support the Defendant's Counterclaim of **Infliction of Unnecessary Emotional Distress**. Amy Rogers' Affidavits falsely accuse the Defendant of participating in... and agreeing to loans the Defendant never signed for and received. *{Supporting Evidence – Amy Rogers Affidavits filed on 11/23/2011 and 05/10/2012 & the Defendant's Exhibits "A", "B" and 5-15}*

(B) Even though Amy Rogers' Affidavits are contradictory, her actions have become a contributing factor to the Defendant's mental anguish and anxiety relative to this action. Since the Defendant has no evidence to support a Counterclaim against the Plaintiff for **Intentional Infliction of Emotional Distress**, the Plaintiff has presented enough evidence in Court for a Jury to render a decision relative to **Negligent Infliction of Emotional Distress**. The Plaintiff and Amy Rogers have falsely accused the Defendant of participating in loans the Defendant never signed for and never received. *{Supporting Evidence - the Plaintiff's Complaint, Pages 2-3, Paragraphs 7-12, Amy Rogers' Corporate Verification of Account, the Plaintiff's Exhibit "C", the Plaintiff's Exhibit "A" & Amy Rogers' File Affidavit in Support of the Plaintiff's Motion for Summary Judgment & the Defendant's Exhibits 19-21}*

(C) To prevail in a negligence action, the Defendant must show three essential elements:

- 1) a duty of care owed by the Plaintiff to the Defendant;
- 2) a breach of that duty by a negligent act or omission; and
- 3) damage proximately caused to the Defendant by a breach of duty. *{Authority - Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996)}*

(D) According to South Carolina's Appellate Court, "[A]n affirmative legal duty to act exists if created by statute, contract, relationship, status, property interest, or some other special circumstance." *{Authorities - Rayfield v. South Carolina Dep't of Corrections, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988). See also Kershaw Motor Co. v. Southern Ry. Co., 136 S.C. 377, 134 S.E. 377 (1926)}*

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM VIII
(Unconscionability)**

49. **Response to Paragraphs 19 & 20:** Even though Amy Rogers has contradicted her sworn Affidavit, Amy Rogers' "Falsely Sworn and Misleading Affidavits"; relative to the two (2) loans the Plaintiff has presented in Court as evidence of a defaulted loan; fail to defeat the Defendant's Counterclaim of **Unconscionability**. "Section 37-5-108 of South Carolina's Code (Supp. 2005) outlines factors utilized to determine if unconscionable conduct has occurred and the remedies the court may provide. 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. {Supporting Authority - Carolina Care Plan, Inc. v. United HealthCare Services, Inc., 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004)."

(A) "[U]nconscionable conduct is also found in acts of fraud and deceit, where the deliberate misrepresentation of fact deprives someone of a valuable possession. Whenever someone takes unconscionable advantage of another person, the action may be treated as criminal fraud or the civil action of deceit."

(B) "[W]hen a court uses the word *unconscionable* to describe conduct, it means that the conduct does not conform to the dictates of conscience. In addition, when something is judged unconscionable, a court will refuse to allow the perpetrator of the conduct to benefit."

(C) "[A]n unconscionable contract is one that no person who is mentally competent would enter into and that no fair and honest person would accept." {Authority - *West's Encyclopedia of American Law, Edition 2*}

(D) No reasonable person; when disclosed the actual facts, would enter into a LoanLiner Credit and Security Agreement with a daily periodic interest rate plan that adds unauthorized Credit Life, Credit Disability and creates a debt equal to or greater than the original loan. {Supporting Evidence – the Plaintiff's Complaint, Supporting Documentation, Statement of Accounts, Amy Rogers' Corporate Verification of Account, pages 1 & 2, & Amy Rogers' Affidavit Supporting the Plaintiff's Motion for Summary Judgment}

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM IX
(Negligent Misrepresentation)**

50. **Response to Paragraphs 21 & 22:** Amy Rogers has contradicted her sworn statements and her "Falsely Sworn and Misleading Affidavits"; relative to the two (2) loans the Plaintiff has presented in Court as evidence of a defaulted loan; fail to defeat the Defendant's Counterclaim of **Negligent Misrepresentation**; Amy Rogers' contradictory sworn statements provide additional credible evidence to maintain and support the Defendant's Counterclaim of **Negligent Misrepresentation**. The Defendant addressed this issue in the Defendant's Answer and incorporates the Defendant's Answer to this issue and supporting authorities by reference as though fully set forth herein.

(A) In addition to failing to defeat the Defendant's Counterclaim, the Plaintiff's has failed to state any facts that can constitute a cause of action on the filed Complaint – the non-existent 02/24/2003 loan for \$5,556.44. *{Authority – the Statue of Frauds}*

(B) Misrepresenting facts in a legal proceeding demands the return of all the Defendant's money. *{Supporting Authority - Whipp v. Iverson, 43 Wis.2d 166, 279 N.W. 79 (1938) – stating; "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."}*

(C) The Plaintiff's Complaint, Debt Collection, Supporting Documentation and Affidavits are for loans the Defendant never signed for and never received. *{Supporting Evidence – the Plaintiff's Filed Complaint, Filed Exhibits 1-4, Amy Rogers' Affidavits & the Defendant's Exhibits 5-15 and 19-21}*

(D) Consequently, the Plaintiff's Motion for Summary Judgment must be denied and the Plaintiff's Complaint Dismissed with Prejudice and the Defendant awarded Just and Compensation.

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM X
(Fraudulent Misrepresentation)**

51. **Response to Paragraphs 23 & 24:** Amy Rogers's contradicted sworn statements and her "Falsely Sworn and Misleading Affidavits"; relative to the two (2) loans the Plaintiff has presented in Court as evidence of a defaulted loan, fail to defeat the Defendant's Counterclaim of **Fraudulent Misrepresentation**; Amy Rogers' contradictory sworn statements provide even more credible evidence to maintain and support the Defendant's Counterclaim of **Fraudulent Misrepresentation**. Like **Negligent Misrepresentation**, an actionable Counterclaim of **Fraudulent Misrepresentation** case requires there first be a false representation predicated upon misstatements of fact rather than upon expression of opinion, intent, or confidence that the deal would be satisfactory. *{Authority - Bishop Logging Co. v. John Deere Indus. Equip. Co., 317 S.C. 520, 526-27, 455 S.E.2d 183, 187 (Ct. App. 1995) (finding statements by equipment seller concerning expected performance of logging system were opinions as to future performance and could not be basis for claim of fraud)}*.

(A) The Defendant was led to believe by the Plaintiff's personnel and LoanLiner Application that her advance was a **15% Fixed Interest Rate Advance**. *{Supporting Evidence – the Defendant's Exhibits 9-11}*

(B) According to OCC and the Federal Reserve Board of Governors that administer the Truth in Lending Act (TILA) with a **Fixed Interest Rate**, "[t]he interest rate and the payment remain the same over the life of the loan. [T]he consumer makes equal monthly payments of principal and interest until the debt is paid in full." *{Supporting Evidence – the Defendant's Exhibits – 9-12 & 19-21 & the Plaintiff's Exhibit 1}*

(B) The Plaintiff's Statement of Account does not represent or is indicative of a payment record or history for a **15% Fixed Interest Rate Advance**. *{Supporting Evidence – the Plaintiff's Statement of Account, the Defendant's Exhibits – 9-12 & 19-21 & the Plaintiff's Exhibit 1}*

(C) None of the loans Amy Rogers validated with sworn statements represent a **15% Fixed Interest Rate Advance**. *{Supporting Evidence – the Plaintiff's Complaint, Supporting Documentation & Exhibits, Statement of Accounts, Amy Rogers' Corporate Verification of Account, pages 1 & 2, Amy Rogers' Affidavit Supporting the Plaintiff's Motion for Summary Judgment & the Defendant's Exhibits 19-21}*

(D) As the Defendant stated in the Defendant's Answer that is incorporated by

reference as though fully set forth herein, the Defendant never signed or agreed to any Open-Ended LoanLiner Loan for \$5,556.44 on 02/24/2003. The Defendant never signed for or agreed to any LoanLiner Loan for \$5,500.00 on 09/05/2002; and the Defendant never signed for or agreed to any Open-Ended LoanLiner Loan on 02/28/2003. *{Supporting Evidence – the Plaintiff's Complaint, Supporting Documentation & Exhibits}*

(E) The Plaintiff has failed to present any signed agreement for the **15% Fixed Interest Rate Advance**. *{Supporting Evidence – the Plaintiff's Complaint, Supporting Documentation & Exhibits}*; on which, the Defendant paid \$110.00 a month for 7 years. *{Supporting Evidence – the Defendant's Exhibit 7 x 94 Payments & the Added Columns of the Plaintiff's Statement of Account}*

**RESPONSE TO THE PLAINTIFF'S
REPLY TO THE DEFENDANT'S COUNTERCLAIM XI
(Fraud)**

52. **Response to Paragraphs 25 & 26:** Amy Rogers's contradicted sworn statements and her "Falsely Sworn and Misleading Affidavits"; relative to the two (2) loans the Plaintiff has presented in Court as evidence of a defaulted loan, fail to defeat the Defendant's Counterclaim of **Fraud**. Amy Rogers' contradictory sworn statements provide even more credible evidence to maintain and support the Defendant's Counterclaim of **Fraud**. An actionable Counterclaim of **Fraud** requires there first be a false representation predicated upon misstatements of fact rather than upon expression of opinion, intent, or confidence that the deal would be satisfactory. *{Supporting Authority - Bishop Logging Co. v. John Deere Indus. Equip. Co., 317 S.C. 520, 526-27, 455 S.E.2d 183, 187 (Ct. App. 1995) (finding statements by equipment seller concerning expected performance of logging system were opinions as to future performance and could not be basis for claim of fraud)}*

(A) The Defendant was led to believe by the Plaintiff's personnel and LoanLiner Application that her advance was a **15% Fixed Interest Rate Advance**. *{Supporting Evidence – the Defendant's Exhibits 9-11}*

(B) According to OCC and the Federal Reserve Board of Governors that administer the Truth in Lending Act (TILA) with a **Fixed Interest Rate**, "[t]he interest rate and the payment remain the same over the life of the loan. [T]he consumer makes equal monthly payments of principal and interest until the debt is paid in full." *{Supporting Evidence – the Defendant's Exhibits – 9-12 & 19-21}*

(B) The Plaintiff's Statement of Account does not represent or is indicative of a payment record or history for a **15% Fixed Interest Rate Advance**. *{Supporting Evidence – the Plaintiff's Statement of Account, the Defendant's Exhibits – 9-12 & 19-21 & the Plaintiff's Exhibit 1}*

(C) None of the loans Amy Rogers validated with sworn statements represent a **15% Fixed Interest Rate Advance**. *{Supporting Evidence – the Plaintiff's Complaint, Supporting Documentation & Exhibits, Statement of Accounts, Amy Rogers' Corporate Verification of Account, pages 1 & 2, Amy Rogers' Affidavit Supporting the Plaintiff's Motion for Summary Judgment & the Defendant's Exhibits 19-21}*

(D) As the Defendant stated in the Defendant's Answer that is incorporated by reference as though fully set forth herein, the Defendant never signed or agreed to any Open-Ended LoanLiner Loan for \$5,556.44 on 02/24/2003. The Defendant never signed for or agreed to any LoanLiner Loan for \$5,500.00 on 09/05/2002; and the Defendant never signed for or agreed to any Open-Ended LoanLiner Loan on 02/28/2003. *{Supporting Evidence – the Plaintiff's Complaint, Supporting Documentation & Exhibits}*

(E) The Plaintiff has failed to present any signed agreement for the **15% Fixed Interest Rate Advance**. *{Supporting Evidence – the Plaintiff's Complaint, Supporting Documentation & Exhibits}*; on which, the Defendant paid \$110.00 a month for 7 years. *{Supporting Evidence – the Defendant's Exhibit 7 x 94 Payments & the Added Columns of the Plaintiff's Statement of Account}*

(F) “[I]n an action at law tried without a jury, the court’s findings of fact will be upheld on appeal when the findings are reasonably supported by the evidence. *Butler Contracting, Inc., v. Court Street, LLC*, 369 S.C. 121, 127, 631 S.E.2d 252, 255 (2006) [T]he court’s findings of fact will not be disturbed on appeal unless wholly unsupported by the evidence or clearly influenced or controlled by an error of law. *Id.* at 127, 631 S. E.2d at 255-56.

(G) “[T]he recipient of a fraudulent misrepresentation of fact is justified in relying on its truth.... The person committing the fraud cannot defeat a claim for misrepresentation ...particularly where the misrepresented facts are peculiarly within the representor’s knowledge.” *{Supporting Authorities - Menominee River Co. v. Augustus Spies L & C Co., 147 Wis. 559 at p. 572; 132 NW 1118 (1912). Stating, “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." & Restatement §164; Stating, "(1) If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient. (2) If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by one who is not a party to the transaction upon which the recipient is justified in relying, the contract is voidable by the recipient, unless the other party to the transaction in good faith and without reason to know of the misrepresentation either gives value or relies materially on the transaction."

53. Amy Rogers' Contradictory, "Falsely Sworn and Misleading Affidavits have also failed to defeat the Defendant's following Affirmative Defenses.

**FIRST AFFIRMATIVE DEFENSE
(Failure to Cooperate and Negotiate in Good Faith)**

(A) At no time prior to filing the Complaint, did the Plaintiff show any inclination to cooperate, negotiate in "Good Faith" (*honesty and best effort in dealings with others*) or explain to the Defendant what happened to the \$10,340.00 plus, the Defendant paid the Plaintiff.

**SECOND AFFIRMATIVE DEFENSE
(Deceptive Lending Practice)**

(B) "[T]he statute clearly requires that in order to recover pursuant to the UTPA one must prove . . . : 1) a violation of the Act [by the commission of an unfair or deceptive act in trade or commerce], 2) proximate cause, and 3) damages. Charleston Lumber Co. v. Miller Housing Corp., 318 S.C. 471, 482, 458 S.E.2d 431, 438 (Ct. App. 1995)." To be associated with trade or commerce, the Plaintiff's acts must impact the public interest. Daisy Outdoor Adver. Co. v. Abbott, 322 S.C. 489, 493, 473 S. E.2d 47, 49 (1996). "[A]n impact on the public interest may be shown if the acts or practices have the potential for repetition. Crary v. Djebelli, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998). [T]he potential for repetition may be shown by proving that the same kind of actions occurred in the past or by showing that the procedures employed by the defendant create a potential for repetition of the deceptive practices. Id. at 388, 496 S. E.2d at 23."

THIRD AFFIRMATIVE DEFENSE
(Parole Evidence Rule)

(C) See “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 parole 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 parole 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.”).” The remaining case law relative to this Affirmative Defense has already been stated in the Defendant’s Answer and are incorporated by reference as though fully set forth herein.

FOURTH AFFIRMATIVE DEFENSE
(Failed to State Facts Sufficient to Constitute a Cause of Action.)

(D) The Defendant has thoroughly covered the Plaintiff’s failure to state facts to constitute a cause if action on the non-existent 02/24/2003 loan. Additional averments relative to this Affirmative Defense are in the Defendant’s Answer and they are incorporated by reference as though fully set forth herein.

FIFTH AFFIRMATIVE DEFENSE
(Failure to Disclose)

(E) The Defendant’s never signed for any loan with the Plaintiff for \$5,556.44 on 02/24/2003. The Defendant never signed for any loan with the Plaintiff for \$5,500.00 on 09/05/2002. The only loan the Defendant signed for on 09/05/2002 was a car loan for \$5,845.00 that is paid out. These additional loan amounts that Amy Rogers verified in sworn statements were never signed for by the Defendant and were not disclosed to the Defendant. By associating the 09/05/2002 signature page with the 02/28/2003 Advance, Amy Rogers Affidavit in support of the Plaintiff’s motion for Summary Judgment gives the false impression that the \$5,500.00 Advance that the Defendant received in 02/28/2003 was signed for on 09/05/2002. This is not the case and never was the case. Additional averments relative to this Affirmative Defense are in the Defendant’s Answer and they are incorporated by reference as though fully set forth herein.

SIXTH AFFIRMATIVE DEFENSE
(In Pari Delicto)

(F) Amy Rogers has contradicted her sworn statement and verified loans that do not exist. Therefore, each and every purported Cause of Action by the Plaintiff indicates some of the Plaintiff's authorized representatives, personnel and/or employees have engaged in acts and courses of conduct which rendered them "In Pari Delicto", equally guilty. This legal Doctrine effectively bars the Plaintiff from profiting from wrongdoing. Additional averments relative to this Affirmative Defense are in the Defendant's Answer and they are incorporated by reference as though fully set forth herein.

SEVENTH AFFIRMATIVE DEFENSE
(Estoppel)

(G) The Plaintiff is "Estopped" from changing the facts in the Complaint that was filed on November 23, 2011. Therefore, for each and every Cause of Action contained in the Complaint that is an omission of a material fact, misrepresentation of a material fact, courses of misconduct, identified deception and/or an unfair trade practice that is contained in the Complaint effectively bars the Plaintiff from any judicial relief. Additional averments relative to this Affirmative Defense are in the Defendant's Answer and are incorporated by reference as though fully set forth herein.

EIGHTH AFFIRMATIVE DEFENSE
(Statute of Frauds)

(H) The "Fixed Rate" Agreements identified in the Plaintiff's Complaint represents a class of contracts that must be in writing to be enforced. Other than the 09/05/2002 car loan for \$5,845.00 that is paid out; the Open-Ended LoanLiner Fixed Rate Agreements that Amy Rogers identifies in her sworn statements are not in writing and the Defendant never signed any such Agreement/s. Additional averments relative to this Affirmative Defense are in the Defendant's Answer and are incorporated by reference as though fully set forth herein.

NINTH AFFIRMATIVE DEFENSE
(Bad Faith)

(I) The Plaintiff misled and misapplied the Defendant's \$110.00 monthly payments for over 7 years. The Plaintiff's Statement of Accounts contradicts what he Defendant was told relative to the 15% **Fixed Interest Rate** advance/ loan. This is "Bad Faith" (*dishonesty*)

or fraud in a transaction). Additional averments relative to this Affirmative Defense are in the Defendant's Answer and are incorporated by reference as though fully set forth herein.

TENTH AFFIRMATIVE DEFENSE
(Willful Tort)

(J) Based on Amy Rogers' sworn statements and the Plaintiff's Complaint; especially, the non-existent 02/24/2003 loan for \$5,556.44, the Plaintiff is barred from pursuing judicial relief of any kind by reason of acts, omissions, misinformation, misrepresentations, courses of conduct, deception, unfair trade practices, and misleading the Defendant for over 7 years that the Defendant's Advance was a 15% Fixed Interest Rate. Such acts by the Plaintiff constitute a "Willful Tort". (*a civil wrong that is done consciously and intentionally*). Additional averments relative to this Affirmative Defense are in the Defendant's Answer and are incorporated by reference as though fully set forth herein.

ELEVENTH AFFIRMATIVE DEFENSE
(Violation of Truth In Lending)

(K) According to TILA's and OCC's definition of a Fixed Interest Rate loan, the LoanLiner Open-End Disbursement Receipt Plus (Fixed Interest Rate) is not a true Fixed Interest Rate Loan. Based on definitions and how the Plaintiff applied monthly payments in the Plaintiff's Statement of Account, the LoanLiner Agreement represents a revolving charge daily periodic interest rate and not equal monthly payments. Failing to disclose the true nature of LoanLiner is violation of TILA. Additional averments relative to this Affirmative Defense are in the Defendant's Answer and are incorporated by reference as though fully set forth herein.

TWELVETH AFFIRMATIVE DEFENSE
(Scienti Et Volenti Non Fit Injuria)

(L) Because of the Plaintiff's misrepresentations of material facts in the Complaint and Amy Rogers Contradictory, Falsely Sworn and Misleading Affidavits, the Plaintiff has no legal right to recover any damages. Additional averments relative to this Affirmative Defense are in the Defendant's Answer and are incorporated by reference as though fully set forth herein.

THIRTEENTH AFFIRMATIVE DEFENSE
(Usurious Interest)

(M) Based on the Plaintiff's Statement of Account, on more than one occasion

the monthly finance charge was 100% of the monthly payment. This is usurious interest. Additional averments relative to this Affirmative Defense are in the Defendant's Answer and are incorporated by reference as though fully set forth herein.

**FOURTEENTH AFFIRMATIVE DEFENSE
(An Unlawful Bait & Switch Credit Scheme)**

(N) The BAIT is a "Fixed Interest Rate" loan application that SWITCHES to an open-end daily periodic rate plan. Additional averments relative to this Affirmative Defense are in the Defendant's Answer and are incorporated by reference as though fully set forth herein.

**FIFTEENTH AFFIRMATIVE DEFENSE
(Reservation of Rights)**

(O) The Defendant reserves the right to amend replies and responses pursuant to South Carolina's and the Federal Rules Civil Procedure. The Defendant also reserves the right to add additional Affirmative Defenses and Counterclaims as this litigation progresses if the circumstances require them.

**RESPONSE TO THE PLAINTIFF'S
FOR A FIRST DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

54. **Response to Paragraphs 27 & 28:** The Plaintiff's First Affirmative Defense fails as a defense under South Carolina's Rules of Civil Procedure - *Rule 8(a), SCRPC*. Based on the facts in this case, the Defendant already meets the legal requirements to state a claim. *Rule 8(a), SCRPC* clearly states in pertinent parts; "A pleading which sets forth a cause of action, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled."

**RESPONSE TO THE PLAINTIFF'S
FOR A SECOND DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Insufficient Allegations of Fraud)**

55. **Response to Paragraphs 29 & 30:** The Plaintiff's Second Affirmative Defense

fails under “Stare Decisis” - the legal doctrine or policy of following rules or principles laid down in previous judicial decisions unless they contravene the ordinary principles of justice. It is well established law that in order to establish actionable fraud, the Defendant only needs to prove by clear and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or 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. ” The evidence to prove “Fraud” in this case is not only clear and convincing, it also beyond any reasonable doubt.

**RESPONSE TO THE PLAINTIFF'S
FOR A THIRD DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Ratification, Consent and Acceptance)**

56. **Response to Paragraphs 31 & 32:** The Plaintiff's Third Affirmative Defense fails as a matter of law. The “Law of the Case” has firmly established the undeniable facts that the Defendant never signed for any loan on 02/24/2003 for \$5,556.44 or on 09/05/2002 for \$5,500.00. The \$5,845.00 car loan was the only loan the Defendant signed for on 09/05/2002.

(A) Even though Amy Rogers' Affidavit in support of the Plaintiff's Motion for Summary Judgment tried to establish a connection between the Defendant's 09/05/2002 signed agreement with the Plaintiff for a car loan and the 02/28/2003 Advance, the attempt failed because the Defendant's car loan was paid out.

(B) The Defendant did not sign any LoanLiner Open-Ended (Fixed Rate Interest) Agreement on 02/28/2003 and the Plaintiff and Amy Rogers have failed to produce a signed LoanLiner Agreement for it. The Defendant's Advance on 02/28/2003 was a 15% Fixed Interest Rate as stated on the application and the Plaintiff was legally bound to honor the Advance's classification and description under TILA and apply the Defendant's monthly payments in a manner that is consistent with the terms on the application. To do otherwise is a violation.

(C) Since no signed Agreement exists for the Defendant's Advance, the Plaintiff must return over \$10,340.00 to the Defendant. The Statue of Frauds bars enforcement of unwritten and unsigned agreements and Section 37-10-107 – SC Code of Laws bars the enforcement of any oral lending agreement/s and other tort claims based on non-written conduct concerning alleged oral misrepresentations and other loan and credit agreements. Hence, there is no ratification, acceptance and/or consent.

**RESPONSE TO THE PLAINTIFF'S
FOR A FOURTH DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Waiver/ Estoppel)**

57. **Response to Paragraphs 33 & 34:** The Plaintiff's Fourth Affirmative Defense fails as a defense due to precedent. South Carolina's Appellate Courts have determined, "[E]stoppel and waiver are protective only, and are to be invoked as shields, and not as offensive weapons." Amy Rogers' Contradictory, Falsely Sworn and Misleading Affidavits effectively nullified the Plaintiff's use of "Waiver and/or Estoppel" as a legal shield.

(A) Therefore, the legal Doctrines of "Waiver and/or Estoppel" correctly apply to the Defendant and not to the Plaintiff. The Defendant paid the Plaintiff over \$10,340.00 over a 7-year period of time. The Plaintiff did not pay the Defendant. The Plaintiff advanced the Defendant \$5,500.00 on 02/28/2003 without a written, signed and enforceable agreement. The advance was made under the false pretenses of a 15% Fixed Annual Interest Rate that required all monthly payments be applied according to TILA's guidelines for 'advances/loans that are not Open-Ended. To do otherwise is a violation of TILA. The evidence is clear and convincing the Plaintiff did otherwise.

(B) Under South Carolina precedent, the operation of "Waiver and Estoppel"; "[i]n all cases should be limited to saving harmless or making whole the party in whose favor they arise and should not, in any case, be made the instruments of gain or profit. "[W]hile the doctrine of waiver or equitable estoppel may be invoked as affirmative defenses to counterclaims, they may not be asserted in a complaint as offensive weapons."

**RESPONSE TO THE PLAINTIFF'S
FOR A FIFTH DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Unjust Enrichment)**

58. **Response to Paragraphs 35 & 36:** The Plaintiff's Fifth Affirmative Defense fails as a defense because it is inconsistent with the facts in the case. The Plaintiff did not pay the Defendant over \$10,340.00 over a 7-year period, the Defendant paid the Plaintiff. Consequently, the Plaintiff has been Unjustly Enriched at the expense of the Defendant.

(A) Since no signed agreement exists for the Defendant's advance, the Plaintiff must return the Defendant's money. The Statue of Frauds bars enforcement of unwritten and unsigned agreements and Section 37-10-107 – SC Code of Laws bars the enforcement of any

oral lending agreement including fraud and other tort claims based on non-written conduct concerning alleged oral misrepresentations and other loan and credit agreements. Since the Plaintiff's loan application is a written document, the Defendant can enforce a claim against the Plaintiff for fraud and/or any other tort claim and/or violation; whether the application is signed or not. The Defendant does not have to operate under Federal and State regulations or meet any regulatory requirement like the Plaintiff. Therefore, any loss the Plaintiff incurs is self-inflicted.

**RESPONSE TO THE PLAINTIFF'S
FOR A SIXTH DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
(Failure to Mitigate Losses)**

59. **Response to Paragraphs 37, 38 & 39:** The Plaintiff's Sixth Affirmative Defense fails as a defense like the Plaintiff's Fifth Affirmative Defense because the defense fails to acknowledge the "Law of the Case" and the defense is inconsistent with the facts in the case.

(A) The Plaintiff did not pay the Defendant over \$10,340.00 over a 7-year period, the Defendant paid the Plaintiff.

(B) The Defendant is not a regulated entity, the Plaintiff is. Consequently, it is unlawful for the Plaintiff to take an individual's money, keep an individual's money or make any claim to an individual's money that has not been lawfully received or established by adherence and/or strict compliance to State and Federal regulatory policies and/or procedures.

(C) The Defendant did not advance the Plaintiff any money without a written and signed agreement. The Plaintiff advanced the Defendant money without a written and signed agreement. The Defendant is not a depository institution, the Plaintiff is.

(D) The Plaintiff cannot enforce any unwritten and/or unsigned loan agreement against the Defendant. The Defendant can file a bona fide claim against the Plaintiff to recover losses because the Plaintiff is a depository institution. The Plaintiff cannot file any bona fide claim against the Defendant to recover any losses because of the Plaintiff's errors and failure to exercise due diligence. Consequently, it is the Plaintiff that has failed to mitigate losses and not the Defendant.

(E) It is the Plaintiff that has consistently failed to mitigate losses and is only compounding and increasing its losses by incurring unnecessary legal expenses in order to collect on an advance that was never signed for pursuant to the Credit Union's rules and regulations and lending policies and procedures.

RESPONSE TO THE PLAINTIFF'S PRAYER FOR RELIEF

60. **Response to Subpart a):** The Defendant's Counterclaims cannot be dismissed because the Defendant's Counterclaims are supported by relevant case law, the facts, the evidence, the Plaintiff's own Exhibits and the Plaintiff's failure to produce a signed agreement for the 02/24/2003 loan for \$5,556.44 that is the "Subject Matter" of the Plaintiff's Complaint, Debt Collection and the reason for this suit.

61. **Response to Subpart b):** The Plaintiff is not entitled to any relief for reasons stated in this pleading from paragraphs 1-60, all subparts contained therein and in the Defendant's Answer, Legal Memorandum Supporting Motion for Summary Judgement and Statement of Material Facts That are not in Dispute; all of which, are incorporated by reference as though fully set forth herein verbatim.

62. **Response to Subpart c):** Whatever cost the Plaintiff has incurred is due to the Plaintiff's failure to mitigate losses, failure to negotiate in "Good Faith" and Failure to "Substantially Comply" with lawful Statutes and lawfully enacted and implemented State and Federal Rules, Regulations and/or Policies and/or Procedures.

63. **Response to Subpart d):** As stated in paragraph 61, the Plaintiff is not entitled to any judicial relief and/or cost of suit for reasons stated therein.

FINAL STATEMENTS RELATIVE TO AMY ROGERS AFFIDAVITS & STATEMENT OF ACCOUNT

64. The impeachment of Amy Rogers Affidavits is far more extensive for the Plaintiff than it is for Amy Rogers. The reason being, documents in the Plaintiff's Exhibit 4 can only be for a loan that was entered into the Plaintiff's computer system on or about 02/24/2003 for \$5,500.00 with interest accruing from that date. The Defendant did not know about this loan because it only exists in computer data files. The person/s that knows about this loan are the person/s that approved it and entered it into the Plaintiff's data bank of loan information. This loan is the "Subject Matter" of the Plaintiff's Complaint and Debt Collection Activities.

{Supporting Evidence – the Plaintiff's Exhibit 4, Pages 1-6}

65. The Defendant's advance was received by mail during the first week in March of

2003 with an application date of 02/28/2003. *{Supporting Evidence – the Plaintiff's Exhibit 1 & the Defendant's Exhibits 9-12}*

66. The due date on the Defendant's loan application for the 02/28/2003 advance is 04/16/2003. *{Supporting Evidence - the Plaintiff's Exhibit 1}* The due date on the Plaintiff's Statement of Account for the same advance is April 17, 2003. *{Supporting Evidence – The Plaintiff's Statement of Account, Page 1, the Plaintiff's Exhibit 3, Page 1 & the Defendant's Exhibit 16, Page 1 of 2}*

67. The Cyber loan of 02/24/2003 was already \$21.34 past due with a first payment of \$131.34 and a loan balance of \$5,521.34. *{Supporting Evidence - the Plaintiff's Exhibit 4, Page 5}* By April of 2003, the balance on the Cyber loan was \$5,534.97, with a payment due on 05-16-03 for \$144.97. *{Supporting Evidence – the Plaintiff's Exhibit 4, Page 8}* By May of 2003, the 02/24/2003 Cyber loan balance had reached \$5,556.44. *{Supporting Evidence – the Plaintiff's Exhibit 4, Page 10}*

68. The Cyber loan of 02/24/2003 included Credit Life and Credit Disability and this is the Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement (“Fixed Interest Rate Agreement”) to which the Defendant's payments were applied. *{Supporting Evidence – the Plaintiff's Exhibit 4, Pages 3-10 & the Plaintiff's Exhibit 3, Page 1}* The Defendant's advance of 02/28/2003 did not have any Credit Life or Credit Disability attached to it and was essentially a Close-Ended 15% **Fixed Interest Rate** loan/advance like the Defendant's car loan of 09/05/2002. *{Supporting Evidence – the Defendant's Exhibits “C” & 12 -15}*

69. In Amy Rogers Affidavit in support of the Plaintiff's Motion for Summary Judgment; Amy Rogers makes another critical error and created another fatal flaw in her sworn statement. In paragraphs 5-7, Amy Rogers describes the Cyber loan of 02/24/2003 as being the loan the Defendant admitted to. *{Supporting Evidence – Amy Rogers' Affidavit of 05/10/2012, Page 2, Paragraphs 5-7}* The Defendant never admitted to this loan. *{Supporting Evidence – the Defendant's Answer, Statement of Material Facts N.I.D, Legal Memorandum & This Response}* The Defendant admitted the Defendant received an advance. *{Supporting Evidence – the Defendant's Answer}*

70. The Defendant's advance does not appear in the Plaintiff's accounting records. *{Supporting Evidence – the Plaintiff's Exhibit 4, Pages 1-228 & Statement of Account}* The Statement of Account the Plaintiff presented in Court on 11/23/2011 to support this action and Amy Rogers' 05/10/2012 Exhibit 3, Pages 1-228 are for the Cyber loan of 02/24/2003 and not for any advance paid to the Defendant. The Cyber loan came into existence and became a data input entry for \$5,500.00 on 02/24/2003, the date the Defendant was approved for the advance. *{Supporting Evidence – the Defendant's Exhibit 11}*

71. The Plaintiff's Exhibit 4 contains accounting records for only two (2) loans, the Defendant's car loan of 09/05/2002 and the Cyber loan of 02/24/2003 for \$5,500.00. *{Supporting Evidence – the Plaintiff's Exhibits 3 & 4}* The Defendant's advance of \$5,500.00 on 02/28/2003 with no Credit Life and no Credit Disability is not in the Plaintiff's accounting records. *{Supporting Evidence – the Plaintiff's Exhibits 3-4, & Statement of Account}*

72. The Plaintiff cannot produce a signed agreement for the 02/24/2003 \$5,556.44 Cyber loan that is the "Subject Matter" of the Plaintiff's Complaint, because no signed agreement exists for it; and there is no signed loan agreement for the Defendant's 02/28/2003 advance. *{Supporting Evidence – the Plaintiff's Filed Complaint, Filed Documents, Filed Exhibits and Amy Rogers' Filed Affidavits}*

SUMMARY

73. The Plaintiff is a victim of the Plaintiff's own Lending Practice and Procedures, the Plaintiff's own Failure to Exercise Due Diligence and an In-house Accounting Error that validated a loan and an advance that were never properly endorsed or signed for. *{Supporting Evidence – the Plaintiff's Filed Complaint, Filed Documents, Filed Exhibits, Amy Rogers' Filed Affidavits & Exhibit 1, Page 1 & 17- Disbursement Voucher, No. 617806}*

74. No signed agreement exists for the Cyber loan of 02/24/2003 and the Defendant's advance is not in the record. As the Court, Attorneys, Amy Rogers, the Plaintiff and the Defendant can clearly see, the Disbursement Voucher is not signed by the Defendant and the advance was not deposited in the Defendant's Share/Share Draft Account for additional proceed validation. *{Supporting Evidence – the Plaintiff's Complaint, Documentation, Exhibit 1, Page 1 & Page 17- Disbursement Voucher, No. 617806 & the Defendant's Exhibits 9-11}*

75. As the Defendant stated in paragraph 59 and in subparts 59(A)-59(E), the Defendant is not a regulated entity or a Depository Institution, the Plaintiff is. Consequently, it is unlawful for the Plaintiff to take the Defendant's money, keep the Defendant's money or make any claim to the Defendant's money that has not been 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. *{Supporting Evidence – Federal and State Laws, Rules, Regulations, Policies & Procedures Governing & Regulating Depository Institutions}*

76. The Defendant realized the Plaintiff has no legally enforceable right/s to keep the Defendant's money because no signed agreement exists for the 02/28/2003 advance and no signed agreement exists for the non-existent Cyber loan of 02/24/2003. Therefore, the Defendant made a very generous offer to the Plaintiff so that Plaintiff would not lose any money due to unjust enrichment, fraud, negligent misrepresentation, violations of TILA, SCUPTA and/or unclean hands.

CONCLUSION & RECOMMENDATION

77. Based on the Plaintiff's Exhibit 3 - Statement of Account, page 2 ; and by simply adding the columns, the record shows what the Plaintiff actually received from the Defendant:

\$ 411.81 +
\$ 1,364.23 +
\$ 5,679.03 +
\$ 55.60 +
\$ 3,500.22 =s
\$11,010.89 - Over a 7-year period

78. Advances total \$6,350.00. Therefore, Payments – Advances =s the balance due.

\$11,010.89
- \$ 6,350.00 =s
\$ 4,660.89 – Due the Defendant after deductions for advances.

79. The Defendant recommends the Plaintiff accept this generous offer to end this matter, remove any derogatory information that may have been sent to Credit Reporting Agencies, reasonably compensate the Defendant for Defense Cost and the Defendant will sign the necessary documents to assure the Plaintiff no further lawsuits will be filed by the Defendant against the Plaintiff relative to this matter. The Plaintiff's check by return mail or filed with the Clerk of Court will signal acceptance and bring an end to this unfortunate situation.

NOTIFICATION

A copy of the Defendant's Response to Plaintiff's Motion for Summary Judgment, Affidavit of Amy Rogers in Support of Motion for Summary Judgment and the Plaintiff's Reply to Defendant's Answer and Counterclaims that has been filed with the Clerk of Court will be mailed to the Plaintiff's attorney/s:

SC Federal Credit Union
ATTN: Amy L. Hewitt
POB 190012
North Charleston, SC 29419
Tel: 843-569-5045

Moore & Van Allen, PLLC
ATTN: Colleen A. McConnell
40 Calhoun Street
POB 22828
Charleston, SC 29413-2828
Phone: 843-579-7000 Fax: 843-579-8714

IN WITNESS WHEREOF, The undersigned, being **DULY SWORN**, has signed and sealed these attestations this 18 day of May, 2012 in the year 2012 in City of ORANGEBURG State of South Carolina.

Signed, sealed and delivered in the presence of:

Signature: Dorothy Hasky-Sistrunk

Notary Witness (1): Lucy DeHelle
(Signature)

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG

On May 18, 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 Lucy DeHelle
(Signature)

Commission Expires MY COMMISSION EXPIRES
APRIL 13TH, 2015

(Seal)

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

South Carolina Federal Credit Union

Plaintiff,

vs.

Dorothy Harley Sistrunk, A/K/A; Dorothy
Harley-Sistrunk, A/K/A; Dorothy A. Harley,

Defendant,

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

DEFENDANT
DOROTHY HARLEY SISTRUNK 'S
COUNTER AFFIDAVIT
TO AMY ROGERS AFFIDAVIT
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT.

May 18, 2012

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 _____
driver's license with the number, 666190796 being of full age, on her
oath, being *DULY SWORN*, and under the *PENALTY OF PERJURY*, deposes and says the
following:

LOANS, ADVANCES & INSURANCES

1. I, Dorothy Harley Sistrunk, reside at 423 Bayne Street in Orangeburg, South Carolina. I do solemnly swear before an Administer of Oaths, that I never signed for, agreed to and/or executed and delivered an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") on or about February 24, 2003 to any Branch Location or Home Office of South Carolina Federal Credit Union that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars.
2. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I never signed for, agreed to and/or executed and delivered an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") on September 05, 2002 to any Branch Location or Home Office of South Carolina Federal Credit Union that called for the payment of the sum of Five Thousand Five Hundred and 00/100 (\$5,500.00) Dollars to be advanced to me on February 28, 2003 before, during or after I signed for my car loan on September 5, 2002. If any such signed agreements are ever presented they are forgeries.
3. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that South Carolina Federal Credit Union never notified me about any increase to the \$5,500.00 advance I

received by mail during the first week of March 2003. The advance had a 15% Fixed Interest Rate with the first payment due on April 16, 2003. The advance did not include Credit Life Insurance or Credit Disability Insurance and I did not sign the application for these insurances that came with the check and Check Disbursement Voucher.

4. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that the only Credit Life Insurance and Credit Disability Insurance I ever signed for with South Carolina Federal Credit Union and agreed to pay was on September 5, 2002 when I received and signed for my car loan on the same date. If any such signed application is every presented at any future date with my signature on it for Credit Life Insurance or Credit Disability Insurance on any date other than September 5, 2002, I hereby declare it to be a forgery.

5. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I never admitted to anyone at anytime that I signed for, agreed to and/or executed and delivered an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") on September 05, 2002, February 24, 2003 or on February 28, 2003 to any Branch Location or Home Office of South Carolina Federal Credit Union that called for the payment of the sum of Five Thousand Five Hundred and 00/100 (\$5,500.00) Dollars and/or Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. If any such person/s says I did; or puts it in writing or swears before an Administer of Oaths that I did, I do hereby declare any such person/s to be a liar/s. If any such signed agreement is presented it is a forgery.

6. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I paid South Carolina Federal Credit Union \$110.00 a month beginning in April of 2003 until South Carolina Federal Credit Union would no longer accept reduced payments from me in the amount I could afford in December of 2010.

NOTIFICATIONS SENT & RECEIVED

7. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I received a notification from South Carolina Federal Credit Union by email on February 24, 2003 from Angel Rabon that I was approved for a Personal Access Line for \$5,500.00 at 15%. I was instructed in the email to contact her at 569-4314 for closing instruction. If any such person/s says Angel Rabon or any authorized personnel from South Carolina Federal Credit Union or anyone else says; or puts it in writing or swears before an Administer of Oaths that I was notified

about an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement"), I do hereby declare any such person/s to be a liar/s.

8. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I received a notification from Sabrina Gaskins at South Carolina Federal Credit Union by email on Friday December 31, 2010 notifying me and stating in pertinent parts, "To be able to work with you on this account, we can accept nothing less than one payment of \$92.00 to clear your October payment." If any such person/s says Sabrina Gaskins or any authorized personnel from South Carolina Federal Credit Union or anyone else says; or puts it in writing or swears before an Administer of Oaths that I was notified about a different amount and/or agreement, I hereby declare any such person/s to be a liar/s.

9. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I received a notification from Renee Priadka at South Carolina Federal Credit Union by email on December 08, 2010 notifying me and stating in pertinent parts, "Your account with South Carolina Federal Credit Union is now past due in the amount of \$184.00. This account became delinquent as of 11/01/2010." On this letter was a Balance of \$4,614.35, with a due date of 10/31/2010. If any such person/s says Renee Priadka or any authorized personnel from South Carolina Federal Credit Union or anyone else says; or puts it in writing or swears before an Administer of Oaths that I was notified about a different amount or a different delinquent date, I hereby declare any such person/s to be a liar/s.

10. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I sent an email to Sabrina Gaskins at South Carolina Federal Credit Union on January 3, 2011 notifying Ms Gaskins that all I could afford to send was \$20.00 a month, and since the least South Carolina Federal Credit Union would accept was \$92.00, then there was no need to send you anything. If any such person/s says or puts it in writing or swears before an Administer of Oaths that I wrote or sent Sabrina Gaskins a different email message with a different amount, I hereby declare any such person/s to be a liar/s.

VOUCHERS RECEIVED & SIGNED

11. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I signed the Multiple Loan Disbursement on 09/05/02 for my car loan. My car loan was \$5,845.00 with Credit Disability Insurance and Credit Life Insurance included with the loan. If any

authorized personnel from South Carolina Federal Credit Union or anyone else says; or puts it in writing or swears before an Administer of Oaths that I signed a Check Disbursement Voucher for an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") on September 05, 2002, February 24, 2003 or on February 28, 2003 at any Branch Location or Home Office of South Carolina Federal Credit Union that called for the payment of the sum of Five Thousand Five Hundred and 00/100 (\$5,500.00) Dollars and/or Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars or any other amount, I do hereby declare any such person/s to be a liar/s and if any such signed Check Voucher is ever presented for \$5,500.00 it is a forgery.

ENDORSEMENTS

12. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I endorsed a check from South Carolina Federal Credit Union for a \$5,500.00 Personal Credit Access Line advance or loan during the first week in March of 2003 and deposited the check in my local bank at BB & T during the same week. All I was told about the \$5,500.00 advance or loan is that it was from my Personal Access Line of Credit and the Annual Percentage Rate of Interest was Fixed at 15%. If any personnel from South Carolina Federal Credit Union or anyone else says; or puts it in writing or swears before an Administer of Oaths something different or that I was told my advance or loan was an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") I do hereby declare any such person/s to be a liar/s.

SUPPORTING DOCUMENTATION

This Affidavit is supported by the following documentation that is already filed in the Court of Common Pleas – Defendant Exhibits 1-18. Copies are available upon request.

Signature of Affiant: Dorothy Harley Sistrunk Date: 5/18/12

SWORN to and subscribed before me;

This 18 day of May 2012

Notary Signature: Lue Sebel

My Commission Expires on _____ MY COMMISSION EXPIRES
APRIL 13TH, 2015

Seal

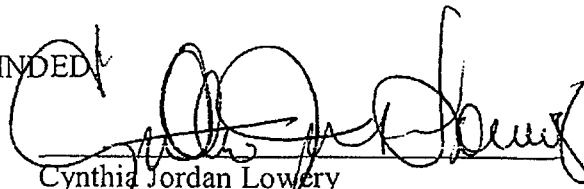
COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) CIVIL CASE NUMBER: 11-CP-38-1392
SOUTH CAROLINA FEDERAL CREDIT)
UNION,)
Plaintiff,)
vs.) NOTICE OF HEARING
DOROTHY HARLEY SISTRUNK A/K/A)
DOROTHY HARLEY-SISTRUNK A/K/A)
DOROTHY A. HARLEY A/K/A)
DOROTHY SISTRUNK,)
Defendant.)

TO: DOROTHY HARLEY SISTRUNK A/K/A DOROTHY HARLEY-SISTRUNK
A/K/A DOROTHY A. HARLEY A/K/A DOROTHY SISTRUNK:

PLEASE TAKE NOTICE that a hearing on Plaintiff's Motion for Summary Judgment will be held on June 19, 2012, at 02:25 o'clock p.m., before the Honorable Diane S. Goodstein, Presiding Judge for Orangeburg County, at the Orangeburg County Courthouse, 180 Gibson Street, Orangeburg, South Carolina.

PLEASE BE PRESENT IF SO MINDED



Cynthia Jordan Lowery
Colleen A. McConnell
Moore & Van Allen PLLC
40 Calhoun Street, Suite 300
Post Office Box 22828
Charleston, SC 29413-2828
(843) 579-7000
Attorneys for South Carolina Federal Credit Union

CHARLESTON, SC
JUNE 19, 2012

CERTIFICATE OF SERVICE

The undersigned, of Moore & Van Allen PLLC, Attorneys for Plaintiff, hereby certifies that on the 8th day of June, 2012, she caused a copy of the foregoing Notice of Hearing to be placed in an envelope with first-class postage, prepaid, and mailed to:

Dorothy Harley Sistrunk a/k/a Dorothy Harley-Sistrunk a/k/a Dorothy A. Harley
a/k/a Dorothy Sistrunk
423 Bayne St.
Orangeburg, South Carolina 29115


Caitlin C. Astle
Moore & Van Allen PLLC
40 Calhoun Street, Suite 300
Post Office Box 22828
Charleston, SC 29413-2828
(843)579-7000

"THIS IS AN ATTEMPT TO COLLECT A DEBT AND IS A COMMUNICATION FROM A DEBT COLLECTOR AND ANY FURTHER INFORMATION OBTAINED WILL BE USED FOR THIS PURPOSE."

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

South Carolina Federal Credit Union, et al. vs. 2011-CP-38-1392

Plaintiff,

vs.

Dorothy Harley Sistrunk, A/K/A; Dorothy
Harley-Sistrunk, A/K/A; Dorothy A. Harley

Defendant,

**DEFENDANT DOROTHY HARLEY
SISTRUNK'S REBUTTALS TO ANY
STATEMENT MADE BY THE
PLAINTIFF OR THE PLAINTIFF'S
ATTORNEYS THAT IS NOT
CONSISTENT WITH THE FILED
COMPLAINT, EXHIBITS OR FILED
AFFIDAVITS DURING THE HEARING
FOR SUMMARY JUDGMENT
SCHEDULED FOR TUESDAY,
JUNE 19, 2012 AT 2:25 O'CLOCK PM**

Today's Date: June 12, 2012

In the event the Defendant cannot make it to the hearing scheduled for June 19, 2012 at 2:25 o'clock p.m., before the Honorable Judge Diane Shafer Goodstein, Presiding Judge for Orangeburg County, at Orangeburg County Courthouse, 180 Gibson Street, Orangeburg, South Carolina, the Defendant is entering the Defendant's Sworn Statements into the Court's Record to Rebut any statement made by the Plaintiff or the Plaintiff's attorneys during the Hearing for Summary Judgement that is inconsistent with filed Complaint, Exhibits and Affidavits. The Plaintiff's NOTICE OF HEARING was received on or about June 9, 2012.

TABLE OF DEFENDANT'S EXHIBITS

Exhibit I.....Original Summons from the Magistrate Court Delivered 06/09/2011
Exhibit II.....SCFCU's Original Complaint in the Magistrate Court
Exhibit III.....Defendant's Original Response to SCFCU's Complaint
Exhibit IV.....Page 1, 14 & 15.....Defendant's Response to Summons and Complaint
Exhibit V.....Amy L. Hewitt's Affidavit and Itemization of Accounts
Exhibit A.....Member 1 Plan Application
Exhibit B.....09/05/02 Signed Application for Credit Disability & Life for Car Loan
Exhibit C.....03/05/2003.....Unsigned Application for Credit Disability & Life that came with
the Check on 03/05/2003 that was never returned to SCFCU.
Exhibit D.....Copy of the Closed-End loan requirements that were discussed with me on the
phone for my 15% Fixed Rate Loan Advance {Source - CUNA Mutual Group}
Exhibit 1.....Letter from Renee Priadka, Dated 12/08/2010
Exhibit 2.....Email Response to Email from Sabrina Gaskins
Exhibit 3.....Response to Sabrina Gaskins about Minimum Payment; Dated 01/03/2011
Exhibit 4.....Copy of Loan Balance from Amy L. Hewitt
Exhibit 5.....Copy of Loan Application from Amy L. Hewitt
Exhibit 6.....Copy of Amy L. Hewitt's Affidavit and Itemization of Accounts
Exhibit 7.....Verification of \$110.00 a Month Payment 94 Checks, Plus Cash

- Exhibit 8.....Amy Rogers Corporate Verification of Account Filed on 11/23/2011
- Exhibit 9.....Copy of Original Loan Application from Credit Union 15% Fixed Rate Closed-End Loan with no Daily Periodic Rate Highlighted.
- Exhibit 10.....Copy of Original Check Voucher Received on 03/05/2003
- Exhibit 11.....Copy of Email Notification of Approval; Dated February 24, 2003
- Exhibit 12.....Copy of Car Loan Application
- Exhibit 13.....Copy of Voucher for Car Loan
- Exhibit 14.....Account Statement Verifying Car Loan is Paid Out
- Exhibit 15.....Copy of Car Title; Additional Verification, Car Loan is Paid Out
- Exhibit 16.....Copy of Account Statement from Attorneys Verifying Payments to SCFCU of Over \$9,430.00 & \$10,340.00. Actual Payments \$11,010.89.
- Exhibit 17.....Copy of LoanLiner Credit and Security Agreement
- Exhibit 18.....Copy of Certificate of Insurance for Credit Life and Disability on Car Loan.
- Exhibit 19.....Amortization Schedule For Plaintiff's \$5,556.44 Loan 02/24/2003 at 15% Fixed Annual Percentage Rate.
- Exhibit 20.....Amortization Schedule For Amy Rogers' \$5,500.00 Loan 09/05/2002 at 15% Fixed Annual Percentage Rate.
- Exhibit 21.....Amortization Schedule For My Closed-End \$5,500.00 Loan 03/05/2003 at 15% Fixed Annual Percentage Rate. { Application date: 02/28/2003 }
- Exhibit 22.....Copy of Motion Filed for Summary Judgment 04/25/2012
- Exhibit 23.....Copy of Receipt for \$25.00 that was Paid for the Motion Fee.
- Exhibit 24.....Copy of Plaintiff's Complaint Filed on 11/23/2011
- Exhibit 25.....Copy of Amy Rogers Affidavit in Support of Motion for Summary Judgment.
- Exhibit 26.....Copy of Deposit Receipt Verifying the \$5,500.00 Advance was Deposited in BB & T on March 5, 2003.
- Exhibit 27.....Plaintiff's Exhibit 1 Filed with the Cross-Motion for Summary Judgment, Note: This is not a Copy of the Original. The Original is Highlighted in Pink.
- Exhibit 28.....Plaintiff's Exhibit 2 Verifying the Plaintiff's Debt Collection is for a \$5,556.44 Loan for 02/24/2003
- Exhibit 29.....Plaintiff's Exhibit 3 Verifying the Defendant Paid the Plaintiff Over \$9,430.00 & \$10,340.00. Actual Payments \$11,010.89.
- Exhibit 30.....Plaintiff's Exhibit 4 Verifying the Plaintiff's Records has ONLY TWO (2) ACCOUNTS; the Defendant's Car Loan and 02/24/2003 Loan for \$5,556.44 with Credit Life and Disability. The Defendant's Closed-End Loan at 15% Fixed Annual Percentage Rate without Credit Life and Disability is not in the Plaintiff's Account Records.

I. **Recommendation:** The Defendant recommends the Plaintiff and the Plaintiff's attorneys place these Exhibits in a Binder. These Exhibits are intended for use by the Honorable Judge Diane Shafer Goodstein at the Hearing. The Plaintiff should already have copies.

II. The Plaintiff has the burden of proving the Plaintiff was wronged and suffered damages from such wrong and that the Defendant caused the damages. In a hearing for Summary Judgment, the Plaintiff is not only limited to the filed Complain, the Plaintiff is also limited to

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and must show that there is no genuine issue as to any material fact and that the Plaintiff is entitled to a judgment as a matter of law. {Authority - Rule 56(c), SCRC}

AUTHORITIES & STANDARD OF REVIEW FOR SUMMARY JUDGMENT

III. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 619, 602 S.E.2d 747, 749 (2004) *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 Defendant.*

IV. Mulherin-Howell v. Cobb, 362 S.C. 588, 595, 608 S.E.2d 587, 591 (Ct. App. 2005) *"If triable issues exist, those issues must go to the jury."*

V. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 59, 518 S.E.2d 301, 305 (Ct. App. 1999). *".....summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law."*

VI. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001) *Any and all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the Plaintiff.*

VII. Lanham v. Blue Cross & Blue Shield, 349 S.C. 356, 363, 563 S.E.2d 331, 336 (2002) *"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."*

THE DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT

VIII. The Plaintiff's Motion for a Summary Judgment should be denied and the Defendant's Motion granted forthwith. {Supporting Evidence – Exhibits 22 & 23} Because....

IX. The Defendant did not sign for any loan for \$5,556.44 on 02/24/2003 and the Plaintiff did not file any signed agreement, application or contract for this loan. The Defendant did not sign for any loan for \$5,500.00 on 09/05/2002; and without a properly executed Addendum, the Defendant's car loan is also invalid. The Defendant did not sign for any loan on February 28, 2003 and the Plaintiff did not file any signed agreement, application or contract. {Supporting Evidence – the Plaintiff's File Complaint, Documents and Amy Rogers' Affidavits}

X. The Defendant did not sign for any loan on March 5, 2003 as required for a Closed-End Loan. {Supporting Evidence – the Defendant's Exhibits D, 5, 9, 10 & 11}

XI. The Defendant did not sign for any Credit Life and/or Credit Disability Insurance on 02/24/2003, 02/28/2003 or 03/05/2003 and the Plaintiff has not produced any signed insurance application for Credit Life and/or Credit Disability Insurance on these dates and cannot introduce any new documents for this hearing. {Supporting Evidence – the Plaintiff's Filed Documents and Amy Rogers' Affidavits}

XII. The Plaintiff has failed to state facts sufficient constitute a Cause of Action {*Authority – Rule 12(b)(6), SCRCF*} and has failed to show proximate damage.

XIII. The Plaintiff owes the Defendant over \$10,340.00. The Defendant has made a prima facie showing that there are no genuine issues of material facts remaining that additional discovery by the Plaintiff will reveal. {*Supporting Evidence - Exhibits I – 30*}

XIV. The Plaintiff has not initiated any discovery since 11/23/2011. {*Supporting Evidence – Plaintiff's Filed Documents*} {*Authority - 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")*}

XV. A Summary Judgment for the Defendant is properly granted when "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 Defendant is entitled to a judgment as a matter of law"; {*Supporting Case Law - Hoard v. Roper Hosp., Inc., 387 S.C. 539, 545-46, 694 S.E.2d 1, 4 (2010)*}

AUTHORITIES & STANDARD OF REVIEW FOR THE DEFENDANT'S RULE 12(b)(6) DISMISSAL

XVI. Rule 12(b)(6), SCRCF & *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006) *Under Rule 12(b)(6) SCRCF, the Defendant has already filed a motion to dismiss this complaint based on SCFCU's failure to state facts sufficient to constitute a cause of action.*

XVII. *Spence*, 368 S.C. at 116, 628 S.E.2d at 874 & *Clearwater Trust v. Bunting*, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006) *The Court's decision to grant a Rule 12(b)(6), SCRCF motion to dismiss must be based solely upon the allegations set forth in the Plaintiff's complaint.*

XVIII. *McDonnell v. The Consolidated School Dist. of Aiken*, 315 S.C. 487, 489, 445 S.E.2d 639, 639 n.2 (1994) & *Gilbert v. Miller*, 356 S.C. 25, 586 S.E.2d 861 (Ct. App. 2003) *"If material outside the pleading is considered by the court, the motion becomes one for summary judgment."*

XIX. *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006) *"In reviewing a motion to dismiss, the court must accept as true the well-pleaded facts in the complaint."*

XX. *Fireman's Ins. Co. of Newark, New Jersey v. Cincinnati Ins. Co.*, 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990) *"However, the court will not admit inferences drawn by the plaintiff from such facts, nor will it admit conclusions of law."*

XXI. *Clark v. Clark*, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987) *"The plaintiff must*

describe each element of the cause of action in terms of the facts of the case. This requires the plaintiff "to plead the ultimate facts" which will be proved at trial, not evidence which will be used to prove those facts."

XXII. Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) & Washington v. Lexington County Jail, 337 S.C. 400, 405, 523 S.E.2d 204, 206 (Ct. App. 1999). *The ruling on a Rule 12(b)(6), SCRPC, motion to dismiss must be based solely upon the allegations set forth in the Plaintiff's complaint.*

XXIII. Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999) *A 12(b)(6), SCRPC motion should not be granted if the facts alleged and the inferences reasonably deducible therefrom would entitle the Plaintiff to any relief on any theory of the case.*

XXIV. Quoting Gentry, (in paragraph XXIII) *id.* at 5, 522 S.E.2d at 139 "The question to be considered is whether, when viewed in the light most favorable to the plaintiff, the complaint states any valid claim for relief. Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail."

XXV. S.C. R. Civ. P. 12(b)(6), SCRPC & Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (2003) *Rule 12(b)(6), SCRPC authorizes the court to dismiss the Plaintiff's complaint for failure to state facts sufficient to constitute a cause of action.*

XXVI. Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001) *"The question is whether the pleadings, taken in the light most favorable to the Plaintiff, articulate a valid claim for relief."*

XXVII. Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (1997) *The Defendant must be granted a Rule 12(b)(6) SCRPC motion if the facts and the inferences reasonably deducible from them show that SCFCU (the Plaintiff) can not prevail on any theory of the case.*

DURING THE HEARING, NEITHER THE PLAINTIFF'S ATTORNEY/S NOR THE PLAINTIFF CAN CONTRADICT OR ALTER THE FILED COMPLAINT

1. **The Defendant Rebuts Any Attempt by the Plaintiff or the Plaintiff's attorney/s to alter the filed Complaint during the hearing.** The Plaintiff's Complaint is based on the unsubstantiated allegation that the Defendant executed and delivered an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars and this particular and clearly identified loan is now in default with an amount due and payable of \$5,274.84. {Supporting

Evidence – The Plaintiff's Filed Complaint, the Plaintiff's filed Exhibits on 11/23/2011 "A", "B" & "C" and the Plaintiff's File Exhibits on 05/10/2012; 1, 2, 3 & 4} The Plaintiff is barred from changing the filed Complaint without an amendment. {Authorities – Rules 7(a), 15(a) & 56(c), SCRCP}

**DURING THE HEARING,
THE PLAINTIFF IS BARRED FROM FILING ANOTHER AFFIDAVIT**

2. All Three Affidavits from the Plaintiff contradict each other and Amy Rogers has contradicted herself, misstated facts and verified two (2) loans the Defendant never signed for or received. *{Supporting Evidence – Exhibits 6 & 4 - Amy L. Hewitt's Affidavit that was filed in Magistrate Court on May 18, 2011; Exhibit 8 – Amy Rogers' Corporate Verification of Account that was filed on 11/23/2011 & Exhibit 25 – Amy Rogers Affidavit Supporting Motion for Summary Judgment filed on 05/10/2012} {Authority – Rule 56(c), SCRCP}*

3. None of the Plaintiff's Affidavits can be used to support the Plaintiff's Complaint, Debt Collection or Motion for Summary Judgment. The Plaintiff is effectively barred from introducing another Affidavit during the Hearing for Summary Judgment. *{Authority – Rule 56(c), SCRCP – "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file..."}*

4. Amy Rogers and Amy L. Hewitt are also effectively barred from contradicting their sworn statements due to the legal concept of Judicial Estoppel. *{Authority – 28 Am. Jur. 2d Estoppel and Waiver §74 ("The fundamental concept of judicial estoppel is that a party in a judicial proceeding is barred from denying or contradicting sworn statements made therein.")}*

**DURING THE HEARING, THE PLAINTIFF IS BARRED FROM ARGUING THE
ONE SIGNATURE NEEDED RULE FOR LOANLINER ACCOUNTS
AND/OR SUBACCOUNTS**

6. In order for the Plaintiff or the Plaintiff's attorney/s to effectively argue the "One Signature Requirement Rule" for an Open-Ended LoanLiner Account, the Plaintiff had to have already filed evidence of an Addendum and evidence that an Addendum was given to and explained to the Defendant before the Defendant received any money on 09/05/2002. *{Authority – Rule 56(c), SCRCP – "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file..."}*

7. There is no Addendum on file in the Plaintiff's documents or exhibits and the Plaintiff has not presented any documentation or verification of any kind that an Addendum was explained to or given to the Defendant prior to receiving a car loan on 09/05/2002. *{Supporting Authorities – SCFCU Membership & Account Agreement – Page 21, Paragraph 6, Under Finance Charge & LoanLiner –stating that “the Credit Agreement and the Addendum is the Contractual Arrangement, the Credit Union should give the Credit Agreement and the Addendum to the member at the same time and **BEFORE THE FIRST TRANSACTION UNDER THE PLAN.**”}* *{Supporting Evidence on File – None}*

8. The Plaintiff has not presented any evidence of disclosure compliance under the requirements of the Truth in Lending Act's (TILA's) Regulation Z. *{Supporting Evidence – the Plaintiff's Filed Documents & Exhibits}* The Plaintiff is effectively barred from introducing any new disclosure documents during the Summary Judgment Hearing. *{Authority – Rule 56(c), SCRCF – “The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file...”}*

**DURING THE HEARING, THE PLAINTIFF IS EFFECTIVELY BARRED
FROM INTRODUCING DOCUMENTS TO REMEDY
THE PLAINTIFF'S COMPLAINT**

9. **The Defendant's loan payments were improperly applied to a LoanLiner Plus Account the Defendant never agreed to.** The Defendant's loan advance; that was received on March 5, 2003, was for a house. *{Supporting Evidence – Defendant's Exhibit 9}* The loan counselor told the Defendant her 15% fixed rate advance was essentially the same as the car loan. Car Loans and home purchases are primarily Closed-Ended loans. *{Authorities – 15 USC 1601 et. seq. & LoanLiner – stating “the following types of subaccounts should not be apart of the Plan, Mobile Homes, Home Equity, Real Estate and Home Purchases.”}*

10. With Closed-End lending, there are between 18 and 30 disclosures that must be made before consummation of the loan. Truth in Lending *requires* that these disclosures:

- (A) Be in writing and in a form members can keep.
- (B) Be segregated from other information – the “Fed. Box”.
- (C) Have itemization of amount financed disclosed outside of the Fed. Box.
- (D) These disclosures may be on the same document as the other loan documents

and disclosures. Disclosure must be grouped together in one place – the “Fed Box.” *{Authority – 15 USC 1601 et. seq.}* There are penalties for inaccurate and defective disclosure. *{Authority – 15 USC 1601 et. seq.}*

12. Failure to give accurate disclosures in the “Fed Box” or failing to substantially comply with TILA’s regulatory requirements, means the Defendant can file a claim against the Plaintiff for violating the Defendant’s rights under TILA. The penalty can be up to \$1,000.00 for each violation. *{Authority – 15 USC 1601 et. seq.}*

13. The Plaintiff did not filed any documents that remotely resemble the lending or compliance requirements for a Closed-Ended 15% fixed rate loan. *{Defendant’s Exhibit 9}* The Plaintiff’s TILA violations are egregious and extensive. *{Supporting Evidence – the Plaintiff’s Filed Complaint, Filed Documents, Exhibits and Filed Affidavits}*

14. The Plaintiff is effectively barred from introducing any new documentation to remedy the Plaintiff’s violations of TILA and South Carolina’s Unfair Trade Practices Act. *{Authority – Rule 56(c), SCRCP – “The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file...”}*

15. The Defendant’s Closed-Ended loan for a mobile home purchase with no Disability or Credit Life Insurance is not in the Plaintiff’s accounting records. *{Supporting Evidence – the Plaintiff’s Exhibits 3 & 4}*

16. The Defendant’s over \$10,340.00 in payments were not used to pay off the Defendant’s Closed-Ended loan, the Defendant’s monthly payments were being applied to a LoanLiner Plus Account, the same account that is the subject of the Plaintiff’s Complaint. *{Supporting Evidence – the Plaintiff’s Exhibit 3, Filed Complaint and Filed Affidavits}*

17. The Plaintiff’s misuse of the Defendant’s Monthly payments is not only a clear violation of SCUTPA and TILA, the Plaintiff has also violated LoanLiner’s mandates, guidelines and procedures. *{Supporting Evidence - LoanLiner – stating - “the following types of subaccounts should not be apart of the Plan, Mobile Homes, Home Equity, Real Estate and Home Purchases.”}*

THE PROBATIVE FORCE OF PLEADINGS

19. 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, definition and/or standard 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.

(C) Consequently, any self-serving statements from 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 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, Sworn Affirmations or Sworn Depositions.

20. The Plaintiff has not controverted any of the Defendant's sworn statements of fact that are contained in the Defendant's pleadings. 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.

21. No Court can grant relief based on the Plaintiff's information and belief, falsely

sworn affidavits, violation of lawfully enacted statutes and failure to state facts sufficient to constitute a Cause of Action. The Plaintiff's information and belief are not admissible as evidence and cannot be used to support any Motion for Summary Judgment. *{Authority – Rule 56(c), SCRC}*

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

23. The Defendant's sworn statement of fact that the Plaintiff has benefitted at the expense of the Defendant is based on personal knowledge that is supported by evidence, documentation or a numbered Exhibit. None of the Defendant's statements of fact have been denied or proven false. Statements from the Plaintiff's attorneys will not overcome the Defendant's sworn statements of fact and the evidence and documentation that supports them.

24. To increase the probative force of this pleading, in addition to being sworn to before an Administer of Oaths, the Defendant will also include a verification statement.
{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)}

SUMMATION

25. Based on the facts, the law, the Rules of Civil Procedure and for all the foregoing reasons, The Plaintiff has failed to state facts to constitute a Cause of Action and has failed to show proximate damage. Therefore, the Plaintiff's motion for Summary Judgment must be denied and the Defendant's Motion for Summary Judgment granted forthwith. *{Supporting Evidence – the Plaintiff's Filed Complaint, Documents, Exhibits, Filed Affidavits & the Defendant's Filed Exhibits} {Supporting Authorities – Rule 12(b)(6), SCRC and Rule 56(c), SCRC, & Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (1997) The Defendant must be granted a Rule 12(b)(6) SCRC dismissal if the facts and the inferences reasonably deducible from them show the Plaintiff can not prevail on any theory of the case.}*

CONCLUSION & RECOMMENDATION

26. The Defendant realized the Plaintiff has no legally enforceable right/s to keep the Defendant's money because no signed agreement exists for the 02/28/2003 advance, no signed agreement exists for the non-existent Cyber loan of 02/24/2003 and no signed agreement exist for the advance the Defendant received on March 5, 2003 for a home purchase. Therefore, the Defendant made a very generous offer to the Plaintiff so that Plaintiff would not lose any money due to unjust enrichment, fraud, negligent misrepresentation, violations of TILA, SCUPTA and/or unclean hands. Based on the Plaintiff's Exhibit 3 - Statement of Account, page 2 ; and by simply adding the columns, the record shows what the Plaintiff actually received from the Defendant:

\$ 411.81 +
\$ 1,364.23 +
\$ 5,679.03 +
\$ 55.60 +
\$ 3,500.22 =s
\$11,010.89 - Over a 7-year period

27. Advances total \$6,350.00. Therefore, Payments – Advances =s the balance due.

\$11,010.89
- \$ 6,350.00 =s
\$ 4,660.89 – Due the Defendant after deductions for advances.

28. The Defendant recommends the Plaintiff accept this generous offer to end this matter, remove any derogatory information that may have been sent to Credit Reporting Agencies, reasonably compensate the Defendant for Defense Cost and the Defendant will sign the necessary documents to assure the Plaintiff no further lawsuits will be filed by the Defendant against the Plaintiff relative to this matter. The Plaintiff's check by return mail or filed with the Clerk of Court will signal acceptance and bring an end to this unfortunate situation.

RELIEF SOUGHT

29. The Defendant seeks the following relief.

Deny the Plaintiff's Motion for Summary Judgment and grant the Defendant's Motion for a Summary Judgment based on the Plaintiff's inability to prevail on any theory of the case and the Plaintiff's failure to state facts sufficient to constitute a cause of action.

VERIFICATION STATEMENT

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 Rebuttals are being filed in the event I cannot schedule time off for the hearing that is scheduled on Tuesday, June 19, 2012 at 2:25 p.m. My Rebuttals are based on my personal knowledge of the case, the Plaintiff's Complaint, filed documents, exhibits and filed affidavits. As to those matters that are based on my information and belief and/or from 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.

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

NOTIFICATION

A copy of the Defendant's Rebuttals to any statement made by the Plaintiff and/or the Plaintiff's attorneys that is inconsistent with the filed complaint, filed documents, filed exhibits and filed affidavits during the scheduled hearing on the Plaintiff's Motion for Summary Judgment that has been filed with the Clerk of Court will be mailed to the Plaintiff's attorney/s:

SC Federal Credit Union
ATTN: Amy L. Hewitt
POB 190012
North Charleston, SC 29419
Tel: 843-569-5045

Moore & Van Allen, PLLC
ATTN: Colleen A. McConnell
40 Calhoun Street
POB 22828
Charleston, SC 29413-2828
Phone: 843-579-7000
Fax: 843-579-8714

ATTEST: COURT CLERK
Wing
CLERK
ORANGE

2012 JUN 13 AM 9:21
CLERK
ORANGE

PERSONALLY, appeared before me Dorothy Harley 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 003190796, 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, being **DULY SWORN**, has signed and sealed these attestations this 12 day of June in the year 2012 in City of Orangeburg, State of South Carolina.

Signed, sealed and delivered in the presence of:

Signature: Dorothy Harley Sistrunk

Notary Witness (1): Bridney Hoffman
(Signature)

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On June 12 2012 before me appeared Dorothy Harley 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]
(Signature)

Commission Expires MY COMMISSION EXPIRES
APRIL 13TH 2015

(Seal)

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

South Carolina Federal Credit Union

Plaintiff,

vs.

Dorothy Harley Sistrunk, A/K/A; Dorothy
Harley-Sistrunk, A/K/A; Dorothy A. Harley,

Defendant,

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

**DEFENDANT DOROTHY HARLEY
SISTRUNK 'S AFFIDAVIT OF FACTS,
MATERIAL FACTS & TRUTH TO
REBUT ANY STATEMENT MADE BY
THE PLAINTIFF OR THE
PLAINTIFF'S ATTORNEY/S THAT IS
NOT CONSISTENT WITH THE
PLAINTIFF'S FILED COMPLAINT,
FILED EXHIBITS AND FILED
AFFIDAVITS DURING THE HEARING
FOR SUMMARY JUDGMENT
SCHEDULED FOR TUESDAY
JUNE 19, 2012 AT 2:25 O'CLOCK PM**

Today's Date: June 14, 2012

PERSONALLY, appeared before me Dorothy Harley 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, 00819 0796 being of full age, on her
oath, being *DULY SWORN*, and under the *PENALTY OF PERJURY*, deposes and says the
following after the presentation of exhibits that are attached to the Affidavit:

EXHIBITS ATTACHED TO THIS AFFIDAVIT

Exhibit E.....Certified Check from BB&T for Bombardier Capital, Inc.
Exhibit F.....Bombardier Capital, Inc., Affidavit for Repossessed Motor Vehicle
Exhibit G.....Mobile Home Bill of Sale
Exhibit H.....Lillie Council Application for Certificate of Title
Exhibit J.....CUNA Mutual Group Commentary on TILA's Section 226.(2)(a)(20)-3
Exhibit K.....CUNA Mutual Group Explains Why the Addendum Must be Given to the
Borrower and What Must Be Signed.
Exhibit L.....CUNA Mutual Group Subaccounts that Should not be Part of the Plan
Exhibit M.....CUNA Mutual Group When the Addendum Should Be Given
Exhibit N.....Pooser's Buyer's Order

ATTEST: TRUE COPY

Page 1 of 10

Wing B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

RESIDENCE

1. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that I currently reside at 423 Bayne Street in Orangeburg, South Carolina; and when I received my loan advance from South Carolina Federal Credit Union on March 5, 2003; hereafter also called SCFCU and/or the Plaintiff, I resided at 5074 Coburg Lane in Orangeburg, South Carolina.

REASON FOR THIS AFFIDAVIT

2. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that the reasons for this affidavit are as follows:

(A) In the event that I cannot be at the Plaintiff's Summary Judgment Hearing that is scheduled for Tuesday, June 19, 2012 at 2:25 o'clock, I want my rebuttals to any statement the Plaintiff might make that is inconsistent with the filed Complaint in the Court's records.

(1) I, Dorothy Harley Sistrunk, do solemnly swear that the Plaintiff's filed Complaint is that I executed and delivered an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Verification – CA Case# 2011-CP-38-1392 & Exhibit 24 – Pages 1-4}*

(2) I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths, that I never signed for, agreed to and/or executed and delivered an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") on or about February 24, 2003 to any Branch Location or Home Office of South Carolina Federal Credit Union that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars that is now in default.

(3) I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths, that I never signed for, agreed to and/or executed and delivered an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") on September 05, 2002 to any Branch Location or Home Office of South Carolina Federal Credit Union that called for the payment of the sum of Five Thousand Five Hundred and 00/100 (\$5,500.00) Dollars to be advanced to me on February 28, 2003 before, during or after I signed for my car loan on September 5, 2002. If any such signed agreement/s are ever presented they are forgeries by any means, method or device known to man.

(4) I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths, that the Plaintiff never notified me about any increase to the \$5,500.00 advance I received by mail during the first week of March 2003. The advance had a 15% Fixed Interest Rate with the first payment due on April 16, 2003. The advance did not include Credit Life Insurance or Credit Disability Insurance and I did not sign the application for these insurances that came with the check and Check Disbursement Voucher.

(5) I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths, that the only Credit Life Insurance and Credit Disability Insurance I ever signed for with the Plaintiff and agreed to pay was on September 5, 2002 when I received and signed for my car loan on the same date. If any such signed application is every presented at any future date with my signature on it for Credit Life Insurance or Credit Disability Insurance on any date other than September 5, 2002, I declare it to be a forgery by any means, method or device known to man.

(6) I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths, that I never admitted to anyone at anytime that I signed for, agreed to and/or executed and delivered an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") on September 05, 2002, February 24, 2003 or on February 28, 2003 to any Branch Location or Home Office of South Carolina Federal Credit Union that called for the payment of the sum of Five Thousand Five Hundred and 00/100 (\$5,500.00) Dollars and/or Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. If any such person/s says I did; or puts it in writing or swears before an Administer of Oaths that I did, I declare any such person/s to be an Absolute Liar. If any such signed agreement is ever presented anywhere at anytime it is a forgery by any means, method o device known to man.

(7) I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths, that I paid South Carolina Federal Credit Union \$110.00 a month beginning in April of 2003 until South Carolina Federal Credit Union would no longer accept reduced payments from me in the amount I could afford in December of 2010. *{Supporting Evidence – Exhibit 7 x 94}*

(8) According to the Plaintiff's own records, the Plaintiff received over \$10,340.00 from me over a 7-year for a mobile home loan. CUNA Mutual Group; POB 391, 5910 Mineral Point Road, Madison, Wisconsin, 53701 clearly states in their publication; LoanLiner, the ABC's of Open-End Lending on page 13; that mobile homes, real estate, home

equity and home purchases are subaccounts that should not part of the plan. *{Supporting Reference – Exhibit L}* My statements on [Exhibit L] are incorporated by reference as though fully set forth herein Verbatim.

(9) If any statement from the Plaintiff or the Plaintiff attorney/s contradicts what is written in Paragraph 2, Subparts (A)(1)-(8); any such person is telling an Absolute Lie.

(B) I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths, that the second reason why I am submitting an Affidavit, in the event, I cannot make it to the Plaintiff's Hearing for a Summary Judgment, is because I want this case to end as soon as possible. Since no hearing was scheduled for me, I wasted my money and my time filing a Motion for a Hearing for a Summary Judgment that was never scheduled and in all probability would never have been scheduled. The Plaintiff's hearing gives me an opportunity to speak the truth in a public setting. *{Supporting Evidence – Filed Exhibits 22 & 23}*

REASON FOR THE LOAN ADVANCE

3. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that the reason why I contacted the Plaintiff for a loan advance was to purchase a repossessed singlewide mobile home from Bombardier Capital, Inc. for \$5,500.00 *{Supporting Evidence – Exhibits E & F}*

4. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that when I told the Plaintiff's loan counselor that the loan was for a mobile home purchase; that is when the Plaintiff's loan representative told me my loan would be essentially the same as my car loan. So that there would be no mistake; that my loan was Closed-Ended; not Open-Ended, and for a home purchase, the Plaintiff's loan counselor wrote it on the loan application (*House*), and did not highlight the daily periodic rate that is indicative of a revolving charge or Open-Ended account. *{Supporting Evidence – Filed Exhibit 9}*

5. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that when I received the check and the loan application on March 5, 2003, there was a message written on the application that stated: "Please see attached for payment instructions. Thank you!" There were additional notations: 1st 786 - 4/11/03 - \$110.00 and 2nd 806 - 5/5/03 - \$110.00. To this day, I have no idea what these notations meant and they were never explained to me. *{Supporting Evidence – Filed Exhibit 9}*

6. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that an application for Credit Life and Credit Disability Insurance with an issue date of 09/05/2002 was also included in the envelope. Since no instructions came with the application, I did not sign it or return it; and no one from the Plaintiff contacted me about it. *{Supporting Evidence – Defendant's Filed Exhibit C}*

7. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that Bombardier Capital's representative told me that I had to have a certified check in order to complete the purchase of the mobile home. She also told me to put my d/b/a, YEP Enterprises, on all documents in c/o Dorothy A. Harley. YEP means Young Entrepreneurs Program. YEP Enterprises was a for profit program that I helped form with my cousin Veronica Mintz to help young adults, ages 13-18, earn part time income by selling newspapers. *{Supporting Evidence – Exhibits E & F}*

8. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that after I bought the mobile home, the cost of moving it, setting it up, buying a lot and other expenses that included drilling for water, clearing land and installing a power pole and septic tank were greater than the purchase price of the house. The mobile home was being repossessed from Lily Ann Council. Since she wanted to continue living in it, I asked my husband to work out the details so that she could buy it from me. All parties agreed that no matter what price I decided to sell the mobile home for, it would be less than \$25,450.00, the original sales price. Lily Council's family, my husband, Lillie Council and I; all agreed, that a reasonable sales price would be \$9,500.00. So that is what I sold it for.... to Lillie Ann Council. *{Supporting Evidence – Exhibits G & H}*

THE ADDENDUM

9. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that other than the application for Credit Life and Credit Disability Insurance, no Addendum or any other documents or paperwork came with the check. The unsigned Voucher was attached to the check. *{Supporting Evidence – Exhibit 10}*

10. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that I did an online search in order to find out what an Addendum really looks like and the information that would be on it. The Addendum I saw is a 2009 Addendum from Coastal Federal Credit Union.

As I have already stated on [Exhibit K] that is incorporated by reference as though fully set forth herein Verbatim, no Addendum was discussed with me before or after I signed for my car loan; and none has been sent to me since 09/06/2002. *{Supporting Reference – <https://apps.coastal24.com/pdf/LOANLINEDEC09.pdf>}*

11. Since you have to be a member of SCFCU's in order to have an Addendum explained to you or given to you. *{Supporting Evidence – Exhibit M}* that is incorporated by reference as though fully set forth herein Verbatim, I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that I was not a member of SCFCU when I was approved for my car loan. A car broker was working with SCFCU; and it was the car broker that got my car loan approved. Since the broker did not find a car for me, and since, I was told I was approved for a car loan, I contacted SCFCU's representative and told him the broker had not found a car for me. So I asked him could I find a car on my own? He told me I could. During the process of looking for a car, I discovered the Mercedes Benz at Pooser's. *{Supporting Evidence – Exhibit N}*

12. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that the car loan transaction was handled by Pooser's and the Plaintiff's representative. I was notified by phone to pick up the check for the car in North Charleston, South Carolina. Since I could not find the office in North Charleston, I was told, by phone, to pick up the check for the car at the Plaintiff's office in Columbia, South Carolina. *{Supporting Evidence – Filed Exhibit 13}*

13. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that when I arrived at the Plaintiff's Columbia office on 09/05/2002, I filled out the membership application and the application for Credit Life and Credit Disability Insurance. I opened an account and filled out some more paperwork. During the process of completing the paperwork, no one said I needed an Addendum, mentioned an Addendum or explained an Addendum to me. I was given a check for \$5,845.00 to take to Pooser's, a packet of information and I left. *{Supporting Evidence – Defendant's Filed Exhibits A & B}*

14. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that if any one of the Plaintiff's personnel or any attorney hired by the Plaintiff swears before an Administer of Oaths or states in Court or files any documents in Court that any one of the Plaintiff's personnel spoke to me about an Addendum, showed me an Addendum or discussed an

Addendum with me at any time, I declare any such representative from the Plaintiff or any such attorney that states such is an Absolute Liar.

**AMY L. HEWITT'S
& AMY ROGERS' FEBRUARY 28, 2003 LOAN APPLICATIONS**

15. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that the 02/28/2003 loan applications Amy L. Hewitt and Amy Rogers have presented as exhibits and evidence of debt is not the loan application I was given. This is how I know, without any doubt or question, that the loan advance I received on March 5, 2003 is not in the Plaintiff's records.

{Supporting Evidence - Exhibit 9 & the Plaintiff's Filed 02/28/2003 Loan Applications & Account Statements}

16. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that the purpose for my loan advance is not in any document filed by the Plaintiff and not in the Plaintiff's accounting record. *{Supporting Evidence - the Plaintiff's Filed Exhibits, Filed Documents & Accounting Records}*

17. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that if the Plaintiff or the Plaintiff's attorneys present any signed loan agreement for 02/24/2003, 09/05/2002, 02/28/2003 or 03/05/2003 for \$5,500.00, I declare that any such signed loan agreement is an absolute forgery by any means, method or device known to man. And if any one of the Plaintiff's personnel swears before an Administer of Oaths or states in Court or in a document filed in Court that he/she/they saw me sign such a loan agreement, or states the same or similar in Court that he/she/they have evidence and/or information that I signed such an agreement any such person is an Absolute Liar and any such statement is an Absolute Lie.

**AMY L. HEWITT &
AMY ROGERS FILED AFFIDAVITS ARE CONTRADICTIONS**

18. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that Amy L. Hewitt's and Amy Rogers' Affidavits and Statement and Accounts contradict each other; and Amy L. Rogers contradicts herself. *{Supporting Evidence - Filed Exhibits 4, 6, 8 & 25}*

STATEMENT OF ACCOUNTS

19. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that

the Plaintiff's Statement of Accounts do not show a payment schedule for a Closed-Ended loan for a mobile home or home purchase. *{Supporting Evidence – The Plaintiff's Exhibit 3}*

20. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that the Plaintiff's Statement of Accounts proves the Plaintiff received over \$10,340.00 from me over a 7-year period. Adding the Columns together reveals the Plaintiff actually received \$11,010.89 over a 7-year period. *{Supporting Evidence – Plaintiff's Exhibit 3}*

21. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that the Plaintiff's filed documents do not illustrate TILA's disclosure requirements for a Closed-Ended loan for a mobile home or home purchase. *{Supporting Evidence – Plaintiff's Filed Documents}*

NOTIFICATIONS SENT & RECEIVED

22. I, Dorothy Harley Sistrunk, do solemnly swear before the Administer of Oaths that I received an email notification from Angel Rabon; the Plaintiff's loan counsel, by email on February 24, 2003. The email notified me that I was approved for a Personal Access Line for \$5,500.00 at 15%. I was instructed in the email to contact her at 569-4314 for closing instruction. If any such person/s says Angel Rabon or any authorized personnel from South Carolina Federal Credit Union or anyone else says; or puts it in writing or swears before an Administer of Oaths that I was notified about an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement"), I do declare any such person/s to be an Absolute Liar.

23. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I received a notification from Sabrina Gaskins at South Carolina Federal Credit Union by email on Friday December 31, 2010 notifying me and stating in pertinent parts, "To be able to work with you on this account, we can accept nothing less than one payment of \$92.00 to clear your October payment." If any such person/s says Sabrina Gaskins or any authorized personnel from South Carolina Federal Credit Union or anyone else says; or puts it in writing or swears before an Administer of Oaths that I was notified about a different amount and/or agreement, I hereby declare any such person/s to be a liar/s.

24. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I received a notification from Renee Priadka at South Carolina Federal Credit Union by email on

December 08, 2010 notifying me and stating in pertinent parts, "Your account with South Carolina Federal Credit Union is now past due in the amount of \$184.00. This account became delinquent as of 11/01/2010." On this letter was a Balance of \$4,614.35, with a due date of 10/31/2010. If any such person/s says Renee Priadka or any authorized personnel from the Plaintiff or anyone else says; or puts it in writing or swears before an Administer of Oaths that I was notified about a different amount or a different delinquent date, I hereby declare any such person/s to be an Absolute Liar.

25. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I sent an email to Sabrina Gaskins at South Carolina Federal Credit Union on January 3, 2011 notifying Ms Gaskins that all I could afford to send was \$20.00 a month, and since the least South Carolina Federal Credit Union would accept was \$92.00, then there was no need to send you anything. If any such person/s says or puts it in writing or swears before an Administer of Oaths that I wrote or sent Sabrina Gaskins a different email message with a different amount, I hereby declare any such person/s to be an Absolute Liar.

VOUCHERS RECEIVED & SIGNED

26. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I signed the Multiple Loan Disbursement on 09/05/02 for my car loan. My car loan was \$5,845.00 with Credit Disability Insurance and Credit Life Insurance included with the loan. If any authorized personnel from South Carolina Federal Credit Union or anyone else says; or puts it in writing or swears before an Administer of Oaths that I signed a Check Disbursement Voucher for an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") on September 05, 2002, February 24, 2003 or on February 28, 2003 at any Branch Location or Home Office of South Carolina Federal Credit Union that called for the payment of the sum of Five Thousand Five Hundred and 00/100 (\$5,500.00) Dollars and/or Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars or any other amount, I do declare any such person/s to be an Absolute Liar and if any such signed Check Voucher is ever presented for \$5,500.00 it is a forgery.

ENDORSEMENTS

27. I, Dorothy Harley Sistrunk, do solemnly swear before an Administer of Oaths, that I endorsed a check from South Carolina Federal Credit Union for a \$5,500.00 Personal Credit Access Line advance or loan during the first week in March of 2003 and deposited the

check in my local bank at BB & T during the same week. All I was told about the \$5,500.00 advance or loan is that it was from my Personal Access Line of Credit and the Annual Percentage Rate of Interest was Fixed at 15%. If any personnel from South Carolina Federal Credit Union or anyone else says; or puts it in writing or swears before an Administer of Oaths something different or that I was told my advance or loan was an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") I do hereby declare any such person/s to be an Absolute Liar.

Signature of Affiant: Dwight Harley Davis Date: 6/14/12

SWORN to and subscribed before me;

This 14 day of June 2012

Notary Signature: Shirley J. Hall

My Commission Expires on MY COMMISSION EXPIRES
APRIL 13TH, 2015

Seal

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

South Carolina Federal Credit Union

Plaintiff,

vs.

Dorothy Harley Sistrunk, A/K/A; Dorothy
Harley-Sistrunk, A/K/A; Dorothy A.
Harley,

Defendant,

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

**DEFENDANT DOROTHY HARLEY
SISTRUNK'S OPPOSITION TO
SUMMARY JUDGMENT
FOR THE PLAINTIFF**

**JUDGE: THE HONORABLE DIANE
SHAFFER GOODSTEIN**

HEARING DATE: JUNE 19, 2012

TIME: 2:25 O'CLOCK PM

Today's Date: June 19, 2012

Comes now the Defendant Dorothy Harley Sistrunk to present in Court her OPPOSITION TO SUMMARY JUDGMENT FOR THE PLAINTIFF to the Plaintiff and the Honorable Judge Diane Shafer Goodstein.

OPPOSITION TO SUMMARY JUDGMENT FOR THE PLAINTIFF

1. Pursuant to Rule 56, SCRPC; the Defendant, appearing *Pro Se*, and supported by the Plaintiff's own filed documents, is submitting her Opposition to any Summary Judgment for the Plaintiff at today's hearing.
2. This opposition is being presented in Court to demonstrate to the Court and the Plaintiff that there are genuine issues of material fact in this case that precludes the entry of Summary Judgment for the Plaintiff as a matter of law.
3. This opposition is also supported by the Defendant's filed Pleadings, Exhibits, Notice of Motion and Motion for Summary Judgment, Legal Memorandum in Support of Motion for Summary judgment, Statement of Material Facts That are not in Dispute, filed Rebuttals that were filed on June 12 & 14, 2012, respectively, and the Defendant's filed Affidavit.
4. This opposition is also supported by the attached Memorandum of Points and Authorities and any Arguments the Court may allow during today's hearing.

Respectfully Submitted to the Plaintiff & the Honorable: Judge Diane Shafer Goodstein;

Signature: Dorothy Harley-Sistrunk

Dorothy Harley Sistrunk

Date: 6/19/2012

CLERK OF COURT
ORANGEBURG COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

South Carolina Federal Credit Union

Plaintiff,

vs.

Dorothy Harley Sistrunk, A/K/A; Dorothy
Harley-Sistrunk, A/K/A; Dorothy A.
Harley,

Defendant,

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

**DEFENDANT DOROTHY HARLEY
SISTRUNK'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO SUMMARY
JUDGMENT FOR THE PLAINTIFF**

**HEARING DATE: JUNE 19, 2012
JUDGE: THE HONORABLE DIANE
SHAFFER GOODSTEIN
TIME: 2:25 O'CLOCK PM**

Today's Date: June 19, 2012

Comes now the Defendant Dorothy Harley Sistrunk to present in Court her MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO SUMMARY JUDGMENT FOR THE PLAINTIFF. The Defendant's Legal Memorandum in Support of the Defendant's Motion for Summary Judgment and Statement of Material Facts That are not in Dispute that were filed on April 25, 2012 are incorporated in this Memorandum by reference as though fully set forth herein.

**STATEMENT OF MATERIAL FACTS
RELATIVE TO THE PLAINTIFF'S COMPLAINT**

- 1.. The Plaintiff's Complaint is for an Open-End Disbursement Receipt Plus Loan Liner Credit and Security Agreement loan that was executed and delivered on or about 02/24/2003. *{Supporting Evidence – Plaintiff's Complaint, Page. 2, Paragraph #7, Filed 11/23/2011}*
2. The Plaintiff's Debt Collection for \$5,274.84 is for the same 02/24/2003 loan. *{Supporting Evidence – Plaintiff's Complaint, Page 3, Paragraph #12, Plaintiff's Exhibit "A", Paragraphs #1 & #3 & Plaintiff's Exhibit "C, Filed 11/23/2011}*
3. Therefore, the Plaintiff's Complaint and Debt Collection are for an Open-End Disbursement Receipt Plus Loan Liner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about 02/24/2003 that called for the payment of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars that is now in default with a payoff of \$5,274.84. *{Supporting Evidence – Plaintiff's Complaint, Page 2, Paragraph #7, Filed 11/23/2011}* The Defendant's loan advance for the mobile home purchase is not in the Plaintiff's account records.

ATTEST: TRUE COPY

4. According to the Plaintiff's Debt Collection Notification; i.e., EXHIBIT "A", FAIR DEBT COLLECTION PRACTICES ACT, (the Act), 15 USC SECTION 1601 as Amended, that was attached to the Plaintiff's Complaint is for the amount stated in the Complaint (\$5,274.84). *{Supporting Evidence – Plaintiff's Exhibit "A", Paragraphs #1 & #3, Plaintiff's Complaint Page 3, Paragraph #12 & Plaintiff's Exhibit "C"}*

5. The Plaintiff's Law Firm of Moore & Van Allen, PLLC, was duly notified in the Defendant's Answer to Complaint on December 21, 2011 that **the Defendant never had a loan of any kind with the Plaintiff that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars.** *{Supporting Evidence – the Defendant's Answer to Complaint, Page 4, Paragraphs 1-3, Page 5, Paragraphs 7-8, Page 6, Paragraphs 11 & 11(a)-11(b), Page 7, Paragraphs 12 & 12(a)-12(b), Pages 8-10, Paragraphs 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Page 11, Paragraph 20}*

6. Amy Rogers stated in her Corporate Verification of Account that she is an agent of the Plaintiff, familiar with the transaction and the facts stated in the pleadings and she has read the pleadings and the facts stated therein are true. *{Supporting Evidence – Plaintiff's Corporate Verification of Account, Page 1, Paragraph 1, Notarized on 10/26/2011 and Filed on 11/23/2011}*

7. Amy Rogers verified in her filed Affidavit on 11/23/2011, that the Plaintiff's Complaint and Debt Collection are based on an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about February 24, 2003 for \$5,556.44, that is now in default with an amount due and payable of \$5,274.84. *{Supporting Evidence – Plaintiff's Complaint Page 2, Paragraph #7, Page 3, Paragraph #12, Amy Rogers' Corporate Verification of Account, Page 1, Paragraph 1, Plaintiff's Exhibit "A", Page 1, Paragraphs #1 & #3 and Plaintiff's Exhibit "C"}*

8. Amy Rogers' loan statement that is attached to the Corporate Verification of Account, *{Plaintiff's Exhibit "C"}* verifies the Plaintiff's filed Complaint and Debt Collection are based on a loan that was executed and delivered on or about February 24, 2003 that called

for the payment of the sum of: \$5,556.44 that is now in default. {Supporting Evidence – Plaintiff's Complaint Pages 2-3, Paragraphs #7-#12, Amy Rogers' Corporate Verification of Account, Page 1, Paragraph 1, Page 2, Column 1, Payoff W/Escrow \$5,274.84 & Plaintiff's Exhibit "A", Page 1, Paragraphs #1 & #3}

9. The Plaintiff's supporting document for a \$5,500.00 "Fixed Rate Loan" is signed and dated 9/5/02. This signature date does not apply to any loan because the Defendant never received the required Addendum from the Plaintiff on 09/05/2002 to validate the Membership Agreement. {Supporting Evidence – Plaintiff's Filed Document that is identified as "PAGE 2" of Exhibit "B" & the Defendant's Exhibits J, K & M}

10. The Defendant's car loan with the Plaintiff was for \$5,845.00, not \$5,500.00 and not for \$5,556.44. {Supporting Evidence – Defendant's Exhibits 12 & 13} The Defendant's car loan was approved via a car broker before the Defendant became a member of SCFCU.

11. The Defendant's car loan is paid out. {Supporting Evidence – Defendant's Exhibits 14 & 15}

STATEMENT OF MATERIAL FACTS RELATIVE TO THE DEFENDANT'S LOAN

12. The Defendant did not enter into any agreement on 09/5/2002, or on 02/24/2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. {Supporting Evidence – Defendants Exhibits D, 5, 9 & 10} Accrued interest cannot be considered part of the loan because it was not disbursed with the proceeds for the mobile home purchase. {Authority – the Uniform Commercial Code}

13. The Plaintiff's filed Complaint and Debt Collection are for a loan the Defendant never had, never signed or agreed to repay. The Plaintiff's \$5,556.44 loan was never paid to any real person and/or entity because it is a fictitious loan. The actual loan for the mobile home purchase is not in the Plaintiff's records. {Supporting Evidence – Defendant's Exhibits D, 5, 9 & 10 and Plaintiff's Complaint Pages 2-3, Paragraphs #7-#12, Filed 11/23/2011, Amy Rogers' verified that the Debt Collection is for a 02/24/2003 Loan for \$5,556.44 & Page 2, Column 1, Payoff W/Escrow \$5,274.84, Plaintiff's Complaint, Page 3, Paragraph #12, Sentence 2, & Plaintiff's Exhibit "A", Page 1, Paragraphs #1 & #3 are for the same \$5,556.44 Loan}

**STATEMENT OF MATERIAL FACTS
RELATIVE TO THE PLAINTIFF'S DEPOSITION/S**

14. Any Summary Judgment for the Plaintiff must be determined from the Plaintiff's pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. *{Authority – Rule 56(c), SCRC}* The Defendant thoroughly discussed the Plaintiff's restrictions and requirements for a Summary Judgment in the Defendant's Rebuttals that was filed on June 12, 2012. The Defendant incorporates the pleading by reference as though fully set forth herein Verbatim.

15. Since the Plaintiff's original Complaint was filed in Magistrate Court on 05/18/2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample opportunity for discovery by Deposition/s. *{Authority – Rule 30(a)(1) & 31(a), SCRC}*

16. From 11/23/2011 to today's date, the Plaintiff has not and did not file any Deposition/s from any person/s disputing Amy Rogers' account verification that the Defendant's loan is a "Fixed Interest Rate Loan" for \$5,556.44; at a 15% Annual Rate. Under TILA's guidelines, a true 15% "Fixed Annual Interest Rate Loan" over the same 7-year period would have been paid out. *{Authority – 15 USC §1601 et. seq. & Supporting Evidence – Defendant's Exhibits D, 19, 20 & 21}*

17. From 11/23/2011 to today's date, the Plaintiff has not and did not file any Deposition/s from any person/s disputing the Defendant's loan was for \$5,556.44. The Defendant's approved credit limit is only \$5,500.00 *{Supporting Evidence – Plaintiff's filed Document – Statement of Account - Credit Limit}*

18. From 11/23/2011 to today's date, the Plaintiff has not and did not file any Deposition/s from any person/s verifying the Defendant entered into any agreement with the Plaintiff on September 5, 2002, or on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Supporting Evidence – Plaintiff's Filed Document - Statement of Account Credit Limit}*

19. From 11/23/2011 to today's date, the Plaintiff has not presented any supporting Deposition/s disputing a 02/24/2003 loan for \$5,556.44. *{Supporting Evidence – Plaintiff's Filed Statement of Account - Credit Limit}*

**STATEMENT OF MATERIAL FACTS
RELATIVE TO THE PLAINTIFF'S ADMISSION/S**

20. Any Summary Judgement for the Plaintiff must be determined from the Plaintiff's pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. *{Authority – Rule 56(c), SCRC}* The Defendant thoroughly discussed the Plaintiff's restrictions and requirements for a Summary Judgment in the Defendant's Rebuttals that was filed on June 12, 2012. The Defendant incorporates the pleading by reference as though fully set forth herein Verbatim.

21. Since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample opportunity for discovery by Admission/s. *{Authority – Rule 36(a), SCRC}*

22. From 11/23/2011 to today's date, the Plaintiff has not and did not file any Admission/s from any person/s disputing Amy Rogers' account verification that the Defendant's loan is a "Fixed Interest Rate Loan" for \$5,556.44; at a 15% Annual Rate. A true 15% "Fixed Interest Annual Rate Loan" over the same 7-year period that the Defendant paid the Plaintiff would have been paid out. *{Supporting Evidence – Defendant's Exhibits D, 19, 20 & 21}*

23. From 11/23/2011 to today's date, the Plaintiff has not and did not file any Admission/s from any person/s disputing the Defendant's loan was \$5,556.44. *{Supporting Evidence – Plaintiff's filed Documents }*

24. From 11/23/2011 to today's date, the Plaintiff has not and did not file any Admission/s from any person/s verifying the Defendant entered into an agreement with the Plaintiff on September 5, 2002, or on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Supporting Evidence – Plaintiff's Filed Documents}*

25. From 11/23/2011 to today's date, the Plaintiff has not presented any supporting answers to Admission/s to support a loan dated 02/24/2003 for \$5,556.44. The Defendant's loan advance; to purchase the mobile home that was received and deposited on May 5, 2003, is not in the Plaintiff's accounting records. *{Supporting Evidence – the Plaintiff's Filed Documents & the Defendant's Exhibits D-H & 9}*

**STATEMENT OF MATERIAL FACTS
RELATIVE TO THE PLAINTIFF'S INTERROGATORIE/S**

26. Any Summary Judgement for the Plaintiff must be determined from the Plaintiff's pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. *{Authority – Rule 56(c), SCRCF}* The Defendant thoroughly discussed the Plaintiff's restrictions and requirements for a Summary Judgment in the Defendant's Rebuttals that was filed on June 12, 2012. The Defendant incorporates the pleading by reference as though fully set forth herein Verbatim.

27. Since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample opportunity for discovery by Interrogatory/ies. *{Authority – Rule 33(a) & 33(b), SCRCF}*

28. From 11/23/2011 to today's date, the Plaintiff has not and did not file any answered Interrogatory/ies from any other SCFCU personnel disputing Amy Rogers account verification that the Defendant's loan is a "Fixed Interest Rate Loan" for \$5,556.44; at a 15% Annual Rate. *{Supporting Evidence – Plaintiff's Filed Documents}*

29. From 11/23/2011 to today's date, the Plaintiff has not and did not file any answered Interrogatory/ies from any person/s disputing the Defendant's loan was \$5,556.44. *{Supporting Evidence – the Plaintiff's Filed Documents}*

30. From 11/23/2011 to today's date, the Plaintiff has not and did not file any answered Interrogatory/ies from any person/s verifying the Defendant entered into an agreement with the Plaintiff on September 5, 2002, or on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{Supporting Evidence – the Plaintiff's Filed Documents}*

31. From 11/23/2011 to today's date, the Plaintiff has not presented any supporting answered Interrogatory/ies for a 02/24/2003 loan for \$5,556.44. The Defendant's loan advance; to purchase the mobile home that was received and deposited on May 5, 2003, is not in the Plaintiff's accounting records. *{Supporting Evidence – the Plaintiff's Filed Documents & the Defendant's Exhibits D-H & 9}*

**STATEMENT OF MATERIAL FACTS
RELATIVE TO THE PLAINTIFF'S REQUEST FOR DISCOVERY**

32. Since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample time and opportunity to initiate and conduct discovery *{Authority – Rule 26, SCRPC}*

33. Since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample opportunity to request a production of documents from the Defendant. *{Authority – Rule 34(a) & 34(b), SCRPC}*

34. Since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011, the Plaintiff has had ample opportunity to Subpoena the Defendant to give testimony or produce documents for inspection. *{Authority – Rule 45(a)(1) & 45(a)(2), SCRPC}*

35. The Defendant's Motion for a Summary Judgment should be granted because the Defendant has made a prima facie showing that there are no genuine issues of material facts remaining that additional discovery by the Plaintiff can or will reveal. As stated, the Plaintiff has not initiated any discovery since the Plaintiff's original Complaint was filed in Magistrate Court, dated May 11, 2011, filed May 18, 2011 and served on the Defendant on June 9, 2011. *{See 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")}*

36. The Defendant's loan advance is not in the Plaintiff's accounting records. *{Supporting Evidence – Defendant's Exhibit 9}* Therefore, the Defendant has no burden to negate or disprove matters on which the Plaintiff will have the burden of proof at trial. The Defendant need only point out to the Court that there is no evidence to support the Plaintiff's Complaint that the Defendant entered into an agreement with the Plaintiff on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars. *{See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 324, 325 (1986)}*

**STATEMENT OF MATERIAL FACTS
RELATIVE TO THE PLAINTIFF' FILED DOCUMENTS**

37. The burden now shifts to the Plaintiff to “designate ‘specific facts showing that there is a genuine issue for trial.’” {*Authority - Fed. R. Civ. P. 56(e)*} “To carry this burden, the Plaintiff must “do more than simply show that there is some metaphysical doubt as to the material facts.” {*See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)}. The Plaintiff must present documented evidence the Defendant signed a loan agreement with the Plaintiff for \$5,556.44 on February 24, 2003.

38. “The mere existence of a scintilla of evidence . . . will be insufficient; there must be evidence on which the jury could reasonably find for the [non-moving party].” {*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)}

39. The Plaintiff has not and did not present any material terms or conditions of any agreement that specifically identifies an agreement or contract between the Defendant and the Plaintiff that is in writing for \$5,556.44. Nor has the Plaintiff presented any documentation of a loan agreement or contract for \$5,556.44 dated 02/24/2003 . {*Authorities – Section 37-10-107(1) – SC Code of Laws, the Statue of Frauds, the Uniform Commercial Code & Supporting Evidence – the Plaintiff’s Filed Documents*}

40. Because the Plaintiff has not and did not provide anything in writing to the Court/Judge or to the Defendant that evidences the material terms and conditions of an alleged promise/s or representation/s made by the Plaintiff to the Defendant for a 02/24/2003 loan for \$5,556.44 that Amy Rogers verified, the Plaintiff’s Complaint cannot be supported. {*Authorities - §37-10-107(1) – SC Codes of Laws & See Carolina First Bank v. Lucas*, Case No. 03-CP-10-1907, 2004 WL 5208410 (S.C. Com. Pl. Jun. 14, 2004); see also *Robertson v. First Union Nat’l Bank*, Case No. 99-CP-10-288, 2000 WL 35722762 (S.C. Com. Pl. Aug. 8, 2000)}

41. Specifically, the Plaintiff’s Complaint did not and has not presented any signed writing by the Plaintiff or from the Plaintiff that contains the material terms and conditions of a promise, undertaking, accepted offer, commitment, or agreement to pay the Plaintiff a monthly payment on a \$5,556.44 loan that was never entered into on February 24, 2003. {*Authorities - S.C. Code Ann. § 37-10-107(1) & The Statue of Fraud*}

**STATEMENT OF MATERIAL FACTS
RELATIVE TO THE STATUE OF FRAUDS**

42. The 02/24/2003, \$5,556.44 loan agreement that is verified by Amy Rogers and is the basis of the Plaintiff's filed Complaint and Collection represents an installment loan account that falls within a class of contracts and/or agreements that are required to be in writing. There is no contract or agreement between the Plaintiff and the Defendant to repay a loan for \$5,556.44 that was never enter into on February 24, 2003. *{Authority – the Statute of Frauds}*

**STATEMENT OF MATERIAL FACTS – [A]
RELATIVE TO AMY ROGERS' TWO (2) AFFIDAVITS**

43. Amy Rogers' Affidavit of May 10, 2012 that was filed to support the Plaintiff's Motion for Summary Judgment is another misstatement and misrepresentation of existing material facts that cannot support the Plaintiff's Complaint or the Plaintiff's Motion for a Summary Judgment. The Defendant never signed for a \$5,500.00 loan with the Plaintiff on 9/5/02 and the loan that was signed for was a \$5,845.00 loan and not a loan for \$5,556.44 or \$5,500.00 *{Supporting Evidence – Defendant's Exhibits 12 & 13}*

44. The Plaintiff's filed documents on 11/23/2011 and filed Exhibits on May 10, 2012 also impeach and disqualify both of Amy Rogers' Affidavits and are additional evidence that Amy Rogers' Affidavits cannot support the Plaintiff's Complaint or the Plaintiff's Motion for a Summary Judgment. The Defendant's car loan is paid out. *{Supporting Evidence – Defendant's Exhibits "D"- "N" and the Defendant's Exhibits 14 & 15}*

45. The Defendant did not enter into any agreement on September 5, 2002, or on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred-Fifty-Six and 44/100 (\$5,556.44) Dollars or Five Thousand Five Hundred and 00/100 (\$5,500.00) Dollars. *{Supporting Evidence – the Plaintiff's Filed Documents & the Defendant's Exhibits "A", "B", "D", 5 & 9-15}*

46. **The Defendant's LoanLiner Membership and Account Agreement has not been validated as being legitimate because the Defendant never received an Addendum that is an integrated and integral part of the Agreement.** *{Authority – CUNA Mutual Group & Supporting Evidence – Defendant's Exhibits "D" & "J"– "M"}*

**STATEMENTS OF MATERIAL FACTS – [B]
RELATIVE TO AMY ROGERS' TWO (2) AFFIDAVITS**

47. The Plaintiff did not file any documentation verifying an Addendum was given to the Defendant on September 5, 2002. *{Supporting Evidence – the Plaintiff's Filed Documents}*

48. The Plaintiff's filed Complaint, Debt Collection and Motion for Summary Judgment cannot be supported by any Affidavit that has been presented by Amy Rogers. Amy Rogers' Affidavits verify loans the Defendant never had, never signed for, never received and never agreed to repay. Amy Rogers' Affidavits of 11/23/2011 and 05/10/2012 are for loans that never happened and do not exist in reality. *{Supporting Evidence – the Defendant's Exhibits "A", "B", "D", 5-15, the Plaintiff's Complaint, Pages 2-3, Paragraphs 7-12, 11/23/2011, Amy Rogers' 11/23/2011 Corporate Verification of Account, Pages 1 & 2 identified the Plaintiff's Debt Collection is for a 02/24/2003 loan for \$5,556.44, the Plaintiff's Exhibit "C", Column 1, Payoff W/Escrow \$5,274.84 is the same loan, the Plaintiff's Complaint, Page 3, Paragraph 12, Sentence 2, the Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3 identifies a default payoff of \$5,274.84 for the same 02/24/2003 loan for \$5,556.44 & the Plaintiff's Exhibits 1-4 that were filed on 05/10/2012 identifies the same \$5,556.44 loan on 02/24/2003 that the Defendant never had, never signed for and never received}*

**STATEMENT OF MATERIAL FACTS – [C]
RELATIVE TO AMY ROGERS' TWO (2) AFFIDAVITS**

49. Amy Rogers Affidavits cannot support the Plaintiff's Complaint, Debt Collection or Motion for Summary Judgment due to the **Doctrine of Preclusion of Inconsistent Positions**. *{Supporting Evidence – Amy Rogers' 2 Different Affidavits for the Same Non-Existent Account}*

(A) Under the **Doctrine of Preclusion of Inconsistent Positions**, the Plaintiff and Amy Rogers are barred from contradicting previous declarations made during the same or an earlier proceeding if the change in position would adversely affect the proceeding or constitute a fraud on the court. *{Authority - 28 Am. Jur. 2d Estoppel and Waiver §74 ("The fundamental concept of judicial estoppel is that a party in a judicial proceeding is barred from denying or contradicting sworn statements made therein.")}*

(B) The **Doctrine of Preclusion of Inconsistent Positions** was thoroughly discussed in the Defendant's Response to the Plaintiff's Motion for Summary Judgment that was

filed on May 18, 2012 and the pleading is incorporate by reference as though set forth herein Verbatim. *{Supporting Evidence – the Defendant’s Response to the Plaintiff’s Motion for Summary Judgment – Pages 4-13}*

(C) Amy Rogers advocated and verified a certain set of facts in her sworn Affidavit that was filed on 11/23/2011 and then advocated a revised set of facts in her second Affidavit. *{Supporting Evidence – Amy Rogers’ Verification of Corporate Account Filed on 11/23/2011 & Amy Rogers’ Affidavit in Support of the Plaintiff’s Motion for Summary Judgment}*

(D) Amy Rogers implied in her second Affidavit that was filed on May 10, 2012, that the loan the Defendant admitted to receiving in the Defendant’s Answer is the same 02/24/2003 loan. Amy Rogers’ statement is a misstatement, mischaracterization, and misrepresentation of the facts. *{Supporting Evidence – the Defendant’s Answer, Page 1, Paragraph 1}*

(E) The Defendant never admitted any such thing. The Defendant did not admit to receiving any loan 02/28/2003, the Defendant clearly stated, “On or about”. *{Supporting Evidence – the Defendant’s Answer, Page 1, Paragraph 1}*

(F) The reason for the confusion is because the 28th of February was the end of the month and the loan advance the Defendant received for the mobile home purchase did not actually arrive by mail until March 5, 2003. The Defendant’s application is dated 02/28/2003 and [House] is clearly written in on it and the terms are highlighted so the Defendant would know the Defendant’s loan advance was essentially the same as the Defendant’s car loan. *{Supporting Evidence – The Defendant’s Exhibit “D” & Exhibit 9}*

(G) The **Doctrine of Preclusion of Inconsistent Positions** effectively bars Amy Rogers and the Plaintiff from changing or contradicting sworn statements during the course of this judicial proceeding. The policies underlying **Preclusion of Inconsistent Positions** are “[g]eneral considerations of the orderly administration of justice and regard for the dignity of judicial proceedings. It is intended to protect against a litigant playing ‘fast and loose’ with the courts.” *{Authority – Jackson v. County of Los Angeles, 60 Cal. App. 4th 171, 181 (Cal. App. 2d Dist. 1997) & 28 Am. Jur. 2d Estoppel and Waiver §74 (“The fundamental concept of judicial estoppel is that a party in a judicial proceeding is barred from denying or contradicting sworn statements made therein.”)}*

**ASTATEMENT OF MATERIAL FACTS – [D]
RELATIVE TO AMY ROGERS’ TWO (2) AFFIDAVITS
(False swearing before persons authorized to administer oaths.)**

50. This is a matter for the Court to decide. S.C. Code Ann. § 26-1-90 states a Notary Public may administer oaths, take depositions, affidavits, protests for nonpayment of bonds, notes, drafts and bills of exchange, acknowledgments and proof of deeds and other instruments required by law to be acknowledged and renunciations of dower and perform all other acts provided by law to be performed by Notaries Public.

(A) Under S.C. Code Ann. § 26-1-95, if a Notary Public who, in his/her official capacity, falsely certifies to affirming, swearing, or acknowledging of a person or his signature to an instrument, affidavit, or writing, the Notary is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

(B) Since a Notary is authorized to administer oaths and an Affidavit is a sworn statement before an Administer of Oaths, Amy Rogers’ sworn statements falsely verify two (2) loans the Defendant never signed for or received. Therefore, Amy Rogers’ Affidavits cannot be used to support the Plaintiff’s Complaint, Debt Collection or Motion for Summary Judgment.

(C) Even if Amy Rogers’ Affidavits are not required by law, Amy Rogers would still be guilty of “Swearing Falsely” before an Administer of Oaths. *{Supporting Evidence - Amy Rogers’ 11/23/2011 Corporate Verification of Account verifies the Plaintiff’s Complaint is for a 02/24/2003 loan for \$5,556.44, Amy Rogers’ 11/23/2011 Corporate Verification of Account, Page 2, Column 1, identifies a Payoff W/Escrow of \$5,274.84 for the 02/24/2003 loan for \$5,556.44. Amy Rogers’ 05/10/2012 Affidavit in Support of the Plaintiff’s Motion for Summary Judgment, Page 2, Paragraph 5, quotes the Defendant’s answer and then blatantly tries to connect Exhibits 1, “A”, “B” & “C”, to the Defendant’s auto loan on 09/05/2002. The Defendant never signed for any loan advance on 09/05/2002 for \$5,500.00 for 02/28/2003 and the Defendant never had, never signed for and never received any \$5,556.44 loan on 02/24/2003.}*

(D) Section 16-9-30 – SC Code of Laws clearly states in pertinent parts;

“It is unlawful for a person to wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath. A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.” It is up to the Court to decide.

**ASTATEMENT OF MATERIAL FACTS – [E]
RELATIVE TO AMY ROGERS’ TWO (2) AFFIDAVITS**

51. Even if the Defendant had the loan identified in the Plaintiff’s Complaint and/or in Amy Rogers’ “Falsely Sworn” Affidavits, neither the Plaintiff’s loan of \$5,556.44 on 02/24/2003 or Amy Rogers’ \$5,500.00 signature loan on 09/05/2002 represents the Defendant’s 15% **Fixed Interest Rate** loans by definition. *{Authorities – 15 USC 1601 et. seq., the Office of the Comptroller of the Currency & the Defendant’s Exhibits “D”, “J”-“K” & Exhibit 9}*

52. The Plaintiff’s Account Statements and Amy Rogers Affidavits are for loans the Defendant never authorized, signed for or received. *{Supporting Evidence - the Plaintiff’s Complaint, Pages 2-3, Paragraphs 7-12, 11/23/2011, Amy Rogers’ 11/23/2011 Corporate Verification of Account, Page 2, the Plaintiff’s Exhibit “C”, Column 1, Payoff W/Escrow \$5,274.84, the Plaintiff’s Complaint, Page 3, Paragraph 12, Sentence 2, the Plaintiff’s Exhibit “A”, Page 1, Paragraphs 1 & 3, the Plaintiff’s Exhibits 1-4 & Amy Rogers’ Affidavit in Support of the Plaintiff’s Motion for Summary Judgment, Page 2, Paragraphs 5-7, quotes the Defendant’s Answer and Exhibits and then tries to connect supporting Exhibits for a 02/28/2003 \$5,500.00 advance to the Defendant’s car loan on 09/05/2002. This never happened.}*

**STATEMENT OF MATERIAL FACTS
RELATIVE TO SECTION 37-10-107 – SC CODE OF LAWS**

53. The Plaintiff’s Complaint and Debt Collection against the Defendant are barred statutorily. Amy Rogers’ Affidavits verify two (2) different loans the Defendant never signed for and never received. The Plaintiff’s Motion for Summary Judgment is based on these same non-existent loans. Section 37-10-107 bars the enforcement of oral lending agreements and bars fraud and other tort claims based on alleged oral misrepresentations and other non-written conduct concerning loan and credit agreements. *{Authority - S.C. Code of Laws § 37-10-107(1)(b) & the Statute of Frauds; Supporting Evidence – the Defendant’s Exhibit “D”, Exhibits “J”-“M” & Exhibit 9}*

54. Since the Defendant never entered into any loan agreement with the Plaintiff or signed any Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement (“Fixed Interest Rate Agreement”) that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and

44/100 (\$5,556.44) Dollars that is now in default with an amount due and payable of \$5,274.84, or any Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about September 05, 2002 that called for the payment of the sum of Five Thousand Five Hundred and 00/100 (\$5,500.00) Dollars that is now in default with an amount due and payable of \$5,274.84, the Plaintiff's Complaint against the Defendant cannot be maintained statutorily and the Plaintiff's Motion for Summary Judgment fails as a matter of law. *{Authority - S.C. Code § 37-10-107(1)(b) & the Statute of Frauds; Supporting Evidence – the Defendant's Exhibits 5-15}*

55. The Plaintiff has not and did not present any material terms or conditions of any signed agreement or contract between the Defendant and the Plaintiff for a February 24, 2003 \$5,556.44 loan or a \$5,500.00 loan on September 09, 2002. The loan the Defendant did sign for on 09/05/2002 was a car loan for \$5,845.00 that has been paid out. *{Supporting Evidence - the Defendant's Exhibits "A" & "B" & Exhibits 12-15}*

56. The Plaintiff's Complaint, Debt Collection and Motion for Summary Judgment cannot defeat the plain wording of **Section 37-10-107(1) – SC Code of Laws** that states in pertinent parts; "(1) no person can maintain an action or defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment, or agreement." *{Additional Supporting Authority – the Statute of Frauds, the Uniform Commercial Code & Chapters 3 & 9, Title 36 – SC Code of Laws}*

57. Because the Plaintiff has not and did not provide anything in writing to the Court or to the Defendant that evidences the material terms and conditions of a loan for \$5,556.44 that was signed, executed and delivered on February 24, 2003 or a loan for \$5,500.00 that was signed and executed on 09/05/2002 for deliverance on 02/28/2003, the Plaintiff's Complaint, Debt Collection and Motion for Summary Judgment fail as a matter of law. *{Supporting Authorities - the Statute of Frauds, Carolina First Bank v. Lucas, Case No. 03-CP-10-1907, 2004 WL 5208410 (S.C. Com. Pl. Jun. 14, 2004); see also Robertson v. First Union Nat'l Bank, Case No. 99-CP-10-288, 2000 WL 35722762 (S.C. Com. Pl. Aug. 8, 2000)}* *{Supporting Evidence – the Plaintiff's Filed Complaint 11/23/2011, Exhibits 1-4, 05/10/2012, Amy Rogers' Affidavits 11/23/2011 & 05/10/2012 & the Defendant's Exhibits "A", "B", 9 & 12-15}*

58. Specifically, the Plaintiff's Complaint did not and has not presented any signed writing between the Plaintiff and the Defendant that contains the material terms and conditions of a promise, undertaking, accepted offer, commitment, or agreement to pay the Plaintiff on a loan that was signed, executed and delivered on 02/24/2003 for \$5,556.44; or on a loan for \$5,500.00 that was signed and executed on 09/05/2002 for deliverance on 02/28/2003; and the Defendant did not sign for any Open-Ended Loan on 02/28/2003. Therefore, the Plaintiff's Complaint and Motion fail as a matter of law. *{Authorities - the Statue of Frauds, Section 37-10-107(1), the Uniform Commercial Code & Chapters 3 & 9 – SC Code of Laws}*

59. Accordingly, as a matter of law, the Plaintiff cannot "maintain an action for legal relief" . . . based upon agreements that were never signed; consequently, the Plaintiff's Motion for Summary Judgment must be denied; and under these circumstances, the Defendant's Motion for Summary Judgment and Dismissal with Prejudice and Just and Fair compensation must be granted forthwith. the Defendant's Motion for Summary Judgment granted forthwith.

{Authorities - S.C. Code Ann. § 37-10-107(1) & (1)(b), the Statue of Frauds, the Uniform Commercial Code, Chapters 3 & 9, Title 36 – SC Code of Laws, Rule 12(b)(6) & Rule 56(b), SCRPC; Celotex Corp. v. Catrett (1986), 477 U.S. 317, 327, 106 S.Ct. 2548, 91 L.Ed.2d 265, David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006), Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006), Clearwater Trust v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006). McDonnell v. The Consolidated School Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 639, 639 n.2 (1994); Gilbert v. Miller, 356 S.C. 25, 586 S.E.2d 861 (Ct. App. 2003) & Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (1997)}

**STATEMENT OF MATERIAL FACTS RELATIVE TO THE LOAN
ADVANCE THE DEFENDANT ACTUALLY RECEIVED ON MARCH 5, 2003**

60. At \$110.00 a month, at a 15% **Fixed Interest Rate**, the \$5,556.44 loan would have been paid out before 02/2010 and the \$5,500.00 signature loan would have been paid out in 2009. *{Supporting Evidence – Defendant's Exhibit "D", "J"-"K" & Exhibits 19-21}*

61. The Defendant has paid the Plaintiff over \$10,340.00. *{Supporting Evidence – the Plaintiff's Statement of Account [add all the columns together] or Simply Multiply Exhibit 7 x 94 Payments to Calculate the Money the Defendant paid the Plaintiff; Plus Cash payments at the local branch that was in Orangeburg, SC}*

62. Based on the Plaintiff's Account Statements, the Defendant paid the Plaintiff over \$10,340.00 over a 7-year period for a loan/s that do not exist. *{Supporting Evidence - the Plaintiff's Exhibit 3}*

63. The Plaintiff failed to show a payment history or any signed documents for the Defendant's **15% Fixed Interest Rate Advance** loan advance for a mobile home purchase that was received by mail on March 5, 2003 and should have been paid out before March of 2010. *{Supporting Evidence – the Defendant's Exhibits 9-11 & 21}*

64. The Plaintiff deceived the Defendant and applied the Defendant's \$110.00 a month payment for the Defendant's **15% Fixed Interest Rate Advance** to a 02/24/2003 Open-Ended Credit Plan that the Defendant never signed for or agreed to. *{Supporting Evidence – the Plaintiff's Statement of Account & Defendant's Exhibits "D" & "J"-"M" & Exhibit 9}*

STATEMENT OF MATERIAL FACTS RELATIVE TO THE ADDENDUM

65. The Plaintiff did file any Addendum with the Plaintiff's Complaint and the Defendant did not receive and Addendum before receiving a check for the Defendant's car loan and no Addendum was given to or mailed to the Defendant after 09/06/2002. *{Supporting Evidence – the plaintiff's Filed Complaint, Documents and Exhibits}*

STATEMENT OF MATERIAL FACTS VERIFYING THE PLAINTIFF HAS FAILED TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

66. Because the 02/24/2003 loan for \$5,556.44 that was verified by Amy Rogers, and is the basis of the Plaintiff's filed Complaint and Collection never existed between the Defendant and the Plaintiff, the Plaintiff has failed to state facts sufficient to constitute a cause of action. A Summary Judgment for the Plaintiff must be denied and a Summary Judgment for the Defendant granted. *{Rule 12(b)(6), SCRPC}*

STANDARD OF REVIEW

67. "Rule 56 SCRPC (explaining summary judgment is properly granted when "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"); *Hoard v. Roper Hosp., Inc.*, 387 S.C. 539,

545-46, 694 S.E.2d 1, 4 (2010)”

68. “A fact is ‘material’ if a dispute over it might affect the outcome of a suit under the governing law; factual disputes that are ‘irrelevant or unnecessary’ do not affect the summary judgment determination. {See *Holcomb v. Powell*, 433 F.3d at 895 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248)}. An issue is “genuine” if the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party. {See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248; *Holcomb v. Powell*, 433 F.3d at 895}”

69. “[W]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving [parties], there is ‘no genuine issue for trial.’” {See *Scott v. Harris*, 550 U.S. 372, 380 (2007) (quoting *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986))}

70. “The moving party bears the initial burden of proving that there are no genuine issues of material fact, thus entitling it to judgment as a matter of law. *Owens Corning v. Nat’l Union Fire Ins. Co.*, 257 F.3d 484, 491 (6th Cir. 2001). The burden then shifts to the nonmoving party to produce specific facts showing a genuine issue for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356 (1986) (citing *FED. R. CIV. P. 56(e)*). The nonmoving party must cite specific evidence and may not merely rely upon allegations contained in the pleadings. *Harris v. Gen. Motors Corp.*, 201 F.3d 800, 802 (6th Cir. 2000). ”

71. “The facts and all resulting inferences are viewed in a light most favorable to the nonmoving party, and the court will decide whether “the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. *Anderson*, 106 S. Ct. at 2512.” “[O]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson*, 106 S. Ct. at 2510.”

72. Based on the facts in this case and the filed Complaint, the Plaintiff, South Carolina Federal Credit Union, has not presented any affidavits, declarations or other competent evidence, setting forth specific facts that can or will support the Plaintiff’s Complaint, Debt Collection or a Summary Judgment. Therefore, the Plaintiff’s Motion for Summary Judgment

must be denied and the Defendant's Motion for Summary Judgment granted forthwith.

{Statutory Authorities - the Statue of Frauds & Section 37-10-107(1) – SC Code of Laws & Procedural Authorities – Rules 12(b)(6) & 56(c), SCRPC}

CLOSING ARGUMENTS

73. The Plaintiff's Cross-Motion for a Summary Judgment must be denied and the Defendant's Motion for Summary Judgment granted for the following reasons.

(A) The Plaintiff cannot produce any signed agreement for the February 24, 2003 loan because the loan only exists in the Plaintiff's computer files.

(B) The Defendant's loan was Closed-Ended; not Open-Ended, and for a home purchase, the Plaintiff's loan counselor wrote it on the loan application (*House*), and did not highlight the daily periodic rate that is indicative of a revolving charge or Open-Ended account.

{Supporting Evidence – Defendant's Exhibits Exhibit 9}

(C) The Defendant's loan did not have any Credit Life or Credit Disability Insurance. The application for these insurances was not signed or returned to the Plaintiff.

{Supporting Evidence – Defendant's Filed Exhibit C}

(D) The Defendant's loan required a signature. *{Supporting Evidence – Defendant's Exhibit D}*

(E) The Plaintiff's one signature argument does not apply to the Defendant because the Defendant did not receive an Addendum as required for a "Valid Contract" and Membership Agreement with the Plaintiff and the LoanLiner Plan.

(F) There is no Addendum on file in the Plaintiff's documents or exhibits and the Plaintiff has not presented any documentation or verification of any kind that an Addendum was explained to or given to the Defendant prior to receiving a car loan on 09/05/2002. *{Supporting Authorities – SCFCU Membership & Account Agreement – Page 21, Paragraph 6, Under Finance Charge & LoanLiner –stating that "the Credit Agreement and the Addendum is the Contractual Arrangement, the Credit Union should give the Credit Agreement and the Addendum to the member at the same time and **BEFORE THE FIRST TRANSACTION UNDER THE PLAN.**"}* *{Supporting Evidence on File – None}*

(G) The Plaintiff has not presented any evidence of disclosure compliance under the requirements of the Truth in Lending Act's (TILA's) Regulation Z. *{Supporting Evidence*

– the Plaintiff's Filed Documents & Exhibits}

(H) The Defendant's loan payments were improperly applied to a LoanLiner Plus Account the Defendant never agreed to. The Defendant's loan advance; that was received on March 5, 2003, was for a house. *{Supporting Evidence – Defendant's Exhibit 9}* The loan counselor told the Defendant her 15% fixed rate advance was essentially the same as the car loan. Car Loans and home purchases are primarily Closed-Ended loans. *{Authorities – 15 USC 1601 et. seq. & LoanLiner – stating “the following types of subaccounts should not be part of the Plan, Mobile Homes, Home Equity, Real Estate and Home Purchases.”}*

(I) With Closed-End lending, there are between 18 and 30 disclosures that must be made before consummation of the loan. Truth in Lending requires that these disclosures:

- (1) Be in writing and in a form members can keep.**
- (2) Be segregated from other information – the “Fed. Box”.**
- (3) Have itemization of amount financed disclosed outside of the Fed. Box.**
- (4) These disclosures may be on the same document as the other loan**

documents and disclosures. Disclosure must be grouped together in one place – the “Fed Box.” *{Authority – 15 USC 1601 et. seq.}* There are penalties for inaccurate and defective disclosure. *{Authority – 15 USC 1601 et. seq.}*

(J) Failure to give accurate disclosures in the “Fed Box” or failing to substantially comply with TILA's regulatory requirements, means the Defendant can file a claim against the Plaintiff for violating the Defendant's rights under TILA. The penalty can be up to \$1,000.00 for each violation. *{Authority – 15 USC 1601 et. seq.}*

(K) The Plaintiff did not file any documents that remotely resemble the lending or compliance requirements for a Closed-Ended 15% fixed rate loan. *{Defendant's Exhibit 9}* The Plaintiff's TILA violations are egregious and extensive. *{Supporting Evidence – the Plaintiff's Filed Complaint, Filed Documents, Exhibits and Filed Affidavits}*

(L) The Defendant's Closed-Ended loan for a mobile home purchase with no Disability or Credit Life Insurance is not in the Plaintiff's accounting records. *{Supporting Evidence – the Plaintiff's Exhibits 3 & 4}*

(M) The Defendant's over \$10,340.00 in payments were not used to pay off the Defendant's Closed-Ended loan, the Defendant's monthly payments were being applied to a

LoanLiner Plus Account, the same account that is the subject of the Plaintiff's Complaint. .
{Supporting Evidence – the Plaintiff's Exhibit 3, Filed Complaint and Filed Affidavits}

(N) The Plaintiff's misuse of the Defendant's Monthly payments is not only a clear violation of SCUTPA and TILA, the Plaintiff has also violated LoanLiner's mandates, guidelines and procedures. {Supporting Evidence - LoanLiner – stating - "the following types of subaccounts should not be apart of the Plan, Mobile Homes, Home Equity, Real Estate and Home Purchases."}

74. Based on the facts, the law, the Rules of Civil Procedure and for all the foregoing reasons, The Plaintiff has failed to state facts to constitute a Cause of Action and has failed to show proximate damage. Therefore, the Plaintiff's motion for Summary Judgment must be denied and the Defendant's Motion for Summary Judgment granted forthwith. {Supporting Evidence – the Plaintiff's Filed Complaint, Documents, Exhibits, Filed Affidavits & the Defendant's Filed Exhibits} {Supporting Authorities – Rule 12(b)(6), SCRCPP, Rule 56(c), SCRCPP, & Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (1997) The Defendant must be granted a Rule 12(b)(6) SCRCPP dismissal if the facts and the inferences reasonably deducible from them show the Plaintiff cannot prevail on any theory of the case.}

RECOMMENDATION TO THE COURT & PLAINTIFF

75. The Defendant realized the Plaintiff has no legally enforceable right/s to keep the Defendant's money because no signed agreement exists for the 02/28/2003 advance, no signed agreement exists for the non-existent Cyber loan of 02/24/2003 and no signed agreement exist for the advance the Defendant received on March 5, 2003 for a home purchase. Therefore, the Defendant made a very generous offer to the Plaintiff so that Plaintiff would not lose any money due to unjust enrichment, fraud, negligent misrepresentation, violations of TILA, SCUPTA and/or unclean hands. Based on the Plaintiff's Exhibit 3 - Statement of Account, page 2 ; and by simply adding the columns, the record shows what the Plaintiff actually received from the Defendant:

\$ 411.81 – Paid in unauthorized Credit Life Insurance +
\$ 1,364.23 - Paid in unauthorized Credit Disability Insurance +
\$ 5,679.03 - Paid in improper Interest Earnings +
\$ 55.60 - Paid in unnecessary Late Charges +
\$ 3,500.22 - Paid in Misapplied Principal Payments =s
\$11,010.89 - Wrongfully taken from the Defendant over a 7-year period

76. Advances total \$6,350.00. Therefore, Payments – Advances = the balance due.

\$11,010.89 – Wrongfully taken from the Defendant over a 7-year period
- \$ 6,350.00 - Actually paid to the Plaintiff for the Loan & Advances =
\$ 4,660.89 – Due the Defendant after deductions for the Loan & Advances

77. The Defendant recommends the Plaintiff accept this generous offer to end this matter, remove any derogatory information that may have been sent to Credit Reporting Agencies, reasonably compensate the Defendant for Defense Cost and the Defendant will sign the necessary documents to assure the Plaintiff no further lawsuits will be filed by the Defendant against the Plaintiff relative to this matter. The Plaintiff's check by return mail or filed with the Clerk of Court will signal acceptance and bring an end to this unfortunate situation.

CONCLUSION

78. For all the foregoing reasons and arguments the Plaintiff's Motion for Summary Judgment should be denied and the Defendant's Motion For Summary Judgment granted.

VERIFICATION STATEMENT

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 Opposition to Summary Judgment for the Plaintiff that is stated in the foregoing Memorandum of Points and Authorities is based on my personal knowledge of the case, the Plaintiff's Complaint, filed documents, exhibits and filed affidavits to date. As to those matters that are based on my information and belief and/or from 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.

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

Signature: Dorothy Harley Sistrunk Date: 6/20/12

NOTIFICATION OF HEARING CANCELLATION

After the Defendant arrived at the Courthouse for the Hearing, the Clerk of Court Office notified the Defendant that the Hearing scheduled for today (June 19, 2012) was cancelled. Therefore, a copy of the Defendant's Memorandum of Points and Authorities that were to be given to the Plaintiff and the Honorable Judge Diane Shaffer Goodstein will be filed with the Clerk of Court on Wednesday, June 20, 2012 and mailed to the Plaintiff's Attorney/s:

SC Federal Credit Union
ATTN: Amy L. Hewitt
POB 190012
North Charleston, SC 29419
Tel: 843-569-5045

Moore & Van Allen, PLLC
ATTN: Colleen A. McConnell
40 Calhoun Street
POB 22828
Charleston, SC 29413-2828
Phone: 843-579-7000 Fax: 843-579-8714

IN WITNESS WHEREOF, The undersigned, being **DULY SWORN**, has signed and sealed these attestations this 20th day of June in the year 2012 in City of Orangeburg in the State of South Carolina.

Signed, sealed and delivered in the presence of:

Signature: Dorothy Harley Strunk

Notary Witness (1): _____
(Signature)

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG

On 6/20/12 before me appeared Dorothy Harley Strunk 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 she executed the same in her authorized capacity, and that by her signature on the instrument presents this document. WITNESS my hand and official seal.

Notary Lillian D. Buck
(Signature)

My Commission Expires
Commission Expires September 30th, 2012

(Seal)

RECORD
CLERK
OF COURT
ORANGEBURG, SC
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ORANGEBURG COUNTY, SC

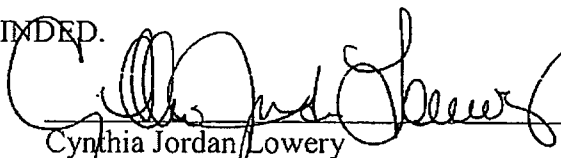
COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) CIVIL CASE NUMBER: 11-CP-38-1392
SOUTH CAROLINA FEDERAL CREDIT)
UNION,)
Plaintiff,)
vs.) NOTICE OF HEARING
DOROTHY HARLEY SISTRUNK A/K/A)
DOROTHY HARLEY-SISTRUNK A/K/A)
DOROTHY A. HARLEY A/K/A)
DOROTHY SISTRUNK,)
Defendant.)
_____)

TO: DOROTHY HARLEY SISTRUNK A/K/A DOROTHY HARLEY-SISTRUNK
A/K/A DOROTHY A. HARLEY A/K/A DOROTHY SISTRUNK:

PLEASE TAKE NOTICE that a hearing on Plaintiff's Motion for Summary Judgment will be held on July 10, 2012, at 03:20 o'clock p.m., before the Honorable Diane S. Goodstein, Presiding Judge for Orangeburg County, at the Orangeburg County Courthouse, 180 Gibson Street, Orangeburg, South Carolina.

PLEASE BE PRESENT IF SO MINDED.



Cynthia Jordan Lowery
Colleen A. McConnell
Moore & Van Allen PLLC
40 Calhoun Street, Suite 300
Post Office Box 22828
Charleston, SC 29413-2828
(843) 579-7000
Attorneys for South Carolina Federal Credit Union

CHARLESTON, SC
JUNE 21 2012

CERTIFICATE OF SERVICE

The undersigned, of Moore & Van Allen PLLC, Attorneys for Plaintiff, hereby certifies that on the 27th day of June, 2012, she caused a copy of the foregoing Notice of Hearing to be placed in an envelope with first-class postage, prepaid, and mailed to:

Dorothy Harley Sistrunk a/k/a Dorothy Harley-Sistrunk a/k/a Dorothy A. Harley
a/k/a Dorothy Sistrunk
423 Bayne St.
Orangeburg, South Carolina 29115



Caitlin C. Astle
Moore & Van Allen PLLC
40 Calhoun Street, Suite 300
Post Office Box 22828
Charleston, SC 29413-2828
(843)579-7000

“THIS IS AN ATTEMPT TO COLLECT A DEBT AND IS A COMMUNICATION FROM A DEBT COLLECTOR AND ANY FURTHER INFORMATION OBTAINED WILL BE USED FOR THIS PURPOSE.”

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SOUTH CAROLINA FEDERAL CREDIT
UNION,

Plaintiff,

vs.

DOROTHY HARLEY SISTRUNK A/K/A
DOROTHY HARLEY-SISTRUNK A/K/A
DOROTHY A. HARLEY A/K/A
DOROTHY SISTRUNK,

Defendant.

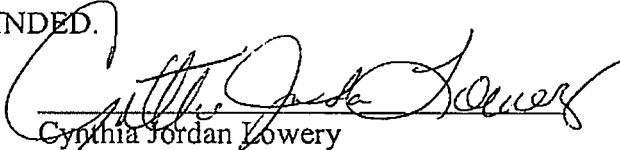
) IN THE COURT OF COMMON PLEAS
)
) CIVIL CASE NUMBER: 11-CP-38-1392

NOTICE OF HEARING

TO: DOROTHY HARLEY SISTRUNK A/K/A DOROTHY HARLEY-SISTRUNK
A/K/A DOROTHY A. HARLEY A/K/A DOROTHY SISTRUNK:

PLEASE TAKE NOTICE that a hearing on Plaintiff's Motion for Summary Judgment will be held on September 4, 2012, at 03:55 o'clock p.m., before the Honorable Diane S. Goodstein, Presiding Judge for Orangeburg County, at the Orangeburg County Courthouse, 180 Gibson Street, Orangeburg, South Carolina.

PLEASE BE PRESENT IF SO MINDED.


Cynthia Jordan Lowery

Colleen A. McConnell

Moore & Van Allen PLLC

40 Calhoun Street, Suite 300

Post Office Box 22828

Charleston, SC 29413-2828

(843) 579-7000

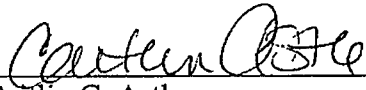
Attorneys for South Carolina Federal Credit Union

CHARLESTON, SC
August 23, 2012

CERTIFICATE OF SERVICE

The undersigned, of Moore & Van Allen PLLC, Attorneys for Plaintiff, hereby certifies that on the 23rd day of August, 2012, she caused a copy of the foregoing Notice of Hearing to be placed in an envelope with first-class postage, prepaid, and mailed to:

Dorothy Harley Sistrunk a/k/a Dorothy Harley-Sistrunk a/k/a Dorothy A. Harley
a/k/a Dorothy Sistrunk
423 Bayne St.
Orangeburg, South Carolina 29115


Caitlin C. Astle
Moore & Van Allen PLLC
40 Calhoun Street, Suite 300
Post Office Box 22828
Charleston, SC 29413-2828
(843)579-7000

“THIS IS AN ATTEMPT TO COLLECT A DEBT AND IS A COMMUNICATION FROM A DEBT COLLECTOR AND ANY FURTHER INFORMATION OBTAINED WILL BE USED FOR THIS PURPOSE.”

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-38- 1392

South Carolina Federal Credit Union Dorothy Harley Sistrunk

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Motion for Summary Judgment
denied

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
	ATTEST: TRUE COPY <u>Wingia B. Clark</u> CLERK OF COURT ORANGEBURG COUNTY, SC	\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Cheryl Sistrunk
Circuit Court Judge

2112
Judge Code

10/17/2012
Date

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	COURT FILE NO. 11-CP-38-1392
	)	
SOUTH CAROLINA FEDERAL	)	
CREDIT UNION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	STIPULATION OF DISMISSAL
	)	
DOROTHY HARLEY SISTRUNK	)	
A/K/A DOROTHY HARLEY-	)	
SISTRUNK A/K/A DOROTHY A.	)	
HARLEY A/K/A DOROTHY	)	
SISTRUNK,	)	
	)	
Defendants.	)	
	)	

Plaintiff, by and through their undersigned attorney, and the Defendant hereby stipulate to the dismissal of this action, with prejudice including as to all claims and counterclaims, pursuant to Rule 41(a)(1)(B), SCRP, with all parties to bear their own costs.

WE MOVE:

WE CONSENT:

Colleen A. McConnell, SC Bar #17238
MOORE & VAN ALLEN, PLLC
40 Calhoun Street, Suite 300
P.O. Box 22828
Charleston, SC 29413-2828
(843) 579-7000
ATTORNEYS FOR PLAINTIFF

Dorothy Harley Sistrunk a/k/a
Dorothy Harley-Sistrunk a/k/a
Dorothy A. Harley a/k/a
Dorothy Sistrunk

DEFENDANT

“THIS IS AN ATTEMPT TO COLLECT A DEBT AND IS A COMMUNICATION FROM A DEBT COLLECTOR AND ANY FURTHER INFORMATION OBTAINED WILL BE USED FOR THIS PURPOSE.”

Page 2
December 19, 2012

Wishing you and yours a blessed holiday season,

Moore & Van Allen PLLC

A handwritten signature in cursive script that reads "Colleen McConnell".

Colleen A. McConnell

Enclosure – as stated.

cc: South Carolina Federal Credit Union (via email only)

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

South Carolina Federal Credit Union

Plaintiff,

vs.

Dorothy Harley Sistrunk, A/K/A; Dorothy
Harley-Sistrunk, A/K/A; Dorothy A.
Harley,

Defendant,

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

**DEFENDANT
DOROTHY HARLEY SISTRUNK 'S
OBJECTIONS TO DISMISSAL
PURSUANT TO SCRPC RULE 41(a)(2);
RESPONSE TO THE PLAINTIFF'S
STIPULATION OF DISMISSAL, AND
COUNTER STIPULATIONS FOR
DISMISSAL**

Today's Date: January 3, 2013

FILED FOR RECORD
JAN 3 2013
CLERK OF COURT
ORANGEBURG COUNTY, SC

Comes now the Defendant Dorothy Harley Sistrunk to File OBJECTIONS TO DISMISSAL PURSUANT TO SCRPC RULE 41(a)(2), Respond to the PLAINTIFF'S STIPULATION OF DISMISSAL under Rule 41(a)(1)(B) that is dated December 19, 2012 and received by mail on December 22, 2012, and to File COUNTER STIPULATIONS FOR DISMISSAL.

TO: SOUTH CAROLINA FEDERAL CREDIT UNION, PLAINTIFF (hereafter also called SCFCU), and to MOORE & VAN ALLEN, PLLC, attorney/s for the PLAINTIFF,

**REASONS FOR OBJECTING TO
THE PLAINTIFF'S STIPULATION OF DISMISSAL**

1. **YOU WILL PLEASE TAKE NOTICE** that the above named Defendant cannot consent to or sign the Plaintiff's filed STIPULATION OF DISMISSAL and files the following OBJECTIONS for the following reasons:

(A) Rule 41(a)(2), SCRPC clearly states in pertinent parts under [By Order of Court]....., that...

"an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court...." The Defendant's Counterclaims have yet to be adjudicated by the Court.

(B) The Court has not ruled on the Defendant's Motion for Summary Judgment in clear and unambiguous language. The Defendant is not an attorney and therefore requires a definitive ruling from the Court that specifically addresses the Defendant's Motion for Summary Judgment that is Pursuant to SCRPC Rules 56(b), (c), (d) and (e).

ATTEST: TRUE COPY

Wynya B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

(C) The only ruling the Defendant has received is on the Plaintiff's Cross Motion that has been denied. In order to avoid needless repetition, the Defendant refers the Court and the Plaintiff to the Defendant's **Motion for Summary Judgment; Statement of Material Facts That Are Not in Dispute, and the Defendant's Legal Memorandum in Support of Notice of Motion and Motion for Summary Judgment** that were filed on April 25 2012 and the Defendant's **Affidavit** that was filed on June 14, 2012.

2. **Objection #1:** Based on the Plaintiff's filed Complaint, the Plaintiff has not and did not state any facts that can constitute a cause of action in Court for which relief can be granted. Accordingly, a Summary Judgment in favor of the Defendant is appropriate based on the Plaintiff's pleading. The Plaintiff's Complaint should be dismissed with prejudice pursuant to *Rule 12(b)(6), SCRCF*. In addition, **Justly and Fairly Compensating** the Defendant for cost incurred is also appropriate and can be legitimately considered by the Court. *{Supporting Evidence - Plaintiff's Complaint, Page 2, Paragraph 7 and Page 3, Paragraphs 11 & 12, Plaintiff's Filed Documents, #2011-CP-38-1392 and the Defendant's Exhibits 5, 9, 10 & 11}*

(A) The Plaintiff's Law Firm of Moore & Van Allen, PLLC, was duly notified in the Defendant's **Answer to Complaint** filed on 12/21/2011, that the Defendant never had a loan of any kind with the Plaintiff that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars (\$5,556.44). *{Supporting Evidence - Plaintiff's Statement of Account, the Defendant's Answer, Page 4, Paragraphs 1-3, Page 5, Paragraphs 7-8, Page 6, Paragraphs 11 & 11(a)-11(b), Page 7, Paragraphs 12 & 12(a)-12(b), Pages 8-10, Paragraphs 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), Page 11, Paragraph 20 and Exhibits 5, 9, 10 & 11}*

(B) Amy Rogers verified the Plaintiff's Complaint and Debt Collection are based on an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was purportedly executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars (\$5,556.44) that is now in default with an amount due and payable of \$5,274.84. *{Supporting Evidence - Plaintiff's Complaint, Page 2, Paragraph 7 & Page 3, Paragraph 12, Amy Rogers' Corporate Account Verification, Page 1, Paragraph 1, Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3 and Plaintiff's Exhibit "C"}*

(C) Amy Rogers' default loan statement, *{Page 2}*, that is attached to her Corporate Verification of Account, *{Plaintiff's Exhibit "C"}* authenticates the Plaintiff's filed Complaint and Debt Collection are based on a loan that was purportedly executed and delivered on or about February 24, 2003 that called for the payment of the sum of \$5,556.44 that is now in default. *{Supporting Evidence – Plaintiff's Complaint Pages. 2-3, Paragraphs 7-12, Amy Rogers' Corporate Verification of Account, Page 1, Paragraph 1, Exhibit "C" Column 1, Payoff W/Escrow \$5,274.84 & Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3}*

(D) The Plaintiff's supporting document for a \$5,500.00 "Fixed Rate Loan" is signed and dated 9/5/02. *{Supporting Evidence – Plaintiff's Exhibit "B", "PAGE 2"}*

(E) The Defendant's car loan with the Plaintiff was signed on 9/5/02 and the loan was for \$5,845.00, not for \$5,500.00 and not for \$5,556.44. *{Supporting Evidence – Defendant's Exhibits 12 & 13}*

(F) The Defendant's car loan is paid out. *{Supporting Evidence – Defendant's Exhibits 14 & 15}*

(G) The Defendant did not enter into any agreement on 9/5/02, or on February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars (\$5,556.44). *{Supporting Averments – Defendant's Answer Page 4, Paragraphs 1-3, Page 5, Paragraphs 7-8, Page 6, Paragraphs 11, 11(a)-11(b), Page 7, Paragraphs 12 & 12(a)-12(b), Pages 8-10, Paragraphs 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Page 11, Paragraph 20; Additional Supporting Evidence – Defendant's Exhibits. 5 & 9-15}*

(H) The Plaintiff's filed Complaint and Debt Collection are for a loan the Defendant never had, signed for, never received and never agreed to repay. The loan never happened and does not exist. *{Supporting Averments – Defendant's Answer Page 4, Paragraphs 1-3, Page 5, Paragraphs 7-8, Page 6, Paragraphs 11 & 11(a)-11(b), Page 7, Paragraphs 12 & 12(a)-12(b), Pages 8-10, Paragraphs 14(b)-14(c), 15 & 15(a)-15(b), 16 & 16(a)-16(b), 18 & 18(a)-18(b), and Page 11, Paragraph 20; Supporting Evidence – Plaintiff's Complaint Pages 2-3, Paragraphs 7-12, 11/23/2011, Amy Rogers' Corporate Verification of Account, Page 2, identifies the Plaintiff's Debt Collection is for a 02/24/2003 loan for \$5,556.44, Exhibit "C", Column 1, Payoff W/Escrow \$5,274.84, Plaintiff's Complaint, Page 3, Paragraph 12, Sentence 2, & Plaintiff's Exhibit "A", Page 1, Paragraph 1 & 3 identifies the same 02/24/2003 loan for \$5,556.44}*

3. **Objection #2:** The Plaintiff's Complaint and Debt Collection against the Defendant are also barred statutorily as a matter of law. Section 37-10-107 SC Code of Laws bars the enforcement of oral lending agreements and bars fraud and other tort claims based on alleged oral misrepresentations and other non-written conduct concerning loan and credit agreements. *{Statutory Authority - S.C. Code § 37-10-107}*

(A) Since the Defendant never entered into a loan agreement with the Plaintiff or signed an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars (\$5,556.44) that is now in default with an amount due and payable of \$5,274.84, the Plaintiff's Complaint against the Defendant cannot be maintained statutorily. *{Statutory Authority - S.C. Code § 37-10-107}*

(B) The Plaintiff has not and did not present any material terms or conditions of any agreement that specifically identifies an agreement or contract between the Defendant and SCFCU that is in writing for \$5,556.44 that was signed by the Defendant on February 24, 2003. *{Supporting Evidence – Plaintiff's filed Documents CA Case #2011-CP-38-1392}*

(C) The Plaintiff has not presented any physical evidence of a signed Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars (\$5,556.44). *{Supporting Evidence – Plaintiff's filed Document – Statement of Account – Loan Limit - \$5,500.00 and Defendant's Exhibits 5 & 9-11}*

(D) The Plaintiff's Complaint and Debt Collection cannot defeat the plain wording of SC Code of Laws Section 37-10-107 that states in pertinent parts, "(1) no person can maintain an action or defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment, or agreement."

(E) Because the Plaintiff has not and did not provide anything in writing to the Court or to the Defendant that evidences the material terms and conditions of a loan for \$5,556.44 that was executed and delivered on February 24, 2003, the Plaintiff's Complaint fails as a matter of law. *{Supporting Case Law Authority - Carolina First Bank v. Lucas, Case No.*

03-CP-10-1907, 2004 WL 5208410 (S.C. Com. Pl. Jun. 14, 2004); see also Robertson v. First Union Nat'l Bank, Case No. 99-CP-10-288, 2000 WL 35722762 (S.C. Com. Pl. Aug. 8, 2000)}

(F) Specifically, the Plaintiff's Complaint did not and has not presented any signed writing from the Defendant that contains the material terms and conditions of a promise, undertaking, accepted offer, commitment, or agreement to pay the Plaintiff on a loan that was executed and delivered on February 24, 2003 for \$5,556.44 {Statutory Authority – S.C. Code Ann. § 37-10-107(1) & the Plaintiff's Filed Documents CA Case #2011-CP-38-1392}

(G) Accordingly, as a matter of law, the Plaintiff cannot "maintain an action for legal . . . relief . . . that is based upon a loan that never existed. {Statutory Authority - S.C. Code Ann. § 37-10-107(1)(b)} Under these circumstances, the Plaintiff cannot establish or state a claim for a legitimate Cause of Action against the Defendant. {Statutory Authority – S.C. Code Ann. § 37-10-107(1)}

FAIR AND IMPARTIAL ADJUDICATION ON THE DEFENDANT'S COUNTERCLAIMS

4. **Objection #3:** Because of the Plaintiff's false accusations and misrepresentation of material facts and misleading statements by the Plaintiff's personnel, the Defendant does not need to settle for anything less than a fair and impartial adjudication on the Defendant's Counterclaims and on the merits of this case for the following reasons.....

(A) The Plaintiff must return over \$10,340.00 to the Defendant. {Supporting Evidence – Defendant's Exhibit 16, Exhibit 7 x 94 Payments and the Plaintiff's Filed Document –Itemized Statement of Account}

(B) The Defendant never approved any Credit Life or Disability Insurance after the car loan was paid out. {Supporting Evidence – Defendant's Exhibits "C", 12 -15 & Exhibit 18, Page 2 of 2 – Under **WHEN INSURANCE STOPS** – " the date your loan stops."}

(C) Despite all the Plaintiff's indiscretions, the Defendant requested the Principle of "Equitable Maxim" be applied to this case. The Defendant clearly stated the Plaintiff, South Carolina Federal Credit Union, can keep the \$5,500.00 SCFCU loaned the Defendant for the mobile home purchase and return the overpayment of \$4,840.00, back to the Defendant and this matter can be over. To date, the Plaintiff has not accepted the Defendant's generous offer to end this matter. {Supporting Evidence – **Defendant's Answer** , Pages 3-4, Paragraphs VII & I-III,

III(A)-III(B), Page 5, Paragraph 8, Pages 6-7, Paragraph 11(b), Pages 7-8, Paragraphs 12(c) 13 & 14(d), Page 9, Paragraph 9(b), Page 10, Paragraph 18(b), Pages 11-12, Paragraphs 20 & 21, Page 12, Paragraph 22, Pages 13-14, Paragraphs 30(b) & 32, Page 19, Paragraph 52(b), Page 20, Paragraph 54(b), Page 21, Paragraph 55(d), Page 22, Paragraph 56(b), Page 23, Paragraph 57(d), Page 24, Paragraphs 65(g) & 66, Page 25, Paragraph 67(d), Page 26, Paragraph 68(d), Pages 26-27, Paragraph 69, Page 27, Paragraph 70(d), Page 28, Paragraphs, 72 & 73(b), Page 30, Paragraphs 76(b) & 77(b), Pages 31-32, Paragraphs 78(b), 79, 80 & 81(c), Page 33, Paragraph 83, Page 34, Paragraphs 85 & 86 and Page 35, Paragraph 87(c)}

(D) The Defendant clearly showed by precedent and Court rulings that the Principle of "Equitable Maxim" has at times guided a court to relieve a party from the consequences of accident, mistake, and fraud. {See *Camp v. Boyd*, 229 U.S. 530, 559 (1913)} "The rule that equity considers as done that which should be done cannot be invoked to create a right contrary to the agreement of the parties." {See *Good v. Jarrard*, 93 S.C. 229, 239, 76 S.E. 698, 702 (1912)}

5. **Objection #4: The Plaintiff's filed documents on 11/23/2011 and filed Exhibits 1-4 on May 10, 2012 impeach and disqualify both of Amy Rogers' Affidavits and are additional evidence that the Plaintiff misallocated over \$10,340.00 and misrepresented an Open-End Revolving Charge/Credit Plan as a 15% Fixed Interest Rate loan.** {Supporting Evidence - the Plaintiff's Statement of Account, the Plaintiff's Exhibit "B", Page 1, Exhibit 1, Page 1 & Page 11; and the Plaintiff's Membership and Account Agreement, Page 21; the Defendant's Exhibits 5-15 and 19-21}

(A) The Plaintiff's Account Statements and Amy Rogers Affidavits are for loans the Defendant never authorized, signed for or received. {Supporting Evidence - the Plaintiff's Complaint, Pages 2-3, Paragraphs 7-12, 11/23/2011, Amy Rogers' 11/23/2011 Corporate Verification of Account, Page 2, the Plaintiff's Exhibit "C", Column 1, Payoff W/Escrow \$5,274.84, the Plaintiff's Complaint, Page 3, Paragraph 12, Sentence 2, the Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3, the Plaintiff's Exhibits 1-4}

(B) Misrepresenting facts in a legal proceeding demands the return of all the Defendant's money. {Supporting Authority - *Whipp v. Iverson*, 43 Wis.2d 166, 279 N.W. 79 (1938) - stating; "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.”}

(C) Federal guidelines and the Plaintiff’s own lending guidelines prohibit using Open- End Revolving Charge Accounts or Credit Plans for home loans, site built or manufactured housing; i.e., ... mobile homes. The Plaintiff’s personnel were told the loan was for a mobile home, it was written on the Defendant’s application and the Plaintiff’s personnel did not send any document/s for the Defendant to sign relative to the Defendant’s mobile home purchase as required by the Plaintiff’s own guidelines. *{Refer to the following Exhibits already filed by the Defendant verifying the Defendant’s loan was for a mobile home purchase and CUNA’s LoanLiner guidelines governing such a purchase.....*

- 1) Exhibit E.....Certified Check from BB&T for
Bombardier Capital, Inc.*
- 2) Exhibit F.....Bombardier Capital, Inc., Affidavit for
Repossessed Motor Vehicle; i.e., Mobile Home.*
- 3) Exhibit G.....Mobile Home Bill of Sale*
- 4) Exhibit H.....Lillie Council Application for Certificate of Title*
- 5) Exhibit J.....CUNA Mutual Group Commentary on TILA’s
Section 226.(2)(a)(20)-3*
- 6) Exhibit K.....CUNA Mutual Group Explains Why the Addendum Must
be Given to the Borrower and What Must Be Signed.*
- 7) Exhibit L.....CUNA Mutual Group Subaccounts that Should not
be Part of the Plan*
- 8) Exhibit M.....CUNA Mutual Group When the Addendum Should Be
Given*
- 9) Exhibit N.....Pooser’s Buyer’s Order for the Car Loan}*

(D) In order for the Plaintiff or the Plaintiff’s attorney/s to effectively argue the “One Signature Requirement Rule” for an Open-End LoanLiner Account, the Plaintiff had to have already filed evidence of an Addendum and evidence that an Addendum was given to and explained to the Defendant before the Defendant received any money on 09/05/2002. There is no Addendum on file in the Plaintiff’s documents or exhibits and the Plaintiff has not presented any documentation, verification, affidavits or sworn testimony from anyone employed by the Plaintiff that an Addendum was explained to or given to the Defendant prior to receiving a car loan on 09/05/2002. *{Supporting Authority – SCFCU’s Membership & Account Agreement –*

Page 21, Paragraph 6, Under Finance Charge & LoanLiner –stating that “the Credit Agreement and the Addendum is the Contractual Arrangement. The Credit Union should give the Credit Agreement and the Addendum to the member at the same time and **BEFORE THE FIRST TRANSACTION UNDER THE PLAN.**”}

(E) The Plaintiff has not and did not present any evidence of disclosure compliance under the requirements of the Truth in Lending Act’s (TILA’s) Regulation Z. {Supporting Evidence – the Plaintiff’s Filed Documents & Exhibits}

(F) **The Defendant’s mobile home loan payments were improperly applied to an Open-End LoanLiner Plus Account the Defendant never agreed to.** The Defendant’s loan advance; that was received on March 5, 2003, was for a house; i.e., a mobile home. {Supporting Evidence – Defendant’s Exhibits E-H & J-M} The Plaintiff’s loan counselor told the Defendant that her 15% fixed rate advance was essentially the same as the car loan. Car Loans and home purchases are primarily Closed-End loans. {Authorities - 15 USC 1601 et. seq. & LoanLiner – stating - “the following types of subaccounts should not be apart of the Plan, Mobile Homes, Home Equity, Real Estate and Home Purchases.”}

(G) With Closed-End lending, there are between 18 and 30 disclosures that must be made before consummation of the loan. Truth in Lending *requires* that these disclosures:

- 1) Be in writing and in a form members can keep.
- 2) Be segregated from other information – the “Fed. Box”.
- 3) Have itemization of amount financed disclosed outside of the Fed.

Box.

4) These disclosures may be on the same document as the other loan documents and disclosures. Disclosure must be grouped together in one place – the “Fed Box.” {Authority – 15 USC 1601 et. seq.} There are penalties for inaccurate and defective disclosure. {Authority – 15 USC 1601 et. seq.}

(H) Failure to give accurate disclosures in the “Fed Box” or failing to substantially comply with TILA’s regulatory requirements, means the Defendant can file a claim against the Plaintiff for violating the Defendant’s rights under TILA. The penalty can be up to \$1,000.00 for each violation. {Authority – 15 USC 1601 et. seq.}

(I) The Plaintiff did not file any documents that remotely resemble the lending or

compliance requirements for a Closed-End 15% fixed rate loan. The Plaintiff's TILA violations are egregious and extensive. *{Supporting Evidence – the Plaintiff's Filed Complaint, Filed Documents, Exhibits and Filed Affidavits}*

(J) The Defendant's Closed-End loan for a mobile home loan with no Disability or Credit Life Insurance is not in the Plaintiff's accounting records. *{Supporting Evidence – the Plaintiff's Exhibits 3 & 4}*

(K) The Defendant's monthly payments were not used to pay off the Defendant's mobile home loan. The Defendant's monthly payments were applied to a LoanLiner Plus Open-End Account. This is the same account that is the subject of the Plaintiff's Complaint. *{Supporting Evidence – the Plaintiff's Exhibit 3, Filed Complaint and Filed Affidavits}*

(L) The Plaintiff's misuse of the Defendant's monthly payments is not only a clear violation of SCUTPA and TILA, the Plaintiff's actions also violates LoanLiner's mandates, guidelines and procedures. *{Supporting Evidence - LoanLiner – stating - “the following types of subaccounts should not be apart of the Plan, Mobile Homes, Home Equity, Real Estate and Home Purchases.”}*

(M) The Plaintiff has not controverted any of the Defendant's sworn statements of fact that are contained in the Defendant's pleadings. 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. No Court can grant relief based upon the Plaintiff's attorney/s information or belief; or the Plaintiff's falsely sworn affidavits, violation of lawfully enacted statutes and laws, misrepresentation of material facts during a legal proceeding and the Plaintiff's failure to state facts sufficient to constitute a Cause of Action.

DEFENDANT'S COUNTER STIPULATIONS FOR DISMISSAL

6. The Defendant realizes the Plaintiff has no legally enforceable right/s to keep the Defendant's money because no signed agreement exists for the 02/28/2003 advance, no signed agreement exists for the non-existent Cyber Loan of 02/24/2003 and no signed agreement exists for the advance the Defendant received on March 5, 2003 for the mobile home purchase. Therefore, the Defendant made a very generous offer to the Plaintiff so that Plaintiff would not lose any money due to unjust enrichment, fraud, negligent misrepresentation, violations of TILA, SCUPTA and/or unclean hands. Since the Defendant is not responsible for any other cost the

Plaintiff has incurred and based on the Plaintiff's Exhibit 3 - Statement of Account, Page 2 ; the record shows the Defendant actually paid the Plaintiff...

\$ 411.81 +
\$ 1,364.23 +
\$ 5,679.03 +
\$ 55.60 +
\$ 3,500.22 =s
\$11,010.89 - Over a 7-year period

Advances total \$6,350.00. Therefore, Payments – Advances =s the balance due.

\$11,010.89
- \$ 6,350.00 =s
\$ 4,660.89 – Due the Defendant after deductions for advances.

7. The Defendant recommends the Plaintiff accepts this generous offer to end this matter. In addition, the Plaintiff must...

(A) Remove any derogatory information that may have been sent to Credit Reporting Agencies relative to this unfortunate lending incident,

(B) Reasonably compensate the Defendant for Defense Cost and the Defendant will sign the necessary documents to assure the Plaintiff no further lawsuits will be filed by the Defendant against the Plaintiff relative to this matter. The Plaintiff's check by return mail or filed with the Clerk of Court will signal acceptance and bring an end to this unfortunate situation.

RELIEF SOUGHT

8. **WHEREFORE**, the Defendant has fully set forth fair, honorable and equitable terms and conditions to permanently settle this matter and for the Court to dismiss this case without further litigation. If the Plaintiff refuses an honorable, just and fair settlement, then the Defendant demands the Court set a date and time for a JURY TRIAL in order to prevent this injustice by the Plaintiff from continuing and:

(A) Under the direction of this Court....

- 1) Ascertain the amount of legal defense fees and cost of action that shall be paid to the Defendant because of the Plaintiff's Complaint.
- 2) Deny any judgment claim made by the Plaintiff.

(B) Order the reimbursement of any and all cost that may be due the Defendant because of the Plaintiff's Complaint.

(C) Deny any claim by the Plaintiff for any additional payments from the Defendant.

(D) Render a judgment against the Plaintiff to have all derogatory credit information removed from Credit Reporting Agencies to which the Plaintiff, SCFCU, may have sent such information.

(E) Render a judgment against the Plaintiff with Prejudice for just and fair compensation, including any punitive damages the Court deems is proper.

9. **WHEREFORE**, the Defendant prays the Defendant's OBJECTIONS TO DISMISSAL PURSUANT TO RULE 41(a)(2), SCRCF; RESPONSE TO THE PLAINTIFF'S STIPULATION OF DISMISSAL and the Defendant's COUNTER STIPULATIONS FOR DISMISSAL have been clearly written, stated and properly supported by the evidence, the facts, Public Law, SC Code of Laws, the Defendant's Exhibits, the Plaintiff's filed documents and the Defendant's Affidavit/s and Averments.

NOTIFICATION

A copy of the Defendant's Objections to Dismissal, Response to the Plaintiff's Stipulation of Dismissal and the Defendant's Counter Stipulations for Dismissal that have been filed with the Clerk of Court will be mailed to the Plaintiff's attorney/s:

SC Federal Credit Union
ATTN: Amy L. Hewitt
POB 190012
North Charleston, SC 29419
Tel: 843-569-5045

Moore & Van Allen, PLLC
ATTN: Colleen A. McConnell
40 Calhoun Street
POB 22828
Charleston, SC 29413-2828
Phone: 843-579-7000 Fax: 843-579-8714

2013 JAN -3 PM 3:56
FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

IN WITNESS WHEREOF, the undersigned, being **DULY SWORN** and under the **PENALTY of PERJURY**, has signed and sealed these attestations on this 3rd day of January in the year 2013 in City of Orangeburg, in the County of Orangeburg, and in the State of South Carolina.

Signature of Declarant: Dorothy Sistrunk

Signed, sealed and delivered in the presence of:

Signature of Notary as Witness (1): Shanita Mazyck-Hamilton

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On January 3, 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 instrument and acknowledged to me that she executed the same in her authorized capacity as the Defendant, and that by her signature on the instrument presents this document.

WITNESS my hand and official seal.

Notary's Signature Shanita Mazyck-Hamilton

My Commission Expires
Commission Expires August 1st, 2017

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