

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

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
VOLUME II**

December 2, 2015

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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
SETTLEMENT OFFER TO THE
PLAINTIFF, SOUTH CAROLINA
FEDERAL CREDIT UNION (SCFCU),
PURSUANT TO RULE 43(k), SCRCF
FOR A RETURN OF \$4,660.89 BACK
TO THE DEFENDANT FOR AN
EQUITABLE & FAIR SETTLEMENT**

Today's Date: May 10, 2013

Comes now the Defendant, Dorothy Harley Sistrunk, to file her Notice of Settlement Offer to the Plaintiff pursuant to Rule 43(k), SCRCF for a return of \$4,660.89 back to the Defendant.

TO: SOUTH CAROLINA FEDERAL CREDIT UNION, PLAINTIFF (hereafter also called SCFCU), and to **MOORE & VAN ALLEN, PLLC**, attorney/s for the **PLAINTIFF**.

**BACKGROUND RELATIVE TO
THE DEFENDANT'S NOTICE OF SETTLEMENT OFFER**

1. On January 3, 2013, the Defendant file her objections to the Plaintiff's STIPULATION OF DISMISSAL pursuant to *Rule 41(a)(2)*, SCRCF that clearly states in pertinent parts.... "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 and Motion for Summary Judgment have yet to be adjudicated by the Court.

2. The Court has not ruled on the Defendant's Motion for Summary Judgment or on the Defendant's Counterclaims. The Defendant is not an attorney and therefore requires a definitive ruling from Judge Goodstein that specifically addresses the Defendant's Motion for Summary Judgment that is Pursuant to *Rules 56(b), (c), (d) and (e)*, SCRCF and Counterclaims. The only ruling the Defendant has received to date is the denial of the Plaintiff's Cross Motion that was denied by Judge Goodstein on June 19, 2012. Accordingly, the Defendant would still like to resolve this matter as soon as possible.

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

3. If Counsel for the Plaintiff will recall, the following issues concerned Judge Goodstein during the hearing...

- (a) Interest payments in some months were extremely high,
- (b) No evidence the Defendant authorized Credit Life & Disability Insurance.
- (c) No evidence the Defendant received an Addendum that is required as part of the Plan (*and essential to an enforceable Membership & Account Agreement and must be given before the first transaction under the Plan.*)
- (d) No evidence the Defendant was duly notified that her mobile home purchase was not the fixed interest rate account that was stated on the application; but an open-ended revolving charge type loan... and...
- (e) No evidence the Defendant signed an agreement and authorized 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.

4. Even though Counsel tried to defend the Plaintiff's Complaint, if Counsel for the Plaintiff will recall, Judge Goodstein also observed that if it were not for the unauthorized Credit Life & Disability Insurance and the open-ended nature of the account, the account would have been paid out.

REASONS FOR REJECTING THE PLAINTIFF'S STIPULATION OF DISMISSAL

5. Based on the Plaintiff's filed Complaint and Judge Goodstein's observations, the Defendant rejected the Plaintiff's Stipulation of Dismissal for the following reasons:

(a) The Plaintiff has not stated any facts that can constitute a cause of action for which relief can be granted and must be dismissed with prejudice pursuant to *Rule 12(b)(6)*, *SCRCP*. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

(b) A Summary Judgment in favor of the Defendant is appropriate based on the Plaintiff's filed Complaint that is pursuant to *Rule 56(c)* *SCRCP* that clearly states in pertinent parts... "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

(c) The Plaintiff's Stipulation of Dismissal did not include a return of the Defendant's over payment of \$ 4,660.89 that the Defendant graciously agreed to accept under the "Equitable Maxim Principle". {See *Good v. Jarrard*, 93 S.C. 229, 239, 76 S.E. 698, 702 (1912)}

6. South Carolina's Appeals Courts have stated, "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." Camp v. Boyd, 229 U.S. 530, 559 (1913) also see the Plaintiff's Complaint, Page 2, Paragraph 7 & Page 3, Paragraphs 11 & 12 and the Defendant's Filed Exhibits 5, 9, 10 & 11}

7. The Courts in South Carolina have also determined, "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).

8. "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).

9. When applying this principle, Courts in South Carolina 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). In addition, South Carolina Appeals Courts have consistently ruled, "after a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity." Wilkie, 187 S.C. at 393, 197 S.E. at 380. The Plaintiff may have to return all the Defendant's money due to accident, mistake, negligent misrepresentation and fraudulent misrepresentation. 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)

ADDITIONAL REASONS FOR REJECTING THE PLAINTIFF'S STIPULATION OF DISMISSAL

10. 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 Filed Exhibits 5, 9, 10 & 11}*

11. Amy Rogers, May 10, 2012 default loan statement, *{Page 2}*, that is attached to her Corporate Verification of Account, *{Plaintiff’s Exhibit “C”}* 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”}*

12. The Plaintiff’s supporting document for a \$5,500.00 “Fixed Rate Loan” is signed and dated 9/5/02. *{Plaintiff’s Exhibit “B”, “PAGE 2”}* 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. *{Defendant’s Exhibits 12 & 13}* The Defendant’s car loan is paid out. *{Defendant’s Exhibits 14 & 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 Dollars (\$5,556.44). *{Defendant’s Exhibits 5 & 9-15}*

13. 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. *{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 and Plaintiff’s Exhibit “A”, Page 1, Paragraph 1 & 3 identifies the same 02/24/2003 loan for \$5,556.44}*

14. 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.

{Section - 37-10-107 - SC Code of Laws}

15. 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. *{SC Code of Laws § 37-10-107}*

16 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. *{Plaintiff’s filed Documents}*

17. 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). *{See the Plaintiff’s filed Document & the Defendant’s Exhibits 5 & 9-11}*

18. 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.”

19. 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. *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)}

20. 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 {S.C. Code Ann. § 37-10-107(1) & the Plaintiff's Filed Documents}

21. Accordingly, as a matter of law, the Plaintiff cannot "maintain an action for legal . . . relief . . . that is based upon a loan that never existed. {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. {S.C. Code Ann. § 37-10-107(1)}

22. Rule 10(c), SCRPC clearly states in pertinent parts: "A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading." When exhibits are inconsistent with the Plaintiff's allegations of material fact, such allegations cancel each other out. The Full Faith and Credit Clause of the United States Constitution provide that "Full Faith and Credit shall be given in each state to the . . . judicial proceedings of every other state." U.S. Const. Art. IV, § 1. Therefore, precedent regarding exhibits that are inconsistent with allegations of material fact can be found in Florida in Fladell v. Palm Beach County Canvassing Board, 772 So.2d 1240 (Fla. 2000) and Greenwald v. Triple D Properties, Inc., 424 So. 2d 185, 187 (Fla. 4th DCA 1983)

23. The language of Section 37-10-107 – SC Code of Laws is plain, unambiguous, and conveys a clear and definite meaning. Therefore, the Plaintiff and the Court cannot impose another meaning. Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995) and Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 442 S.E.2d 177 (1994).

24. South Carolina's Courts hold and recognize that "the rules of statutory construction must give way to the cardinal rule of legislative intent." Holley v. Mount Vernon Mills, Inc., 312 S.C. 320, 440 S.E.2d 373 (1994); Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993); Gardner v. Biggart, 308 S.C. 331, 417 S.E.2d 858 (1992)

REASONS FOR THE DEFENDANT'S SETTLEMENT OFFER

25. 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 return of over \$10,340.00. {Defendant's Exhibit 16, Exhibit 7 x 94 Payments and the Plaintiff's Itemized Statement of Account}

26. The Defendant never approved any Credit Life or Disability Insurance after the car loan was paid out {Defendant's Exhibits "C", 12 -15 & Exhibit 18, Page 2 of 2 – Under **WHEN INSURANCE STOPS** – “ the date your loan stops. ”}. In addition, the Defendant was never informed that her mobile home purchase would be treated and classified as an open-ended account. The Defendant was told by the Plaintiff's personnel that her loan was essentially the same as her car loan.

27. 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 that leaves the Defendant no viable choice except to seek the return of all her money.

28. The Defendant has clearly shown 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. {*Camp v. Boyd*, 229 U.S. 530, 559 (1913)}

29. The Plaintiff's hands are not clean relative to this matter and South Carolina Courts have consistently held, “no person can be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act.” *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and maintained by bribery). South Carolina Courts apply this rule for “Unclean Hands” in 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.

30. In, *Menominee River Co. v. August Spies L & C Co.*, the court determined, “if any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as

it is impossible to say what part or which one of the considerations induced the promise.”

Menominee River Co. v. Augustus Spies L & C Co., 147 Wis. 559 at p. 572; 132 NW 1118 (1912).

31. In 1879, South Carolina’s Supreme Court held, “There can be no doubt of the correctness of the legal proposition that, where money is paid under a mistake of fact, to a person who has no ground in conscience to claim it, the person paying it may recover it back. Glenn v. Shannon, 12 S.C. 570, 570 (1879); See also Pilot Life Ins. Co. v. Cudd, 208 S.C. 6, 36 S.E.2d 860 (1945) (holding the general rule is that money paid to another under a mistake of fact may be recovered because the money belongs, in equity and good conscience, to the person who paid it). See Castock Corp. v. Bailey, 492 N.Y.S.2d 921 (Sup. Ct. 1985) (the fact that recipient has parted with the money is an insufficient excuse to forgive repayment); 70 Am. Jur. 2d Payment § 114(c) (1987) (no defense where money has been paid to another or spent).

32. In addition, South Carolina’s Appeals Courts have consistently held, “a party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.” Unjust enrichment is an equitable doctrine which permits the recovery of that amount the Plaintiff has been unjustly enriched at the expense of the Defendant. Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988). The legal issues are determined by a jury while equitable issues are for the judge. Floyd v. Floyd, 306 S.C. 376, 379, 412 S.E.2d 397, 398-99 (1991)

33. South Carolina’s Appeals Courts have also ruled, “Restitution is a remedy designed to prevent unjust enrichment.” Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003) To recover on a theory of restitution, the Defendant must show (1) that she conferred a non-gratuitous benefit on the Plaintiff; (2) that the Plaintiff realized some value from the benefit; and (3) that it would be inequitable for the Plaintiff to retain the benefit without paying the Defendant for its value. Sauner, 354 S.C. at 409, 581 S.E.2d at 167; see also Earthscapes Unlimited, Inc., 390 S.C. at 616-17, 703 S.E.2d at 225 (providing the same requirements to recover under the doctrine of quantum meruit). ”

34. To demonstrate whether or not an unjust enrichment would result, the Defendant need only show that she conferred a benefit on the Plaintiff and that allowing the Plaintiff to

retain that benefit would result in a loss for the Defendant. See Player v. Chandler, 299 S.C. 101, 107, 382 S.E.2d 891, 895 (1989).

35. Moreover, the Defendant has been victimized by the Plaintiff personnel's Negligent Misrepresentation and Fraudulent Misrepresentation. South Carolina's Appeals Courts have stated, "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).

36. Like negligent misrepresentation, an actionable fraudulent misrepresentation 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*).

37. More specifically, the alleged false representation must be of a present or pre-existing fact. See Spires v. Acceleration Nat'l Ins. Co., 417 F. Supp. 2d 750, 755-56 (D.S.C. 2006). In addition, the representation must be false at the time it is made. See GSM Dealer Servs., Inc. v. Chrysler Corp., 32 F.3d 139, 142 (4th Cir. 1994). With respect to fraudulent misrepresentation, the fraudulent representation must relate to a present or pre-existing fact. To recover on a claim for negligence, the Defendant must show (1) a duty of care owed by the Plaintiff to tell the Defendant the truth about her mobile home loan; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach. Tanner v. Florence County Treasurer, 336 S.C. 552, 561, 521 S.E.2d 153, 158 (1999) (*quoting Andrews v. Piedmont Air Lines*, 297 S.C. 367, 369, 377 S.E.2d 127, 128 (1989)).

38. In order for the Defendant to establish liability for her Counterclaim of negligent misrepresentation, the Defendant must show (1) the Plaintiff made a false representation to the Defendant; (2) the Plaintiff had a pecuniary interest in making the representation; (3) the Plaintiff

owed a duty of care to see that he/she communicated truthful information to the Defendant; (4) the Plaintiff breached that duty by failing to exercise due care; (5) the Defendant justifiably relied on the representation; and (6) the Defendant suffered a pecuniary loss as the proximate result of her reliance upon the representation." Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003) (quoting AMA Mgmt. Corp. v. Strasburger, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992)).

39. Under the discovery rule, the statute of limitations begins to run from the date the Defendant either knows or should know, by the exercise of reasonable diligence that a cause of action exists for the wrongful conduct of the Plaintiff. S.C. Code Ann. § 15-3-535 (2005); Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). The statute of limitations begins to run from the point of discovery and not when advice of counsel is sought or a full-blown theory of recovery developed. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 328-29, 534 S.E.2d 672, 676 (2000) (citations omitted).

40. 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-ended revolving charge/credit plan as a 15% Fixed Interest Rate loan. {see the Plaintiff's Statement of Account, the Plaintiff's Exhibit "B", Page 1, Exhibit 1, Page 1 & Page 11; and the Plaintiff's Membership & Account Agreement, Page 21 and the Defendant's Exhibits 5-15 & 19-21}

41. The Plaintiff's Account Statements and Amy Rogers Affidavits are for loans the Defendant never authorized, signed for or received. {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}

42 Misrepresenting facts in a legal proceeding demands the return of all the Defendant's money. 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.”}

43. 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.....*

- (a) Exhibit J.....CUNA Mutual Group Commentary on TILA’s Section 226.(2)(a)(20)-3
- (b) Exhibit K.....CUNA Mutual Group Explains Why the Addendum Must be Given to the Borrower and What Must Be Signed.
- (c) Exhibit L.....CUNA Mutual Group Subaccounts that Should not be Part of the Plan
- (d) Exhibit M.....CUNA Mutual Group When the Addendum Should Be Given

44. 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. *{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.**”}*

45. The Plaintiff did not present any evidence of disclosure compliance under the requirements of the Truth in Lending Act’s (TILA’s) Regulation Z. *{See the Plaintiff’s Filed Documents & Exhibits}*

46. 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. *{See Filed Exhibits E-H & J-M}* The Plaintiff's loan counselor told the Defendant that her 15% fixed rate advance was essentially the same as her car loan. Car Loans and home purchases are primarily Closed-End loans. *{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."}*

47. 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.}*

48. Failure to give accurate disclosures in the "Fed Box" or failing to substantially comply with TILA's regulatory requirements, means the Defendant's pursue her Counterclaim and seek damages 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.}*

49. 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. *{See the Plaintiff's Filed Complaint, Filed Documents, Exhibits and Filed Affidavits}*

50. The Defendant's Closed-End loan for a mobile home with no Disability or Credit Life Insurance is not in the Plaintiff's accounting records. *{See Plaintiff's Exhibits 3 & 4}*
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. *{See the Plaintiff's Exhibit 3, and Filed Affidavits}*

51. 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. {See LoanLiner – stating - “the following types of subaccounts should not be apart of the Plan, Mobile Homes, Home Equity, Real Estate and Home Purchases.”}

52. 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 statues 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 & SETTLEMENT

53. 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 the 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 +
\$	<u>3,500.22 =s</u>
\$11,010.89	- Over a 7-year period
Advances total \$6,350.00. Therefore, Payments.– Advances =s the balance due.	
\$11,010.89	
- \$	<u>6,350.00 =s</u>
\$ 4,660.89–	Due the Defendant after deductions for advances.

54. 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) If the Plaintiff will do what is right and return the Defendant's overpayment of \$ 4,660.89, 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

55. **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.

56. **WHEREFORE**, the Defendant prays her Notice of Settlement Offer pursuant to Rule 43(k), SCRPC and the Defendant's Counter Stipulations have been clearly written and properly supported by the evidence, the facts, Public Law, SC Code of Laws, the Defendant's Exhibits, the Plaintiff's filed documents, the Defendant's Affidavit/s and Averments and Legal Precedent.

NOTIFICATION

A copy of the Defendant's Notice of Settlement Offer pursuant to *Rule 43(k), SCRCF* 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** and under the **PENALTY of PERJURY**, has signed and sealed these attestations on this 10 day of May in the year 2013 in City of Orangeburg, in the County of Orangeburg, and in the State of South Carolina.

Signature of Affiant: Dorothy Haskins Sistrunk

Signature of Notary as Witness (1): Robin W. King

Signed, sealed and delivered in the presence of:

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

On 5-10-13 before me appeared Dorothy Haskins 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 Robin W. King

Commission Expires My Commission Expires November 18, 2014

(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

**STATEMENT OF DAMAGES THAT IS
FILED IN CONJUNCTION WITH SC
CODE OF LAWS §§ 39-5-20 & 39-5-140
AND 15 USC 1601 ET. SEQ. - THE TRUTH
IN LENDING ACT (TILA)**

Today's Date: November 18, 2013

Comes now the Defendant, Dorothy Harley Sistrunk, to file her *Statement of Damages that is being filed in Conjunction with §§ 39-5-20 & 39-5-140 and 15 USC 1601 et. seq. - The Truth in Lending Act (TILA)* The Plaintiff did not and has not responded to or opposed the Defendant's Affirmative Defenses relative to these violations that are incorporated by reference as though set forth herein verbatim. Consequently, the Defendant's averments are deemed admitted under the Rules, Precedent and Law and must be ruled upon by the Court because they have never been stricken or disallowed by any Court Order or Ruling.

TO: SOUTH CAROLINA FEDERAL CREDIT UNION, PLAINTIFF (hereafter also called SCFCU), and to **Amy Hewitt & Moore & Van Allen, PLLC**, attorneys for the **Plaintiff**,

**THE PLAINTIFF DID NOT DENY, REFUTE OR
CONTROVERT ANY OF THE DEFENDANT'S AFFIRMATIVE DEFENSES**

1. In addition to the Plaintiff's failure to respond to or oppose the Defendant's *Motion for Summary Judgment, Statement of Material Facts that are not in Dispute and Legal Memorandum* supporting the *Motion for Summary Judgment* that were filed on April 25, 2012, {See Attached Exhibits 31 & 32} the Plaintiff also failed to respond to, oppose, deny, refute, or controvert any of the Defendant's Affirmative Defenses in the Defendant's *Answer to the Plaintiff's Summons & Complaint* that was filed on December 21, 2011.

(A) The Defendant's SECOND AFFIRMATIVE DEFENSE accused the Plaintiff of engaging in "*Deceptive Lending Practices*" that violate the *Unfair Trade Practices Act*, i.e., *UPTA*, that includes Section 39-5-10, 39-5-20 & 39-5-140 - SC Code of Laws. The Plaintiff has not, and did not refute, deny, oppose or controvert this allegation. This allegation is now admitted pursuant to Rule 8(d), SCRCF that clearly states in pertinent parts; "*Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.*"

(B) The Defendant's ELEVENTH AFFIRMATIVE accused the Plaintiff of violating the *Truth in Lending Act (TILA)* , i.e., *15 USC 1601 et. seq.* The Plaintiff has not, and did not refute, deny, oppose or controvert this allegation. This allegation is now admitted pursuant to *Rule 8(d), SCRCP* that clearly states in pertinent parts; *"Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."*

(C) The Defendant's THIRTEENTH & FOURTEENTH AFFIRMATIVE DEFENSES "Usurious Interest" and an "Unlawful Bait and Switch Credit Scheme", respectfully, were never denied, opposed, refuted or controverted by the Plaintiff since December 21, 2011 and pursuant to *Rule 8(d), SCRCP* "are admitted when not denied in the responsive pleading." These actions by the Plaintiff; either together or individually, are a violation of *Section 37-5-108 – SC Code of Laws* that clearly states, *"(1) With respect to a transaction that is, gives rise to, or leads the debtor to believe will give rise to, a consumer credit transaction, if the court as a matter of law finds: (a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or (b) any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result and award the consumer any actual damages he has sustained. (2) With respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction. In addition, the consumer has a cause of action to recover actual damages and, in an action other than a class action, a right to recover from the person violating this section a penalty in the amount determined by the court of not less than one hundred dollars nor more than one thousand dollars...."*

"Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Carolina Care Plan, Inc. v. United Health- Care Services, Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004). "In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Id.* at 24-25, 644 S.E.2d at 668.

STATUTORY VIOLATIONS & PUNITIVE DAMAGES

2. Section 39-5-140(a) –SC Code of Laws clearly states in pertinent parts, “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.”

3. SCUPTA states “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” S.C. Code Ann. § 39-5-20 (Supp. 2005). “An act is ‘unfair’ when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is ‘deceptive’ when it has a tendency to deceive.” Johnson v. Collins Entm’t Co. Inc., 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002).

4. Federal courts have held that unfair or deceptive acts as defined in the *FTC Act* need not constitute ordinary fraud. Federal Trade Commission v. Algoma Lumber Co., 291 U.S. 67, 54 S. Ct. 315, 78 L. Ed. 655 (1934); D.D.D. Corp. v. Federal Trade Commission, 125 F. (2d) 679 (7th Cir.1942). Under the statute there is no need to show that a claim or representation was intended to deceive, but only that it had the capacity or effect or tendency to deceive. *Id.* See also Hardy v. Toler, 288 N.C. 303, 218 S.E. (2d) 342 (1975)

5. Actual knowledge is not required under SCUTPA to hold SCFCU liable for the misrepresentations of its personnel. At common law, actual knowledge is not necessary to hold a principal liable, if misrepresentations are made by the agent while acting within the scope of his agency. See, West v. Service Life & Health Insurance Co., 220 S.C. 198, 66 S.E. (2d) 816 (1951); See also, Restatement(Second) of Agency § 261, comment a (1958)

6. Under Section 39-5-20(a) and (b), SC Code of Laws, the Defendant need not prove the elements of common law deceit in order to establish a violation of the *South Carolina Unfair Trade Practices Act* since, under the statute, there is no need to show that a claim or representation was intended to deceive but only that it had the capacity, effect, or tendency to deceive. State ex rel. McLeod v. C & L Corporation, *supra*.

7. "Baiting and Switching", "Misrepresenting a Revolving Charge as a 15% Fixed Interest Rate Loan" and failing to follow the guidelines and requirements of LoanLiner and the *Truth in Lending Act (TILA)* will deceive. 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. The Plaintiff's loan counselor told the Defendant that her 15% fixed rate advance was essentially the same as her car loan. Car Loans and home purchases are primarily Closed-End loans.

8. 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." There are penalties for inaccurate and defective disclosure.

9. Failure to give accurate disclosures in the "Fed Box" or failing to substantially comply with TILA's regulatory requirements, means the Defendant can pursue her Counterclaim and seek damages against the Plaintiff for violating the Defendant's rights under *TILA*. The penalty can be up to \$1,000.00 for each violation.

10. 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.

11. The Defendant's Closed-End loan for a mobile home with no Disability or Credit Life Insurance is not in the Plaintiff's accounting records. 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. 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 violate LoanLiner's mandates, guidelines and procedures.

12. In order to recover punitive damages, the Defendant has the burden of proving by clear and convincing evidence the Plaintiff's conduct was willful, wanton, or in reckless disregard of the Defendant's rights. *S.C. Code Ann. § 15-33-135 (2005)*; *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). The trial court should conduct a post-trial review of punitive damages to determine whether the award of punitive damages was proper. *Gamble v. Stevenson*, 305 S.C. 104, 111, 406 S.E.2d 350, 354 (1991). In conducting such a review the trial court may consider the following factors:

(A) (1) The Plaintiff's degree of culpability; (2) duration of the conduct; (3) Plaintiff's aware-ness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the Plaintiff or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) Plaintiff's ability to pay; and finally, (8) . . . "other fac-tors" deemed appropriate. *Gamble*, 305 S.C. at 111-12, 406 S.E.2d at 354.

(B) The trial court is not required to make findings of fact for each factor to uphold a punitive damage award. *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 468 S.E.2d 633 (1996). *Welch v. Epstein*, 342 S.C. at 306, 536 S.E.2d at 422. The trial judge has considerable discretion regarding the amount of damages both actual or punitive awarded. *Id.* at 305, 536 S.E.2d at 421.

(C) Due to the Plaintiff's pattern of consistent violations of federal and state law, rules and/or regulations, the Defendant seeks Punitive Damages and all relevant Statutory Penalties. In addition to granting the Defendant's *Motion for Summary Judgment, Dismissing this case with Prejudice* and awarding all *Statutory Damages*, the Trial Court **MUST** consider "*Punitive Damages*" to deter the Plaintiff from similar activity in the future.

(D) South Carolina's Appeals Court and Supreme Court have determine the following, "*The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future,*" as well as "*to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party.*" *Clark v. Cantrell*, 39 S.C. 369, 378-79, 529 S.E.2d 528, 533 (2000).

(E) Recklessness implies the doing of a negligent act knowingly; it is a '*conscious failure to exercise due care.*' *Berberich v. Jack*, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011) (quoting *Yaun v. Baldridge*, 243 S.C. 414, 419, 134 S.E.2d 248, 251 (1964)).

(F) If a person of ordinary reason and prudence would have been conscious of the prob-

ability of resulting injury, the law says "the person is reckless or willful and wanton, all of which have the same meaning—the conscious failure to exercise due care." *Id.* "It is this present consciousness of wrongdoing that justifies the assessment of punitive damages against the tortfeasor" *Cody P. v. Bank of Am., N.A.*, Op No. 4875 (S.C. Ct. App. Filed Aug. 23, 2011) (Shearouse Adv. Sh. No. 29 at 93) (quoting *Rogers v. Florence Printing Co.*, 233 S.C. 567, 578, 106 S.E.2d 258, 263 (1958)). "

(G) In other words, 'at the time of his act or omission to act the tortfeasor [must] be conscious, or chargeable with consciousness, of his wrongdoing.' *Id.* (quoting *Rogers*, 233 S.C. at 578, 106 S.E.2d at 264) (alteration by court). "A conscious failure to exercise due care constitutes willfulness." *Mishoe v. OHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005). "In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct. App. 2004) (quoting S.C. Code Ann. § 15-33-135). "

DETERMINING ACTUAL DAMAGES DUE

13. The Defendant included paragraphs 1 - 12 to illustrate to the Court and the Plaintiff the difficulty in determining damages due. Statutory damages are written into the law, but are dependent upon the Court for their implementation. The Defendant is neither Judge nor Jury. Therefore, the following "Statement of Damages" will be based partly on the documents the Plaintiff has filed in Court and the remainder will be based upon whatever the Court decides is just, fair, appropriate and proper.

STATEMENT OF DAMAGES

14. **General Damages:**

A. Pain, Suffering and Inconvenience	\$ 3,000.00
B. Emotional Stress.....	\$ 3,000.00
C. Over Payment.....	\$ 4,660.89
D. Compensation for Cost of Suit.....	\$ 2,500.00
Total Due Amount of General Damages Due.....	\$13,160.89

15. **Punitive Damages:**

To Be Determined By the Court.....\$?

16. **Statutory Damages:**

- A. To Be Determined By the Court....Violation of SCUTPA..... \$?
B. To Be Determined By the Court....Violation of 15 USC 1601 et. seq..... \$?
C. To Be Determined By the Court.....Violation of 37-5-108(1)(a)(b).....\$?

17. **Special Damages:**

There are no "Special Damages".....\$ 0.00

OFFER & RECOMMENDATION

18. The Defendant recommends the Plaintiff accept her generous offer to end this matter. In addition, the Plaintiff must...

(A) By Court Order if necessary, remove any derogatory information that may have been sent to Credit Reporting Agencies relative to this lending incident,

(B) If the Plaintiff will do what is right and return the Defendant's overpayment of \$4,660.89, 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

18. A copy of the Defendant's *Statement of Damages that is being filed in Conjunction with §§ 39-5-20 & 39-5-140 and 15 USC 1601 et. seq. - The Truth in Lending Act (TILA)* that has been filed with the Clerk of Court will be mailed to the following:

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

The Honorable Judge Diane Shafer Goodstein
POB 234
St. George, SC 29477

Signature of Affiant: Dorothy Hasky-Sant Date: 11/18/13

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
2013 NOV 18 FIRST JUDICIAL CIRCUIT

FILED CASE NO: 2011-CP-38-1392

WINNIE S. GILK
CLERK OF COURT
ORANGEBURG, SC

**DEFENDANT DOROTHY HARLEY
SISTRUNK'S REQUEST TO
SUBMIT FOR A DECISION
PURSUANT TO RULE 56(e), SCRCP**

Today's Date: November 18, 2013

Comes now the Defendant, Dorothy Harley Sistrunk, to file her *Request to Submit for Decision* pursuant to *Rule 56(e), SCRCP*. The Plaintiff did not and has not responded to or opposed her *Motion for Summary Judgment, Statement of Material Facts that are not in Dispute* and *Legal Memorandum* supporting the *Motion for Summary Judgment* that was filed on April 25, 2012. In addition, the Plaintiff, South Carolina Federal Credit Union, has not denied, refuted or controverted any Fact or Material Fact filed by the Defendant since 12/21/2011. Therefore, pursuant to *Rule 56, Summary Judgment must be rendered forthwith with Prejudice* and all monies paid on the account returned to the Defendant including any punitive damages and cost of suit.

TO: SOUTH CAROLINA FEDERAL CREDIT UNION, PLAINTIFF (hereafter also called SCFCU), and to **Amy Hewitt & Moore & Van Allen, PLLC**, attorneys for the **Plaintiff**,

REQUEST TO SUBMIT FOR A DECISION

1. The Plaintiff has had ample time for opposition and to respond to the Defendant's *Motion for Summary Judgment*. In addition to the Plaintiff's failure to respond to or oppose the Defendant's *Motion for Summary Judgment, Statement of Material Facts that are not in Dispute* and *Legal Memorandum* supporting the *Motion for Summary Judgment* that were filed on April 25, 2012, {See Attached Exhibits 31 & 32} this *Request to Submit for Decision* is also being filed in conjunction with the Defendant's *Notice of Settlement Offer Pursuant to Rule 43(k), SCRCP* that was filed on May 10, 2013 and the following **Verified Pleadings and Papers** that have already been filed in connection with this case that have never been opposed, refuted, denied, stricken, controverted by the Plaintiff or disallowed by any Court Order and/or Ruling.

(A) Defendant Dorothy Harley Sistrunk's Affidavit of Facts, Material Facts & Truth to Rebut any Statement Made by the Plaintiff or the Plaintiff's Attorney..... that was filed on June 14, 2012 and is incorporated by reference as though fully set forth herein verbatim.

(B) *Defendant Dorothy Harley Sistrunk's Objections to Dismissal Pursuant to SCRCP Rule 41(a)(2); Response to the Plaintiff's Stipulation of Dismissal and Counter Stipulations for Dismissal* that was filed on January 3, 2013 and is incorporated by reference as though fully set forth herein verbatim.

2. Therefore, all averments and statements relative to material facts contained in the aforementioned **Verified Pleadings and Papers**; as well as every citation contained therein, are deemed admitted by rule, law and precedent. This includes any Counterclaims and Affirmative Defenses. Therefore, this case must be *Dismissed forthwith with Prejudice* and the Plaintiff must return \$4,660.89 back to the Defendant; plus any Court awarded amount for statutory violations, punitive damages and compensation for cost incurred.

3. Rule 56(b), SCRCP clearly states in pertinent parts, "*A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.*" The Defendant completed and filed her *Motion for Summary Judgment*, along with her *Statement of Material Facts that are not in Dispute* and *Legal Memorandum* supporting the Motion on April 25, 2012. The Defendant's filed statements identified why her *Motion for Summary Judgment* is supported by *Material Facts* that are not in dispute and never refuted or denied by the Plaintiff. The Defendant's *Legal Memorandum* informed the Court why her *Motion for Summary Judgment* is supported by the law. The Defendant did not request a hearing because her *Motion for Summary Judgment* can be decided by the Pleadings without oral arguments.

4. Rule 56(c) SCRCP states, "*The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.*" See *Grant v. Mount Vernon Mills, Inc.*, 370 S.C. 138, 145-46, 634 S.E.2d 15, 19 (Ct. App. 2006) and *Klippel v. Mid-Carolina Oil, Inc.*, 303 S.C. 127, 129, 399 S. E. 2d 163, 164 (Ct. App. 1990) ("*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 also *Higgins v. Med. Univ. of S.C.*, 326 S.C. 592, 599, 486 S. E. 2d 269, 272 (Ct. App. 1997) (holding that "*the trial court ordinarily may*

not consider factual statements made during argument on the summary judgment issue").

5. Opposing Affidavits must be based on personal knowledge. South Carolina's Appeals Court has consistently stated, "[T]his court ordinarily will not consider statements of fact presented only in an attorney's argument in determining whether a genuine issue of material fact exists sufficient to preclude summary judgment." *West v. Gladney*, 341 S.C. 127, 135, 533 S.E.2d 334, 338 (Ct. App. 2000).

6. Rule 56(e), SCRCP clearly outlines this requirement by stating, "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

**THE PLAINTIFF DID NOT AND HAS NOT OPPOSED
THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

7. The Plaintiff did not and has not filed any statements, affidavits, depositions or testimony opposing the Defendant's *Motion for Summary Judgment* or identified any part of the Motion the Plaintiff disagreed with. If the Plaintiff disagreed with or disputed any of the facts in the Defendant's *Statement of Material Facts that are not in Dispute*, the Plaintiff or the Plaintiff's witness/es that has/have personal knowledge must complete and file a statement opposing the Defendant's *Statements of Material Facts*. Since the Plaintiff has not and did not controvert any statement in the Defendant's *Statement of Material Facts that are not in Dispute*, all the Defendant's statements are deemed admitted. Therefore, the Court must grant *Summary Judgment* forthwith, *Dismiss* this case forthwith *with Prejudice* and the Plaintiff must return \$4,660.89 to the Defendant; as well as any Court award amount for statutory damages and/or punitive damages, including compensation for cost of suit. {See Attached Exhibits 31 & 32}

LEGAL PRECEDENT & A REVIEW OF RULE 56 SCRCP

8. In CMI Capital Market Inv., LLC v. Gonzalez-Toro, No. 06-2623, 2008 WL 713577, (1st Cir. March 18, 2008) (where the nonmovants failed to submit a separate statement of material facts in accordance with the local rule, "[t]he district court was ... within its discretion to deem the facts in the [movant's] statement of material facts admitted."); Ríos-Jiménez v. Principi, No. 06-2582, 2008 WL 651630, (1st Cir. March 12, 2008) ("In the event that a party opposing summary judgment fails to act in accordance with the rigors that such a [local summary judgment] rule imposes, a district court is free, in the exercise of its sound discretion, to accept the moving party's facts as stated.") (citations omitted); John S. v. County of Orange, No. 05-55021, 2007 WL 625249, (9th Cir. Feb. 26, 2007) (unpublished) ("It was not error for the district court to deem the material facts submitted by defendants as admitted and to grant summary judgment on procedural grounds.") (citing C.D. CAL. L.R. 56-3); Libel v. Adventure Lands of Am., Inc., 482 F.3d 1028, 1033 (8th Cir. 2007) ("The district court was not obliged to scour the record looking for factual disputes." "[d]istrict courts are not required to ferret through sloppy records in search of evidence supporting a party's case.") (citations omitted); Cosme-Rosado v. Serrano-Rodriguez, 360 F.3d 42, 45 (1st Cir. 2004) ("We have consistently upheld the enforcement of this [local summary judgment] rule, noting repeatedly that 'parties ignore [it] at their peril' and that 'failure to present a statement of disputed facts, embroidered with specific citations to the record, justifies the court's deeming the facts presented in the movant's statement of undisputed facts admitted.'") (citing Ruiz Rivera v. Riley, 209 F.3d 24, 28 (1st Cir. 2000)); Espinoza v. Northwestern Univ., No. 03-3251, 2004 WL 1662281 (7th Cir. July 20, 2004) (unpublished) (the district court did not abuse its discretion in deeming the movant's facts admitted and in granting summary judgment upon the nonmovant's failure to respond to a summary judgment motion without excuse) (citing Ammons v. Aramark Uniform Servs., Inc., 368 F.3d 809, 817 (7th Cir. 2004); Dade v. Sherwin-Williams Co., 128 F.3d 1135, 1139-40 (7th Cir. 1997)); Northwest Bank and Trust Co. v. First Ill. Nat'l Bank, 354 F.3d 721, 724-25 (8th Cir. 2003) (finding no abuse of discretion where the district court, "[a]s a sanction for noncompliance [with the local summary judgment rule], . . . ordered that Northwest be deemed to have admitted all of FINB's Statement of Material Facts," and limited its consideration of the nonmovant's "Statement of Additional Material Facts" to those that were specifically referenced by the nonmovant to the extent they did not contradict the facts submitted by the movant.).

9. If the Plaintiff disagreed with any citation, averment or the material facts; as presented in the Defendant's *Legal Memorandum* supporting the *Motion for Summary Judgment*, that was filed on April 25, 2012; the Plaintiff had to complete and file a memorandum opposing the motion. In addition, the Plaintiff's memorandum opposing the Defendant's *Motion for Summary Judgment* had to explain with specificity and particularity why the Defendant's *Motion for Summary Judgment* is not supported by the law. *Rule 56(e)*, *SCRCP* clearly states in pertinent parts, "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Therefore, *Summary Judgment* must be granted forthwith and this case *Dismissed forthwith with Prejudice*. In addition, the Plaintiff must return **\$4,660.89** to the Defendant; as well as any Court award amount for statutory damages and/or punitive damages, including compensation for cost of suit. See *Plaintiff's Exhibit 3 - Statement of Account, Page 2*

10. The plain language of *Rule 56(c)*, *SCRCP*, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. *Carolina Alliance for Fair Employment v. S.C. Dept. of Labor, Licensing, and Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999).

11. The manner in which a trial is conducted is within the trial judge's discretion. *Baber v. Greenville County*, 327 S.C. 31, 41, 488 S.E.2d 314, 319 (1997) (holding that "the conduct of a trial is largely within the trial judge's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion or the commission of a legal error that results in prejudice for appellant"). A failure to exercise discretion amounts to an abuse of that discretion. See *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997). When a trial judge is vested with discretion; but his ruling reveals no discretion was in fact exercised, an error of law has occurred. See *Ballon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 155, 399 S.E.2d 439, 441 (1990).

12. Under the Rules, when a motion for summary judgment is made and supported as

provided in *Rule 56*, the Plaintiff cannot rest upon filed allegations or denials in the Plaintiff's Pleading, the Plaintiff's response, by affidavits or as otherwise provided in *Rule 56*, must set forth specific facts showing that there is a genuine issue for trial. **If the Plaintiff does not respond, summary judgment, if appropriate, shall be entered against the Plaintiff.** (c) and (e) of *Rule 56*, allow the Plaintiff to supplement or oppose affidavits with depositions, answers to interrogatories and admissions on file.

13. *Rule 56* goes on to state; "If the party opposing summary judgment asserts he or she cannot present by affidavit facts justifying opposition, he must set forth this belief and the reasons for this belief in an affidavit for the trial court's review." See *Rule 56(f)*, SCRCF.

14. Specifically, *Rule 56(f)* states the following in pertinent parts: "Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just."

15. In other words, to obtain the benefit of *Rule 56(f)*, the Plaintiff had to file an affidavit setting forth the reasons why the Plaintiff is unable to present; by affidavit, facts essential to justify the Plaintiff's opposition to the Defendant's *Motion for Summary Judgment*. The Plaintiff did not and has not filed any such affidavit. See *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001) (holding that "*Rule 56(f)* requires the party opposing summary judgment to at least present affidavits explaining why he needs more time for discovery.").

16. Since the Plaintiff has relied solely upon the Pleadings, filed no counter-affidavit/s, and made no factual showing in opposition to the Defendant's filed *Motion for Summary Judgment, and/or Dismissal with Prejudice*, the lower court is required under *Rule 56*, to grant summary judgment, if, under the facts presented by the Defendant, she is entitled to judgment and/or dismiss the case as a matter of law. See *Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991) (Holding that "Where a plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required, under *Rule 56*, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.").

**FACTS, MATERIAL FACTS & AVERMENTS THAT
HAVE NEVER BEEN REFUTED, DENIED OR CONTROVERTED
BY ANY COURT ORDER OR RULING AND ARE DEEMED ADMITTED**

17. On January 3, 2013, the Defendant filed her objections to the Plaintiff's STIPULATION OF DISMISSAL pursuant to *Rule 41(a)(2), SCRPC* that clearly states in pertinent parts.... "*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....*"

18. The Court has not and did rule on the Defendant's *Motion for Summary Judgment* or on the Defendant's *Counterclaims and Affirmative Defenses*. The Defendant is not an attorney and therefore requires a definitive ruling from Judge Goodstein that specifically addresses the Defendant's *Motion for Summary Judgment* that is pursuant to *Rules 56(b), (c), (d) and (e), SCRPC*, *Counterclaims and Affirmative Defenses*. The only ruling the Defendant has received to date is the denial of the Plaintiff's Cross Motion that was denied by Judge Goodstein on June 19, 2012. Accordingly, the Defendant would still like to resolve this matter as soon as possible.

A. Reasons for Rejecting the Plaintiff's Stipulation of Dismissal.

19. Based on the Plaintiff's filed Complaint and Judge Goodstein's observations, the Defendant rejected the Plaintiff's Stipulation of Dismissal for the following reasons:

(A) The Plaintiff has not stated any facts that can constitute a cause of action for which relief can be granted and must be dismissed with prejudice pursuant to *Rule 12(b)(6), SCRPC. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).*

(B) A Summary Judgment in favor of the Defendant is appropriate based on the Plaintiff's filed Complaint that is pursuant to *Rule 56(c) SCRPC* that clearly states in pertinent parts... "*The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.*"

(C) The Plaintiff's Stipulation of Dismissal did not include a return of the Defendant's over payment of \$ 4,660.89 that the Defendant graciously agreed to accept and still agrees to accept, after everything is considered under the "Equitable Maxim Principle". {See Good v. Jarrard, 93 S.C. 229, 239, 76 S.E. 698, 702 (1912)}

20. South Carolina's Appeals Courts have stated, "*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.*" Camp v. Boyd, 229 U.S. 530, 559 (1913) also see the Plaintiff's Complaint, Page 2, Paragraph 7 & Page 3, Paragraphs 11 & 12 and the Defendant's Filed Exhibits 5, 9, 10 & 11}

21. The Courts in South Carolina have also determined, "*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).

22. 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 @ *¶ 21. This maxim applies by "*dispensing with pure formalities which would otherwise defeat the equity.*" *Id.* @ *¶ 21; 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*).

23. When applying this principle, Courts in South Carolina 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). In addition, South Carolina Appeals Courts have consistently ruled, "*after a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity.*" Wilkie, 187 S.C. at 393, 197 S.E. at 380. The Plaintiff may have to return all the Defendant's money due to accident, mistake, negligent misrepresentation and fraudulent misrepresentation. 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)

B. The Plaintiff has not and did not Oppose, Refute, Deny or Controvert any One of the Following Facts and Material Facts.

24. The Plaintiff's Law Firm of Moore & Van Allen, PLLC, was duly notified in the Defendant's *Answer to Complaint* filed 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 Dollars (\$5,556.44). {See Plaintiff's Statement of Account & Filed Exhibits 5, 9, 10 & 11}

25. Amy Rogers, May 10, 2012 default loan statement, {Page 2}, that is attached to her Corporate Verification of Account, {Plaintiff's Exhibit "C"} 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. {See the 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"}

26. The Plaintiff's supporting document for a \$5,500.00 "Fixed Rate Loan" is signed and dated 9/5/02. {Plaintiff's Exhibit "B", "PAGE 2"} 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. {Defendant's Exhibits 12 & 13} The Defendant's car loan is paid out. {Defendant's Exhibits 14 & 15} 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 Dollars (\$5,556.44). {Defendant's Exhibits 5 & 9-15}

27. 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. {Amy Rogers' Corporate Verification of Account, Page 2, identifies the Plaintiff's Debt Collection is for a February 24, 2003 loan for \$5,556.44, Exhibit "C", Column 1, Payoff W/Escrow \$5,274.84, Plaintiff's Complaint, Page 3, Paragraph 12 and Plaintiff's Exhibit "A", Page 1, Paragraphs 1 & 3 identifies the same February 24, 2003 loan for \$5,556.44}

28. 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. *{Section - 37-10-107 - SC Code of Laws}*

29. 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. *{SC Code of Laws § 37-10-107}*

30. 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. *{ See the Plaintiff's filed Documents}*

31. 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). *{See Plaintiff's filed Document and the Defendant's Exhibits 5, 9, 10 & 11}*

32. 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."

33. 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. *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)}

34. 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 { *S.C. Code Ann. § 37-10-107(1) & the Plaintiff's Filed Documents* }

35. Accordingly, as a matter of law, the Plaintiff cannot "*maintain an action for legal . . . relief. . .*" that is based upon a loan that never existed. { *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. { *S.C. Code Ann. § 37-10-107(1)* }

36. Rule 10(c), SCRCF clearly states in pertinent parts: "*A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading.*" When exhibits are inconsistent with the Plaintiff's allegations of material fact, such allegations cancel each other out. The Full Faith and Credit Clause of the United States Constitution provide that "*Full Faith and Credit shall be given in each state to the ... judicial proceedings of every other state.*" U.S. Const. Art. IV, § 1. Therefore, precedent regarding exhibits that are inconsistent with allegations of material fact can be found in Florida in Fladell v. Palm Beach County Canvassing Board, 772 So.2d 1240 (Fla. 2000) and Greenwald v. Triple D Properties, Inc., 424 So. 2d 185, 187 (Fla. 4th DCA 1983)

37. The language of Section 37-10-107 – SC Code of Laws is plain, unambiguous, and conveys a clear and definite meaning. Therefore, the Plaintiff and the Court cannot impose another meaning. Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995) and Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 442 S.E.2d 177 (1994).

38. South Carolina's Courts hold and recognize that "*the rules of statutory construction must give way to the cardinal rule of legislative intent.*" Holley v. Mount Vernon Mills, Inc., 312 S.C. 320, 440 S.E.2d 373 (1994); Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993); Gardner v. Biggart, 308 S.C. 331, 417 S.E.2d 858 (1992)

39. When exhibits are attached to and incorporated with the Complaint; the Court may consider those exhibits when ruling on the Defendant's *Motion for Summary Judgment*. See *Rule 10(c), SCRCP*; *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989) (“[B]y virtue of Rule 10(c), SCRCP, the attachment became a part and parcel of the complaint.”) and *Metal Serv. Corp. v. Industr. Elec. Co.*, 253 S.C. 507, 509, 171 S.E.2d 703, 704 (1970) (considering materials attached to complaint when deciding defendant’s demurrer to the complaint)}

40. It is well settled law that the Plaintiff is judicially bound by the Pleadings unless withdrawn, altered or stricken by amendment or otherwise. See *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) **Therefore, the Plaintiff failed to state a cause of action for which relief can be granted based on the documents attached to the Complaint.**

41. 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 \$11,010.89.** {Defendant’s Exhibit 16 and the Plaintiff’s Itemized Statement of Account, Exhibit 3, Page 2}

42. The Defendant never approved any Credit Life or Disability Insurance after the car loan was paid out {Defendant’s Exhibits “C”, 12 -15 & Exhibit 18, Page 2 of 2 – Under **WHEN INSURANCE STOPS** – “ the date your loan stops.”}. In addition, the Defendant was never informed that her mobile home purchase would be treated and classified as an open-ended account. The Defendant was told by the Plaintiff’s personnel that her loan was essentially the same as her car loan.

43. 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 \$ 4,660.89 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. See Plaintiff’s Exhibit 3 - Statement of Account, Page 2.

44. The Defendant has clearly shown 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. {*Camp v. Boyd*, 229 U.S. 530, 559 (1913)}

45. The Plaintiff's hands are not clean relative to this matter and South Carolina Courts have consistently held, *"no person can be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act."* Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and maintained by bribery). South Carolina Courts apply this rule for "Unclean Hands" in 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.

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

47. In 1879, South Carolina's Supreme Court held, *"There can be no doubt of the correctness of the legal proposition that, where money is paid under a mistake of fact, to a person who has no ground in conscience to claim it, the person paying it may recover it back."* Glenn v. Shannon, 12 S.C. 570, 570 (1879); see also Pilot Life Ins. Co. v. Cudd, 208 S.C. 6, 36 S.E.2d 860 (1945) (holding the general rule is that money paid to another under a mistake of fact may be recovered because the money belongs, in equity and good conscience, to the person who paid it). See Castock Corp. v. Bailey, 492 N.Y.S.2d 921 (Sup. Ct. 1985) (the fact that recipient has parted with the money is an insufficient excuse to forgive repayment); 70 Am. Jur. 2d Payment § 114(c) (1987) (no defense where money has been paid to another or spent).

48. If the Defendant were told the truth; that her loan request was going to be considered as a revolving charge account, the Defendant never would have asked for any loan. South Carolina's Appeals Courts have consistently held, *"a party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another."* Unjust enrichment is an equitable doctrine which permits the recovery of that amount the Plaintiff has been unjustly enriched at the expense of the Defendant. Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988). The legal issues are determined by a jury while equitable issues are for the judge. Floyd v. Floyd, 306 S.C. 376, 379, 412 S.E.2d 397, 398-99 (1991)

49. South Carolina's Appeals Courts have also ruled, "*Restitution is a remedy designed to prevent unjust enrichment.*" Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003) To recover on a theory of restitution, the Defendant must show (1) that she conferred a non-gratuitous benefit on the Plaintiff; (2) that the Plaintiff realized some value from the benefit; and (3) that it would be inequitable for the Plaintiff to retain the benefit without paying the Defendant for its value. Sauner, 354 S.C. at 409, 581 S.E.2d at 167; *see also* Earthscapes Unlimited, Inc., 390 S.C. at 616-17, 703 S.E.2d at 225 (providing the same requirements to recover under the doctrine of quantum meruit). "

50. To demonstrate whether or not an unjust enrichment would result, the Defendant need only show that she conferred a benefit on the Plaintiff and that allowing the Plaintiff to retain that benefit would result in a loss for the Defendant. *See* Player v. Chandler, 299 S.C. 101, 107, 382 S.E.2d 891, 895 (1989).

51. Moreover, the Defendant has been victimized by the Plaintiff personnel's Negligent Misrepresentation and Fraudulent Misrepresentation. South Carolina's Appeals Courts have stated, "*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).

52. Like negligent misrepresentation, an actionable fraudulent misrepresentation 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*).

53. More specifically, the alleged false representation must be of a present or pre-existing fact. *See* Spires v. Acceleration Nat'l Ins. Co., 417 F. Supp. 2d 750, 755-56 (D.S.C. 2006). In addition, the representation must be false at the time it is made. *See* GSM Dealer Servs., Inc. v.

Chrysler Corp., 32 F.3d 139, 142 (4th Cir. 1994). With respect to fraudulent misrepresentation, the fraudulent representation must relate to a present or pre-existing fact. To recover on a claim for negligence, the Defendant must show (1) a duty of care owed by the Plaintiff to tell the Defendant the truth about her mobile home loan; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach. Tanner v. Florence County Treasurer, 336 S.C. 552, 561, 521 S.E.2d 153, 158 (1999) (quoting Andrews v. Piedmont Air Lines, 297 S.C. 367, 369, 377 S.E.2d 127, 128 (1989)).

54. In order for the Defendant to establish liability for her Counterclaim of negligent misrepresentation, the Defendant must show (1) the Plaintiff made a false representation to the Defendant; (2) the Plaintiff had a pecuniary interest in making the representation; (3) the Plaintiff owed a duty of care to see that he/she communicated truthful information to the Defendant; (4) the Plaintiff breached that duty by failing to exercise due care; (5) the Defendant justifiably relied on the representation; and (6) the Defendant suffered a pecuniary loss as the proximate result of her reliance upon the representation." Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003) (quoting AMA Mgmt. Corp. v. Strasburger, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992)).

55. Under the discovery rule, the statute of limitations begins to run from the date the Defendant either knows or should know, by the exercise of reasonable diligence that a cause of action exists for the wrongful conduct of the Plaintiff. S.C. Code Ann. § 15-3-535 (2005); Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). "The statute of limitations begins to run from the point of discovery and not when advice of counsel is sought or a full-blown theory of recovery developed." Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 328-29, 534 S.E.2d 672, 676 (2000) (citations omitted).

56. 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-ended revolving charge/credit plan as a 15% Fixed Interest Rate loan. {See the Plaintiff's Statement of Account, the Plaintiff's Exhibit "B", Page 1, Exhibit 1, Page 1 & Page 11; and the Plaintiff's Membership & Account Agreement, Page 21 and the Defendant's Exhibits 5-15 & 19-21}

57. The Plaintiff's Account Statements and Amy Rogers Affidavits are for loans the Defendant never authorized, signed for or received. {See 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}

58. Misrepresenting facts in a legal proceeding demands the return of all the Defendant's money. 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."}

59. 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.....

- (A) Exhibit J.....CUNA Mutual Group Commentary on TILA's Section 226.(2)(a) (20)-3.
- (B) Exhibit K.....CUNA Mutual Group Explains Why the Addendum Must be Given to the Borrower and What Must Be Signed.
- (C) Exhibit L.....CUNA Mutual Group Subaccounts that Should not be Part of the Plan.
- (D) Exhibit M.....CUNA Mutual Group When the Addendum Should Be Given.

60. 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 documen-

tation, 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. {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.**”}

61. The Plaintiff did not present any evidence of disclosure compliance under the requirements of the Truth in Lending Act's (TILA's) Regulation Z. {See the Plaintiff's Filed Documents & Exhibits}

62. 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. {See Filed Exhibits E-H & J-M} The Plaintiff's loan counselor told the Defendant that her 15% fixed rate advance was essentially the same as her car loan. Car Loans and home purchases are primarily Closed-End loans. {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.”}

63. 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.” {See 15 USC 1601 et. seq.} There are penalties for inaccurate and defective disclosure. {15 USC 1601 et. seq.}

64. Failure to give accurate disclosures in the “Fed Box” or failing to substantially comply with TILA's regulatory requirements, means the Defendant can pursue her Counterclaim and seek damages against the Plaintiff for violating the Defendant's rights under TILA. The penalty can be up to \$1,000.00 for each violation. {See 15 USC 1601 et. seq.}

65. 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. *{See the Plaintiff's Filed Complaint, Filed Documents, Exhibits and Filed Affidavits}*

66. The Defendant's Closed-End loan for a mobile home with no Disability or Credit Life Insurance is not in the Plaintiff's accounting records. *{See Plaintiff's Exhibits 3 & 4}* 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. *{See the Plaintiff's Exhibit 3, and Filed Affidavits}*

67. 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 violate LoanLiner's mandates, guidelines and procedures. *{See LoanLiner – stating - "the following types of subaccounts should not be apart of the Plan, Mobile Homes, Home Equity, Real Estate and Home Purchases. "}*

68. As stated in this Pleading, the Plaintiff has not opposed, denied, refuted or 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 & SETTLEMENT

69. 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 the 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 on account #1119448-21...

\$ 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.

OFFER & RECOMMENDATION

70. The Defendant recommends the Plaintiff accept her generous offer to end this matter. In addition, the Plaintiff must...

(A) By Court Order if necessary, remove any derogatory information that may have been sent to Credit Reporting Agencies relative to this lending incident,

(B) If the Plaintiff will do what is right and return the Defendant's overpayment of **\$4,660.89**, 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.

NOTICE OF INTENT TO FILE "STATEMENT OF DAMAGES"

71. On July 24, 2013, the Defendant notified the Plaintiff's management personnel with a certified letter with return receipt of her *Notice of Intent to File "Statement of Damages"* relative to *Civil Action Case #2011-CP-38-1392* and her willingness to accept **\$4660.89** instead of **\$11,010.89** to end this matter. {See attached Exhibits 33 & 34}

(A) The Plaintiff has not and did not respond to the Defendant's offer. However, rather than have the Court Order the Plaintiff to pay the Defendant **\$11,010.89**, and since the Defendant purchased the mobile home, the Defendant has decided the only right course of action is to let the Plaintiff keep the **\$6,350.00** and just return the **\$4660.89**. {See Attached Exhibit 35}

(B) This is still the Defendant's terms and condition for a fair and just settlement relative to this unfortunate lending incident. {See Attached Exhibits 33, 34 & 35}

72. Section 39-5-140(a) –SC Code of Laws clearly states in pertinent parts, “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.”

**UNDER THE RULE, THE RELIEF SOUGHT MUST BE GRANTED
FORTHWITH INCLUDING COMPENSATION FOR COST OF SUIT AND
ANY MONETARY AWARDS OF PUNITIVE AND/OR STATUTORY DAMAGES**

73. **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 *with Prejudice*. without further litigation or cost to the Plaintiff. Since the Plaintiff has not denied, refuted, opposed or controverted any fact and/or Material Facts filed in Court of Common Pleas since December 21, 2011 or the Defendant's *Motion for Summary Judgment* since April 25, 2012, **THEREFORE, FORTHWITH...**

(A) Under the direction of this Honorable Court....

1) Immediately grant *Summary Judgment* to the Defendant and ascertain the amount of legal defense fees and cost of action that shall be paid to the Defendant because of the Plaintiff's Complaint and *Dismiss this case with Prejudice*.

2) Deny any judgment claim made by the Plaintiff.

(B) By Order of this Honorable Court reimbursement any and all cost that may be due the Defendant because of the Plaintiff's Complaint; including any punitive damages, compensatory damages and any monetary award/s due to the Plaintiff's statutory violations.

(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 if the Plaintiff refuses to remove derogatory information voluntarily.

(E) Render a judgment against the Plaintiff with Prejudice for the entire dollar amount of \$11,010.89 as punitive, if the Court feels it is necessary to deter the Plaintiff from future abuses and statutory violations.

74. **WHEREFORE**, the Defendant prays her *Request to Submit for a Decision Pursuant to Rule 56(e)*, SCRCF has been clearly written and properly supported by the evidence, the facts, Public Law, SC Code of Laws, the Defendant's Exhibits, the Plaintiff's filed Documents, the Defendant's Affidavit/s and Averments and Legal Precedent.

NOTIFICATION

75. A copy of the Defendant's *Request to Submit for a Decision Pursuant to Rule 56(e)*, SCRCF that has been filed with the Clerk of Court will be mailed to the following:

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

The Honorable Judge Diane Shafer Goodstein; POB 234, St. George, SC 29477

NOTARY VERIFICATION

IN WITNESS WHEREOF, the undersigned, being **DULY SWORN** and under the **PENALTY of PERJURY**, has signed and sealed these attestations on this 18th day of Nov in the year 2013 in City of Orangeburg, in the County of Orangeburg, and in the State of South Carolina.

Signature of Affiant:

Signature of Notary as Witness (1):

Signed, sealed and delivered in the presence of:

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

On Nov 18th, 2013 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 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

Commission Expires My Commission Expires
July 24, 2022

(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 OBJECTS TO NOTICE OF
CONTINUANCE AND FILES A SECOND
SETTLEMENT OFFER TO THE
PLAINTIFF, SOUTH CAROLINA
FEDERAL CREDIT UNION (SCFCU),
PURSUANT TO RULE 43(k), SCRPC
FOR A RETURN OF \$4,660.89 BACK
TO THE DEFENDANT FOR AN
EQUITABLE & FAIR SETTLEMENT**

Today's Date: March 17, 2014

2014 MAR 17 PM 3:03

TO: SOUTH CAROLINA FEDERAL CREDIT UNION, PLAINTIFF (hereafter also called SCFCU), and to **MOORE & VAN ALLEN, PLLC**, attorney/s for the **PLAINTIFF**,

Comes now the Defendant, Dorothy Harley Sistrunk, to file her *Objections to the Plaintiff's Notice of Continuance and Files a Second Settlement Offer to the Plaintiff, South Carolina Federal Credit Union (SCFCU) pursuant to Rule 43(k), SCRPC for a return of \$4,660.89 back to the Defendant for an Equitable and Fair Settlement.* This Pleading is in response to letters that were received from the Clerk of Court that is dated February 5, 2014, and from the Plaintiff's attorney, Colleen A. McConnell that are dated February 10, 2014 and March 4, 2014 respectively. The letters were retrieved from the mailbox at 423 Bayne Street in Orangeburg, South Carolina on February 7, 2014. February 13, 2014 and March 7, 2014.

The Plaintiff did not and has not responded to or opposed the Defendant's *Motion for Summary Judgment, Statement of Material Facts that are not in Dispute and Legal Memorandum* supporting the *Motion for Summary Judgment* that were filed on April 25, 2012. The Plaintiff has not refuted or denied the Defendant's *Statement of Damages* that was filed on November 18, 2013 pursuant to *Rule 8(a), SCRPC*. Neither the Plaintiff nor the Court has responded to the Defendant's *Request to Submit for Decision* that was filed on November 18, 2013. In addition, the Plaintiff has not denied, refuted or controverted any *Notarized Statement, Affidavit or Material Fact* filed by the Defendant or objected to the payment of the *Relief* sought since December 21, 2011. Therefore, under the Legal Doctrine and Principles of Stare Decisis and South Carolina's Rules of Civil Procedure this case must be Dismissed with Prejudice and the *Relief* sought paid to the Defendant forthwith. In addition to the aforementioned....

**I. THE DEFENDANT OBJECTS TO ANY CONTINUANCE FOR THE PLAINTIFF
FOR THE FOLLOWING REASONS**

A. Facts.

1. The Defendant never authorized any loan of any kind with the Plaintiff that was executed

ATTEST: TRUE
Wm. J. [Signature]
CLERK OF COURT
ORANGEBURG CO.

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). {See the Plaintiff's Statement of Account & the Defendant's Filed Exhibits 5, 9, 10 & 11}

2. The Plaintiff did not file an Addendum with its Complaint. {See Plaintiff's Filed Documents} This might be due to the fact that the Defendant's car loan did not originate with South Carolina Federal Credit Union (hereafter also called SCFCU). The Defendant did not receive an Addendum that would consummate the SCFCU's Membership and Account Agreement on September 5, 2002 and the Plaintiff has not filed any signed application other than the application for the Defendant's car loan that is paid out. {See Defendant's Filed Exhibits B & 12-15}

3. 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. The Plaintiff's Membership & Account Agreement clearly states, "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.**" }

4. The Defendant's "Closed-end" loan for a mobile home with no Disability or Credit Life Insurance is not in the Plaintiff's accounting records. {See Plaintiff's Exhibits 3 & 4} 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 that was never authorized by the Defendant. The Defendant was deceived. This is the same account that is the subject of the Plaintiff's Complaint. {See the Plaintiff's Filed Exhibit 3 & Affidavits}

5. SCUTPA clearly states, "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). Section 39-5-50(a) – SC Code of Laws clearly states in relevant parts...

"(a) Whenever the Attorney General has reasonable cause to believe that any person is using, has used or is about to use any method, act or practice declared by Section 39-5-20 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary restraining order, temporary injunction or permanent injunction the use of such method, act or practice. The courts are authorized to issue orders and injunctions to restrain and prevent violations of this article, and such orders and injunctions shall be issued without bond."

B. The Plaintiff did not respond to or oppose the Defendant's Motion for Summary Judgment, Statement of Material Facts that are not in Dispute and Legal Memorandum Supporting the Defendant's Motion for Summary Judgment that were filed on April 25, 2012.

6. As stated in the Defendant's *Request to Submit for Decision and Statement of Damages* that were filed on November 18, 2013 and are incorporated by reference as though fully set forth herein verbatim, the Plaintiff has had ample time for opposition and to respond to the Defendant's *Motion for Summary Judgment, Statement of Material Facts that are not in Dispute and Legal Memorandum* supporting the *Motion for Summary Judgment* that were filed on April 25, 2012. The Plaintiff also has never refuted the *Relief* sought and has had ample time to respond to the Defendant's *Notice of Settlement Offer Pursuant to Rule 43(k), SCRCP* that was filed on May 10, 2013. Therefore a continuance is not necessary, only a Ruling and Order.

7. In addition to the aforementioned in paragraph #6, the following **Verified Pleadings and Papers** that have already been filed in connection with this case that have never been opposed, refuted, denied, stricken, controverted by the Plaintiff or disallowed by any Court Order and/or Ruling.

(a) *Defendant Dorothy Harley Sistrunk's Affidavit of Facts, Material Facts & Truth to Rebut any Statement Made by the Plaintiff or the Plaintiff's Attorney.....* that was filed on June 14, 2012 and is incorporated by reference as though fully set forth herein verbatim.

(b) *Defendant Dorothy Harley Sistrunk's Objections to Dismissal Pursuant to SCRCP Rule 41(a)(2); Response to the Plaintiff's Stipulation of Dismissal and Counter Stipulations for Dismissal* that was filed on January 3, 2013 and is incorporated by reference as though fully set forth herein verbatim.

(c) Therefore, all averments and statements relative to material facts contained in the aforementioned **Verified Pleadings and Papers**; as well as every citation contained therein, are deemed admitted by rule, law and precedent as uncontested facts. This includes any Affirmative Defense and/or uncontested Counterclaim.

8. Therefore, under the legal principle and doctrine of **Stare Decisis**, this case must be *Dismissed forthwith with Prejudice* and judgment entered against the Plaintiff pursuant to the Rule of law and South Carolina's and the Federal Rules of Civil Procedure. As the Defendant has repeatedly stated, the Plaintiff can avoid further litigation by returning the over payment of \$4,660.89 back to the Defendant; plus any Court awarded amount for statutory violations and

compensation for cost incurred. In addition, to the aforementioned in this paragraph, any punitive damages the Court deems is proper to deter the Plaintiff from repeating the deceptive acts that ensnared the Defendant.

9. Rule 56(b), SCRCP clearly states in pertinent parts,

"A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof."

10. As stated, the Defendant completed and filed her *Motion for Summary Judgment*, along with her *Statement of Material Facts that are not in Dispute* and *Legal Memorandum* supporting the motion on April 25, 2012. The Defendant's filed statements identified why her *Motion for Summary Judgment* is supported by *Material Facts* that are not in dispute and never refuted or denied by the Plaintiff and the Defendant's *Legal Memorandum* informed the Court why her *Motion for Summary Judgment* is supported by the law. The Defendant did not request a hearing because her *Motion for Summary Judgment* can be decided by the Pleadings without oral arguments.

11. Rule 56(c) SCRCP clearly states in pertinent parts,

"The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See Grant v. Mount Vernon Mills, Inc., 370 S.C. 138, 145-46, 634 S.E.2d 15, 19 (Ct. App. 2006) and Klippel v. Mid-Carolina Oil, Inc., 303 S.C. 127, 129, 399 S. E. 2d 163, 164 (Ct. App. 1990) ("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 also Higgins v. Med. Univ. of S.C., 326 S.C. 592, 599, 486 S. E. 2d 269, 272 (Ct. App. 1997) (holding that "the trial court ordinarily may not consider factual statements made during argument on the summary judgment issue").

12. Opposing Affidavits must be based on personal knowledge. South Carolina's Appeals Court has consistently stated, "[T]his court ordinarily will not consider statements of fact presented only in an attorney's argument in determining whether a genuine issue of material fact exists sufficient to preclude summary judgment." West v. Gladney, 341 S.C. 127, 135, 533 S.E. 2d 334, 338 (Ct. App. 2000).

13. Rule 56(e), SCRCP clearly outlines this requirement by stating in pertinent parts,

"Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

14. The Plaintiff did not and has not filed any statements, affidavits, depositions or testimony opposing the Defendant's *Motion for Summary Judgment* or identified any part of the Motion the Plaintiff disagreed with. If the Plaintiff disagreed with or disputed any of the facts in the Defendant's *Statement of Material Facts that are not in Dispute*, the Plaintiff or the Plaintiff's witness/es that has/have personal knowledge must complete and file a statement opposing the Defendant's *Statements of Material Facts*.

15. Since the Plaintiff has not and did not controvert any statement in the Defendant's *Statement of Material Facts that are not in Dispute*, all the Defendant's statements are deemed admitted as uncontested facts. Therefore, the Court must grant *Summary Judgment* forthwith, *Dismiss* this case forthwith *with Prejudice* and the Plaintiff must return all monies paid back to Defendant or avoid further litigation by returning the over payment of \$4,660.89 back to the Defendant; as well as any Court awarded amount for statutory damages and/or punitive damages, including compensation for cost of suit.

16. In *CMI Capital Market Inv., LLC v. Gonzalez-Toro*, No. 06-2623, 2008 WL 713577, (1st Cir. March 18, 2008) (where the nonmovants failed to submit a separate statement of material facts in accordance with the local rule, "[t]he district court was ... within its discretion to deem the facts in the [movant's] statement of material facts admitted."); *Ríos-Jiménez v. Principi*, No. 06-2582, 2008 WL 651630, (1st Cir. March 12, 2008) ("In the event that a party opposing summary judgment fails to act in accordance with the rigors that such a [local summary judgment] rule imposes, a district court is free, in the exercise of its sound discretion, to accept the moving party's facts as stated.") (citations omitted); *John S. v. County of Orange*, No. 05-55021, 2007 WL 625249, (9th Cir. Feb. 26, 2007) (unpublished) ("It was not error for the district court to deem the material facts submitted by defendants as admitted and to grant summary judgment

on procedural grounds.”) (citing *C.D. CAL. L.R. 56-3*); *Libel v. Adventure Lands of Am., Inc.*, 482 F.3d 1028, 1033 (8th Cir. 2007) (“The district court was not obliged to scour the record looking for factual disputes.” “[d]istrict courts are not required to ferret through sloppy records in search of evidence supporting a party’s case.”) (citations omitted); *Cosme-Rosado v. Serrano-Rodriguez*, 360 F.3d 42, 45 (1st Cir. 2004) (“We have consistently upheld the enforcement of this [local summary judgment] rule, noting repeatedly that ‘parties ignore [it] at their peril’ and that ‘failure to present a statement of disputed facts, embroidered with specific citations to the record, justifies the court’s deeming the facts presented in the movant’s statement of undisputed facts admitted.’”) (citing *Ruiz Rivera v. Riley*, 209 F.3d 24, 28 (1st Cir. 2000)); *Espinoza v. Northwestern Univ.*, No. 03-3251, 2004 WL 1662281 (7th Cir. July 20, 2004) (unpublished) (the district court did not abuse its discretion in deeming the movant’s facts admitted and in granting summary judgment upon the nonmovant’s failure to respond to a summary judgment motion without excuse) (citing *Ammons v. Aramark Uniform Servs., Inc.*, 368 F.3d 809, 817 (7th Cir. 2004); *Dade v. Sherwin-Williams Co.*, 128 F.3d 1135, 1139–40 (7th Cir. 1997)); *Northwest Bank and Trust Co. v. First Ill. Nat’l Bank*, 354 F.3d 721, 724–25 (8th Cir. 2003) (finding no abuse of discretion where the district court, “[a]s a sanction for noncompliance [with the local summary judgment rule], . . . ordered that Northwest be deemed to have admitted all of FINB’s Statement of Material Facts,” and limited its consideration of the nonmovant’s “Statement of Additional Material Facts” to those that were specifically referenced by the nonmovant to the extent they did not contradict the facts submitted by the movant.).

17. If the Plaintiff disagreed with any citation, averment or the material facts; as presented in the Defendant’s *Legal Memorandum* supporting the *Motion for Summary Judgment*, that was filed on April 25, 2012; the Plaintiff had to complete and file a memorandum opposing the motion. In addition, the Plaintiff’s memorandum opposing the Defendant’s *Motion for Summary Judgment* had to explain with specificity and particularity why the Defendant’s *Motion for Summary Judgment* is not supported by the law. *Rule 56(e)*, *SCRCP* clearly states in pertinent parts,

“When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.”

18. The plain language of *Rule 56(c)*, *SCRCP*, mandates the entry of summary judgment,

after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. Carolina Alliance for Fair Employment v. S.C. Dept. of Labor, Licensing, and Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999).

19. The manner in which a trial is conducted is within the trial judge's discretion. Baber v. Greenville County, 327 S.C. 31, 41, 488 S.E.2d 314, 319 (1997) (holding that "the conduct of a trial is largely within the trial judge's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion or the commission of a legal error that results in prejudice for appellant"). A failure to exercise discretion amounts to an abuse of that discretion. See Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997). When a trial judge is vested with discretion; but his ruling reveals no discretion was in fact exercised, an error of law has occurred. See Ballon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152, 155, 399 S.E.2d 439, 441 (1990).

20. Under South Carolina's Rules of Civil Procedure, when a motion for summary judgment is made and supported as provided in Rule 56, the Plaintiff cannot rest upon filed allegations or denials in the Plaintiff's Pleading, the Plaintiff's response, by affidavits or as otherwise provided in Rule 56, must set forth specific facts showing that there is a genuine issue for trial. **If the Plaintiff does not respond, summary judgment, if appropriate, shall be entered against the Plaintiff.** (c) and (e) of Rule 56, allow the Plaintiff to supplement or oppose affidavits with depositions, answers to interrogatories and admissions on file.

21. Rule 56(f), SCRPC goes on to state, if the party opposing summary judgment asserts he or she cannot present by affidavit facts justifying opposition, he must set forth this belief and the reasons for this belief in an affidavit for the trial court's review.

22. Specifically, Rule 56(f) states the following in pertinent parts:

"Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just."

23. In other words, to obtain the benefit of Rule 56(f), the Plaintiff had to file an affidavit setting forth the reasons why the Plaintiff is unable to present; by affidavit, facts essential to

justify the Plaintiff's opposition to the Defendant's *Motion for Summary Judgment*. The Plaintiff did not and has not filed any such affidavit. See *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321, 548 S.E. 2d 854, 857 (2001) (holding that "Rule 56(f) requires the party opposing summary judgment to at least present affidavits explaining why he needs more time for discovery.").

24. Since the Plaintiff has relied solely upon the Pleadings, filed no counter - affidavit/s, and made no factual showing in opposition to the Defendant's filed *Motion for Summary Judgment*, and/or *Dismissal with Prejudice*, the lower court is required under Rule 56, to grant *Summary Judgment*, if, under the facts presented by the Defendant, she is entitled to judgment and/or dismiss the case as a matter of law. See *Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991) (Holding that "Where a plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required, under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.").

C. The Plaintiff did not respond to, oppose, refute or deny any of the Defendant's Affirmative Defenses or the Relief sought since December 21, 2011.

25. In addition to the Plaintiff's failure to respond to or oppose the Defendant's *Motion for Summary Judgment*, *Statement of Material Facts that are not in Dispute* and *Legal Memorandum* supporting the *Motion for Summary Judgment* that were filed on April 25, 2012, the Plaintiff also failed to respond to, oppose, deny, refute, or controvert any of the Defendant's Affirmative Defenses in the Defendant's *Answer to the Plaintiff's Summons & Complaint* that was filed on December 21, 2011.

(a) The Defendant's SECOND AFFIRMATIVE DEFENSE accused the Plaintiff of engaging in "Deceptive Lending Practices" that violate the *Unfair Trade Practices Act*, i.e., *SCUTPA*, that includes Sections 39-5-10, 39-5-20 & 39-5-140 - *SC Code of Laws*. The Plaintiff has not, and did not refute, deny, oppose or controvert this Defense. This Defense is now deemed admitted pursuant to Rule 8(d), *SCRCP* that clearly states in pertinent parts;

"Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."

(b) The Defendant's ELEVENTH AFFIRMATIVE accused the Plaintiff of violating the *Truth in Lending Act (TILA)*, i.e., 15 USC 1601 et. seq. The Plaintiff has not, and did not refute, deny, oppose or controvert this Defense. This Defense is also admitted pursuant to Rule 8(d), *SCRCP*.

(c) The Defendant's THIRTEENTH & FOURTEENTH AFFIRMATIVE DEFENSES "Usurious Interest" and an "Unlawful Bait and Switch Credit Scheme", respectfully, were never denied, opposed, refuted or controverted by the Plaintiff since December 21, 2011 and pursuant to Rule 8(d), SCRCF "are admitted when not denied in the responsive pleading." These actions by the Plaintiff; either together or individually, are a violation of Section 37-5-108 – SC Code of Laws that clearly states in pertinent parts,

"(1) With respect to a transaction that is, gives rise to, or leads the debtor to believe will give rise to, a consumer credit transaction, if the court as a matter of law finds:

(a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or

(b) any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result and award the consumer any actual damages he has sustained.

(2) With respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction. In addition, the consumer has a cause of action to recover actual damages and, in an action other than a class action, a right to recover from the person violating this section a penalty in the amount determined by the court of not less than one hundred dollars nor more than one thousand dollars...."

26. "Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Carolina Care Plan, Inc. v. United Health - Care Services, Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004). "In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Id.* at 24-25, 644 S.E.2d at 668. Interest payments during some months were almost 100%. {See the Defendant's Filed Exhibit 16}

D. The Plaintiff's personnel engaged in a deceptive lending practice by misrepresenting a "Revolving Charge" loan" as a "Fixed Rate" loan that violates South Carolina's Unfair Trade Practices Act and CUNA'S Policies and procedures. This has never been refuted or denied by the Plaintiff in any filed Pleading.

27. Under the discovery rule, the statute of limitations begins to run from the date the Defendant either knows or should know, by the exercise of reasonable diligence that a cause of action exists for the wrongful conduct of the Plaintiff. *S.C. Code Ann. § 15-3-535 (2005)*; *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). The statute of limitations begins to run from the point of discovery and not when advice of counsel is sought or a full-blown theory of recovery developed. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 328-29, 534 S.E.2d 672, 676 (2000) (citations omitted).

28. 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 is written on the Defendant's application {See the Defendant's Filed Exhibit 9, Page 1 of 2} and the Plaintiff's personnel did not send any document/s for the Defendant to sign relative to the Defendant's mobile home purchase {See the Defendant's Filed Exhibit 9, Page 2 of 2} 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.....

(a) Exhibit J.....CUNA Mutual Group Commentary on TILA's Section 226.(2)(a)(20)-3.

(b) Exhibit K.....CUNA Mutual Group Explains Why the Addendum Must be Given to the Borrower and What Must Be Signed.

(c) Exhibit L.....CUNA Mutual Group Subaccounts that Should not be Part of the Plan.

(d) Exhibit M.....CUNA Mutual Group When the Addendum Should Be Given.

29. The Defendant did not receive an Addendum on 09/05/2002 as required by SCFCU's Membership & Account Agreement. As already stated, this oversight may have been caused by the fact that the Defendant's car loan did not originate at SCFCU. Therefore, 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. {See 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."}

30. If this were an accident or a bona fide accounting error pursuant to TILA, why didn't the Plaintiff make the necessary corrections or account changes, after all the facts were known? Based on the Plaintiff's actions, an "Open-end" Revolving Charge was misrepresented as a "Fixed Rate" loan that is violative of South Carolina's Unfair Trade Practices Act {See the Plaintiff's Filed Exhibit 3, Affidavits & § 39-5-10(a) – SC Code of Laws}

31. Section 39-5-10(a) – SC Code of Laws declares ...,

"[u]nfair or deceptive acts or practices in the conduct of any trade or commerce... . unlawful." S.C. Code Ann. § 39-5-20(a) (1976). The terms "trade" and "commerce" "include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and include any trade or commerce directly or indirectly affecting the people of this State."

32. S.C. Code Ann. § 39-5-10(b) (1976) clearly states in pertinent parts. "An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive." Wogan v. Kunze, 366 S.C. 583, 606, 623 S.E.2d 107, 120 (Ct. App. 2005) (citing deBondt v. Carlton Motorcars, Inc., 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000)).]

33. A practice is 'deceptive' when it has a tendency to deceive." See Johnson v. Collins Entm't Co., Inc., 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002). S.C. Code Ann. § 39-5-20(a) (2002).clearly states the following in pertinent parts...

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

(b) It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended."

34. Unfair or deceptive acts as defined in the *FTC Act* need not constitute ordinary fraud. Federal Trade Commission v. Algoma Lumber Co., 291 U.S. 67, 54 S. Ct. 315, 78 L. Ed. 655 (1934); D.D.D. Corp. v. Federal Trade Commission, 125 F. (2d) 679 (7th Cir.1942). Under the statute there is no need to show that a claim or representation was intended to deceive, but only that it had the capacity or effect or tendency to deceive. *Id.* See also Hardy v. Toler, 288 N.C. 303, 218 S.E. (2d) 342 (1975)

35. Actual knowledge is not required under *SCUTPA* to hold SCFCU liable for the misrepresentations of its personnel. At common law, actual knowledge is not necessary to hold a

principal liable, if misrepresentations are made by the agent while acting within the scope of his agency. See, West v. Service Life & Health Insurance Co., 220 S.C. 198, 66 S.E. (2d) 816 (1951); See also, Restatement(Second) of Agency § 261, comment a (1958)

36. Under Section 39-5-20(a) and (b), SC Code of Laws, the Defendant need not prove the elements of common law deceit in order to establish a violation of the *South Carolina Unfair Trade Practices Act* since, under the statute, there is no need to show that a claim or representation was intended to deceive but only that it had the capacity, effect, or tendency to deceive. State ex rel. McLeod v. C & L Corporation, supra.

37. “Misrepresenting a Revolving Charge as a 15% Fixed Interest Rate Loan” failing to follow the guidelines and requirements of CUNA’s LoanLiner credit procedures and the *Truth in Lending Act (TILA)* will deceive. 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. {See Defendant’s Filed Exhibit 9, Page 1 of 2 & E-H} As already stated and consistently repeated, the Plaintiff’s loan counselor told the Defendant that her 15% Fixed Rate advance was essentially the same as her car loan. Under CUNA’s guidelines, an “Open-end” Revolving Charge is not to be used for car loans and home purchases. {See Defendant’s Filed Exhibit L}

38. Section 39-5-140(a) –SC Code of Laws clearly states in pertinent parts,

“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.”

39. The Defendant must show the Plaintiff’s actions adversely affected the public interest. Daisy Outdoor Adver. Co., Inc. v. Abbott, 322 S.C. 489, 493, 473 S.E.2d 47, 49(1996). 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 in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company’s procedures created a potential for repetition of the unfair and deceptive acts. *Id.* at

388, 496 S.E.2d at 23. and (3) The Defendant suffered monetary or property loss as a result of the Plaintiff's unfair or deceptive act(s)." Wright v. Craft, 640 S.E.2d 486, 498 (S.C. Ct. App. 2006) (citing S.C. Code Annotated. §§ 39-5-10 to 560). The Defendant has paid the Plaintiff over \$11,000.00. {See Plaintiff's Exhibit 3}

40. "An impact on the public interest may be shown if the acts or practices have the potential for repetition." Singleton v. Stokes Motors, Inc., 595 S.E.2d 461, 466 (S.C. 2004). Baiting and switching is an unfair trade practices that impacts the public.

(a) These practices are repeated, have been repeated for years and; in all likelihood, will continue to be repeated. Noack Enterprises, Inc. v. Country Corner Interiors, 351 S.E.2d 347 (S.C.Ct.App. 1986).

(b) The financial damages associated with telling credit union members they have a "Fixed Rate" loan when it is in fact an "Open-end" Revolving Charge can only be stopped, when it is discovered. This deceptive practice can only be deterred effectively when the lower courts, law enforcement and legislative bodies stop giving perpetrators slaps on the wrist or; even worst, turning a blind eye.

41. South Carolina and Federal law prohibits prospering or benefiting as a direct or indirect result of an illegal act. It is a well founded policy of law "[t]hat no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act." See 86 C.J.S. Torts § 12 (1954)

42. This rule applies at both law and in equity and whether the cause of action is in contract or in tort. {See 1A C.J.S. Actions § 29 (1985). See also Graham v. Graham, 276 S.C. 341, 278 S.E.2d 345 (1981); Nelson v. Bryant, 265 S.C. 558, 220 S.E.2d 647 (1975); Roundtree v. Ingle, 94 S.C. 231, 77 S.E. 931 (1913); Restatement (Second) of Torts § 774 (1977) and Jackson v. Bi-Lo Stores, Inc., 313 S.C. at 276, 437 S.E. 2d at 170.}

43. The illegality doctrine has also been recognized by the United States Supreme Court. {See McMullen v. Hoffman, 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899), holding that illegality is a defense to a contract action: The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract. *Id.* at 654, 19 S.Ct. at 845.}

44. South Carolina courts have reached similar conclusions refusing to aid plaintiffs who are themselves guilty of an illegal act. In *Roundtree*, the court concluded that "[his] whole transaction is without the pale of the law, and [he] cannot invoke the aid of the courts in enforcement of any claim depending on it." *Id.* 77 S.E. at 932. See also, *Berkebile v. Outen*, S.C. 426 S.E.2d 760, 762 (1993) (holding that "an illegal contract has always been unenforceable ... South Carolina courts will not enforce a contract which is violative of public policy, statutory law or provisions of the Constitution.").

E. The Plaintiff's actions are a violation of Section 37-10-107(1) – SC Code of Laws.

45. The Plaintiff's Complaint and Debt Collection against the Defendant are a violation of Section 37-10-107(1). The Plaintiff's Complaint is 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.

"(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."

46. 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. {*SC Code of Laws § 37-10-107(1)*}

47. 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. {*See the Plaintiff's filed Documents*}

48. 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).

{See the Plaintiff's filed Document & the Defendant's Exhibits 5 & 9-11}

49. The Plaintiff's Complaint and Debt Collection cannot defeat the plain wording of SC Code of Laws Section 37-10-107(1) that states in pertinent parts,

"no person can maintain an action or defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment, or agreement."

50. 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. *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)}

51. 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 *{ See the Plaintiff's Filed Documents }*

52. Accordingly, as a matter of law, the Plaintiff cannot "maintain an action for legal . . . relief . . . that is based upon a loan that never existed. *{S.C. Code Ann. § 37-10-107(1)}* Under these circumstances, the Plaintiff cannot establish or state a claim for a legitimate "Cause of Action" against the Defendant.

53. Rule 10(c), SCRPC clearly states in pertinent parts:

"A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading."

54. When exhibits are inconsistent with the Plaintiff's allegations of material fact, such allegations cancel each other out. The Full Faith and Credit Clause of the United States Constitution provide that "Full Faith and Credit shall be given in each state to the ... judicial proceedings of every other state." *U.S. Const. Art. IV, § 1.*

55. Therefore, precedent regarding exhibits that are inconsistent with allegations of material fact can be found in Florida in *Fladell v. Palm Beach County Canvassing Board*, 772 So.2d 1240 (Fla. 2000) and *Greenwald v. Triple D Properties, Inc.*, 424 So. 2d 185, 187 (Fla. 4th DCA 1983)

56. The Plaintiff's supporting document for a \$5,500.00 "Fixed Rate Loan" is signed and dated 9/5/02. {Plaintiff's Exhibit "B", "PAGE 2"} 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. {Defendant's Exhibits 12 & 13} The Defendant's car loan is paid out. {Defendant's Exhibits 14 & 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 Dollars (\$5,556.44). {Defendant's Exhibits 5 & 9-15}

57. The Defendant never approved any Credit Life or Disability Insurance after the car loan was paid out {Defendant's Exhibits "C", 12 -15 & Exhibit 18, Page 2 of 2 – Under **WHEN INSURANCE STOPS** – " the date your loan stops."}. In addition, the Defendant was never informed that her mobile home purchase would be treated and classified as an open-ended account. The Defendant was told by the Plaintiff's personnel that her loan was essentially the same as her car loan.

58. The language of *Section 37-10-107(1) – SC Code of Laws* is plain, unambiguous, and conveys a clear and definite meaning. Therefore, the Plaintiff and the Court cannot impose another meaning. *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995) and *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 442 S.E.2d 177 (1994).

59. "[T]he rules of statutory construction must give way to the cardinal rule of legislative intent." *Holley v. Mount Vernon Mills, Inc.*, 312 S.C. 320, 440 S.E.2d 373 (1994); *Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993); *Gardner v. Biggart*, 308 S.C. 331, 417 S.E.2d 858 (1992)

F. The Plaintiff's actions are a violation of the Truth in Lending Act (TILA).

60. The Truth in Lending Act (TILA) was established to ensure adequate disclosure of loan terms to consumers, in order to effectuate informed decisions regarding the cost of credit. Accordingly, the Act states in pertinent parts:

"It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." {15 U.S.C.A. § 1601(a); see also *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 559, 63 L. Ed. 2d 22, 7-28, 100 S. Ct. 790 (1980)}

61. 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.” There are penalties for inaccurate and defective disclosure. *{See Defendant Dorothy Harley Sistrunk’s Statement of Material Facts That Are Not In Dispute, Pages 6-7 that is incorporated by reference as fully set forth herein verbatim for a payout schedule of a 15% Fixed Rate loan}*

62. Failure to give accurate disclosures in the “Fed Box” or failing to substantially comply with TILA’s regulatory requirements, means the Defendant can pursue her Counterclaim and seek damages against the Plaintiff for violating the Defendant’s rights under TILA. The penalty can be up to \$1,000.00 for each violation.

63. 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. *{See Defendant Dorothy Harley Sistrunk’s Statement of Material Facts That Are Not In Dispute, Pages 6-7 that is incorporated by reference as fully set forth herein verbatim for a payout schedule of a 15% Fixed Rate loan}*

64. The Plaintiff’s misuse of the Defendant’s monthly payments is a clear violation of TILA’s guidelines. As already stated and consistently repeated, the Defendant’s “Closed-end” loan for a mobile home with no Disability or Credit Life Insurance is not in the Plaintiff’s accounting records, the Defendant’s monthly payments were not used to pay off the Defendant’s mobile home loan and 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.

II. THE DEFENDANT OBJECTS TO ANY CONTINUANCE FOR THE PLAINTIFF FOR THE FOLLOWING ADDITIONAL REASONS

A. The Court must rule on the Defendant’s Motion for Summary Judgment and Counterclaims.

65. The Defendant filed her objections to the Plaintiff’s STIPULATION OF DISMISSAL on January 3, 2013, pursuant to *Rule 41(a)(2), SCRPC* that clearly states in pertinent parts....

“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* and *Motion for Summary Judgment* have yet to be adjudicated by the Court.

66. The only ruling the Defendant has received to date is the denial of the Plaintiff's *Cross Motion* that was denied by Judge Goodstein on June 19, 2012. Accordingly, the Defendant would still like to resolve this matter as soon as possible.

67. If Counsel for the Plaintiff will recall, the following issues concerned Judge Goodstein during the hearing...

- (a) Interest payments in some months were extremely high,
- (b) No evidence the Defendant authorized Credit Life & Disability Insurance.
- (c) No evidence the Defendant received an Addendum that is required as part of the Plan (*and essential to an enforceable Membership & Account Agreement and must be given before the first transaction under the Plan.*)

(d) No evidence the Defendant was duly notified that her mobile home purchase was not the fixed interest rate account that was stated on the application; but an "Open-end" Revolving Charge type loan... and...

(e) No evidence the Defendant signed an agreement and authorized 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.

68. Even though Counsel tried to defend the Plaintiff's Complaint, if Counsel for the Plaintiff will recall, Judge Goodstein also observed that if it were not for the unauthorized Credit Life & Disability Insurance and the "Open-ended" nature of the account, the account would have been paid out.

69. The Plaintiff has not stated any facts that can constitute a cause of action for which relief can be granted and must be dismissed with prejudice pursuant to *Rule 12(b)(6), SCRCF. Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

70. A *Summary Judgment* in favor of the Defendant is appropriate based on the Plaintiff's filed Complaint that is pursuant to *Rule 56(c) SCRCF* that clearly states in pertinent parts...

"The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

71. The Plaintiff's Stipulation of Dismissal did not include a return of the Defendant's over payment of \$ 4,660.89 that the Defendant graciously agreed to accept under the "Equitable Maxim Principle". {See Good v. Jarrard, 93 S.C. 229, 239, 76 S.E. 698, 702 (1912)}

72. "[T]he 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." Camp v. Boyd, 229 U.S. 530, 559 (1913) also see the Plaintiff's Complaint, Page 2, Paragraph 7 & Page 3, Paragraphs 11 & 12 and the Defendant's Filed Exhibits 5, 9, 10 & 11}

73. "[T]he 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). "[T]he 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).

74. When applying this principle, Courts in South Carolina look to the "[s]ubstance 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). In addition, "[a]fter a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity." Wilkie, 187 S.C. at 393, 197 S.E. at 380.

75. The Plaintiff may have to return all the Defendant's money due to accident, mistake, negligent misrepresentation and fraudulent misrepresentation. 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)

76. The Plaintiff's Law Firm of Moore & Van Allen, PLLC, was duly notified in the

Defendant's *Answer to Complaint* filed 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 Dollars (\$5,556.44). *{See Plaintiff's Statement of Account & the Defendant's Filed Exhibits 5, 9, 10 & 11}*

77. Amy Rogers, May 10, 2012 default loan statement, *{Page 2}*, that is attached to her Corporate Verification of Account, *{Plaintiff's Exhibit "C"}* 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. *{See the 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"}*

78. 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. *{Refer to Amy Rogers' Corporate Verification of Account, Page 2, that 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 and Plaintiff's Exhibit "A", Page 1, Paragraph 1 & 3 identifies the same 02/24/2003 loan for \$5,556.44}*

79. 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 return of over \$10,340.00. *{Defendant's Exhibit 16, Exhibit 7 x 94 Payments and the Plaintiff's Itemized Statement of Account}*

80. 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 that leaves the Defendant no viable choice except to seek the return of all her money.

81. The Defendant has clearly shown 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. *{Camp v. Boyd, 229 U.S. 530, 559 (1913)}*

82. The Plaintiff's hands are not clean relative to this matter and South Carolina Courts have consistently held, "no person can be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act." *Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and maintained by bribery).* South Carolina Courts apply this rule for "Unclean Hands" in 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.*

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

84. In 1879, South Carolina's Supreme Court held, "There can be no doubt of the correctness of the legal proposition that, where money is paid under a mistake of fact, to a person who has no ground in conscience to claim it, the person paying it may recover it back. *Glenn v. Shannon, 12 S.C. 570, 570 (1879); See also Pilot Life Ins. Co. v. Cudd, 208 S.C. 6, 36 S.E.2d 860 (1945) (holding the general rule is that money paid to another under a mistake of fact may be recovered because the money belongs, in equity and good conscience, to the person who paid it). See Castock Corp. v. Bailey, 492 N.Y.S.2d 921 (Sup. Ct. 1985) (the fact that recipient has parted with the money is an insufficient excuse to forgive repayment); 70 Am. Jur. 2d Payment § 114(c) (1987) (no defense where money has been paid to another or spent).*

85. In addition, "[a] party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another." Unjust enrichment is an equitable doctrine which permits the recovery of that amount the Plaintiff has been unjustly enriched at the expense of the Defendant. *Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988).* The legal issues are determined by a jury while equitable issues are for the judge. *Floyd v. Floyd, 306 S.C. 376, 379, 412 S.E.2d 397, 398-99 (1991)*

86. "[R]estitution is a remedy designed to prevent unjust enrichment." Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003) To recover on a theory of restitution, the Defendant must show (1) that she conferred a non-gratuitous benefit on the Plaintiff; (2) that the Plaintiff realized some value from the benefit; and (3) that it would be inequitable for the Plaintiff to retain the benefit without paying the Defendant for its value. Sauner, 354 S.C. at 409, 581 S.E.2d at 167; *see also* Earthscapes Unlimited, Inc., 390 S.C. at 616-17, 703 S.E.2d at 225 (providing the same requirements to recover under the doctrine of quantum meruit). "

87. To demonstrate whether or not an unjust enrichment would result, the Defendant need only show that she retain that benefit would result in a loss for the Defendant. *See* Player v. Chandler, 299 S.C. 101, 107, 382 S.E.2d 891, 895 (1989).

88. Moreover, the Defendant has been victimized by the Plaintiff personnel's Negligent Misrepresentation and Fraudulent Misrepresentation. South Carolina's Appeals Courts have stated, "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).

89. Like negligent misrepresentation, an actionable fraudulent misrepresentation 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).

90. More specifically, the alleged false representation must be of a present or pre-existing fact. *See* Spires v. Acceleration Nat'l Ins. Co., 417 F. Supp. 2d 750, 755-56 (D.S.C. 2006). In addition, the representation must be false at the time it is made. *See* GSM Dealer Servs., Inc. v. Chrysler Corp., 32 F.3d 139, 142 (4th Cir. 1994). With respect to fraudulent misrepresentation, the fraudulent representation must relate to a present or pre-existing fact. To recover on a claim for negligence, the Defendant must show (1) a duty of care owed by the Plaintiff to tell the

Defendant the truth about her mobile home loan; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach. Tanner v. Florence County Treasurer, 336 S.C. 552, 561, 521 S.E.2d 153, 158 (1999) (quoting Andrews v. Piedmont Air Lines, 297 S.C. 367, 369, 377 S.E.2d 127, 128 (1989)).

91. In order for the Defendant to establish liability for her Counterclaim of negligent misrepresentation, the Defendant must show (1) the Plaintiff made a false representation to the Defendant; (2) the Plaintiff had a pecuniary interest in making the representation; (3) the Plaintiff owed a duty of care to see that he/she communicated truthful information to the Defendant; (4) the Plaintiff breached that duty by failing to exercise due care; (5) the Defendant justifiably relied on the representation; and (6) the Defendant suffered a pecuniary loss as the proximate result of her reliance upon the representation." Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003) (quoting AMA Mgmt. Corp. v. Strasburger, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992)).

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

93. The Plaintiff's Account Statements and Amy Rogers Affidavits are for loans the Defendant never authorized, signed for or received. {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 and the Plaintiff's Exhibits 1-4}

94 Misrepresenting facts in a legal proceeding demands the return of all the Defendant's money. Whipp v. Iverson, 43 Wis.2d 166, 279 N.W. 79(1938) (holding that; "It is not necessary for rescission of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations.")}

B. The Defendant's Fair & Equitable Settlement Offer.

95. 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 the 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.

96. 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) If the Plaintiff will do what is right and return the Defendant's overpayment of \$4,660.89, 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.

C. Relief Sought.

97. **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 *Summary*

Judgment should be entered against the Plaintiff or a JURY TRIAL scheduled 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.

98. **WHEREFORE**, the Defendant prays her *Objections to Continuance* have been clearly written and properly supported by the evidence, the facts, Public Law, SC Code of Laws, the Defendant's Exhibits, the Plaintiff's filed documents, the Defendant's Affidavit/s and Averments and Legal Precedent.

SPECIAL NOTICE

99. Since the overwhelming majority of averments in this Pleading have already been written in previous filed Pleadings, notarization is not necessary.

NOTIFICATION

100. A copy of the Defendant's *Objections to Continuance* that has been filed with the Clerk of Court will be mailed to the Plaintiff's attorney/s:

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

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

Signature: Dorothy Harley Sistrunk
Dorothy Harley Sistrunk

Date: 3/17/2014

Dorothy Harley Sistrunk • 423 Bayne Street • Orangeburg, SC 29115 • 803-268-0716

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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) **PLAINTIFF'S RENEWED MOTION**
) **FOR SUMMARY JUDGMENT**
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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 South Carolina Federal Credit Union ("Plaintiff" or "SCFCU"), by and through its undersigned attorneys and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move to renew its Motion for Summary Judgment before the presiding Judge for the Court of Common Pleas for Orangeburg County, in the Orangeburg County Courthouse, at 9:00 a.m. on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court, against Defendant Dorothy Harley Sistrunk, a/k/a Dorothy Harley-Sistrunk, a/k/a Dorothy A. Harley, a/k/a Dorothy Sistrunk ("Defendant") on the grounds that there is no genuine issue of material fact and Plaintiff is entitled to judgment as a matter of law in its favor, on Plaintiff's verified Complaint as well 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 Agreement(s) which is/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.

Colleen A. McConnell (by Amy J. Nickele)

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

Attorneys for Plaintiff
South Carolina Federal Credit Union

March 26, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Plaintiff's Renewed Motion for Summary Judgment and Affidavit of Amy Rogers in Support of Renewed 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 26th day of March, 2014.

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

Walter Malista, Jr.

"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."

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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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AFFIDAVIT OF AMY ROGERS
IN SUPPORT OF RENEWED
MOTION FOR SUMMARY JUDGMENT

I, Amy Rogers, being first duly sworn depose and say that the following statements are true and correct under penalty of perjury:

1. That I am a Credit Counselor at South Carolina Federal Credit Union and my office is located in North Charleston, SC;

2. That I am familiar with the account of the Defendant in the above-captioned action and the events and circumstances raised in the Complaint filed in this action and that the matters stated herein are of my own personal knowledge and I am competent to testify to the matters stated herein;

3. That the books and records regarding this account are under my supervision and control;

4. That the records attached hereto are made as a part of the Plaintiff's regularly conducted business activities. Further, it is the regular practice of the Plaintiff to make contemporaneous records of its regularly conducted business activities;

5. That the Defendant applied for membership with Plaintiff on September 5, 2002 by executing a Member 1 Plan Application;

Did not receive in Addendum
6. That the Member 1 Plan Application incorporates by reference the Membership and Account Agreement, Credit and Security Agreement, Addendum and Credit Insurance Certificate, as may be revised from time to time (together, the "Member 1 Plan Agreement"), and the Member 1 Plan Agreement governs all of Plaintiff's direct non-mortgage extensions of credit, advances or subaccounts to streamline and expedite the direct non-mortgage lending process for members. A copy of the Member 1 Plan Agreement for Defendant, is attached hereto as Exhibit "1" and incorporated herein by reference;

credit disability & Credit life stops when loan is paid out.
7. That Defendant elected credit disability and credit life insurance coverage in her Member 1 Plan Agreement of September 5, 2002, and never cancelled or rescinded that election;

Did not receive \$500.00 in February 28, 2003 received in March 3, 2003
8. That the \$5,500.00 Personal Access Line of Credit advance Defendant admits in her Answer as having received from Plaintiff on February 28, 2003, is the subject matter of the Complaint and was advanced or disbursed to Defendant pursuant to an electronic request by Defendant and pursuant to the Member 1 Plan Agreement as well as, the terms and conditions of that certain Open-End Disbursement Receipt Plus (together, the "Open-End Fixed Rate of Interest Personal Access Line of Credit Agreement" or "PAL Agreement"). A copy of said Open-End Fixed Rate of Interest Personal Access Line of Credit Agreement or PAL Agreement is attached hereto as Exhibit "2" and incorporated herein by reference;

9. That the highest principal balance due to be repaid by the Defendant to the Plaintiff, pursuant to the terms and conditions of the PAL Agreement was \$5,556.44, and was reached on May 1, 2003, as further evidenced by the Statement of Account, Itemized Statement

EXHIBIT 38

of Account and Monthly Member Account Statements attached hereto as Exhibits "3", "4" and "5" and incorporated herein by reference;

10. That pursuant to the terms and conditions of the PAL Agreement, Plaintiff subsequently advanced to Defendant \$350.00 and \$500.00 on November 22, 2006 and October 25, 2007, respectively and as further evidenced by the Itemized Statement of Account and Monthly Member Statements attached hereto as Exhibits "4" and "5" and incorporated herein by reference;

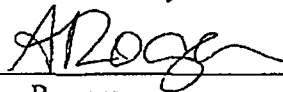
11. That Plaintiff mailed to the Defendant Monthly Member Account Statements, reflecting all account activity including, the amount charged for monthly credit disability and life insurance premiums under the PAL Agreement from March 2003 to November 2011, but that Plaintiff did not receive any objections from the Defendant, including related to credit disability and credit life insurance, at any time prior to Defendant's default on the PAL Agreement;

12. That the Defendant is in default for failure to tender payments as required under the terms and conditions of the PAL Agreement, and following which and in accordance with said terms and conditions, Plaintiff has elected to accelerate, and the full amount due and payable under the PAL Agreement as of October 3, 2011 is Five Thousand Two Hundred Seventy-Four and 84/100 (\$5,274.84) Dollars, plus interest thereafter at a rate of 15.00% per centum per annum until paid, as further evidenced by the Statement of Account, Itemized Statement of Account and Monthly Member Account Statements attached hereto as Exhibits "3", "4" and "5" and incorporated herein by reference;

13. That pursuant to the terms of the PAL Agreement, Plaintiff is entitled to collect all expenses, including reasonable attorneys' fees incurred in the collection of the amounts payable thereunder; and

That further Affiant sayeth naught.

This the 24th day of March, 2014.



Amy Rogers
Credit Counselor

Sworn to and Subscribed to me
this the 24th day of March, 2014.



Notary Public: South Carolina
My Commission Expires: 7-17-2018

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, PRO SE DEFENDANT:

PLEASE TAKE NOTICE that a hearing on Plaintiff's Renewed Motion for Summary Judgment will be held on April 10, 2014 at 9:00 o'clock a.m., before the Honorable James B. Jackson, Jr., Presiding Judge for Orangeburg County, at the Orangeburg County Courthouse, 180 Gibson Street, 3rd Floor, Orangeburg, South Carolina.

PLEASE BE PRESENT IF SO MINDED.

Colleen A. McConnell (by Amy J. Luckett)

Cynthia Jordan Lowery

Colleen A. McConnell

Moore & Van Allen PLLC

78 Wentworth Street

Post Office Box 22828

Charleston, SC 29413-2828

Telephone: (843) 579-7000

Attorneys for South Carolina Federal Credit Union

CHARLESTON, SC

March 26, 2014

CERTIFICATE OF SERVICE

The undersigned, of Moore & Van Allen PLLC, Attorneys for Plaintiff, hereby certifies that on the 20 day of March, 2014, 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



Moore & Van Allen PLLC
78 Wentworth Street
Post Office Box 22828
Charleston, SC 29413-2828
Telephone: (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.”

CHARLESTON\566195v1

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

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S RENEWED MOTION
FOR SUMMARY JUDGMENT**

COMES NOW the Plaintiff, South Carolina Federal Credit Union ("Plaintiff" or "SCFCU"), and respectfully submits this Memorandum in Support of Plaintiff's Renewed Motion for Summary Judgment.

PROCEDURAL HISTORY

Plaintiff filed its Complaint in this action on November 23, 2011 seeking judgment against the Defendant for the balance owed on Defendant's Open-End Fixed Rate of Interest Personal Access Line of Credit Account ("PAL Account"). Defendant filed an Answer and Counterclaims, pro se, on December 21, 2011. On April 25, 2012, Defendant filed a Motion for Summary Judgment. On May 11, 2012, Plaintiff filed a Motion for Summary Judgment as to Plaintiff's Complaint and Defendant's Counterclaims. The Honorable Diane S. Goodstein heard the motions on July 10, 2012.

At the motions hearing, the Court heard the arguments of the Defendant, who appeared pro se, and counsel for Plaintiff. The Defendant's motion was heard first and based on the arguments and filed pleadings, the Court denied Defendant's Motion for Summary Judgment.

Plaintiff's motion was heard next and counsel for Plaintiff asked that the Court reserve its decision on Plaintiff's Motion for Summary Judgment to allow Plaintiff time to address the Court's questions related to the credit disability and credit life insurance components of Defendant's PAL Account and prepare a proposed order. The Court agreed to reserve judgment on Plaintiff's motion and on October 22, 2012, issued an Order denying Defendant's summary judgment motion. See Oct. 22, 2012 Order (Ex. A).

On November 19, 2013, Defendant filed a Request to Submit for a Decision Pursuant to Rule 56(e), SCRPC. It appears that the Defendant forgot or misunderstood what transpired at the motions hearing, or is moving a second time for summary judgment on her Counterclaims. In any event, Plaintiff feels it necessary to renew its Motion for Summary Judgment as to Plaintiff's Complaint and Defendant's Counterclaims.

FACTUAL BACKGROUND

On September 5, 2002, Defendant became a member of South Carolina Federal Credit Union by executing that certain Member 1 Plan Application ("Application"). See Application (Ex. B). By signing the Application, Defendant agreed to the terms and conditions of the Membership and Account Agreement and to any amendments SCFCU makes from time to time which were incorporated therein. See id. p. 2. By signing the Application, Defendant acknowledged she had "received and read the Application and Credit and Security Agreement, including the addendum and Credit Insurance Certificate." See id. p. 2, ¶ 1. Defendant's signature on the Application bound her to the terms and conditions of the agreement. See id. By executing the Application, Defendant authorized SCFCU to check her credit and verify her employment in connection with her request for membership and/or credit and in connection with her request for an *extension* of the credit received. See id. Thus, Defendant agreed that the

Application which incorporates by reference the Membership and Account Agreement, Credit and Security Agreement, Addendum and Credit Insurance Certificate as may be revised from time to time (together, the "Member 1 Plan Agreement"), would apply to all future extensions of credit or advances to Defendant by SCFCU. See Affidavit of Amy Rogers In Support of Renewed Motion for Summary Judgment (hereinafter, "Rogers Affidavit") ¶ 6 (Ex. C).

As part of Defendant's Member 1 Plan Agreement, Defendant elected credit disability and credit life insurance coverage. See Credit Insurance Certificate (Ex. D). Defendant's execution of the Credit Insurance Certificate authorized SCFCU to add the premiums for the insurance to her loan balance each month and notified the Defendant that she had the right to stop the insurance by notifying SCFCU in writing of her desire to stop the insurance coverage. See id. The Defendant's insurance coverage election applied to all eligible extensions of credit, advances or subaccounts received by Defendant and Defendant never cancelled or rescinded that insurance coverage election and that election applied to all credit advances or subaccounts received by Defendant. See Rogers Aff. ¶¶ 6, 7.

As previously stated, by executing the Application, Defendant agreed to be bound by the terms of the Membership and Account Agreement and the Credit and Security Agreement. See Application p. 2. The Credit and Security Agreement provides:

This is an open-ended, multi-featured credit plan. We anticipate that, from time to time, you will borrow money (called "advances") under the Plan.¹ We are not required to make advances to you under the Plan and can refuse a request for an advance at any time. The Addendum describes the different types of credit (called "subaccounts") available under the Plan, the current interest rate for each subaccount expressed as a daily periodic rate and corresponding annual percentage rate and other charges.

¹ The Credit and Security Agreement, including any applicable Truth in Lending disclosures are referred to as, the "Plan."

Credit and Security Agreement, p. 21 (Ex. F). Current credit life and credit disability insurance rates are some of the other charges detailed in the Addendum, which by its terms, is incorporated into and becomes a part of the Credit and Security Agreement. See Addendum effective Aug. 1, 2002 (Ex. G). The Credit and Security Agreement further addresses credit insurance as follows:

Credit life and/or credit disability insurance is optional under the Plan. If you qualify for and purchase the insurance from us, you authorize us to add the insurance premiums monthly to your loan balance and charge you interest on the entire balance. If you elect credit insurance, your payments may increase or the period of time necessary to repay your advance may be extended.

See Credit and Security Agreement, p. 22.

The Membership and Account Agreement requires Defendant to examine each statement received for irregularities and notify SCFCU within thirty-three (33) days of the mailing of any statement of any unauthorized items drawn on the account. See Membership and Account Agreement, ¶ 24 (Ex. E). Failure to timely examine statements (or notify SCFCU of any statements not received) and dispute any unauthorized charge waives liability on part of SCFCU for any such charge. See id. SCFCU mailed Defendant Monthly Member Account Statements. See Rogers Aff. ¶ 11.

On or about February 24, 2003, Defendant electronically requested from Plaintiff, an extension of credit in the amount of \$5,500.00. See Rogers Aff. ¶ 8. On February 24, 2003, SCFCU notified Defendant via e-mail that she had been approved for a Personal Access Line in the amount of \$5,500.00 at a rate of 15% interest. See SCFCU e-mail dated Feb. 24, 2003 (Ex. H). On or about February 28, 2003, SCFCU mailed to Defendant a check for the loan proceeds in the amount of \$5,500.00 and the Open-End Disbursement Receipt Plus. See Open-End Disbursement Receipt Plus and related documents (Ex. I). The Open-End Disbursement Receipt Plus states that by endorsing the check or having the loan proceeds deposited into Defendant's

SCFCU account, Defendant agrees to make payments in accordance with the terms of the Credit and Security Agreement. See id. In the more than eight (8) years Defendant received statements and paid on this PAL Account, Defendant never objected to or disputed any charges on her statement as unauthorized. See Rogers Aff. ¶ 11. Nor did Defendant ever notify SCFCU of her desire to cancel the credit disability and credit life insurance coverage she elected in her Member 1 Plan Agreement. See id. ¶ 7.

LEGAL ARGUMENTS

I. STANDARD OF REVIEW

Summary judgment is proper when it is clear that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See S.C. R. Civ. P. 56(c); Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301, 304 (Ct. App. 1999). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." Moore v. Weinberg, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007), aff'd by 383 S.C. 583, 681 S.E.2d 875 (2009).

Summary judgment should be granted when plain, palpable, and undisputable facts exist upon which reasonable minds cannot differ. See Trico Surveying, Inc. v. Godley Auction Co., Inc., 314 S.C. 542, 544, 431 S.E.2d 565, 566 (1993). To determine whether an issue of fact exists, the court must view the evidence and all its inferences in the light most favorable to the nonmoving party. See Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Where, as here, there is no dispute over the operative facts, summary judgment is proper as a matter of law. See Citizens & So. Nat'l Bank of S.C. v. Lanford, 313 S.C. 540, 545,

443 S.E.2d 549, 551 (1994) (affirming summary judgment in favor of lender for the entire amount of the note based on the unambiguous language of the guaranty).

II. PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT AS TO ITS CLAIM AGAINST DEFENDANT

A. Defendant breached the terms of her agreement with SCFCU, SCFCU elected to accelerate the balance owed, and SCFCU is entitled to judgment for the full amount owed.

Plaintiff is entitled to judgment as a matter of law on its collection action because there are no genuine issues of material fact as to this claim. Defendant admits in her Answer and Counterclaim, that SCFCU advanced \$5,500.00 to her on February 28, 2003. See Def.'s Answer & Countercl. p. 1. The advance was pursuant to the terms and conditions of the Open-End Fixed Rate of Interest Personal Access Line of Credit Agreement ("PAL Agreement"). See Rogers Aff. ¶ 8. Subsequently, SCFCU advanced \$350.00 and \$500.00 to Defendant on November 22, 2006 and October 25, 2007, respectively. See Itemized Statement of Account (see Ex. 4 to Rogers Aff. attached hereto as Ex. C.); Monthly Member Account Statements (see Ex. 5 to Rogers Aff.); Rogers Aff. ¶ 10. In addition to these cash advances, Defendant elected to receive credit disability and credit life insurance coverage. See Credit Insurance Certificate (Ex. D); Rogers Aff. ¶ 7. Defendant agreed to have the monthly premiums for such coverage added to her loan balance each month. See Credit Insurance Certificate.

Defendant is in default for failure to tender payments as required under the terms and conditions of the PAL Agreement, SCFCU elected to accelerate, and SCFCU is entitled to judgment for the full amount due and payable under the PAL Agreement as of October 3, 2011, \$5,274.84 plus interest thereafter at a rate of fifteen percent (15%) per annum until paid. See Statement of Account (see Ex. 3 to Rogers Aff.); Itemized Statement of Account; Monthly Member Account Statements; Rogers Aff. ¶ 12. Pursuant to the terms of the PAL Agreement,

SCFCU is entitled to collect all expenses, including reasonable attorneys' fees incurred in the collection of the amounts payable thereunder. See PAL Agreement (see Ex. 2 to Rogers Aff.); Rogers Aff. ¶ 13.

B. Defendant's election of credit disability and credit life insurance applies to all eligible extensions of credit, advances or subaccounts of credit under the Member 1 Plan Agreement.

Defendant argues that she did not authorize credit disability and credit life insurance for the Open-End Disbursement Receipt Plus (see Def.'s Answer & Countercl. p. 17); however, Defendant's election of coverage in her Credit Insurance Certificate extended to the February 2003 advance by the terms of her Member 1 Plan Agreement. See Rogers Aff. ¶¶ 6, 7. As set forth above, the Defendant agreed that the Member 1 Plan Agreement as may be revised from time to time, would apply to all future extensions of credit or advances to Defendant by SCFCU. The Member 1 Plan Agreement clearly anticipated that the Defendant may request future advances and directed that at the time of the future advance, the Addendum in effect, would provide the current interest rates, credit insurance rates, and repayment terms for the applicable type of advance. See Credit and Security Agreement, p. 21 (Ex. F). Thus, the Open-End Disbursement Receipt Plus, Application, Membership and Account Agreement, Credit and Security Agreement, Addendum and Credit Insurance Certificate, as may be revised from time to time, are all components of the member's agreement with SCFCU and serve as a single, integrated contract (PAL Agreement). See Rogers Aff. ¶¶ 6, 8.

Accordingly, the Defendant's election of credit disability and credit life insurance during the initial Application process, applied to all eligible extensions of credit, advances or subaccounts unless the member notifies SCFCU of the member's desire to cancel such coverage. See Credit and Security Agreement, p. 22; Credit Insurance Certificate (Ex. D). As previously

stated, by signing the Application, the Defendant acknowledged that she had received and read the Credit and Security Agreement and Credit Insurance Certificate that clearly provide that the monthly premiums for this coverage would be added to the balance of her PAL Account, and therefore, these premiums were rightly added to the balance owed by Defendant on the Open-End Fixed Rate of Interest Personal Access Line of Credit Agreement or PAL Agreement.

“A person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it.” Regions Bank v. Schmauch, 354 S.C. 648 663, 582 S.E.2d 432, 440 (Ct. App. 2005); Evans v. State Farm Mut. Auto Ins. Co., 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977). “[W]hen a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents. Regions Bank, 354 S.C. at 663-64, 582 S.E.2d at 440. “The law does not impose a duty on [a] bank to explain to an individual what he could learn from simply reading the document.” Id. at 664, 582 S.E.2d at 440 (citing Citizens & So. Nat’l Bank of S.C., 313 S.C. at 545, 443 S.E.2d at 551). Furthermore, “[t]he court must enforce an unambiguous contract according to its terms, regardless of the contract’s wisdom or folly, or the parties’ failure to guard their rights carefully.” Ellis v. Taylor, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994).

Defendant’s failure to read the documents comprising her contract with SCFCU does not absolve her from liability for her election of credit disability and credit life insurance thereunder. Furthermore, SCFCU did not owe Defendant a duty to explain to Defendant what she could learn from reading the terms and conditions of the accounts. Thus, there is no genuine issue of material fact as to the credit disability and life insurance, and Plaintiff is entitled to summary judgment as a matter of law as to its claim against Defendant.

C. *Defendant's failure to timely dispute any irregularities including the credit disability and credit life insurance premiums serves as a waiver of her right to do so now.*

The Membership and Account Agreement requires Defendant to examine each statement received for irregularities and notify SCFCU within thirty-three (33) days of the mailing of any statement of any unauthorized items drawn on the account. See Membership and Account Agreement, ¶ 24 (Ex. E). Defendant's failure to timely examine statements (or notify SCFCU of any statements not received) and dispute any unauthorized charge waives liability on part of SCFCU for any such charge. See id. "[A] customer who fails to properly review a statement of account accompanied by the items . . . paid which is sent to him by his bank will be precluded from recovering payment of the [items] if he fails to notify the bank of the [unauthorized items] within a reasonable period of time." Dennis v. The S.C. Nat'l Bank, 299 S.C. 34, 382 S.E.2d 237 (Ct. App. 1988) (citing S.C. Code Ann. § 36-4-406(2)).

SCFCU mailed Defendant monthly account statements from the inception of her membership through November 2011. See Rogers Aff. ¶ 11. Each of the monthly statements mailed to Defendant after the February 2003 advance contained entries evidencing the premiums for the credit disability and credit life insurance coverage being added to the balance of Defendant's loan. See id. Under the terms of the Membership and Account Agreement, Defendant had a duty to review these statements and notify SCFCU of any unauthorized charges within thirty-three (33) days of their mailing. See Membership and Account Agreement, ¶ 24. The terms of the contract agreed to by Defendant effectively establish a limitations period for disputing unauthorized charges. In the more than eight (8) years that SCFCU mailed Defendant statements regarding this advance and during which Defendant made payments, Defendant never

objected to the insurance premiums as being unauthorized or notified SCFCU that she wished to cancel the insurance coverage. See Rogers Aff. ¶¶ 11, 7.

The account relationship between SCFCU and Defendant is governed by the terms and conditions of the PAL Agreement, and Defendant's failure to follow the terms related to disputing unauthorized charges serves to bar Defendant from doing so now. Based on the arguments set forth above, there are no genuine issues of material fact as to Plaintiff's claim, and Plaintiff is entitled to judgment as a matter of law thereon.

III. PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS

Defendant's Counterclaims fail as a matter of law, and Plaintiff is entitled to summary judgment on all claims. Defendant has pled counterclaims of violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), unjust enrichment, misrepresentation of material facts, unclean hands, fraud in the factum, fraud in the inducement, restitution, intentional infliction of emotional distress, unconscionability, negligent misrepresentation, fraudulent misrepresentation, and fraud. See Def.'s Answer & Countercl. Of these counterclaims as alleged, Defendant's misrepresentation of material facts, fraud in the factum, fraud in the inducement, fraudulent misrepresentation, and fraud claims are duplications of the same claim of fraud. Additionally, unclean hands and unconscionability are not recognized causes of action but, rather, are affirmative defenses.

All of Defendant's counterclaims are based on two factual allegations: (1) that SCFCU represented that the credit advance had a fixed rate and misrepresented the open-ended nature of the credit advance and (2) that the credit disability and credit life insurance were not authorized for this PAL Account. See Def.'s Answer & Countercl.

A. Defendant's claims are barred by the applicable statutes of limitation.

However, all of Defendant's counterclaims are barred by the applicable statutes of limitation. "The limitations period of S.C. Code Ann. § 15-3-530(5) (2005), which is the applicable limitations period for a negligence claim, begins to run when the plaintiff knew or by the exercise of reasonable diligence should have known that he had a cause of action." Gibson v. Bank of America, N.A., 383 S.C. 399, 405–06, 680 S.E.2d 778, 782 (Ct. App. 2009) (internal quotations omitted). "[T]he clock starts running when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist." Id. at 406, 680 S.E.2d at 782. "The date on which discovery should have been made is an objective, not subjective, question." Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). "Therefore, the limitations period begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." Gibson, 383 S.C. at 406, 680 S.E.2d at 782 (internal quotations omitted). "A key element in the reasonable diligence test is 'notice.' . . . [T]he statute of limitations is triggered not merely by knowledge of an injury, but by knowledge of facts, diligently acquired, sufficient to put a person on notice of the existence of a cause of action against another." Id.

As to the Defendant's allegations that SCFCU misrepresented the nature of the February 2003 credit advance, there is no question of material fact that Defendant received the Application and its supporting account agreements, the Open-End Disbursement Receipt Plus, and the Addendum by February 2003 or that the account agreements specifically state that the credit advance was at a fixed interest rate of 15% and was an open-ended personal access line. See Def.'s Answer & Countercl. p. 9, ¶ 16 (admitting the personal access line was described in the e-

mail approval notice); p. 10, ¶ 17 (admitting the Application “has open-end written on it and the handbook clearly states it”); p. 14, ¶ 35 (admitting the Application states it is a fixed rate of 15%); p. 18, ¶ 48 (“Open-End is written on the application in plain sight.”). As such, Defendant knew or should have known of any claims related to the alleged ambiguity as to the nature of the credit advance by 2003 when she received the Open-End Disbursement Receipt Plus. Defendant did not assert these causes of action until December 21, 2011. Thus, Defendant’s Counterclaims related to the nature of the credit advance are barred by the applicable statutes of limitation.

Similarly, Defendant’s claims related to SCFCU’s alleged failure to disclose and obtain authorization for the credit disability and credit life insurance are also time-barred. It is undisputed that Plaintiff mailed monthly statements to Defendant related to the February 2003 extension of credit, all of which contained entries showing the charges for the premiums for this coverage. See Monthly Member Account Statements (Ex. 5 to Rogers Aff.); Rogers Aff. ¶ 11. Thus, Defendant knew or should have known that her account was being charged the monthly premiums as early as March 2003. Such claims are now time-barred, and Plaintiff is entitled to summary judgment as to all of Defendant’s counterclaims.

B. Plaintiff is entitled to judgment as a matter of law as to Defendant’s fraud claims.

Defendant has asserted Counterclaims of fraud, fraud in the inducement, fraud in the factum, misrepresentation of material facts, fraudulent misrepresentation, and negligent misrepresentation against SCFCU. As noted above, all of these claims except negligent misrepresentation are essentially duplicative claims of fraud. To state a claim of fraud under South Carolina law, a plaintiff must allege: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on

its truth; (8) the hearer's right to rely on the representation; and (9) the hearer's consequent and proximate injury. See Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). A claim for fraud in the inducement to enter a contract requires the same elements as fraud. See Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766 (2011).

To maintain a claim for negligent misrepresentation, a plaintiff must allege: (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 communicate 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 of the representation. Turner, 392 S.C. at 123, 708 S.E.2d at 769. "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." Fisher v. Pelstring, 817 F. Supp. 2d 791, 822 (D.S.C. 2011).

Defendant's fraud and negligent misrepresentation claims are based on Defendant's mistaken assumptions that: (1) the February 2003 credit advance was not extended at a fixed rate of interest and (2) the credit advance was a close-end, installment loan-type product. See Def.'s Answer & Countercl. However, these assumptions are contradicted by the plain language of the account disclosures. See Def.'s Answer & Countercl. p. 10, ¶ 17 (admitting the Application "has open-end written on it and the handbook clearly states it"); p. 14, ¶ 35 (admitting the Application states it is a fixed rate of 15%); p. 18, ¶ 48 ("Open-End is written on the application in plain sight."); see also PAL Agreement (Ex. 2 to Rogers Aff.). Thus, per Defendant's own admissions, there has been no false representation by SCFCU to Defendant.

Rather, Defendant has either failed to review the account disclosures or has misunderstood the nature of the accounts as set forth in the account disclosures. Therefore, Defendant's fraud and negligent misrepresentation claims fail as a matter of law, and Plaintiff is entitled to summary judgment as to these claims.

C. Plaintiff is entitled to judgment as a matter of law as to Defendant's claim for violation of South Carolina Unfair Trade Practices Act.

Defendant cannot maintain a claim for violation of SCUTPA because Defendant does not sufficiently allege or provide any evidence that SCFCU's actions adversely affected the public interest. In order to maintain an action under SCUTPA, a party must show that the alleged unfair or deceptive acts have an impact upon the public interest and have the potential for repetition. Crary v. Djebelli, 321 S.C. 38, 42, 467 S.E.2d 128, 131 (Ct. App. 1995). "This adverse effect on the public must be proved by specific facts. . . . 'Without proof of specific facts disclosing that . . . members of the public were adversely affected by [the unfair conduct] or that they were likely to be, all we are left with is a "speculative [claim] of adverse public impact" and that will not suffice for a recovery under the UTPA.'" Jefferies v. Phillips, 316 S.C. 523, 529, 451 S.E.2d 21, 24 (1994).

First, Defendant's SCUTPA claim fails for the same reason that her fraud and negligent misrepresentation claims fail because it is also based upon the same mistaken assumptions about the nature of the February 2003 credit advance. See Def.'s Answer & Countercl. Thus, Defendant has not articulated and has not presented any evidence of an actual deceptive trade practice by SCFCU.

Second, Defendant's SCUTPA claim fails as a matter of law because although Defendant has made conclusory allegations that the alleged unfair and deceptive practices committed by SCFCU related to SCFCU's alleged misrepresentations as to the open-end, fixed-rate nature of

the 2003 credit advance have adversely impacted the public interest, Defendant fails to specifically allege or offer evidence of any other instances or transactions that have affected the public interest.

Defendant's SCUTPA claim fails to specify what and how members of the public are adversely affected by Plaintiff's conduct. In order to prove a potential for repetition, Defendant must show that Plaintiff "engaged in unfair or deceptive acts when they had those opportunities in the past or that they were inclined to engage in unfair or deceptive acts or practices if given the opportunity in the future." Crary, 321 S.C. at 42, 467 S.E.2d at 131 Defendant makes no allegations and presents no evidence about other similar acts or unfair or deceptive practices in the past or in the future. "In the course of human endeavor, every action has some potential for repetition. The mere proof that the actor is still . . . engaged in the same business is not sufficient to establish this element." Id. Based on the foregoing reasons, Plaintiff should be granted summary judgment as to this cause of action.

D. Plaintiff is entitled to judgment as a matter of law as to Defendant's unjust enrichment and restitution claims.

Defendant's unjust enrichment and restitution claims are based upon Defendant's allegations that the credit disability and credit life insurance were unauthorized. See Def.'s Answer & Countercl., p. 20, 23. However, as set forth more fully in Part II. B above, Defendant's election of insurance coverage during her initial Application extended to the February 2003 credit advance, pursuant to the terms of the PAL Agreement. Defendant agreed to be bound by the terms of the PAL Agreement, thus, there can be no unjust enrichment of the Plaintiff or grounds for restitution to the Defendant. As such, there is no genuine issue of material fact as to these claims, and Plaintiff is entitled to judgment as a matter of law.

**IV. DEFENDANT'S SUMMARY JUDGMENT MOTION WAS DENIED IN
THE OCTOBER 22, 2012 ORDER**

Defendant filed a Motion for Summary Judgment as to her counterclaims on April 25, 2012. Defendant's motion was the first motion heard before the Honorable Diane S. Goodstein on July 10, 2012. Judge Goodstein denied the Defendant's motion before moving on to discuss Plaintiff's motion, and the Court issued an Order denying Defendant's motion on October 22, 2012. Since then, Defendant has not filed any additional affidavits nor presented any new or additional evidence in support of her claims. With no new or additional evidence in support of Defendant's counterclaims, Defendant's Request to Submit for a Decision Pursuant to Rule 56(e), SCRCF is simply a second attempt at the same summary judgment motion based on the same arguments presented to the Court in July 2012 and, thus, should also be denied.



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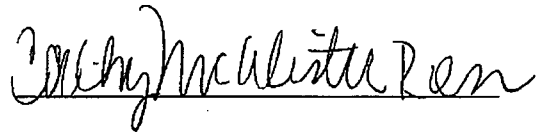
Attorneys for Plaintiff
South Carolina Federal Credit Union

April 1, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Plaintiff's Memorandum in Support of Plaintiff's Renewed 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 1st day of April, 2014.

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

A handwritten signature in cursive script, appearing to read "Gregory McAllister".

"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
FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

**DEFENDANT DOROTHY HARLEY
SISTRUNK OBJECTIONS TO THE
PLAINTIFF'S MEMORANDUM IN
SUPPORT OF PLAINTIFF'S RENEWED
MOTION FOR SUMMARY JUDGMENT.**

**NOTIFICATION:
THIS IS A VERIFIED PLEADING**

Today's Date: April 8, 2014

Comes now the Defendant Dorothy Harley Sistrunk to file this notice that *Defendant Dorothy Harley Sistrunk* *Objections to the Plaintiff's Memorandum in Support of Plaintiff's Renewed Motion for Summary Judgment*. Plaintiff's documents are dated March 27th and April 1st, 2014, and were retrieved from the mailbox at 423 Bayne Street in Orangeburg, South Carolina on March 31, 2014 and April 3rd, 2014 Respectively.

I. NOTIFICATION: THIS IS A VERIFIED PLEADING

A. What is the significance of a Verified Pleading?

1. Before responding to the Plaintiff's Renewed Motion for Summary Judgment and the Plaintiff's Evidence and Testimony that proves by the Preponderance of the Evidence, by Clear and Convincing Evidence and Beyond Any Reasonable Doubt that SCFCU misapplied over \$10,000 to an account the Defendant never authorized or agreed to and all the money the Defendant paid to South Carolina Federal Credit Union (SCFCU) must be returned forthwith.... however, the Defendant feels it would be helpful for the Plaintiff and the Court to increased their understanding of **Verified Pleadings**. The court and the Plaintiff by words, actions and deeds have demonstrated that they have little or no experience when it comes to **Verified Pleadings**....

and/or... little or no experience in drafting responses and/or court orders relative to **Verified Pleadings**. Therefore, in this **Verified Pleading**, the Defendant will thoroughly explain the significance and difference of a **Verified Pleading**.

2. A **Verified Pleading** is a written sworn statement or declaration that meets the legal requirements of *Rules 11(c) and 56(e), SCRPC* and the Federal Rules of Civil Procedure, *Rule 11(b), FRCP*. The Defendant's pleadings are based on her own knowledge and not belief.

(a) *Rule 11(c), SCRPC* clearly states in pertinent parts....

"Affidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

(b) *Rule 56(e), SCRPC* clearly states in pertinent parts...

"Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein...."

(c) *Rule 11(b), Fed.R.Civ.P* clearly state in pertinent parts...

"By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

3. Except for conclusions of law, a **Verified Pleading** is admissible when submitted to the

court as statements of fact and cannot be summarily dismissed, ignored by a sitting Judge or the Plaintiff. Unverified responses to **Verified Pleadings** in any court of competent jurisdiction are dismissed; and if no response, the court is forced to act on all the statements in a **Verified Pleading** as uncontested facts and must grant judgment accordingly. *Charter Bank v. Eckert*, 223 Ill.App.3d 918, 585 N.E.2d 1304, 166 Ill.Dec. 282 (5th Dist. 1992) (unverified answer has same effect as if no answer was filed; all well-pleaded facts are deemed admitted but not conclusions of law).

"Allegations in a plaintiff's unverified answer are dismissed, and the defendants' well-pleaded facts are deemed admitted." See *Pinnacle Corp.*, 258 Ill.App.3d at 209, 196 Ill.Dec. 567, 630 N.E.2d 502. "[A]llegations contained in verified pleadings are deemed to be admissions of fact." *Winnetka Bank v. Mandas*, 202 Ill. App. 3d 373, 397 (1st Dist. 1990).

4. "[W]hen a pleading is verified, every subsequent pleading must also be verified unless the trial court excuses the verification. *Pinnacle Corp. v. Village of Lake in the Hills*, 258 Ill.App.3rd 205, 209, 196 Ill.Dec. 567, 630 N.E.2d 502 (1994). Once a pleading has been verified, facts contained within it are judicial admissions that remain part of the record and are admissible against the pleading party, even if the pleading is subsequently amended. *Id.*"

Controlling Authority:

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

5. The verification of a pleading, like the verification of a complaint, is a statement that the contents of the pleading are true; thus, in effect, an affidavit.

Controlling Authorities:

Rekart v. Safeway Stores, 468 P.2d 892, 895 (N.M. Ct. App. 1970) ("The verification of the complaint is a statement that the contents of the complaint are true; thus, in effect, an affidavit."); *Missouri ex rel. Burton v. City of Parsons*, 95 P. 391 (Kan. 1908) (noting that a verified petition can be used as an affidavit and the allegations contained therein

should be treated accordingly); Montana ex rel. Redle v. District Court In and For Missoula County, 59 P.2d 58 (Mont. 1936) (noting that under statutes requiring an affidavit, a verified petition is equivalent to, and can be used as, an affidavit); 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) Hladczuk v. Epstein, 470 N.Y.S.2d 211 (App. Div. 1983) (stating that a verified pleading is the equivalent of an affidavit for purposes of summary judgment. U.S. Bank National Ass'n v. Clark, 216 Ill.2d 334, 837 N.E.2d 74, 297 Ill. Dec. 294 (2005). Winnetka Bank v. Mandas, 202 Ill.App.3d 373, 559 N.E.2d 961, 147 Ill. Dec. 621 (1st Dist. 1990) (provision that verified allegations constitute evidence by way of admission refers to admissions of fact, not legal conclusions or admissions of law). "[I]n addition, when a verified complaint is filed, a prove-up of facts may be avoided in the event of a default. Verified complaints should be used with care because facts contained in a verified complaint are admissible against the plaintiff even if the complaint is subsequently amended. See Tyler v. Gibbons, 368 Ill.App.3d 126, 857 N.E.2d 885, 306 Ill. Dec. 486 (3d Dist. 2006); In re Marriage of Osborn, 206 Ill.App.3d 588, 564 N.E.2d 1325, 151 Ill. Dec. 663 (5th Dist. 1990); Robins v. Lasky, 123 Ill.App.3d 194, 462 N.E.2d 774, 78 Ill. Dec. 655 (1st Dist. 1984).

6. The Full Faith and Credit Clause of the United States Constitution requires the courts of one state give "[s]uch force and effect to a foreign judgment as the judgment would receive in its own state." {See Taylor, 326 S.C. at 532, 484 S.E.2d at 597; See also U.S. Const. Art. IV, § 1 ("Full Faith and Credit shall be given in each State to the public acts, records, and judicial proceedings of every other State.")}

B. Unlike Attorney Colleen A. McConnell, who is relying on unverified and/or uncertified information and her belief, the Defendant's Statements are based on personal knowledge about the events, circumstances and documentation relative to the Defendant's Mobile Home Purchase.

7. The Defendant's statements are based on personal knowledge and not information or belief. Therefore, even if the Defendant failed to state: "except as to the matters which are therein stated on his or her information or belief, and as to those matters that he or she believes it to be true"; the pleading is still verified because the Defendant's **Verified Pleadings** are not based on information or belief or what she believes to be true, they are based on personal knowledge of what she knows to be true during the dates and times in question, precedent; as

evidence by this **Verified Pleading**, South Carolina's Code of Laws, Court Records and Federal Laws and/or Regulations and carry the full weight of perjury just like any other sworn testimony.

Controlling Authorities:

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

8. As already stated, unlike an attorney's brief or a responsive pleading, a **Verified Pleading** has the probative force of an affidavit. Because it is based on personal knowledge and not information or belief, it can only be countered by another affidavit based on personal knowledge, a sworn deposition based on personal knowledge and/or certified hard evidence to the contrary. Uncertified copies are legally insufficient and an attorney's brief that is not supported by an affidavit based on personal knowledge, certification or another **Verified Pleading** are dismissed because an unverified pleading is legally insufficient to challenge sworn statements in a **Verified Pleading**. Charter Bank v. Eckert, 223 Ill.App.3d 918, 585 N.E.2d 1304, 166 Ill.Dec. 282 (5th Dist. 1992) (unverified answer has same effect as if no answer was filed; all well-pleaded facts are deemed admitted but not conclusions of law).

Estate of Rennick, 181 Ill.2d 395, 407, 692 N.E.2d 1150, 1156 (1998) ("[A] judicial admission binds the party who made the admission.") "[A]llegations contained in verified pleadings are deemed to be admissions of fact." Winnetka Bank v. Mandas, 202 Ill. App. 3d 373, 397 (1st Dist. 1990).

C. The Defendant's Verified Pleadings constitute Judicial Admissions and cannot be ignored by the Judge, the Plaintiff, any attorney or the jury.

9. The Defendant's **Verified Pleadings** also constitute judicial admissions that cannot be ignored by the Judge, the Plaintiff, any attorney or a jury. *Rynn v. Owens*, 181 Ill.App.3d 232, 235, 536 N.E.2d 959, 962 (1st Dist. 1989). A judicial admission is a deliberate, clear, unequivocal statement by the Defendant about a concrete fact that is based on the Defendant's personal knowledge and not information or belief. Once made, a judicial admission binds the Defendant to the statement and the Defendant cannot change or contradict the statement later.

Estate of Rennick, 181 Ill.2d 395, 407, 692 N.E.2d 1150, 1156 (1998) "[A] judicial admission binds the party who made the admission. If the admission is merely an evidentiary admission (instead of a judicial admission), the party may contradict or explain it. *Williams Nationalease, Ltd. v. Motter*, 271 Ill.App.3d 594, 597, 207 Ill.Dec. 914, 648 N.E.2d 614, 616-17 (1995). "[W]hether an admission is a judicial admission or an evidentiary admission is a question of law, which we decide de novo." *Elliott v. Industrial Comm'n*, 303 Ill.App.3d 185, 187, 236 Ill.Dec. 383, 707 N.E.2d 228, 230 (1999).

10. A judicial admission cannot be contradicted in a motion for summary judgment. A judicial admission cannot be contradicted at trial. *Dayan v. McDonald's Corp.*, 125 Ill.App.3d 972, 983, 466 N.E.2d 958, 967 (1st Dist. 1984). Thus, the Defendant cannot introduce an affidavit or testify contrary to a prior judicial admission. *Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.* 71 Ill.App.3d 562, 568, 390 N.E.2d 60 (1979) The Defendant may not offer contrary testimony from other witnesses or experts. *Caponi v. Larry's* 66, 236 Ill.App.3d 660, 671, 601 N.E.2d 1347, 1355 (2nd Dist 1992) Formal admissions in open court, admissions pursuant to requests to admit and stipulations also constitute judicial admissions. Now that the Court and the Plaintiff understand the Defendant's **Verified Pleadings** are entered as statements of fact when submitted, only **Verified Pleadings**, Affidavits based on personal knowledge and/or certified hard evidence can contradict the facts that will be stated in this pleading. *Winnetka Bank v. Mandas*, 202 Ill. App. 3d 373, 397 (1st Dist. 1990) ("[A]llegations contained in verified pleadings are deemed to be admissions of fact.")

Estate of Rennick, 181 Ill.2d 395, 407, 692 N.E.2d 1150, 1156 (1998) ("[A] judicial admission binds the party who made the admission.") "[A]llegations contained in verified pleadings are deemed to be admissions of fact." *Winnetka Bank v. Mandas*, 202 Ill. App. 3d 373, 397 (1st Dist. 1990). *Charter Bank v. Eckert*, 223 Ill.App.3d 918, 585 N.E.2d 1304, 166 Ill.Dec. 282 (5th Dist. 1992) (unverified answer has same effect as if no answer was filed; all well-pleaded facts are deemed admitted but not conclusions of law).

II. IF THE PLAINTIFF'S SUMMARY JUDGMENT IS DENIED AGAIN, THE DEFENDANT REQUESTS THAT THIS HONORABLE COURT GRANT SUMMARY JUDGMENT FOR THE DEFENDANT ACCORDING TO THE DEFENDANT'S RELIEF SOUGHT & SUMMARY JUDGMENT MOTION THAT WAS FILED ON APRIL 15, 2012. NO HEARING WAS EVER CALLED FOR THE DEFENDANT'S MOTION. THE JULY 10, 2012 HEARING WAS FOR THE PLAINTIFF

A. Corrections in the Plaintiff's Procedural History due to misstatement of facts. The Defendant does not believe the misstatements are intentional and will not file a motion to strike because the Plaintiff's Procedural History, even with the errors, verifies the Defendant's Answer to Complaint are true and are therefore incorporated by reference as though fully set forth herein verbatim.

11. The Plaintiff claim of filing its Complaint in this action on November 23, 2011 is not an entirely true statement. On May 18, 2011, Amy L. Hewitt, agent of South Carolina Federal Credit Union (SCFCU), filed an action in Magistrate Court – Case # 2011CV3810701394, claiming the Defendant owed SCFCU \$4,999.19 {See Defendant's Filed Exhibits I, II & V}.

12. The Complaint and Summons was delivered by a County Deputy on June 4, 2011. The Defendant filed an *Answer with Counterclaims and Affirmative Defenses* on Jun 28, 2011 {See Defendant's Filed Exhibits III & IV}

13. The Defendant had paid SCFCU over \$9,000.00 {See Defendant's Exhibit 16 & Plaintiff's Exhibit 3 to arrive at the Exact Dollar Amount by Adding the Columns to Equal \$11,010.89} and due to the dollar amount of the Defendant's Answer, Counterclaims and Affirmative Defenses the matter was referred to the Circuit Court. {See Section 22-3-10(1) – SC Code of Laws} that clearly states in pertinent parts... "Magistrates have concurrent civil jurisdiction in the following cases:"

“(1) in actions arising on contracts for the recovery of money only, if the sum claimed does not exceed seven thousand five hundred dollars;”

14. The Plaintiff never responded to any of the Defendant’s Counterclaims and/or Affirmative Defenses in the Defendant’s **Verified Pleading** that were filed on June 28, 2011. *Charter Bank v. Eckert*, 223 Ill.App.3d 918, 585 N.E.2d 1304, 166 Ill.Dec. 282 (5th Dist. 1992) (unverified answer has same effect as if no answer was filed; all well-pleaded facts are deemed admitted but not conclusions of law). “[C]onsequently, we must ignore the allegations in Crystal Lake’s unverified answer. Moreover, a failure to file an answer results in well-pleaded facts being deemed admitted. (Florsheim, 75 Ill.App.3d at 309, 30 Ill.Dec. 876, 393 N.E.2d 1223.)

15. All the Defendants exhibits that are attached to the Defendant’s **Verified Pleading** are also verified pursuant to *Rule 10(c)*, *SCRCP* that clearly states in pertinent parts...

“Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading.”

16. Based solely on the Plaintiff’s filed Complaint, SCFCU is seeking judgment against the Defendant for the balance owed on the Defendant’s Open-End Fixed Rate of Interest Personal Access Line of Credit Account (“PAL Account”). SCFCU might have authorized a Personal Access Line of Credit (“PAL Account”) but the Defendant never authorized it.

B. Additional True History & Factual Background and why the Defendant never received an Addendum relative to the automobile purchase.

17. The Defendant’s car loan paperwork was originally approved for an automobile broker that was using SCFCU to fund his sales. Sometimes between July of 2002 and the end of August in 2002, the Defendant needed another car. Aline Bethea, a salesperson at Schult Home Center in Orangeburg, South Carolina, recommended that she use an automobile broker that she had used

to obtain her car. After several weeks, the broker was unable to find an affordable car for the Defendant. The Defendant asked the broker was it possible to have SCFCU finance a car without him and he said yes.....because the paperwork was already approved.

18. The Defendant's search for an automobile took her to Pooser's Service Center and Auto Sales {See Defendant's Filed Exhibit N} The car loan transaction was handled by Pooser's and SCFCU's representative. The Defendant was notified by phone to pick up the check for the car in North Charleston, South Carolina. Since the Defendant could not find the office in North Charleston, the Defendant was told, by phone, to pick up the check for the car at SCFCU's office in Columbia, South Carolina. {See Defendant's Filed Exhibit 13}

19. When the Defendant arrived at SCFCU's Columbia office on 09/05/2002, she filled out the membership application and the application for Credit Life and Credit Disability Insurance. She opened an account and filled out some more paperwork. {See the Defendant's Filed Affidavit that is incorporated by reference as though fully set forth herein verbatim}

20. During the process of completing the paperwork, no one said the Defendant needed an addendum, mentioned an addendum or explained an addendum to the Defendant. The Defendant was given a check for \$5,845.00 to take to Pooser's and a packet of information. The Defendant left without any addendum. {See Defendant's Filed Exhibits A & B}

21. In 2 years, no one from SCFCU has refuted or denied the Defendant's statement of fact. After this pleading is filed... and if..... someone from SCFCU suddenly appear because of this filing, the court has no alternative except to believe that person/s is telling an ABSOLUTE LIE.

C. The Plaintiff's Deceit and Deception relative to the Addendum.

22. When Amy L. Hewitt filed her Complaint in Magistrate Court on May 18, 2011, no addendum was filed with the Complaint that evidenced a consummated Membership and

Account Agreement or Credit Agreement with SCFCU. When the Plaintiff filed its Complaint on November 23, 2011, no addendum was filed with the Complaint with the Defendant's initials or signature. CUNA MUTUAL GROUP'S requirements and guidelines relative to the importance of the addendum are clearly stated on South Carolina Federal Credit Union's CUNA MUTUAL GROUP'S LOANLINER® Addendum.

(a) "This addendum is incorporated into and becomes a part of your LOANLINER® Credit Agreement. Please keep this attached to your LOANLINER® Credit Agreement."

(b) "Since the addendum is incorporated into the Credit Agreement by reference, the signature to the Credit Agreement indicate agreement to the terms of the Addendum also. There is no legal requirement to sign the Addendum but Addendums with signature lines are available. The Credit Agreement is only signed once. A copy of the Credit Agreement and the Addendum must be given to the borrower before the first transaction under the plan." *{See Defendant's Filed Exhibit K}*

23. Without the referenced addendum that should have been given to the Defendant before she was given the check for Pooser's, no valid Credit Agreement exists with SCFCU. This fatal flaw has never been corrected and was only discovered when SCFCU filed its Complaint. The Defendant simply honored her obligation to repay the car loan without a valid agreement. *{See Defendant's Filed Exhibits 14 & 15}*

24. When the Plaintiff filed its Cross Motion for Summary Judgment on May 11, 2012 no addendum was filed with the Defendant's initials or signature and no affidavit, deposition, interrogatory and/or admission was filed relative to the missing addendum. To cover up this critical mistake in SCFCU's renewed motion for summary judgment relative to the Defendant's credit agreement, the Plaintiff simply resorted to deceit and deception.

25. SCFCU's renewed motion has the evidence of SCFCU's deceit and deception. There are 4 addendums attached to the motion and none are relative to the effective date and time the Defendant received the check for Pooser's. The evidence suggests, the addendums were simply

taken from SCFCU's files. In addition, none are certified. {See the Plaintiff's Filed Addendums}

26. The Plaintiff has consistently failed to prove an essential element of its case with eyewitness testimony and/or hard verified and/or certified evidence that an addendum was given to the Defendant before she received the check for Pooser's on September 5, 2002. In addition, the Plaintiff has been responding to **Verified Pleadings**. Therefore, the Plaintiff has not filed an acceptable response to the Defendant's **Verified Pleadings** since June 28, 2011. Consequently, based upon *South Carolina's Rules of Civil Procedure 56(c)*, this action must be Dismissed with Prejudice and the Defendant's money returned forthwith. *Rule 56(c)*, *SCRCP* clearly states in pertinent parts...

(a) "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

(b) Additional Controlling Authorities

Charter Bank v. Eckert, 223 Ill.App.3d 918, 585 N.E.2d 1304, 166 Ill.Dec. 282 (5th Dist. 1992) (unverified answer has same effect as if no answer was filed; all well-pleaded facts are deemed admitted but not conclusions of law). "[C]onsequently, we must ignore the allegations in Crystal Lake's unverified answer. Moreover, a failure to file an answer results in well-pleaded facts being deemed admitted. (*Florsheim*, 75 Ill.App.3d at 309, 30 Ill.Dec. 876, 393 N.E.2d 1223.) "Allegations in a plaintiff's unverified answer are dismissed, and the defendants' well-pleaded facts are deemed admitted." *Pinnacle Corp. v. Village of Lake in the Hills*, 258 Ill.App.3d 205, 209, 196 Ill.Dec. 567, 630 N.E.2d 502 (1994) "[G]ladney produced no evidence to refute West's statements. Not only will we not consider Gladney's untimely affidavit, this court ordinarily will not consider statements of fact presented only in an attorney's argument in determining whether a genuine issue of material fact exists sufficient to preclude summary judgment. *See Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (ruling the trial court properly disregarded the statements of counsel which reflected testimony appearing in depositions not otherwise entered into evidence). We find Gladney failed to establish a genuine issue of material fact that his reliance on any alleged representation by West was justified. Accordingly, the trial court did not err in granting West's motion for summary judgment." *West v. Gladney*, 533 S.E.2d 334.

D. The undisputed facts as to what really happened.

27. The Defendant filled out an online application for a mobile home loan shortly before February 24, 2003. On February 24, 2003, the Defendant received an email from Angel Rabon, notifying the Defendant that her application had been approved and processed for a Personal Access Line at 15%. *{See Defendant's Filed Exhibit 11}*

28. After receiving Angel Rabon's email, *{Defendant's Filed Exhibit 11}* the Defendant contacted Angel Rabon at 843-569-4314 and discussed the mobile home purchase *{See Defendant's Filed Exhibits E-H}*. It was during this conversation with Angel Rabon that the Defendant was told her mobile home purchase will be essentially the same as her car loan. CUNA's LOANLINER® Credit Plan clearly states in pertinent parts..

"Anytime a dwelling is given as security for an open-end credit plan, the plan becomes a 'home equity plan' according to Regulation Z. the LOANLINER® open-end consumer credit plan was not designed to be a home equity plan and the home equity disclosures are not given in these documents. Therefore, the following types of subaccounts should not be part of the plan.

- mobile homes
- home equity
- real estate
- home purchase" *{See Defendant's Filed Exhibits L & M}*

E. SCFCU's evidence proves conclusively the Defendant's payments were applied to an SCFCU open-end PAL Account in violation of Regulation Z and in violation of CUNA'S LOANLINER® guidelines and not to the Defendant's mobile home purchase.

29. As the Defendant has stated in her **Verified Pleadings** that cannot be changed, the Defendant's mobile home purchase is not in SCFCU's account records. SCFCU has consistently proven the mobile home purchase is not in its account records and every report SCFCU files in this action proves clearly and conclusively... and every affidavit Amy Rogers has filed proves clearly and conclusively, that the Defendant's mobile home payments were never applied to the Defendant's mobile home purchase. Amy Rogers affidavits prove clearly, convincingly and

conclusively that the Defendant's mobile home payments were applied to an open-end PAL Account that cannot be used for mobile homes and was never authorized by the Defendant.

{Defendant's Filed Exhibit 11}

"Anytime a dwelling is given as security for an open-end credit plan, the plan becomes a 'home equity plan' according to Regulation Z. the LOANLINER® open-end consumer credit plan was not designed to be a home equity plan and the home equity disclosures are not given in these documents. Therefore, the following types of subaccounts should not be part of the plan.

- mobile homes
- home equity
- real estate
- home purchase" *{See Defendant's Filed Exhibits L & M}*

30. SCFCU has provided over 600 pages of computer generated account statements and/or reports and not one report identifies the mobile home the Defendant purchased or an account designation relative to a mobile home purchase. *{See SCFCU's Computer Generated Exhibits}*

31. SCFCU has had over 2 years to depose witnesses other than the Defendant and has had ample opportunity to develop the record for SCFCU's case. See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 594, 545 S.E.2d 500, 506 (2001) (finding summary judgment was not premature because defendant "had a full and fair opportunity to develop the record on this issue, but failed to do so."); see also Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 128-29, 542 S.E.2d 736, 742-43 (Ct. App. 2001) (stating it was not error to grant summary judgment because no further discovery would have contributed to the resolution of the case). "Allegations in a plaintiff's unverified answer are dismissed, and the defendants' well-pleaded facts are deemed admitted." See Pinnacle Corp., 258 Ill.App.3d at 209, 196 Ill.Dec. 567, 630 N.E.2d 502. "[A]llegations contained in verified pleadings are deemed to be admissions of fact." Winnetka Bank v. Mandas, 202 Ill. App. 3d 373, 397 (1st Dist. 1990)

III. IN ADDITION TO CLEARLY AND CONVINCINGLY VIOLATING REGULATION Z AND CUNA'S GUIDELINES RELATIVE TO MOBILE HOMES, SCFCU VIOLATED CUNA GUIDELINES RELATIVE TO CREDIT LIFE AND DISABILITY INSURANCE AND SOUTH CAROLINA'S CODE OF LAWS

32. Credit life and Credit Disability were not included as an option with the Defendant's original loan application in 2003. *{See Defendant's Filed Exhibits 9 & 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 Defendant's Filed 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. *{See Defendant's Filed Exhibits 9 & 10}* The Defendant justifiably relied upon Angel Rabon's representations that the interest rate was fixed at 15% and the loan was for a mobile home purchase (house). *{See Defendant's Filed Exhibits 9-11}*

33. 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 Defendant's Filed Exhibit 16, Page 1 of 2, line #2}* SCFCU must explain what it means by "Loan Stops". The car loan was paid out. *{See Defendant's Filed Exhibits 12-15}*

34. 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 – SC Code of Laws*. 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 Defendant's Filed Exhibits 13, 14 & 15}*

35. *Section 37-4-201- SC Code of Laws* 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...."

36. 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 Defendant's Filed 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". Under CUNA'S guidelines, Credit Life/Credit Disability insurance automatically stops when the loan is paid off, no written request is required. *{See Membership and Account Agreement, page 29}*

(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, neither a mobile home nor an automobile purchase qualifies for the automatic retention of Credit Life/Credit Disability insurance under the plan.

"Anytime a dwelling is given as security for an open-end credit plan, the plan becomes a 'home equity plan' according to Regulation Z. the LOANLINER® open-end consumer credit plan was not designed to be a home equity plan and the home equity disclosures are not given in these documents. Therefore, the following types of subaccounts should not be part of the plan.

- mobile homes
- home equity
- real estate
- home purchase" *{See Defendant's Filed Exhibits L & M}*

(b) SCFCU's Credit Life/Credit Disability Insurance certificate is inconsistent with 37-4-201(3)(a) -SC Code of Laws; 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}

Section 37-4-201(3)- SC Code of Laws 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...."

(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. {See Page 22, Under Credit Insurance in MAAA}

37. 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.

38. 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 Defendant's Filed Exhibits 5, 9, 11, 12, 16 and 17, page 21}

39. 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 Defendant's Filed Exhibits 5, 9, 11 & 12}*

40. 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 Defendant's Filed 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}* SCFCU's violations are clear and convincing.

IV. CONCLUSION OF MISTATEMENTS IN THE PLAINTIFF'S PROCEDURAL HISTORY

A. Rule 56, SCRCP mandates a hearing be called for the moving party in a summary judgment. No hearing was ever called for the Defendant.

41. *Rule 56(b), SCRCP* clearly states,

"A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof."

42. *Rule 56(c), SCRCP* is also unambiguous,

"The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

B. It is not even reasonable to conclude even in the most biased and corrupt court in America that the Defendant's summary judgment motion was read, affidavits considered and/or exhibits; as well as, pages of undisputed facts.

43. The notice of hearing clearly states a hearing on the Plaintiff's motion for summary judgment. The Defendant justifiably relied on the rules of civil procedure and the clear and unambiguous language written in the notice. It is not conceivable that the Defendant can arrive at any other conclusion. The hearing was called for the Plaintiff, not the Defendant.

44. The Defendant came to the hearing to oppose the Plaintiff's summary judgment motion. During the hearing Judge Goodstein did not request or ask the Defendant to present her motion for summary judgment, to explain her motion summary judgment or even to discuss her motion for summary judgment. So how can Judge Goodstein deny a motion she has never heard or read. Judge Goodstein read from the Plaintiff's filed documents not the Defendant's. *{Review transcripts of the hearing}*

45. The Court has never read the Defendant's Summary Judgment Motion in any Court hearing. Judge Goodstein's signed order does not specifically mention the Defendant. In addition, if this is the case, Judge Goodstein has violated the Due Process Clause of the United States Constitution, South Carolina's Constitution, South Carolina's Rules of Civil Procedure and the Federal Rules of Civil Procedure. *See State v. Colf, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998) (noting that federal interpretation of the rules of civil procedure is persuasive when there is no South Carolina interpretation).*

46. *Article 1, Section 3, under DECLARATION OF RIGHTS in South Carolina's Constitution, states the following:*

"The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

Governing Authorities:

(a) Kurschner v. City of Camden Planning Commission, Mathews v. Eldridge, 424 U.S. 319, 332 (1976); Ogburn v. Matthews, 332 S.C. at 562, 505 S.E.2d at 603; Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (stating that the Due Process Clause demands "notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"); cf. S.C. Const. art. I, § 22 ("No person shall be finally bound by a judicial or quasi judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard"); Stono River Envtl. Protection Ass'n v. South Carolina Dep't of Health and Envtl. Control, 305 S.C. 90, 406 S.E.2d 340 (1991); Brown v. Malloy, 345 S.C. 113, 546 S.E.2d 195 (Ct. App. 2001); Murdock v. Murdock, 338 S.C. 322, 526 S.E.2d 241 (Ct. App. 1999); Murdock, 338 S.C. at 334, 526 S.E.2d at 248; Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363 (1914); Cameron & Barkley Co. v. South Carolina Procurement Review Panel, 317 S.C. 437, 454 S.E.2d 892 (1995); Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002). Anderson v. Creighton, 483 U.S. 635 (1987) "[t]he right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause (no matter how unclear it may be that the particular action is a violation) violates a clearly established right. Much the same could be said of any other constitutional or statutory violation."

(b) "[I]t is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights." Murdock, 338 S.C. at 334, 526 S.E.2d at 248. "[A] judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on. Id."

47. Therefore, for the Plaintiff or a Judge to conclude the Defendant's appearance to defend a summary motion was an opportunity to discuss the Defendant's motion is ludicrous beyond belief; especially, since Judge Goodstein neither read or discussed the Defendant's motion... and in the words established by Anderson v. Creighton, 483 U.S. 635 (1987) "[t]he right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause (no matter how unclear it may be that the particular action is a violation) violates a clearly established right. Much the same could be said of any other constitutional or statutory violation."

48. The Defendant did not forget or misunderstand anything, S.C. Const. art. I, § 22 says it

all...("No person shall be finally bound by a judicial or quasi judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard"); "[T]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." South Carolina Dep't of Social Servs. v. Holden, 319 S.C. 72, 459 S.E.2d 846 (1995).

49. In addition, the controlling and governing authorities relative to **Verified Pleadings** in the Appellate Courts, State Supreme Courts, Federal District Courts and the United States Supreme Court are very clear when it comes to failure to respond to statements of fact in **Verified Pleadings** regardless of the errors of law and judgments in the lower courts.

(a) "CMI Capital Market Inv., LLC v. Gonzalez-Toro, No. 06-2623, 2008 WL 713577, (1st Cir. March 18, 2008) (where the nonmovants failed to submit a separate statement of material acts in accordance with the local rule, "[t]he district court was . . . within its discretion to deem the facts in the [movant's] statement of material facts admitted."); Ríos-Jiménez v. Principi, No. 06-2582, 2008 WL 651630, (1st Cir. March 12, 2008) ("In the event that a party opposing summary judgment fails to act in accordance with the rigors that such a [local summary judgment] rule imposes, a district court is free, in the exercise of its sound discretion, to accept the moving party's facts as stated.") (citations omitted); John S. v. County of Orange, No. 05-55021, 2007 WL 625249, (9th Cir. Feb. 26, 2007) (unpublished) ("It was not error for the district court to deem the material facts submitted by defendants as admitted and to grant summary judgment on procedural grounds.") (citing C.D. CAL. L.R. 56-3); Libel v. Adventure Lands of Am., Inc., 482 F.3d 1028, 1033 (8th Cir. 2007) ("The district court was not obliged to scour the record looking for factual disputes.")

(b) "[T]he manner in which a trial is conducted is within the trial judge's discretion. See Baber v. Greenville County, 327 S.C. 31, 41, 488 S.E.2d 314, 319 (1997) (holding that "the conduct of a trial is largely within the trial judge's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion or the commission of a legal error that results in prejudice for appellant"). "[A] failure to exercise discretion amounts to an abuse of that discretion. See Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997). When a trial judge is vested with discretion; but his ruling reveals no discretion was in fact exercised, an error of law has occurred. See Ballon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152, 155, 399 S.E.2d 439, 441 (1990).

V. **OPPOSITION TO THE MISSTATEMENT OF FACTS IN THE PLAINTIFF'S FACTUAL BACKGROUND**

50. **Paragraph 1, Sentence #1: The Defendant Objects to the Plaintiff's Conclusions in Sentence #1:** Base on the requirements of SCFCU's Membership Agreement, the Defendant never became an official member of SCFCU. The addendum is a mandatory requirement that the did not receive on September 5, 2002. Therefore, the Defendant could not agree to any terms and conditions of the MAAA. The Defendant is not an employee, staff member or principal of SCFCU, therefore, it is not the responsibility of the Defendant to know what's in SCFCU's MAAA. It is SCFCU's responsibility and requirement to explain them.. Therefore, the Defendant did not agree to anything. The Defendant simply followed the instructions she was given from SCFCU's representative to obtain the loan for the car. Without the addendum attached to the signed application, no valid agreement exists. "[T]he required elements of a contract are an offer, acceptance, and valuable consideration." *Sauner v. Pub. Serv. Auth. of South Carolina*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). "[A] contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct." *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997).

Additional Authorities

There are no binding terms if the agreement is not complete. *Schade v. Diethrick*, 760 P.2d 1050, 1058 (Ariz. 1988) (The requirement of definiteness is "a factor relevant to determining the ultimate element of contract formation—the question whether the parties manifested assent or intent to be bound"); *Restatement 2d of Contracts* §33 cmt. c ("The more terms the parties leave open, the less likely it is the they have intended to conclude a binding agreement".) Accordingly, if the missing terms are sufficiently material, the contract is unenforceable.

51. **Paragraph #1, Sentence #2: The Defendant Objects to the Plaintiff's Conclusions in Sentence #2:** By allowing the Defendant to sign the application without an addendum, SCFCU engaged in constructive fraud. On September 5, 2002, the Defendant had no idea what an addendum is. As far as the Defendant is concerned the front of the application could have been

the addendum. Without an addendum in her physical possession, it does matter what the Defendant signed, it is not a valid agreement. “[A] contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct.” *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997). There are no binding terms if the agreement is not complete.

Additional Authorities

There are no binding terms if the agreement is not complete. *Schade v. Diethrick*, 760 P.2d 1050, 1058 (Ariz. 1988) (The requirement of definiteness is “a factor relevant to determining the ultimate element of contract formation—the question whether the parties manifested assent or intent to be bound”); *Restatement 2d of Contracts* §33 cmt. c (“The more terms the parties leave open, the less likely it is the they have intended to conclude a binding agreement”). Accordingly, if the missing terms are sufficiently material, the contract is unenforceable.

52. **Paragraph #1, Sentence #3: The Defendant Objects to the Plaintiff's Conclusions in Sentence #3:** Without an addendum in her physical possession, it does matter what the Defendant signed, it is not a valid agreement. SCFCU violated CUNA's guidelines. “[A] contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct.” *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997).

Additional Authorities

There are no binding terms if the agreement is not complete. *Schade v. Diethrick*, 760 P.2d 1050, 1058 (Ariz. 1988) (The requirement of definiteness is “a factor relevant to determining the ultimate element of contract formation—the question whether the parties manifested assent or intent to be bound”); *Restatement 2d of Contracts* §33 cmt. c (“The more terms the parties leave open, the less likely it is the they have intended to conclude a binding agreement”). Accordingly, if the missing terms are sufficiently material, the contract is unenforceable.

53. **Paragraph #1, Sentence #4: The Defendant Objects to the Plaintiff's Conclusions in Sentence #4:** Without an addendum in her physical possession, it does matter what the Defendant signed, it is not a valid agreement. SCFCU violated CUNA's guidelines. “[A] contract is an

obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct.” Roberts v. Gaskins, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997).

Additional Authorities

There are no binding terms if the agreement is not complete. Schade v. Diethrick, 760 P.2d 1050, 1058 (Ariz. 1988) (The requirement of definiteness is “a factor relevant to determining the ultimate element of contract formation—the question whether the parties manifested assent or intent to be bound”); Restatement 2d of Contracts §33 cmt. c (“The more terms the parties leave open, the less likely it is the they have intended to conclude a binding agreement”). Accordingly, if the missing terms are sufficiently material, the contract is unenforceable.

54. **Paragraph #1, Sentence #5: The Defendant Objects to the Plaintiff’s Conclusions in**

Sentence #5: Without an addendum in her physical possession, it does matter what the Defendant signed, it is not a valid agreement. SCFCU violated CUNA’s guidelines. “[A] contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct.” Roberts v. Gaskins, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997).

Additional Authorities

There are no binding terms if the agreement is not complete. Schade v. Diethrick, 760 P.2d 1050, 1058 (Ariz. 1988) (The requirement of definiteness is “a factor relevant to determining the ultimate element of contract formation—the question whether the parties manifested assent or intent to be bound”); Restatement 2d of Contracts §33 cmt. c (“The more terms the parties leave open, the less likely it is the they have intended to conclude a binding agreement”). Accordingly, if the missing terms are sufficiently material, the contract is unenforceable.

55. **Paragraph #1, Sentence #6: The Defendant Objects to the Plaintiff’s Conclusions in**

Sentence #6: Without an addendum in her physical possession, it does matter what the Defendant signed, it is not a valid agreement. SCFCU violated CUNA’s guidelines. “[A] contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct.” Roberts v. Gaskins, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997).

Additional Authorities

There are no binding terms if the agreement is not complete. *Schade v. Diethrick*, 760 P.2d 1050, 1058 (Ariz. 1988) (The requirement of definiteness is “a factor relevant to determining the ultimate element of contract formation—the question whether the parties manifested assent or intent to be bound”); *Restatement 2d of Contracts* §33 cmt. c (“The more terms the parties leave open, the less likely it is the they have intended to conclude a binding agreement”). Accordingly, if the missing terms are sufficiently material, the contract is unenforceable.

The Affidavit of Amy Rogers In Support of Renewed Motion for Summary Judgment (hereafter also called Rogers’ Affidavit) from sentence #1-#9 proves clearly, convincingly and conclusively that the Defendant’s monthly payments were applied to an open-end PAL Account and not to the Defendant’s mobile home purchase. Rogers’ Affidavit also verifies SCFCU violated CUNA’s LOANLINER® open-end consumer credit plan, violated the home equity disclosure requirements of Regulation Z and verifies SCFCU’s violation of *Section 37-4-201(3)- SC Code of Laws*.

“Anytime a dwelling is given as security for an open-end credit plan, the plan becomes a ‘home equity plan’ according to Regulation Z. the LOANLINER® open-end consumer credit plan was not designed to be a home equity plan and the home equity disclosures are not given in these documents. Therefore, the following types of subaccounts should not be part of the plan.

- mobile homes
- home equity
- real estate
- home purchase” {See Defendant’s Filed Exhibits L & M}

56. Amy Rogers’ verification of SCFCU’s violations of *Section 37-4-201(3) –SC Code of Laws* is dispositive for sentences #1 and #2 in paragraph #2 on page 3 and dispositive for paragraph #3 from page 3 to page 4. *Schade v. Diethrick*, 760 P.2d 1050, 1058 (Ariz. 1988) (The requirement of definiteness is “a factor relevant to determining the ultimate element of contract formation—the question whether the parties manifested assent or intent to be bound”); *Restatement 2d of Contracts* §33 cmt. c (“The more terms the parties leave open, the less

likely it is the they have intended to conclude a binding agreement”). Accordingly, if the missing terms are sufficiently material, the contract is unenforceable.

57. **Page 4, Paragraph #2, Sentence #1: The Defendant Objects to the Plaintiff's Conclusions in Sentence #1:** The Defendant did examine her statements. That's how the Defendant knew something was wrong the account. The Defendant contacted SCFCU and requested SCFCU change her mobile home loan to a fixed rate loan because that is what is suppose to be. SCFCU refused. Under the discovery rule, the statute of limitations begins to run from the date the Defendant knew by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct SCFCU. *S.C. Code Ann. § 15-3-535 (2005); Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996).

Additional Authority:

“[T]he exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.” *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 328-29, 534 S.E.2d 672, 676 (2000) (citations omitted).

58. **Page 4, Paragraph #3, Sentences #1-7: The Defendant Objects to the Plaintiff's Conclusions in Sentences #1-7:** The Plaintiff has finally discovered where the error occurred. The Plaintiff did not and has not referenced or mentioned Angel Rabon. Angel Rabon's information that the Defendant's advance was for a mobile home purchase was never entered into SCFCU's account records. This is precisely why the Defendant's payments where not applied to her mobile home purchase and precisely why SCFCU has no record of it. This is precisely why SCFCU has violated the disclosure requirements of Regulation Z, CUNA's LOANLINER® Credit Agreement and South Carolina Law. Over 600 pages of evidence proves conclusively, the Defendant's mobile home purchase is not in SCFCU's account records because

Angel Rabon's information about the mobile home was either ignored or discarded. {See Defendant's Filed Exhibits 9, 10 & 11}

**VI. THE DEFENDANT OBJECTS TO THE PLAINTIFF'S LEGAL ARGUMENTS
THERE CAN BE NO SUMMARY JUDGMENT FOR THE PLAINTIFF DUE TO
KNOWN VIOLATIONS OF FEDERAL AND STATE LAW AND PUBLIC
POLICY**

59. Angel Rabon was the account representative that handled the Defendant's advance not Amy Rogers. Angel Rabon knew the mobile home could not be included as an open-ended PAL Account and sent the Defendant an application for Credit Life/Disability Insurance. {Defendant's Exhibit C} Angel Rabon understood the Credit Life/Disability Insurance on the Defendant's car would end when the car was paid out and could not be automatically transferred to the mobile home without a separate agreement. Instead of listening to the Defendant, SCFCU relied on the errors in its computer files and has come to court trying to defend those errors when the Defendant's evidence proves conclusively, the advance was to purchase a mobile home and not a microwave oven. {See Defendant's Filed Exhibits 9, 10, 11 & F, G & H}

60. Money obtained by violating a State or Federal Law cannot be kept and agreements cannot be enforced. Any money or benefit obtained illegally by fraud, deceit, robbery, mistake of fact or by any other means must be returned in its entirety. Menominee River Co. v. Augustus Spies L & C Co., "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).

Additional Authorities:

Whipp v. Iverson, 43 Wis. 2d 166, 168 N.W.2d 201 (1969) (holding that, "It is not necessary for rescission of a contract that the party making the misrepresentation should

have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations.”); Leonard v. Springer, 197 Ill 532. 64 NE 299 (1902). (Holding that “Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts.” (The seller or lender) “He is liable, not upon any idea of benefit to himself, but because of his wrongful act and the consequent injury to the other party.”) Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis. 550, 279 NW 79 (1938) (holding that “The contract is void if it is only in part connected with the illegal transaction and the promise single or entire.”)

VII. THE FOLLOWING AUTHORITIES ARE DISPOSITIVE FOR ANY REMAING ARGUMENTS THE PALINTIFF HAS FILED ON PAGES 6-17

61. “[I]t is a well founded policy of law “[t]hat no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act.” See 86 C.J.S. Torts § 12 (1954)

62. This rule applies at both law and in equity and whether the cause of action is in contract or in tort. {See 1A C.J.S. Actions § 29 (1985). See also Graham v. Graham, 276 S.C. 341, 278 S.E.2d 345 (1981); Nelson v. Bryant, 265 S.C. 558, 220 S.E.2d 647 (1975); Roundtree v. Ingle, 94 S.C. 231, 77 S.E. 931 (1913); Restatement (Second) of Torts § 774 (1977) and Jackson v. Bi-Lo Stores, Inc., 313 S.C. at 276, 437 S.E. 2d at 170.}

63. The illegality doctrine has also been recognized by the United States Supreme Court. {See McMullen v. Hoffman, 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899), holding that illegality is a defense to a contract action: The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract. *Id.* at 654, 19 S.Ct. at 845.}

64. South Carolina courts have reached similar conclusions refusing to aid plaintiffs who are

themselves guilty of an illegal act. In *Roundtree*, the court concluded that "[his] whole transaction is without the pale of the law, and [he] cannot invoke the aid of the courts in enforcement of any claim depending on it." *Id.* 77 S.E. at 932. See also, *Berkebile v. Outen*, S.C. 426 S.E.2d 760, 762 (1993) (holding that "an illegal contract has always been unenforceable ... South Carolina courts will not enforce a contract which is violative of public policy, statutory law or provisions of the Constitution."). SCFCU has violated CUNA's guidelines, public policy, statutory law and federal law.

CONCLUSIONS

65. 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

66. Advances total \$6,350.00. Therefore, Payments – Advances =s 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 =s
\$ 4,660.89 – Due the Defendant after deductions for the Loan & Advances

67. 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.

68. For all the foregoing reasons and arguments the Plaintiff's Renewed Motion for Summary Judgment should be denied and the Defendant's Motion For Summary Judgment granted.

NOTIFICATION

A copy of the Defendant *Dorothy Harley Sistrunk Objections to the Plaintiff's Memorandum in Support of Plaintiff's Renewed 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

NOTARY VERIFICATION

IN WITNESS WHEREOF, The undersigned, being duly **SWORN**, and under the **PENALTY**

OF PERJURY has signed and sealed these attestations this 8th day of April

in the year 2014 in City of Orangeburg, State of South Carolina.

Affiant Signature: Dorothy Haskins-Sistrunk

Notary's Signature as Witness (1): Lin E. Heller

Signed, sealed and delivered in the presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On 4-8-14 before me appeared Dorothy Sistrunk
and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed
to the within document and acknowledged to me that she executed the same in her authorized
capacity, and that by her signature on this Pleading presents this Verified Pleading to the Court.

WITNESS my hand and official seal.

Notary's Signature Lin E. Heller

Commission Expires MY COMMISSION EXPIRES
APRIL 13TH, 2015

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA
0107

(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 DOES NOT OBJECT TO
PLAINTIFF'S RENEWED MOTION FOR
SUMMARY JUDGMENT. THE
DEFENDANT ENCOURAGES THE COURT
TO ACCEPT THE MOTION AS WRITTEN
AND THE NEW EVIDENCE AS
PRESENTED & DENY ANY ATTEMPT BY
THE PLAINTIFF TO WITHDRAW THE
MOTION AND/OR THE EVIDENCE
AND/OR ALTER AMY ROGERS' FILED
AFFIDAVIT IN SUPPORT OF THE
PLAINTIFF'S RENEWED MOTION FOR
SUMMARY JUDGMENT**

Today's Date: April 8, 2014

Comes now the Defendant Dorothy Harley Sistrunk to file this notice that *Defendant Dorothy Harley Sistrunk Does not Object to Plaintiff's Renewed Motion for Summary Judgment. The Defendant Encourages the Court to Accept the Motion as Written and the New Evidence as Presented and Deny any Attempt by the Plaintiff to Withdraw the Motion and/or the Evidence and/or Alter Amy Rogers' Filed Affidavit in Support of the Plaintiff's Renewed Motion for Summary Judgment.* The Plaintiff's documents are dated March 27th and April 1, 2014, and were retrieved from the mailbox at 423 Bayne Street in Orangeburg, South Carolina on March 31, 2014 and April 3rd, 2014 Respectively.

1. The Defendant encourages the court to accept the Plaintiff's Renewed Motion for Summary Judgment. At the conclusion of the Plaintiff's evidence, grant Summary Judgment for the Defendant, including a return of all the money the Defendant paid on SCFCU's account. The Plaintiff will prove clearly and convincingly with the preponderance of the evidence and beyond any reasonable doubt with the documents the Plaintiff has assembled that the Defendant's mobile home purchase is not in the Plaintiff's account records and the Defendant's monthly payments for 7 years; after SCFCU was duly notified, were misapplied to PAL open-end Account in

violation of CUNA's guidelines and Regulation Z.

2. "Anytime a dwelling is given as security for an open-end credit plan, the plan becomes a 'home equity plan' according to Regulation Z. the LOANLINER® open-end consumer credit plan was not designed to be a home equity plan and the home equity disclosures are not given in these documents. Therefore, the following types of subaccounts should not be part of the plan.

- mobile homes
- home equity
- real estate
- home purchase" {See Defendant's Filed Exhibits L & M}

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

NOTIFICATION

A copy of the Defendant *Dorothy Harley Sistrunk Objections to the Plaintiff's Memorandum in Support of Plaintiff's Renewed 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

Signature: *Dorothy Harley Sistrunk* Date: 4/8/14

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 OBJECTS TO THE
AFFIDAVIT OF AMY ROGERS IN
SUPPORT OF THE PLAINTIFF'S
RENEWED MOTION FOR SUMMARY
JUDGMENT**

Today's Date: April 8, 2014

Comes now the Defendant Dorothy Harley Sistrunk *Objects to the Affidavit of Amy Rogers in Support of the Plaintiff's Renewed Motion for Summary Judgment.* The Plaintiff's documents are dated March 27th and April 1, 2014, and were retrieved from the mailbox at 423 Bayne Street in Orangeburg, South Carolina on March 31, 2014 and April 3rd, 2014 Respectively.

1. **Page 1, Sentence #1:** The Defendant does not object to sentence #1.
2. **Page 1, Sentence #2:** The Defendant objects to sentence #2. Amy Rogers has demonstrated she is not familiar with the events and circumstances surrounding this action. She has failed in several affidavits to mention or refer to Angel Rabon, South Carolina Federal Credit Union's (SCFCU) representative that spoke with the Defendant about her mobile home purchase in February of 2003. Amy Rogers has consistently failed to mentioned it was Angel Rabon that spoke with the Defendant about the mobile home purchase. {See Defendant's Exhibit 11}
3. **Page 1, Sentence #3:** The Defendant objects to sentence #3. If the books and records are under Amy Rogers' control, why has Amy Rogers consistently failed to include Angel Rabon's information into SCFCU's account records that the Defendant's \$5,500.00 advance was used to purchase a mobile home? Is Amy Rogers knowingly violating CUNA MUTUAL GROUP's guidelines relative to mobile homes purchases and/or home purchases and disclosure requirements relative to home equity plans? {See Defendant's Exhibit 11}

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY
EXHIBIT 39

“Anytime a dwelling is given as security for an open-end credit plan, the plan becomes a ‘home equity plan’ according to Regulation Z. The LOANLINER® open-end consumer credit plan was not designed to be a home equity plan and the home equity disclosures are not given in these documents. Therefore, the following types of subaccounts should not be part of the plan.

- mobile homes
- home equity
- real estate
- home purchase” *{See Defendant’s Filed Exhibits L & M}*

4. **Page 1, Sentence #4:** The Defendant does not object to sentence #4. Let the record show SCFCU’s records do not identify the purpose of the Defendant’s loan or identifies the mobile home purchased by the Defendant or the 15% fixed interest rate that is on the email and the Defendant’s application. *{See Defendant’s Filed Exhibits 9, 10 & 11}*

5. **Page 2, Sentence #5:** The Defendant objects to sentence #5. The Defendant’s membership with SCFCU was never completed. The Defendant never received an addendum as required by CUNA’s guidelines. SCFCU violated CUNA’s guidelines and allowed the Defendant to sign an agreement with the mistaken belief that the Defendant had read an addendum. There is no addendum attached to the Defendant’s application and no addendum in the packet of information the Defendant received from SCFCU in September of 2002.

6. **Page 2, Sentence #6:** The Defendant accepts the features identified as being true. However, such features are only available to members that have completed the membership enrollment process. Without the addendum in the Defendant’s physical and actual possession, the Defendant has not completed the membership process and does not have a valid agreement with SCFCU. The evidence that no valid agreement exists is Amy Rogers has consistently failed to include a copy of the addendum the Defendant received in September of 2002. The possibility exists that the missing addendum can no longer be found or obtained because addendums are updated and replaced on a regular basis. In addition, pulling an addendum from someone’s file and placing in the affidavit is deceit and deception and a deliberate falsification of records.

7. **Page 2, Sentence #7:** The Defendant objects to sentence #7. The Defendant does not have to cancel or rescind the election of Credit/Disability Insurance. Under CUNA's guidelines, insurance automatically stops when the loan is paid out. The Defendant's automobile loan is paid out and a mobile home does not qualify as a from time to time purchase under loanliner. The automatic cancellation of credit life insurance; when a debt is paid out, is also mandated by South Carolina law.

8. **Page 2, Sentence #8:** The Defendant accepts sentence #8 as the irrefutable and undeniable evidence that the Defendant's mobile home payments were not used to pay off the loan for the mobile home at a 15% fixed interest rate but were misapplied as a PAL open-end Account that violates CUNA's loanliner guidelines and the home equity disclosure requirements of Regulation Z. The Defendant purchased a mobile home, Angel Rabon knew it was a mobile home, the Defendant's documents prove she purchased a mobile home, the application has house clearly written on it; as well as the 15% fixed interest rate *{Defendant's Filed Exhibits 9 & 11}* and SCFCU was duly notified that the Defendant purchased a mobile home. *{See Defendant's Filed Exhibits E, F, G & H}* Amy Rogers Affidavit and all the documents filed in court verifies SCFCU is in violation and has been in violation for years. SCFCU's own records prove the Defendant has paid SCFCU over eleven thousand dollars. \$11,000.00. *{Plaintiff's Exhibit 3}*

"Anytime a dwelling is given as security for an open-end credit plan, the plan becomes a 'home equity plan' according to Regulation Z. The LOANLINER® open-end consumer credit plan was not designed to be a home equity plan and the home equity disclosures are not given in these documents. Therefore, the following types of subaccounts should not be part of the plan.

- mobile homes
- home equity
- real estate
- home purchase" *{See Defendant's Filed Exhibits L & M}*

9. **Page 2, Sentence #9:** The Defendant accepts sentence #9. Amy Rogers highest principal

balance verifies an open-end PAL Account that cannot be used for home purchases or mobile home purchases. In addition, SCFCU's own records prove the Defendant has paid SCFCU over \$11,000.00 in cash. *{Plaintiff's Exhibit 3}*

10. **Page 3, Sentence #10:** The Defendant rejects sentence #10. According to SCFCU's own records the Defendant has paid SCFCU over \$11,000.00 dollars in cash. *{Plaintiff's Exhibit 3}*

11. **Page 3, Sentence #11:** The Defendant rejects sentence #11. It is not the Defendant's responsibility to comply with CUNA's guidelines, Federal Reserve Board regulatory requirements relative to credit plans and home equity loans or "Substantially Comply" with South Carolina law relative to credit life insurance.

12. **Page 3, Sentence #12:** The Defendant rejects sentence #12. The Defendant is not in default. SCFCU created the default by misapplying the Defendant's mobile home payments to a PAL open-end Account, instead the 15% fixed interest that Angel Rabon referred to and highlighted on the Defendant's application. According to SCFCU's own records, the Defendant has paid SCFCU over \$11,000.00 dollars in cash. *{Plaintiff's Exhibit 3}*

13. **Page 3, Sentence #13:** The Defendant rejects sentence #13. SCFCU is not entitled to collect anything. In fact the violation of a federal or state law, mandates SCFCU must return all the Defendant's money that SCFCU illegally applied to a PAL open-end Account in violation of South Carolina and Federal law; as well as, CUNA's loanliner guidelines. In addition, misapplying a customer's or member's money to an inappropriate account not knowingly authorized is a violation of South Carolina's Unfair Trade Practices Act and Federal Reserve Board Banking Regulations. According to SCFCU's own records, the Defendant has paid SCFCU over \$11,000.00 dollars in cash. *{Plaintiff's Exhibit 3}*

Authorities Relative to This Action.

1. In addition to the “home equity” disclosures required by Regulation Z and CUNA MUTUAL GROUP’s LOANLINER® guidelines for mobile and/or home purchases.

(A) “[T]he required elements of a contract are an offer, acceptance, and valuable consideration.” Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). “[A] contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct.” Roberts v. Gaskins, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997).

(B) There are no binding terms if the agreement is not complete. Schade v. Diethrick, 760 P.2d 1050, 1058 (Ariz. 1988) (The requirement of definiteness is “a factor relevant to determining the ultimate element of contract formation—the question whether the parties manifested assent or intent to be bound”); Restatement 2d of Contracts §33 cmt. c (“The more terms the parties leave open, the less likely it is that they have intended to conclude a binding agreement”). Accordingly, if the missing terms are sufficiently material, the contract is unenforceable.

(C) “[T]he exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.” Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 328-29, 534 S.E.2d 672, 676 (2000) (citations omitted).

(D) S.C. Code Ann. § 15-3-530(7) (2005); “(7) any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were solely cognizable by the court of chancery, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;”

(E) “This Court has recognized that, under the discovery rule, the statute of limitations begins to run when a reasonable person of common knowledge and experience would be on notice that a claim against another party might exist. The fact that the injured party may not comprehend the full extent of the damage is immaterial. Dean v. Ruscon Corp., 321 S.C. 360, 363-364, 468 S.E.2d 645, 647 (1996). See also Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994) (reasonable diligence means simply that injured party must act with some promptness where facts and circumstances of injury would put person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist; statute of limitations begins to run from this point and not when advice of counsel is sought or full-blown theory of recovery is developed); Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 278 S.E.2d 333

(F) Menominee River Co. v. Augustus Spies L & C Co., “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).

(G) Whipp v. Iverson, 43 Wis. 2d 166, 168 N.W.2d 201 (1969) (holding that, “It is not necessary for rescission of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations.”);

(H) Leonard v. Springer, 197 Ill 532. 64 NE 299 (1902). (Holding that “Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts.” (The seller or lender) “He is liable, not upon any idea of benefit to himself, but because of his wrongful act and the consequent injury to the other party.”)

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

(J) “[I]t is a well founded policy of law “[t]hat no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act.” See 86 C.J.S. Torts § 12 (1954) . This rule applies at both law and in equity and whether the cause of action is in contract or in tort. {See 1A C.J.S. Actions § 29 (1985). See also Graham v. Graham, 276 S.C. 341, 278 S.E.2d 345 (1981); Nelson v. Bryant, 265 S.C. 558, 220 S.E.2d 647 (1975); Roundtree v. Ingle, 94 S.C. 231, 77 S.E. 931 (1913); Restatement (Second) of Torts § 774 (1977) and Jackson v. Bi-Lo Stores, Inc., 313 S.C. at 276, 437 S.E. 2d at 170.}

(K) The illegality doctrine has also been recognized by the United States Supreme Court. McMullen v. Hoffman, 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899), holding that illegality is a defense to a contract action: The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract. Id. at 654, 19 S.Ct. at 845.

2. "Anytime a dwelling is given as security for an open-end credit plan, the plan becomes a 'home equity plan' according to Regulation Z. The LOANLINER® open-end consumer credit plan was not designed to be a home equity plan and the home equity disclosures are not given in these documents. Therefore, the following types of subaccounts should not be part of the plan.

- mobile homes
- home equity
- real estate
- home purchase" {See Defendant's Filed Exhibits L & M}

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

NOTIFICATION

A copy of the Defendant *Objects to the Affidavit of Amy Rogers in Support of the Plaintiff's Renewed 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

NOTARY VERIFICATION

IN WITNESS WHEREOF, The undersigned, being duly **SWORN**, and under the **PENALTY OF PERJURY** has signed and sealed these attestations this 9th day of April in the year 2014 in City of Orangeburg, State of South Carolina.

Affiant Signature: Dorothy Haley-Dist

Notary's Signature as Witness (1): Sullivan D. Beck

Signed, sealed and delivered in the presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On 4/9/14 before me appeared Dorothy H. Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within document and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on this Affidavit that Objects to the Affidavit of Amy Rogers in Support of the Plaintiff's Renewed Motion for Summary Judgment presents this Verified Pleading to the Court.

WITNESS my hand and official seal.

Notary's Signature Sullivan D. Beck

Commission Expires My Commission Expires July 24, 2022

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

(Seal)

COPY

received
11/7/14

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 TRIAL

)

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

)

)

)

)

Defendant.

)

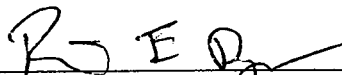
)

)

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

PLEASE TAKE NOTICE that a Trial will be held on December 15, 2014 at 2:30 p.m.,
before the Honorable James B. Jackson, Jr., Master-In-Equity for Orangeburg County, at the
Orangeburg County Courthouse, 151 Docket Street, 3rd Floor – Room 305, Orangeburg, South
Carolina.

PLEASE BE PRESENT IF SO MINDED.



Cynthia Jordan Lowery

Reid E. Dyer

Moore & Van Allen PLLC

78 Wentworth Street

Post Office Box 22828

Charleston, SC 29413-2828

Telephone: (843) 579-7000

Attorneys for South Carolina Federal Credit Union

CHARLESTON, SC
November 5, 2014

CHARLESTON588201v1

CERTIFICATE OF SERVICE

The undersigned, of Moore & Van Allen PLLC, Attorneys for Plaintiff, hereby certifies that on the 31st day of November, 2014, she caused a copy of the foregoing Notice of Trial 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



Moore & Van Allen PLLC
78 Wentworth Street
Post Office Box 22828
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Telephone: (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.”

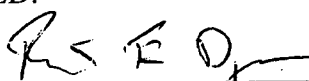
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	CIVIL CASE NUMBER: 11-CP-38-1392
	)	
SOUTH CAROLINA FEDERAL CREDIT UNION,	)	
	)	
	)	
Plaintiff,	)	
vs.	)	NOTICE OF CONTINUAUCNE
	)	OF TRIAL
DOROTHY HARLEY SISTRUNK A/K/A	)	
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, PRO SE DEFENDANT:

PLEASE TAKE NOTICE that the Trial in the above case has been continued and will be held on **February 18, 2015 at 1:30 p.m.**, before the Honorable James B. Jackson, Jr., Master-In-Equity for Orangeburg County, at the Orangeburg County Courthouse, 151 Docket Street, 3rd Floor – Room 305, Orangeburg, South Carolina.

PLEASE BE PRESENT IF SO MINDED.



Cynthia Jordan Lowery
Reid E. Dyer
Moore & Van Allen PLLC
78 Wentworth Street
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Telephone: (843) 579-7000
Attorneys for South Carolina Federal Credit Union

CHARLESTON, SC
December 3, 2014

CERTIFICATE OF SERVICE

The undersigned, of Moore & Van Allen PLLC, Attorneys for Plaintiff, hereby certifies that on the 4th day of December, 2014, she caused a copy of the foregoing Notice of Continuance of Trial 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



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“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
FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

**DEFENDANT DOROTHY
HARLEY SISTRUNK 'S
OUTLINE FOR THE FEBRUARY
18TH 2015 HEARING**

Today's Date: February 17, 2015

Comes now the Defendant Dorothy Harley Sistrunk to present this Outline for the February 18th 2015 Hearing.

I. INVOCATION OF RULES 8(f), SCRPC (South Carolina Rules of Civil Procedure); 201, 401 & 614, SCRE (South Carolina Rules of Evidence) AND 13(a), SCRMC (South Carolina Rules of Magistrate Court)

A. Before I begin my presentation, I invoke the following Rules of Court for the following reasons.

1. Rule 8(f), SCRPC, (South Carolina Rules of Civil Procedure); states the following in pertinent parts... "[A]ll pleadings shall be so construed as to do substantial justice to all parties." As a pro se litigant, I have no legal training.

2. Rule 201(b) & (d)-(g), SCRE (South Carolina Rules of Evidence), states the following in pertinent parts.

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

(d) A court shall take judicial notice if requested by a party and supplied with

the necessary information.

(e) A party is entitled upon timely request to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

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

(g) The court shall instruct the jury to accept as conclusive any fact judicially noticed." This will help the Court expedite matters pursuant to *Rule 1, SCRPC*.

JUDICIAL NOTICE REQUESTED FOR THE FOLLOWING EXHIBITS

1. **Exhibit D**; Re: Definition and characteristics of Closed-end Loans.
2. **Exhibit E**; \$5,500.00 Check to Bombardier Capital to purchase mobile home. Dated: March 10, 2003.
3. **Exhibit F**; 1999 Redman mobile home purchased for \$5,500.00.
4. **Exhibit L**; CUNA MUTUAL GROUP, LOANLINER®. Mobile homes are not part of the plan.
5. **Exhibit N**; Sales Contract to purchase 1987 Mercedes from Pooser Servicenter and Auto Sales. Dated: 8-29-02.
6. **Exhibit 9**; [2 pgs] Copy of original instructions from SCFCU, that came with the check on March 5, 2003, that is dated 02/28/2003. Adjudicative notice is also requested from the Court's records to verify, this fact has never been refuted, contested or denied by SCFCU in over 3 years. Also notice, house is hand written on the instructions. Adjudicative notice is also requested from the Court's own records to verify SCFCU has not contested or denied this fact in over 3 years.
7. **Exhibit 10**; Copy of the 5,500.00 check, also dated 02/28/2003 verifying the check received was not for \$5556.44. {See *Exhibit 36, the Plaintiff's Compl.*, ¶ 7, pg 2}
8. **Exhibit 15**; Certificate of Title verifying car loan paid out. Lien released 10-22-04.

3. **Rule 401, SCRE** (South Carolina Rules of Evidence), clearly states in pertinent parts; "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more

probable or less probable than it would be without the evidence."

4. Rule 614(a)-(b), SCRE, states the following in pertinent parts.. "[I]n extraordinary circumstances, the court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called. Before calling a court's witness, the court shall afford the parties a hearing on the matter outside the presence of the jury." "[W]hen required by the interests of justice only, the court may interrogate witnesses."

5. Rule 13(a), SCRMC (South Carolina Rules of Magistrate Court) clearly states in pertinent parts: ".....[I]n the trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order to assure that all claims and defenses are fully presented."

B. In the interest of Justice, I also ask the Trial Judge to rely on the following precedents, I am looking forward to answering any question the Judge asks.

1. "[t]he trial judge, of course, has the right, in his discretion, and in a proper manner, to question witnesses during a trial, in order to elicit the truth." Williams v. S.C. Farm Bureau Mutual Ins. Co., 251 S.C. 464, 163 S.E.2d 212; Fowler v. Laney Tank Lines, Inc., 263 S.C. 422, 211 S.E.2d 231 (1975) ("[I]f a trial judge in the exercise of his discretion feels called upon, in the interest of justice, to question witnesses to elicit the truth, he should be cautious to see that such questions are propounded in a fair and impartial manner, and should not express or indicate to the jury the judge's opinion as to the facts of the case or the weight or sufficiency of the evidence.")

2. State v. Chasteen, 228 S.C. 88, 88 S.E. (2d) 880 quoting State v. Anderson, 85 S.C. 229, 67 S.E. 237, 238. ("[I]t is his duty to see to it that justice be done in every case, if it can be done according to law; and, if he thinks that the attorney for

either party, either from inadvertence or any other cause, has failed to ask the witnesses the questions necessary and proper to bring out all the testimony which tends to ascertain the truth of the matter under investigation, we can see no legal objection to his propounding such questions; but, of course, he should do so in a fair and impartial manner and should not by the form or manner of his questions express or indicate to the jury his opinion as to the facts of the case, or as to the weight or sufficiency of the evidence.")

3. "[A] trial courts possess 'a discretionary range of control over parties and proceedings' that allows reasonable accommodations to self represented litigants." *Blair v. Maynard*, 324 S.E.2d 391, 396 (West Virginia 1984). *Baber v. Greenville County*, 327 S.C. 31, 41, 488 S.E.2d 314, 319 (1997) (holding that "[t]he conduct of a trial is largely within the trial judge's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion or the commission of a legal error that results in prejudice for appellant").

4. "[T]he trial judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish." *Breck v. Ulmer*, 745 P.2d 66, 75 (Alaska 1987) "[C]ourt errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings." *Plaskey v CIA*, 953 F.2d 25.

5. "[I]mplicit in the right to self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training. While the right "does not exempt a party from compliance with relevant rules of procedural and substantive law," *Birl v. Estelle*, 660 F.2d 592,, 593 (5th Cir.1981)

6. "[I]n addition, "[w]hen the substance of a legal claim is otherwise present, this court has indicated that 'confusion of various legal theories,' a technical pleading error, should not be dispositive in pro se cases." *Switzer v. Coan*, 261 F.3d 985, 988 (citing *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)). This will help avoid an unnecessary Appeal, once the truth, the facts and the material facts are known.

II. THE KEY ISSUES IN CASE NO: 2011-CP-38-1392

1. I have prepared this outline because I am not a great speaker..and I have a tendency to get nervous whenever I have to speak in public. The following are the key issues in this case that is before the court.

(A) **South Carolina Federal Credit Union (hereafter SCFCU) made an error SCFCU refuses to correct.** Amy Rogers' inadvertently verified an error was made in her Affidavit Supporting Renewed Motion for Summary Judgment by stating; **"the Member 1 Plan Agreement governs all of Plaintiff's direct non-mortgage extensions of credit, advances or subaccounts to streamline and expedite the direct non-mortgage lending process for members."** {See Exhibit 38, Amy Rogers Affidavit ¶ 6, pg 2}

1. As the Court can see from *Exhibits D-F & L*, my loan was for a 1999 Redman mobile home. {See Exhibit F} Under Regulation Z, mobile homes are considered home equity plans. Therefore, the LOANLINER® open-end consumer credit plan in 2003 was not designed for home equity plans and could not be used for mobile homes. {Review Exhibit L}

2. As the Court can plainly see, I purchased a \$25,450.00 mobile home from Bombardier Capital for \$5,500.00 on March 10, 2003. {Review Exhibits E & F}

3. As Angel Rabon {See Exhibit 11}, told me over the phone, my mobile home loan would be the same as my car loan. My car loan was closed-end and was paid

out in October of 2004. {Review Exhibit 11 & See Exhibits 9, 10 & 15}

4. The 15% fixed rate close-end loan is written on the credit paperwork. {See Exhibits, 9 & 10}

5. Based on the available evidence, the error occurred on February 24, 2003. Instead of entering a closed-end, fixed rate loan for a mobile home purchase into the record, someone at SCFCU entered an open-end LOANLINER® account that became the subject of SCFCU's Complaint. {Review Exhibit 36, Plaintiff's Compl., ¶ 6, pg 2 & Exhibit 37} My mobile home purchase is not in SCFCU's account records. {Id.}

(B) SCFCU'S violated CUNA MUTUAL'S LOANLINER® guidelines and the Truth in Lending Act's (TILA'S) disclosure requirements under 15 USC 1601 et. seq., i.e., Regulation Z: Based on the facts and the evidence, for over 7 years, SCFCU violated the requirements of Regulation Z for close-end loans and LOANLINER'S® guidelines for mobile home purchases. {Review Exhibit D} Based on the evidence and the facts, for over 7 years, SCFCU, miss applied my monthly payments to a revolving charge type open-end account {See Plaintiff's Exhibit 3}; that I never signed for or agreed to. {Also Review Exhibits 36 & 37}

1. With closed-end lending, there are between 18 and 30 disclosures that must be made before consummation of the loan. Truth in Lending (TILA) 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.” {Review 15 USC 1601 et. seq.}

2. There are penalties for inaccurate and defective disclosure. {Review 15 USC 1601 et. seq.}

3. Failure to give accurate disclosures in the "Fed Box" or failing to substantially comply with TILA's regulatory requirements, means I can file a claim against SCFCU for violating my rights under the Truth in Lending Act (TILA). The penalty can be up to \$1,000.00 for each violation. *{Review 15 USC 1601 et. seq.}*

4. SCFCU did not file any documents that remotely resemble the lending or compliance requirements for a Closed-Ended 15% fixed rate loan. *{Review Exhibit 9}*
The Plaintiff's TILA violations are egregious and extensive. *{See the Plaintiff's Filed Complaint, Filed Documents, Exhibits and Filed Affidavits; Especially, Exhibit 3}*

(C) **SCFCU misapplied my monthly payments:** I paid SCFCU over \$11,000.00 in payments that were not used to pay off my mobile home loan. *{Plaintiff's Exhibit 3}* In violation of TILA and LOANLINER®, my monthly payments were being applied to a LoanLiner Plus Account, the same account that is the subject of the Plaintiff's Complaint. *{Review Plaintiff's Exhibit 3, Filed Complaint and Filed Affidavits; Especially, Exhibit 25, pg 2}*

1. SCFCU's misuse and misapplication of my monthly payments are not only a clear violation of LOANLINER® guidelines and TILA's regulations, they are also a violation of South Carolina's Unfair Trade Practices Act (SCUTPA).

(a) Section 39-5-20(a)-(b) SC Code of Laws clearly states in pertinent parts.. "[a)] Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. (b) It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended."

(b) Section 39-5-50(a)-(b) SC Code of Laws clearly states in pertinent parts.. "[a)] Whenever the Attorney General has reasonable cause to believe that any person is using, has used or is about to use any method, act or practice declared by Section 39-5-20 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the

name of the State against such person to restrain by temporary restraining order, temporary injunction or permanent injunction the use of such method, act or practice."

(c) "[A]n 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).

(d) For an actionable SCUTPA claim, I must allege and prove that SCFCU's actions of misapplying monthly payments to unauthorized accounts adversely affects the public interest. *Daisy Outdoor Adver. Co., Inc. v. Abbott*, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996) (citations omitted). "[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) (citation omitted). "[T]he potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts." {*Id.* at 388, 496 S.E.2d at 23. (citation omitted)}

2. **No Addendum - No Valid Credit Agreement.** Under CUNA MUTUAL's LOANLINER® Credit Agreement, a member must be given an **Addendum** with the Credit Agreement before the first transaction in order to have a valid Credit Agreement under the plan. {Review Exhibit K} The Truth in Lending Act requires "**meaningful disclosure of credit terms**". This is why the **Addendum** must be given before the transaction. Without an **Addendum**, there is no valid Credit Agreement and it is a violation of the Truth in Lending Act. {See Exhibit 17, Review 15 USC 1601 et. seq.}

(a) The reason why I don't have an "**Addendum**" is because I never went to SCFCU in Charleston, South Carolina to pick one up. The Charleston Office never sent me one and the Columbia Office never gave me one. This is why there are no affidavits, interrogatories, admissions on file or any eyewitness testimony relative to the **Addendum**, because if anybody tried to produce one it would be **Perjury**, for a litigant and **Fraud upon the Court** for an attorney.

1. Section 16-9-10 SC Code of Laws clearly states in pertinent parts... "[A](1) It is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State. (2) It is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State. (B)(1) A person who violates the provisions of subsection (A)(1) 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. (2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both. (C) A person may be convicted under this section if he induces, procures, or persuades another person to commit perjury or if he commits perjury by his own act, consent, or agreement."

2. On page 893 in Black's Law Dictionary (2nd ed. 1910); **Perjury** is also defined as a known "false assertion in an affidavit".

3. H.K. Porter Co. v. Goodyear Tire & Rubber, 536 F.2d 1115, 1119 (6th Cir.1976) ("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."); Synanon Found., Inc., v. Bernstein, 503 A.2d 1254 (D.C.1986) (attorney subornation of perjury and false statements to trial court constitute fraud upon the court);

4. "[W]hile an attorney "should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court." 7 Moore, *Federal Practice* ¶ 60.33 at 511 (1971 ed.) & at 513.

(b) The Counsel for SCFCU can verify these facts, if she chooses to verify them. I can only surmise Columbia mistakenly believed the Charleston Office gave me one, because they approved the loan and Charleston, mistakenly believed the Columbia Office gave me one, because that is where I picked up the check. Both Offices neglected to give me the document that validated the Credit Agreement. LOANLINER® guidelines mandate an Addendum must be given first. {Review Exhibits L & M}

(c) Since I did not know anything about an Addendum, it was SCFCU's responsibility to make sure I had one. When I left Columbia, South Carolina, all I had was the Membership and Account Agreement, {Exhibit 40}; the check, {Exhibit 13}, and the credit paperwork, {Exhibits A & B}

2. Based on the evidence, the facts, the law, the truth, the Rules of Civil Procedure and all the foregoing reasons, SCFCU has failed to state facts to constitute a Cause of Action and has failed to show proximate damage. Therefore, SCFCU, under all prevailing precedents must return all my money. $\{94 + months \times \$110.00 = \$10,340.00 \text{ Re: Exhibit 7} \times 94 + months\}$

3. In addition, based on SCFCU's filed Complaint, SCFCU has not and did not state any facts that can constitute a cause of action in Court for which relief can be granted. Accordingly, judgment in my favor is appropriate and SCFCU's Complaint should be dismissed with prejudice pursuant to *Rule 12(b)(6), SCRCP*. In addition, **Justly and Fairly Compensating** me for the cost I incurred is also appropriate and can be legitimately considered by the Court. {See Exhibit 24}

4. SCFCU's Law Firm of Moore & Van Allen, PLLC, was duly notified in my Answer to Complaint filed on 12/21/2011, that I never had a loan of any kind with SCFCU 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). {See Exhibit 25}

5. Amy Rogers has consistently verified 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 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. {See Amy Rogers Filed Affidavits} I don't owe SCFCU....SCFCU...owes me....over...\$10,340.00. $\{94 + months \times \text{Exhibit 7}\}$

III. DUE TO EGREGIOUS VIOLATIONS OF TILA, SCFCU HAS NO LEGITIMATE RIGHT TO KEEP ANY OF THE MONEY I PAID THEM FOR OVER 7 YEARS.

6. I realize SCFCU has no legally enforceable right/s to keep any of the money I paid them over a 7 year period. No signed agreement exists for the 02/28/2003 advance, no signed agreement exists for the non-existent Cyber Loan of 02/24/2003. No signed agreement exists for the advance I received on March 5, 2003 for the mobile home purchase and no Addendum exists to Validate the Credit Agreement that is also a Violation of the Truth in Lending Act. Therefore..

1. Section 36-3-305(a)(1)(ii) - SC Code of Laws clearly states the following in pertinent parts: "[a)] Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (1) a defense of the obligor based on..... (ii) illegality of the transaction which, under other law, nullifies the obligation of the obligor,..."

2. South Carolina's well founded policy of law... "[t]hat no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act." 86 C.J.S. Torts § 12 (1954) The key words are: "one who participates in an unlawful act cannot recover damages for the consequences of that act." SCFCU has participated in unlawful acts. "[T]his rule applies at both law and in equity and whether the cause of action is in contract or in tort." {See 1A C.J.S. Actions § 29 (1985) & Graham v. Graham, 276 S.C. 341, 278 S.E.2d 345 (1981); Nelson v. Bryant, 265 S.C. 558, 220 S.E.2d 647 (1975); Restatement (Second) of Torts § 774 (1977)}

3. The United States Supreme Court in McMullen v. Hoffman, 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899), holding that "[i]llegality is a defense to a contract action: The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract. {Id. at 654, 19 S.Ct. at 845.}

7. Since I still have the car and did purchase the mobile home, I decided to overlook SCFCU's indiscretions and made the Credit Union a very generous offer so that SCFCU would not lose any money due to Unjust Enrichment, Negligent Misrepresentation, Violations of TILA, SCUPTA and/or Unclean Hands. Since I am not responsible for any other cost SCFCU incurred

and based on SCFCU's Exhibit 3 - Statement of Account, Page 2 ; the record shows I actually paid SCFCU over \$11,000.00...

\$ 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

8. Since an **Addendum** is a mandatory requirement for any valid Credit Agreement, I recommend SCFCU accept this generous offer to end this matter. In addition, SCFCU must...

(A) Remove any derogatory information that may have been sent to Credit Reporting Agencies relative to this unfortunate lending incident,

(B) Reasonably compensate Dorothy Harley Sistrunk for her Defense Cost; so that Dorothy Harley Sistrunk can sign the necessary documents to assure SCFCU no further lawsuits will be filed against SCFCU relative to this matter. SCFCU'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;** as the Defendant in this case, I have fully set forth fair, honorable and equitable terms; as well as, conditions to permanently settle this matter and for the Trial Court to dismiss this case with prejudice without further litigation. If SCFCU continues to refuse an honorable, just and fair settlement, then I demand the Court 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 Dorothy Harley Sistrunk because of SCFCU's Complaint and violations; as well as....deny any judgment claim made by SCFCU.

(B) Order the reimbursement of any and all cost that may be due Dorothy Harley Sistrunk because of SCFCU's Complaint and violations.

(C) Deny any claim by SCFCU for any additional payments from Dorothy Harley Sistrunk.

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

(E) Finally, render a judgment against SCFCU with Prejudice for just and fair compensation, including any punitive damages the Trial Court deems is proper.

ADDITIONAL RECOMMENDATIONS FOR ADJUDICATIVE FACTS

9. I also recommend the Trial Court examine the records of the Court, for possible **Fraud upon the Court**, by either SCFCU or SCFCU's Law Firm of Moore & Van Allen, PLLC. The reason why I never went to SCFCU's Office in Charleston, South Carolina is because, I am not familiar with Charleston and did not know where the Office was located. I was much more familiar with Columbia, South Carolina. This is why it was impossible to physically receive an **Addendum** from the Charleston Office. The Columbia Office had no legal requirement to give me an **Addendum** because they did not originate the car loan in 2002. This may be the reason why they never gave me one when I picked up the check. *{Review Exhibits A, B, 13 & 40}*

10. Therefore, any propose **Addendum** that I purportedly and/or supposedly received in 2002 would an attempt at deceiving the Court, thus constituting false testimony, that is defined as Intrinsic "Fraud upon the Court", by a litigant and Extrinsic Fraud upon the Court, if it were done by an attorney/s from Moore & Van Allen, PLLC. *{Review SCFCU's Court Documents}*

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly **SWORN**, and under the **PENALTY OF PERJURY** declares the facts in her "Outline" are true and correct as of her own knowledge.

When it comes to matters stated therein that are based upon information and/or belief; as to those matters, she believes them to be true. Accordingly, based on the stated facts has signed and sealed these attestations this 17th day of February in the year 2015 in City and County of Orangeburg, in the State of South Carolina.

Affiant's Signature: Dorothy Sistrunk

Notary's Signature as Witness (1): William D. Buck

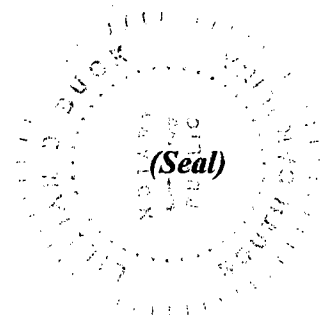
Signed, sealed and delivered in the presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On 2/17/15 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, and by her signature on the "Outline" and this Notary Certification presents this document to the Court. WITNESS my hand and official seal.

Notary's Signature William D. Buck

Commission Expires _____ My Commission Expires
July 24, 2022



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 TO ALTER OR AMEND THE
ORDER OF JUDGMENT PURSUANT TO
RULE 59(e), SCRPC**

April 6, 2015

Comes now the Defendant Dorothy Harley Sistrunk to file her Notice of Motion and
Motion to Alter or Amend the Order of Judgment Pursuant to Rule 59(e), SCRPC.

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 59(e) to Alter or Amend the Judgment Order that was filed on March 26, 2015.
2. This Motion that has been filed to Alter or Amend the Judgment is based upon the following grounds and reasons that include, but are not limited to the following:

(a) **There is no filed Complaint or an Amended filed Complaint or Debt Collection for a LOANLINER® loan dated February 28, 2003.** SCFCU's filed Complaint and Debt Collection are for an Open-end Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was supposedly 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 were verified by Amy Rogers on 10/26/2011 and filed in Court on 11/23/2011. I never had, never signed for and never agreed to any loan for \$5,556.44 on February 24, 2003. This has not changed in 4 years.

(b) A judgment error occurred. The referred to LOANLINER® paperwork that is dated 02/28/2003 is for the mobile home purchase that is not in SCFCU's account records. There is no law or CUNA Mutual Group guideline that prohibits purchasing a mobile home for \$5,500. My \$110.00 monthly payments for a 15% fixed interest rate mobile home loan were mistakenly applied to an open-end computer generated "cyber loan" dated February 24, 2003. This is the loan Amy Rogers has been consistently verifying in filed affidavits. **I am not the person that is confused, it is the Trial Court and SCFCU.**

-1-

Exhibit 42

(c) In 2003, mobile homes were not a part of CUNA Mutual Group's open-end credit plan for repeat sales. In addition to violating CUNA Mutual Group's lending guidelines, SCFCU also violated TILA's mandatory lending and disclosure guidelines and requirements. Due to SCFCU's TILA violations, SCFCU is effectively barred from receiving any judicial relief under the **Legal Doctrine of Unclean Hands** and South Carolina's long standing Policy of Law.. "[t]hat no person be permitted to acquire a right of action from his own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act." 86 C.J.S. Torts § 12 (1954) [T]his rule applies at both law and in equity and whether the cause of action is in contract or in tort." Jackson v. Bi-Lo Stores, Inc., 437 SE 2d 168 (Ct. App. 1993); 1A C.J.S. Actions § 29 (1985); Restatement (Second) of Torts § 774 (1977)"

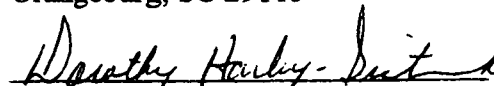
(d) **No valid credit agreement exists between me and SCFCU.** The Credit Agreement and the Addendum is the Credit Arrangement. No Addendum was ever given to me to consummate the arrangement. My loan was approved and handled by telephone, not in person.

(e) Since no Addendum was given to me with the necessary disclosures that are mandated by CUNA Mutual Group and the TILA, 15 U.S.C. § 1601 et seq., a violation occurred that has been ongoing for over 12 years. My Recoupment Defense survives TILA's 1-year limit.

3. My Motion to Alter or Amend the Order of Judgment is supported by South Carolina's Rules of Civil Procedure, relevant case law, South Carolina's Code of Laws, Public Law, SCFCU's filed documents, my Exhibits, my Statements of Material Facts That are not in Dispute that was filed on April 25, 2012 and the accompanying Legal Memorandum of Law and Authorities that supports my current Motion.

Respectfully Submitted;

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

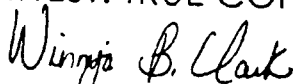

Dorothy Harley Sistrunk

Dated: 4/6/15
Orangeburg, South Carolina

NOTIFICATION

A copy of my Notice of Motion and Motion to Alter or Amend the Judgment Order that has been filed with the Clerk of Court will be mailed to SCFCU's Attorney/s of Record.

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

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC

2015 APR -6 PM 1:59

Exhibit 42

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

**DOROTHY HARLEY SISTRUNK'S
MEMORANDUM OF LAW AND
AUTHORITIES SUPPORTING MOTION
TO ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59(c), SCRPC**

Today's Date: April 6, 2015

I. Let it be known that 18 U.S. Code § 1621 clearly states in pertinent parts; "[W]hoever— (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States."

II. And...28 U.S. Code § 1746 clearly states in pertinent parts; "[W]herever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

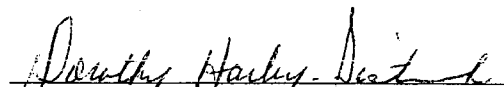
(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)". "

III. Finally, Rule 11(c), SCRPC clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to

administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

IV. Based on the above Rules and Laws, as the Defendant in this case, I, Dorothy Sistrunk, declare; under the PENALTY of PERJURY, under the laws of the United States and in compliance with Rule 11(c), SCRCP, that the following stated facts are true and correct. Executed on April 6, 2015.


Dorothy Harley Sistrunk

Comes now the Defendant, Dorothy Harley Sistrunk, to file her *Memorandum of Law and Authorities Supporting Motion to Alter or Amend Judgment* pursuant to Rule 59(e), SCRCF and her reasons why the Judgment must be Altered, Amended and Remanded to the Circuit Court for a Jury Trial. The Judgment was filed on March 26, 2015 and was retrieved from the mailbox at 423 Bayne Street on Saturday, March 28, 2015.

V. JUDICIAL NOTICE REQUESTED FOR ADJUDICATIVE FACTS THAT ARE NECESSARY AND ESSENTIAL FOR MY MOTION TO ALTER OR AMEND

(a) North River Ins. Co. v. CIGNA Reinsurance Co., 52 F. 3d 1194 (3rd Cir. 1995) "[A] proper motion to alter or amend judgment "must rely on one of three major grounds: (1) an intervening change in controlling law; (2) the availability of new evidence [not available previously]; [or] (3) the need to correct clear error [of law] or prevent manifest injustice" Natural Resources Defense Council v. United States Env'tl. Protection Agency, 705 F.Supp. 698, 702 (D.D.C.1989) (quoting All Hawaii Tours, Corp. v. Polynesian Cultural Ctr., 116 F.R.D. 645, 649 (D.Haw. 1987))."

(b) From I'ON, LLC v. Town of Mt. Pleasant, 526 S.E.2d 716 (2000), "[A]n appellate court may not, of course, reverse for any reason appearing in the record. The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments. E.g., Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (199) (appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court); State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991) (same); Sumter Building & Loan Ass'n v. Winn, 45 S.C. 381, 23 S.E. 29 (1895) (same)."

(c) From the same case; I'ON, LLC v. Town of Mt. Pleasant, 526 S.E.2d 716 (2000), "[I]f the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review. E.g., Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton, 311 S.C. 56, 427 S.E.2d 673 (1993); Hoffman v. Powell, 298 S.C. 338, 380 S.E.2d 821 (1989); see also Rules 52(b) and 59(e), SCRCF.

(d) In the same case; I'ON, LLC v. Town of Mt. Pleasant, 526 S.E.2d 716 (2000), "[I]mposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. See Roche v. South Carolina Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975) (purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal).

(e) Finally, from the same case; *I'ON, LLC v. Town of Mt. Pleasant*, 526 S.E.2d 716 (2000) because it is very instructive, detailed in its decision and presents numerous precedents for guidance. "[T]he requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case. See *Brown v. Singletary*, 226 S.C. 482, 85 S.E.2d 738 (1955) (party may not neglect or ignore vices in the trial, then expect to assert those vices on appeal in case of disappointment at trial); *State v. Warren*, 207 S.C. 126, 134, 35 S.E.2d 38, 41 (1945) (same).

1. For this Memorandum of Law and Authorities supporting my Motion to Alter or Amend the Judgment, rather than write as the Defendant, I will plead in the first person. Accordingly, and pursuant to *Rule 201, SCRE*, as the Defendant in this case, I am requesting Judicial Notice of Adjudicative Facts. *Rule 201, SCRE*, clearly states in pertinent parts,

(a) “[T]his rule governs only judicial notice of adjudicative facts.

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

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

(d) **[Adjudicative Fact #1]:** A court shall take judicial notice if requested by a party and supplied with the necessary information. **[Note: Shall means mandatory]** *State v. Foster*, 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981) (“Taken literally, the word ‘shall’ is mandatory.”)

(e) A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Judicial notice may be taken at any stage of the proceeding....”

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

(2) *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) "[A] court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records. 31 C.J.S., Evidence, Section 50(1), p. 1018-1021."

2. **Adjudicative Fact #2:** By including 18 U.S. Code § 1621 on page 1, I am sending a clear signal to the Court that I understand what the penalty is for lying. By doing so in this pleading, I have effectively addressed and settled the issue raised in *Tishcon Corp. v. Soundview Communications, Inc.*, 2005 WL 6038743, at n. 4 (N.D. Ga. 2005) and *United States v. Bueno-Vargas*, 383 F.3d 1104, 1111 (9th Cir. 2004). ("true test" for whether a declaration is made under oath or affirmation "is whether the procedures followed were such that perjury could be charged therein if any material allegation contained therein is false.").

3. Since I am aware of the consequences for lying, any argument/s raised by the Plaintiff, South Carolina Federal Credit Union (SCFCU) relative to my filed Notarized, Sworn to and /or Verified Pleadings and/or Affidavits must be considered as frivolous and/or moot by the Court.

4. **Adjudicative Fact #3:** Rule 8(d), SCRCF clearly states in pertinent parts; "[A]verments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading."

5. Exhibits attached to Verified Pleadings are also Verified. **Adjudicative Fact #4:** Rule 10(c), SCRCF clearly states in pertinent parts; "[A] copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading." **Therefore all my filed exhibits have probative force.**

6. **Reason #1 to Alter or Amend & Error of Law #1:** The Facts and Material Facts, I presented in filed Notarized or Sworn to pleadings should have been deemed admitted since 2011.

V. REASONS FOR THE DECLARATION ON PAGES 1 & 2 AND WHY THE COURT'S JUDGMENT MUST BE ALTERED OR AMENDED TO CORRECT CLEAR ERRORS OF LAW AND TO PREVENT MANIFEST INJUSTICE

7. **Reason #2 to Alter or Amend:** Based upon the Court's Records, my Notarized, Sworn to and/or Verified Pleadings were never considered by the Court. **Adjudicative Fact #4:** A review of the Court's own Records in this proceeding will verify none of my Statements of Fact and/or Material Facts have been denied, refuted, contested and/or proven false by SCFCU in 3 years, going on 4. {Review Freeman v. McBee, *supra*, on pg 5}

8. From the Court's Records, it appears the Plaintiff has little experience in addressing Notarized or Sworn to and/or Verified Pleadings, In the past, my declaration and/or notarization was at the very end of the Pleading. In this Memorandum, I reversed it, and placed my Declaration at the very beginning. This should remove any doubt this pleading is Verified.

(a) Jones v. Blanas, 393 F.3d 918 (9th Cir. 2004) "[U]nder 28 U.S.C. § 1746, a matter may be proved by a signed statement, executed within the United States, that reads: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date)."

(b) **Adjudicative Fact #5:** Schroeder v. McDonald, 55 F.3d 454, 460 n. 10 (9th Cir.1995) (pleading counts as "verified" if the drafter states under penalty of perjury that the contents are true and correct).

9. Therefore, neither the Plaintiff, nor the Court has to read through 10 or 50 pages just to discover my Pleading is Notarized or Sworn to, pursuant to Rule 11(c), SCRCP and/or Verified pursuant to 28 U.S. Code § 1746.

10. **Error of Law #2:** Never refuted or denied Judicial and/or Evidentiary Admissions are binding admissions that should have been dealt with accordingly and properly by the Court. This was not not done, therefore this failure is also an *Error of Law*.

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

(b) **Adjudicative Fact #6:** "[U]nder federal law, stipulations and admissions in the pleadings are generally binding on the parties and the Court. Not only are such admissions and stipulations binding before the trial court, but they are binding on appeal as well." *Ferguson v. Neighborhood Housing Services*, 780 F.2d 549, 551 (6th Cir.1986) (citations omitted). "[J]udicial admissions are formal admissions in the pleadings which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *In re Fordson Engineering Corp.*, 25 B.R. 506, 509 (Bankr.E.D.Mich.1982). "[F]actual assertions in pleadings and pretrial orders, unless amended, are considered judicial admissions conclusively binding on the party who made them." See *White v. Arco/Polymers, Inc.*, 720 F.2d 1391, 1396 (5th Cir.1983); *Fordson*, 25 B.R. at 509.

(c) *Houston First American Sav. v. Musick*, 650 S.W.2d 764 (1983) "[A]ssertions of fact, not pled in the alternative, in the live pleadings of a party are regarded as formal judicial admissions. Any fact admitted is conclusively established in the case without the introduction of the pleadings or presentation of other evidence." *Kirk v. Head*, 137 Tex. 44, 152 S.W.2d 726 (1941); 1A R. Ray, *Texas Law of Evidence*, § 1144 (Texas Practice 3d ed. 1980).

(d) *Koserkoff v. Chesapeake & Ohio Ry. Co.*, 427 F.2d 1049, 1054 (6th Cir.1970), cert. denied, 401 U.S. 947, 91 S.Ct. 924, 28 L.Ed.2d 230 (1971) (holding that "positive statement of fact" is required for a binding admission, not "contradictory statements").

(e) *Glick v. White Motor Co.*, 458 F.2d 1287, 1291 (3d Cir.1972) ("The scope of judicial admissions is restricted to matters of fact which otherwise would require evidentiary proof, **and does not include counsel's statement of his conception of the legal theory of a case.**"). [Boldness added for emphasis.]

(f) **Adjudicative Fact #7:** *Black's Law Dictionary* 54 (10th ed. 2014) (defining a judicial admission as "[a] formal waiver of proof that relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing it")

(g) *Meyer v. Berkshire Life Ins. Co.*, 372 F.3d 261, 264-65 (4th Cir. 2004) ("Judicial admissions are not . . . limited to affirmative statements that a fact exists. They also include intentional and unambiguous waivers that release the opposing party from its burden to prove the facts necessary to establish the waived conclusion of law.").

(h) **Adjudicative Fact #8:** "[T]he doctrine of judicial admissions has never been applied to counsel's statement of his conception of the legal theory of the case. When counsel speaks of legal principles, as he conceives them and which he thinks applicable, he makes no judicial admission and sets up no estoppel which would prevent the court from applying to the facts disclosed by the proof, the proper legal principles as the Court understands them." *New Amsterdam Casualty Company v. Waller*, 323 F. 2d 20 (4th Cir. 1963) [Note: Boldness added for emphasis.]

(i) **Adjudicative Fact #9:** Ellison v. Simmons, 238 S.C. 364, 120 S.E.2d 209 (1961) "[I]n the case of Dickson's Drug Store, Inc. v. Davis, 197 S.C. 294, 15 S.E. (2d) 332, it was held that testimony is relevant which renders it properly applicable in determining the truth and falsity of matters in issue between the parties to the suit..."

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

(k) **Adjudicative Fact #10:** Whitehurst v. Corey, 364 SE 2d 728 (N.C. Ct. App. 1988) "[W]e disagree. Defendants' verified answer and counterclaim constitute an "affidavit" for purposes of determining either party's right to summary judgment. See Schoolfield v. Collins, 281 N.C. 604, 612, 189 S.E.2d 208, 213 (1972) (to extent verified pleadings meet requirements of Rule 56(e), pleadings are "affidavit"). It is true that Rule 56(e) also requires that "opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated [t]herein." However, while defendants' verified pleadings arguably do not conform to the formal requirements of Rule 56(e), plaintiff's failure to move to strike these allegations waives any objection to their formal defects. See North Carolina Nat'l Bank v. Harwell, 38 N.C.App. 190, 192, 247 S.E.2d 720, 722, disc. rev. denied, 296 N.C. 410, 267 S.E.2d 656 (1979) (failure to object to form or sufficiency of pleadings and affidavits waives objection on summary judgment); Noblett v. General Electric Credit Corp., 400 F.2d 442, 445 (10th Cir.1968), cert. denied, 393 U.S. 935, 89 S.Ct. 295, 21 L.Ed.2d 271 (1969) (affidavit not conforming to Rule 56(e) is subject to motion to strike, but objection waived absent motion); see also 10A C. Wright & A. Miller, *Federal Practice and Procedure* Sec. 2738 at 507-09 (1983) (party must move to strike affidavit not conforming with Rule 56(e) before appeal).

(l) **Adjudicative Fact #11:** "[T]hus, a court is entitled to rely, in determining whether a genuine issue of material fact exists on a particular issue, only upon those portions of the verified pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits submitted, specifically called to its attention by the parties." Gover v. Speedway Super America, LLC, 284 F. Supp. 2d 858 (S.D. OH. 2003).

(m) **Adjudicative Fact #12:** State v. Harrington, 627 S.W.2d 345 (Tenn. 1981), "[W]hen no objection to testimony is interposed, it may properly be considered and given its natural probative effect as if it were in law admissible." Also see State v. Bennett 549 S.W.2d 949, 950 (Tenn.1977).

(n) **Adjudicative Fact #13:** "[E]vidence received without objection is competent." Toyota of Florence v. Lynch, 314 S.C. 257, 266, 442 S.E.2d 611, 616 (1994).

11. **Reason #3 to Alter or Amend & Error of Law #3:** Since no documentation, objections or motions were filed to challenge my testimony and **Statements of Fact** in my early Notarized Pleadings, it is well settled law among federal and state courts that testimony to which no objection is made, refuted or contested may be and/or must be considered by the Trier of Facts. **Error of Law #4:** Failure to rely on uncontested material facts is an *Abuse of Discretion*.

(a) United States v. Ebersole, 411 F.3d 517 (4th Cir. 2005) "[B]y definition, 'a court abuses its discretion when it makes an error of law.'"

(b) "[A]n abuse of discretion arises where the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." Tri-County Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 799, 782 (1990). "[A] failure to exercise discretion amounts to an abuse of that discretion." Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997).

12. **Reason #4 to Alter or Amend & Adjudicative Fact #14:** My loan was handled by telephone and not in SCFCU's Charleston office or in its Columbia office; Therefore, any attempt by SCFCU to produce an Addendum that was never given to me must be construed as Dishonest Conduct and False Testimony that can only be viewed as "Fraud upon the Court" be it Intrinsic or Extrinsic.

(a) "[W]henver an officer of the court commits fraud during a procedure in the court, he is engaged in fraud upon the court. Bulloch v. United States 763 F 2d 1115, 1121 (10th Cir. 1985). "[F]raud upon the court makes void the orders and judgments of that court. It is well settled law that any attempt to commit 'fraud upon the court' vitiates the entire proceeding." People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354, 192, NE 229 (1934); ("[t]he maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions.")

(b) "Fraud upon the court is committed when a representative of the court mediators, evaluators, administrators, special appointees, lawyers, judges, referees or guardian ad litem, fraudulently present facts to the court that interfere with a just and equitable decision making process. This is an extremely serious crime, and so in dire opposition to the definition of justice that this crime is not subject to any statute of limitations." {SEO Law Firm, Tampa, Fl.}

(c) “[D]eliberate deception of a court and jurors by the presentation of known false evidence is incompatible with “rudimentary demands of justice.” Mooney v. Holohan, 294 U.S. 103, 112 (1935)

(d) *Black’s Law Dictionary* (5th ed. 1979), pg 421, defines **Dishonesty** as “[A] disposition to lie, cheat or defraud; [a] lack of integrity.”

(e) “[I]t is well settled that courts possess the inherent authority to ensure the integrity of the judicial process and guard against the procurement of judgments based on falsified testimony.” Lyons v. Goldstein, 290 NY 19, 25, (1943); also Matter of Holden, 271 NY 212, 218, (1936); Furman v. Furman 153 NY 309, 314, (1897).

(f) Sun World, Inc. v. Lizarazu Olivarría, 144 F.R.D. 384, 389 (E.D. Cal. 1992) (holding that, when a litigant commits a fraud upon the court, “the inherent powers of the court support the sanction of dismissal and entry of default judgment”); Pope v. Federal Express Corp., 138 F.R.D. 675, 683 (W.D. Mo. 1990), *aff’d in part, vacated in part on other grounds*, 974 F.2d 982, 984 (8th Cir. 1992) (court has inherent power to sanction litigants for improper conduct) Pope, 138 F.R.D. at 682 (dishonest conduct by a party or conduct that “threatens the integrity of the judicial process” is grounds for dismissal with prejudice under Rule 41(b)).

13. **Reason #5 to Alter or Amend & Adjudicative Fact #15:** SCFCU, did not present any eyewitness/es at the trial, and/or a verified and/or certified and/or sworn to depositions, interrogatories, admissions, sworn testimony or an affidavit from an official or any authorized employee at SCFCU in Charleston, South Carolina that stated under the **Penalty of Perjury** that he/she/they witnessed my receiving an Addendum; either on, or prior to September 5, 2002. This cannot be done and any such statement would be and would have been **Perjured Testimony**. {Review Filed Exhibit M – How Should the Addendum Be Used}

14. **Reason #6 to Alter or Amend & Adjudicative Fact #16:** SCFCU’s remarks relative to their procedures are immaterial because that is not what happened. There is no evidence in the Court’s Records from any employee from SCFCU’s office in Charleston, South Carolina or from Columbia, South Carolina verifying or testifying that I was given an Addendum to consummate a LOANLINER® loan or an SCFCU Membership and Account Agreement.

15. **Reason #7 to Alter or Amend & Adjudicative Fact #17:** Therefore, SCFCU's failure to give me an Addendum violated the mandatory disclosure requirements of 15 U.S.C. § 1601 *et seq.*, in 2002, and this violation has been ongoing for more than 12 years. SCFCU's Membership and Account Agreement was never valid under existing law or under CUNA Mutual Group LOANLINER®'s mandatory lending guidelines for compliance with federal law.

{Review Filed Exhibits D & K-M}

VI. SCFCU'S VIOLATION OF TILA

16. **Reason #8 to Alter or Amend & Adjudicative Fact #18:** SCFCU's failure to give me an Addendum before and after money was disbursed is not only a **Material Fact** and **an additional Gravamen of this case**, it is a severe violation of 15 U.S.C. § 1601 *et seq.*, that cannot be overlooked or dismissed by the court; as well as a violation of CUNA Mutual's Membership and Account Agreement.

(a) **Reason #9 to Alter or Amend & Adjudicative Fact #19:** *Rudisell v. Fifth Third Bank*, 622 F. 2d 243 (6th Cir. 1980) "[T]ILA requires that disclosures be made "before the credit is extended". See 15 U.S.C. § 1639(b). Regulation Z, 12 C.F.R. § 226.1, *et seq.*, promulgated by the Federal Reserve Board under the authority granted in 15 U.S.C. § 1604, gives further guidance. Section 226.8(a) provides that the disclosures "shall be made before the transaction is consummated," which occurs "at the time a contractual relationship is created between a creditor and a customer or a lessor and lessee irrespective of the time of performance of either party," 12 C.F.R. § 226.2(kk). Since the "purpose of disclosure is clearly to give the borrower an opportunity to do some comparative shopping for credit terms", *476 F.2d at 1064*, this Court held: a credit transaction which requires disclosures under the Act [TILA] is completed when the lender and borrower contract for the extension of credit. The disclosures must be made sometime before this event occurs. **If the disclosures are not made, this violation of the Act occurs, at the latest, when the parties perform their contract.** *476 F.2d at 1065.*" (Citations *Wachtel v. West*, 476 F. 2d 1062 (6th Cir. 1973)) [Note: Boldness & Underlining are added for emphasis.]

(b) **Reason #10 to Alter or Amend & Adjudicative Fact #20:** *Smith v. Fidelity Consumer Discount Co.*, 898 F. 2d 896 (3rd Cir. 1990) "[T]hrough TILA, Congress sought to remedy the "divergent and often fraudulent practices by which credit customers were apprised of the terms of the credit extended to

them." *Johnson v. McCrackin-Sturman Ford, Inc.*, 527 F.2d 257, 262 (3d Cir.1975). Indeed, the congressionally stated purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him." **15 U.S.C. § 1601(a). TILA, as a remedial statute which is designed to balance the scales "thought to be weighed in favor of lenders," is to be liberally construed in favor of borrowers.** *Bizier v. Globe Financial Services*, 654 F.2d 1, 3 (1st Cir.1981). See *Johnson*, 527 F.2d at 262. TILA achieves its remedial goals by a system of strict liability in favor of the consumers when mandated disclosures have not been made. 15 U.S.C. § 1640(a). A creditor who fails to comply with TILA in any respect is liable to the consumer under the statute regardless of the nature of the violation or the creditor's intent. *Thomka v. A.Z. Chevrolet Inc.*, 619 F.2d 246, 249-50 (3d Cir.1980). **"[O]nce the court finds a violation, no matter how technical, it has no discretion with respect to liability."** *Grant v. Imperial Motors*, 539 F.2d 506, 510 (5th Cir. 1976). **A single violation of TILA gives rise to full liability for statutory damages.** Damages include actual damages incurred by the debtor plus a civil penalty equal to double the finance charge up to a maximum of \$1,000. 15 U.S.C. § 1640(a)(1)(2)(A)(i). Multiple violations of TILA in the course of a single loan transaction do not yield multiple civil penalties but result in only a single penalty. 15 U.S.C. § 1640(g)" Also See *Rubio v. Capital One Bank*, 613 F. 3d 1195 (9th Circuit 2010); *Barnes v. Fleet Nat. Bank, NA*, 370 F. 3d 164 (1st Cir. 2004) [Note: Boldness and Underlining added for emphasis]

(c) **Reason #11 to Alter or Amend & Adjudicative Fact #21:** *Bizier v. Globe Financial Services, Inc.*, 654 F. 2d 1 (1st Cir. 1981) "[N]or do we think that any good faith defense excuses this violation under either state or federal law, whose standards differ in a manner not material to our conclusion. Compare 15 U.S.C. § 1640(c) with Mass.Gen.L. ch. 140C, § 10(b). Each requires affirmative proof by a creditor that a violation was unintentional and "resulted from a bona fide error" under specified circumstances. While appellees have argued that the mistake is insignificant, they have not offered any evidence which even tends to prove that it resulted from a bona fide effort at precision. Federal courts have strictly limited this defense to purely and literally "clerical" errors, see, e. g., *Ives v. W.T. Grant Co.*, 522 F.2d 749 (2d Cir. 1975); *Haynes v. Logan Furniture Mart*, 503 F.2d 1161 (7th Cir. 1974); *Gillard v. Aetna Finance Co.*, 414 F.Supp. 737, 748 (D.La.1976).

(d) **Reason #12 to Alter or Amend & Adjudicative Fact #22:** *Rubio v. Capital One Bank*, 613 F. 3d 1195 (9th Cir. 2010). "[I]n applying TILA and its implementing regulations, we "require absolute compliance by creditors," *Hauk v. JP Morgan Chase Bank USA*, 552 F.3d 1114, 1118 (9th Cir. 2009), and "[e]ven technical or minor violations of the TILA impose liability on the creditor," *Jackson v. Grant*, 890 F.2d 118, 120 (9th Cir. 1989)..... The form of Regulation Z that governs this case, however, does prohibit disclosures that a reasonable consumer will not understand. 12 C.F.R. pt. 226 supp. I, para. 5a(a)(2), cmt. 1.

The new regulation was adopted because the agency that implements TILA, relying on empirical evidence, concluded that describing an APR as "fixed" is misleading to reasonable consumers. What was misleading in 2006 and 2007, when the consumer studies were conducted, was also misleading in 2004, when Rubio received Capital One's solicitation. The new regulation and the empirical studies it relies on are therefore relevant and informative for this case. For "even where not binding," an agency's interpretation of a statute "certainly may influence courts facing questions the agenc[y] ha[s] already answered." *Tualatin Valley Builders Supply, Inc. v. United States*, 522 F.3d 937, 941 (9th Cir. 2008) (citation and quotation marks omitted). Here, the Board has concluded that "fixed" is "generally" interpreted to mean that the rate will not be changed and that the creditor has not reserved the right to change it at a later date. 74 Fed.Reg. at 5373. We need not go so far as to decide how "fixed" is generally interpreted. But the Board's conclusion and the study on which it relies certainly persuade us that "fixed" can reasonably be interpreted to mean "unchangeable." For that reason, it is not "clear and conspicuous" to describe an APR as "fixed" when the creditor has reserved the right to change the APR for any reason."

17. I have already dealt with this issue of SCFCU's failures in previous filings and will not address the issue in detail here. **Reason #13 to Alter or Amend & Adjudicative Fact #23:** All rulings in Courts of competent jurisdiction must be based on mandatory elements that include; [1] The Pleadings, [2] Depositions, [3] Answers to Interrogatories, [4] Admissions on File, [5] Exhibits and [6] Affidavits, if any. To be more precise, **THE EVIDENCE**.

18. Therefore, in the interest of judicial economy and time, rather than write another 100-200 pages restating what is already in the Court's Records and pursuant to Rule 10(c), SCRCP, I incorporate **ALL** the Pleadings, Affidavits and Exhibits I have filed in C.A. Case #2011-CP-38-1392 from December of 2011 to the date of this pleading by reference as though I have written them herein verbatim.

(a) **Reason #14 to Alter or Amend & Adjudicative Fact #24:** "[I]f the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to the jury." *Hendricks v. Clemson Univ.*, 353 S.C. 449, 459, 578 S.E.2d 711, 716 (2003); *Easler v. Pappas*, 252 S.C. 398, 166 S.E. (2d) 808 (1969); *Crossley v. State Farm Mutual Auto. Ins.*, 307 S.C. 354, 415 S.E.2d 393 (1992); see also *Weir v. Citicorp Nat'l Services, Inc.*, 312 S.C. 511, 435 S.E.2d 864 (1993)

(b) **Reason #15 to Alter or Amend & Adjudicative Fact #25:** *Black's Law Dictionary* (rev. 4th ed. 1968) on pg 882, defines ILLEGALITY in pertinent parts as; "[T]hat which is contrary to the principles of law, as contra distinguished from mere rules of procedure. It denotes a complete defect in the proceedings."

(c) "[T]he record must show that the issue was raised in the trial court." *Zaman v. S.C. State Bd. of Med. Exam'rs*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991); *Reid v. Kelly*, 274 S.C. 171, 174, 262 S.E.2d 24, 26 (1980); see also *State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("Whe[n] an objection and the ground therefore is not stated in the record, there is no basis for appellate review."); *Hundley v. Rite Aid of S.C., Inc.*, 339 S.C. 285, 306, 529 S.E.2d 45, 56 (Ct. App. 2000) (finding arguments must be conducted on the record to be preserved for appellate review). "[F]urther, the appellant has the burden of providing an adequate record on appeal." *Harkins v. Greenville Cnty.*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000); see also *Rule 210(h), SCACR* ("Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.")

(d) **Reason #16 to Alter or Amend & Adjudicative Fact #26:** *United States v. Neder*, 527 U.S. 1 (1999), In *Neder*, the Supreme Court defined a matter as "material" if "[a] reasonable man would attach importance to its existence or non-existence in determining his choice of action in the transaction in question." *Neder*, 527 U.S. at 22, n. 5. "[T]he issue of materiality is a question for the jury, not the judge."

(d) **Reason #17 to Alter or Amend & Adjudicative Fact #27:** The United States Supreme Court in *McMullen v. Hoffman*, 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899), holds "[i]llegality is a defense to a contract action: The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it," *Id.* at 654, 19 S.Ct. at 845.

(e) **Reason #18 to Alter or Amend & Adjudicative Fact #28:** In *Nelson v. Production Credit Ass'n of the Midlands*, 930 F.2d 599, 605 (8th Cir. 1991) the Court held the following, ("Court would not impose a duty on a lender to use reasonable care in making a loan.")

(f) **Reason #19 to Alter or Amend & Adjudicative Fact #29:** *Berkebile v. Outen*, S.C. 426 S.E.2d 760, 762 (1993) (holding that "[a]n illegal contract has always been unenforceable --- South Carolina courts will not enforce a contract which is violative of public policy, statutory law or provisions of the Constitution.").

(g) **Reason #20 to Alter or Amend & Adjudicative Fact #30:** *Nelson v. Bryant*, 265 S.C. 558, 220 S.E.2d 647 (1975) "[I]t is well settled that the courts will not aid in an action to enforce an illegal transaction."

19. **Reason #21 to Alter or Amend, Adjudicative Fact #31 & Error of Law #5:** In

addition, to the above, the Court has a duty and obligation to determine the truth and the facts and act upon the truth and the facts, especially when a Pro Se litigation is involved that has no legal experience pleading a case in court.

(a) **Adjudicative Fact #32:** *Rule 8(f), SCRCP* clearly states in pertinent parts.... "[A]ll pleadings shall be so construed as to do substantial justice to all parties."

(b) **Adjudicative Fact #33:** Pro Se pleadings and filings should be reviewed liberally. *Howard v. U.S. Bureau of Prisons*, 487 F.3d 808, 815 (10th Cir. 2007). "[I]n addition, "[w]hen the substance of a legal claim is otherwise present, this court has indicated that 'confusion of various legal theories,' a technical pleading error, should not be dispositive in pro se cases." *Switzer v. Coan*, 261 F.3d 985, 988 (citing *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)).

(c) "[T]he trial judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish." *Breck v. Ulmer*, 745 P.2d 66, 75 (Alaska 1987) "[C]ourt errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings." *Plaskey v CIA*, 953 F.2nd 25. [Boldness added for emphasis.]

(d) "[I]mplicit in the right to self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training. While the right "does not exempt a party from compliance with relevant rules of procedural and substantive law," *Birl v. Estelle*, 660 F.2d 592,, 593 (5th Cir.1981)

20. **Reason #22 to Alter or Amend & Error of Law #6:** Since I never went to

Charleston, South Carolina to receive an Addendum that is a mandatory requirement for any LOANLINER® Credit Union loan, and since SCFCU did not and cannot produce any witness testimony or documentation that can or will verify, I was at their office in Charleston, South Carolina, by all prevailing judicial standards, SCFCU's loan cannot be legalized by the Circuit Court or the Equity Court as an authorized LOANLINER® loan or a legitimate SCFCU Membership and Account Agreement. This could not be done in 2002 or from 2003-2014, and it still cannot be done by the Circuit Court or the Equity Court in 2015.

(a) Miles v. Perpetual Savings & Loan, 58 Ohio St. 2d 97 (1979) “[M]oreover, it should be axiomatic that parties who directly benefit from and knowingly participate in a transaction tainted with fraud or deceit, who are under a duty to disclose their knowledge and fail to do so, are liable for damages directly and proximately resulting from their silence.” See 37 American Jurisprudence 2d 571, Section 421; Saporta v. Barbagelata (1963), 220 Cal. App. 2d 463, 33 Cal.Rptr. 661.”

(b) Mlynarik v. Bergantzel, 675 N.W.2d 584, 587 (Iowa 2004) (“[W]e have noted the purpose of [the non-enforcement rule] ‘is to deter future misconduct by denying relief to one whose losses were substantially caused by his own fraud or illegal conduct.’” (quoting Gen. Car & Truck Leasing Sys., Inc. v. Lane & Waterman, 557 N.W.2d 274, 279 (Iowa 1996))).

(c) A contract can be set aside if it is discovered after the execution of the contract that information, documents and/or statements were discovered to be false, misrepresented, forged, and/or counterfeited or concealment of or non-disclosure of a material fact. Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis. 550, 279 NW 79 (1938) (Holding that, “The contract is void if it is only in part connected with the illegal transaction and the promise single or entire.”); Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (Holding that “illegal contracts are void and unenforceable, such that actions for its breach may not be maintained”)

(d) **Reason #23 to Alter or Amend & Adjudicative Fact #34:** It is South Carolina’s well founded policy of law.... “[t]hat no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act.” 86 C.J.S. Torts § 12 (1954) [T]his rule applies at both law and in equity and whether the cause of action is in contract or in tort.” {See 1A C.J.S. Actions § 29 (1985); Restatement (Second) of Torts § 774 (1977)}

(e) Black's Law Dictionary (9th ed. 2009), pg. 1323 – “[P]robative means tending to prove or disprove.” “[P]robative value is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues. The more essential the evidence, the greater its probative value.” United States v. Stout, 509 F.3d 796, 804 (6th Cir. 2007). (**Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates.**) [Boldness and Underlining added for emphasis.]

(f) “[R]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE.

(g) “[A]ll relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina,

statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible.” *Rule 402, SCRE*

(h) *Black’s Law Dictionary* (9th Ed. 2009) pg 1134, states in pertinent parts; “**Contributory Negligence** is a claim by a defendant that the *plaintiff’s* own negligence played a part in causing the plaintiff’s injury and that it is significant enough to bar the *plaintiff* from recovering damages.” [Note: *Comparative Negligence in South Carolina law*]

21. **Reason #24 to Alter or Amend:** On September 5, 2002 whatever mistake I made...was made...in ignorance of CUNA Mutual Group’s LOANLINER® guidelines and 15 U.S.C. § 1601 et seq.. The same cannot be said for the Plaintiff, SCFCU. Therefore, no valid lending agreement ever existed between me and SCFCU. {Review Filed Exhibits D & K-M}

22. **Reason #25 to Alter or Amend & Adjudicative Fact #35:** CUNA Mutual Group’s governing guidelines were written for Credit Unions and/or lenders and 15 U.S.C. § 1601 et seq., was written for regulated firms and courts. SCFCU is a regulated lending firm or enterprise. Therefore, I cannot be held responsible for SCFCU’s violations, errors in judgment and their failure to “Substantially Comply” with CUNA’s guidelines and Federal law.

Rubio v. Capital One Bank, 613 F. 3d 1195 (9th Cir. 2010) “[A]s a final argument that the term “fixed” cannot be misleading, Capital One also relies on the official staff commentary to Regulation Z, which appears to use “fixed” to mean “not tied to an index” rather than “unchangeable.” See 12 C.F.R. pt. 226 supp. I, para. 5a(b)(1), cmt. 5. We find this contention unpersuasive. **The staff commentary to Regulation Z is intended to guide regulated firms and the courts.** See *id.* pt. 226 supp. I, intro. cmt. 1. There is nothing in the staff commentary to indicate that its *internal* use of “variable” and “fixed” defines how a reasonable consumer would interpret the words. As the Board has concluded, the best evidence on that question comes from the consumer studies indicating that many reasonable consumers do interpret the term “fixed” as “unchangeable.””

23. **Reason #26 to Alter or Amend and Error of Law #7:** Based upon SCFCU’s failures, and because no legitimate LOANLINER® credit account ever existed, SCFCU must return all the interest payments, credit life and credit disability premiums they charged me since 2002. Legally this is considered as a **Recoupment**.

(a) **Reason #27 to Alter or Amend & Adjudicative Fact #36:** *Tuloka Affiliates, Inc. v. Moore*, 268 SE 2d 293 (S.C. S. Ct. 1980) “[A] recoupment, unlike a counterclaim, only reduces the plaintiff’s claim; it does not allow recovery of an affirmative money judgment for any excess over that claim. Unlike set-off, it must grow out of the identical transaction that gave rise to the plaintiff’s claim. *Mullins Hospital v. Squires*, 233 S.C. 186, 104 S.E. (2d) 161 (1958). “Recoupment, therefore, is the right of the defendant to cut down or diminish the claim of the plaintiff in consequence of his failure to comply with some provision of the contract sought to be enforced, *or because he has violated some duty imposed upon him by law in the making or performance of that contract*. The delinquency or deficiency which will justify the reduction of the plaintiff’s claim must arise out of the same transaction, and not out of a different transaction.” *Mullins Hospital v. Squires*, *supra*, 104 S.E. (2d) at page 166, citing Burks’ Pleading and Practice, 4th Ed., Section 247, page 438. (Emphasis added). Respondent’s argument that the contract executed by the appellants and duties of disclosure imposed by TILA do not form part of the same transaction are unpersuasive. The duties imposed on the lender arise out of the loan transaction itself and effectively become a part of the contract. **While the limitation of Section 1640(e) may be interposed to bar an affirmative counterclaim or set-off, it may not be used to defeat the equitable defense of recoupment.** This Court has long held the view that: “[Recoupment] grows out of the contract itself which is the cause of action, and is not barred by the statute of limitations. It would be manifestly unjust to permit the vender to enforce a subsisting contract, and deny to the purchaser, from lapse of time, a defense involving the validity of it at its inception. *Evans’ Executors v. Yongue*, 42 S.C.L. (8 Rich.) 113, 115 (1854). See also, *Bull v. United States*, 295 U.S. 247, 55 S.Ct. 695, 79 L.Ed. 1421 (1935); *Earle v. Owings*, 72 S.C. 362, 51 S.E. 980 (1905). **The purpose of the TILA is “to assure meaningful disclosure of credit terms” so that the consumer can shop for credit on an informed basis.** 15 U.S.C. § 1601. The provisions for remedies at Section 1640(a) place enforcement of the TILA in the hands of the consumer. If recoupment claims were barred by the limitation in Section 1640(e), lenders could avoid the consequences of non-compliance simply by waiting a year to bring suit on a default, thereby defeating the purpose of the TILA.” [Note: Boldness added for emphasis.]

(b) *US Life Credit Corp. v. James*, 279 SE 2d 367 (SC. S. Ct. 1981) “[T]he trial judge ruled that the one-year statute of limitations under the Truth in Lending Act, 15 U.S.C.A. § 1640(a), barred Debtor from pleading this alleged violation by answer almost five years later. We disagree. In *Tuloka Affiliates v. Moore*, S.C. 268 S. E. (2d) 293 (1980) filed approximately one month after the order in this action), we held that **a debtor can allege these violations as an affirmative defense by recoupment even after the one-year limitation period for bringing an action under the Truth in Lending Act has lapsed.**”

(c) *Beach v. Ocwen Fed. Bank*, 523 US 410 (1998) “[A]ccordingly, the Act requires creditors to provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest,

and the borrower's rights. See §§ 1631, 1632, 1635, 1638. Failure to satisfy the Act subjects a lender to criminal penalties for noncompliance, see § 1611, as well as to statutory and actual damages traceable to a lender's failure to make the requisite disclosures, see § 1640. Section 1640(e) provides that an action for such damages "may be brought" within one year after a violation of the Act, but that **a borrower may assert the right to damages "as a matter of defense by recoupment or set-off" in a collection action brought by the lender even after the one year is up.**" [Note: Boldness for emphasis.]

(d) **Reason #28 to Alter or Amend & Adjudicative Fact #37:** Wallace v. Owens-Illinois, Inc., 389 SE 2d 155 (Ct. App. 1989) "[t]he general rule is that one who does a wrongful act is answerable for all consequences that may ensue in the normal course of events. Any number of causes and effects may intervene between the original wrongful act and the final injurious consequence. **If the intervening acts are (1) set in motion by the original wrongful act and (2) are the normal and foreseeable result of the original act, the final result, as well as every intermediate cause, is considered in law to be the proximate result of the first wrongful cause.**"

(e) **Reason #29 to Alter or Amend & Adjudicative Fact #38:** Jones v. TransOhio Sav. Ass'n, 747 F. 2d 1037 (6th Cir. 1984) "[T]he equitable maxim that 'no man may take advantage of his own wrong,' older than the country itself, is deeply rooted in our federal jurisprudence. As stated by Mr. Justice Miller in Insurance Co. v. Wilkinson, 80 U.S. (13 Wall.) 222, 233, 20 L.Ed. 617 (1871) The principle is that where one party has by his representations or his conduct induced the other party to a transaction to give him an advantage which it would be against equity and good conscience for him to assert, he would not in a court of justice be permitted to avail himself of that advantage ... where the technical advantage thus obtained is set up and relied on to defeat the ends of justice or establish a dishonest claim. Repeatedly throughout our judicial history, the Supreme Court has approved the application of equitable tolling to statutes of limitations to prevent unjust results in cases arising at law as well as at equity."

(f) **Reason #30 to Alter or Amend & Adjudicative Fact #39:** Ortiz v. Accredited Home Lenders, Inc., 639 F. Supp. 2d 1159 - Dist. Court, SD California 2009) "[G]enerally, 'a defendant's right to plead 'recoupment,' a 'defense arising out of some feature of the transaction upon which the plaintiff's action is grounded,'... survives the expiration" of the limitations period. Beach v. Ocwen Fed. Bank, 523 U.S. 410, 415, 118 S.Ct. 1408, 140 L.Ed.2d 566 (1998) (quoting Rothensies v. Elec. Storage Battery Co., 329 U.S. 296, 299, 67 S.Ct. 271, 91 L.Ed. 296 (1946) (internal citation omitted)). Plaintiffs also correctly observe the Supreme Court has confirmed recoupment claims survive TILA's statute of limitations. *Id.* at 418, 118 S.Ct. 1408. To avoid dismissal at this stage, Plaintiffs must show that "(1) the TILA violation and the debt are products of the same transaction, (2) the debtor asserts the claim *as a defense*, and (3) the main action is timely." Moor v. Travelers Ins. Co., 784 F.2d 632, 634 (5th Cir. 1986) (citing In re Smith, 737 F.2d 1549, 1553 (11th Cir. 1984)) (emphasis added)."

VII. MANIFEST INJUSTICE AND VERIFIABLE ERRORS IN JUDGMENT

A. Manifest Injustice.

24. **Reason #31 to Alter or Amend:** The Circuit Judge and the Plaintiff, SCFCU, made significant *Errors in Judgment* that could constitute a Manifest Injustice if not corrected. A Manifest Injustice means something which is 'obviously unfair' or 'shocking to the conscience.' It refers to an unfairness that is direct, obvious, and observable. As Justice Scalia once commented, "manifest injustice" might mean "almost anything" and "is just a surrogate for policy preferences." *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 857 (1990) (*Scalia, J., concurring*).

B. SCFCU's Errors in Judgment that cannot be ignored by the Court.

25. **Reason #32 to Alter or Amend:** SCFCU's personnel have made significant errors in judgment starting in September of 2002 that the Court cannot ignore.

(a) **First Error in Judgment:** SCFCU's first judgment error was not giving me an Addendum to consummate the first LOANLINER® loan and SCFCU's Membership and Account Agreement. This violated a Federal law and CUNA Mutual Group's mandatory requirements and procedures for compliance with a Federal mandate. {Review Filed Exhibits D, K-M & *Smith v. Fidelity Consumer Discount Co.*, 898 F. 2d 896 (3rd Cir. 1990) ¶ 16(b); pgs 11-12}

(b) **Second Error in Judgment:** SCFCU's second judgment error also occurred in 2002. It is inconceivable that someone in SCFCU's Charleston office did not know or realize that it is impossible to give an Addendum over the telephone. It is also inconceivable that SCFCU's personnel did not know Federal law and CUNA Mutual Group's LOANLINER® loans and Membership and Account Agreements required disclosures before credit is actually extended...or at the very least, at the time and before the

check was actually given. Therefore, this situation could have been easily resolved by a timely phone call to their Columbia office to make sure an Addendum was given to me. **Adjudicative Fact #40:** There is no evidence in the Court's Records that can or will verify a call was made to SCFCU's Columbia office to give me an Addendum to consummate SCFCU's LOANLINER® car loan or Membership and Account Agreement. {Also review *Rudisell v. Fifth Third Bank*, 622 F. 2d 243 (6th Cir. 1980) pgs 11, 12 & 17 and *Smith v. Fidelity Consumer Discount Co.*, 898 F. 2d 896 (3rd Cir. 1990), pgs 11-12}

(c) **Third Error in Judgment:** SCFCU's third judgment error occurred as a direct result of this litigation. In 2002 and 2003, I did not know anything about Addendums or State and Federal laws governing lending. When SCFCU discovered I did not receive an Addendum to validate the Membership & Account Agreement of its LOANLINER® loans, action should have been taken to rectify the manner. **Adjudicative Fact #41:** There is no evidence in the Court's Records that can or will verify SCFCU made an attempt to update the Membership & Account Agreement in order to comply with the disclosure requirements of Federal law. {Also review *Bizier v. Globe Financial Services, Inc.*, 654 F. 2d 1 (1st Cir. 1981) ¶ 16(c), on pg 12}

(d) **Fourth Error in Judgment:** SCFCU's fourth judgment error occurred when they failed to send an Addendum with the check for my mobile home purchase in 2003. SCFCU mistakenly relied on CUNA Mutual's policy that only one Addendum has to be given before the first transaction. Since no Addendum was given in 2002, because it was done by telephone and not in person, an Addendum should have been given before or with the check in 2003. **Adjudicative Fact #42:** There is no evidence in the Court's Records that can or will verify SCFCU sent an Addendum with the check for my mobile home purchase in order to comply with the disclosure requirements of 15 U.S.C. §

1601 et seq. {Review Berkebile v. Outen, S.C. 426 S.E.2d 760, 762 (1993) ¶ 18(f) on pg 14}

(e) **Fifth Error in Judgment:** SCFCU's fifth judgment error also occurred in this litigation. Instead of acknowledging their mistake in 2002, Amy Rogers & SCFCU's law firm continuously filed Affidavits verifying an account activity that has no basis as a legitimate LOANLINER® credit transaction under a legitimate Membership & Account Agreement and clearly proves beyond any reasonable doubt and by clear and convincing evidence **the interest rate is not fixed. Adjudicative Fact #43:** There is no mobile home purchase in SCFCU's account records. **Adjudicative Fact #44:** There is no evidence in the Court's Records that can or will verify a fixed (unchanging) interest rate for a mobile home purchase. {Review Amy Rogers filed Affidavits, SCFCU's filed Complaint ¶¶ 7-10, on pg 2, SCFCU's Filed Exhibit 3 & Beach v. Ocwen Fed. Bank, 523 US 410 (1998) ¶ 23(c), pgs 18-19}

C. **The Court's own Errors of Judgment in fact or law that cannot be ignored.**

26. **Reason #33 to Alter or Amend:** In addition to SCFCU's personnel significant errors in judgment that the Court cannot ignore, the Court cannot ignore its own judgment errors because these errors constitute errors of fact or law.

(a) **First Judicial Error in Judgment of Fact or Law:** The Court's first judicial error in fact or law occurred in 2012. I completed and filed my *Motion for Summary Judgment*, along with my *Statement of Material Facts that are not in Dispute and Legal Memorandum* supporting the Motion on April 25, 2012. My filed statements identified why my *Motion for Summary Judgment* was supported by *Material Facts* that are not in dispute and never refuted or denied by the Plaintiff, SCFCU. My *Legal Memorandum*

dum informed the Court why my *Motion for Summary Judgment* is supported by the law and the facts. **No hearing was ever scheduled for this motion. This is a violation of Rule 56(c).**

(1) *Rule 56(c) SCRCF* clearly states in pertinent parts; “[T]he motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”.

(2) *City of New York v. McAllister Brothers, Inc.*, 278 F. 2d 708 (2nd Cir. 1960) “[F]orthwith” means immediately, without delay, or as soon as the object may be accomplished by reasonable exertion. The Supreme Court has said of the word that “in matters of practice and pleading it is usually construed, and sometimes defined by rule of court...”

(b) **Second Judicial Error in Judgment of Fact or Law:** The Court’s second judicial error of fact or law is the Court’s failure to accept the Material Fact that SCFCU never gave me an Addendum to consummate the first LOANLINER® loan and SCFCU’s Membership and Account Agreement. This is a verifiable violation of a Federal law and CUNA Mutual Group’s mandatory requirements and procedures for compliance with a Federal mandate. {Review Filed Exhibits D, K-M & *Smith v. Fidelity Consumer Discount Co.*, 898 F. 2d 896 (3rd Cir. 1990) ¶ 16(b), pgs 11-12}

(c) **Third Judicial Error in Judgment of Fact or Law:** The Court’s third judicial error of fact or law is the Court’s failure to accept the Material Fact that there is no federal or state law limiting the price of a mobile home. I have presented the documented evidence from SCFCU that the loan was for a house, i.e., a mobile home with a fixed interest rate. SCFCU’s document states the interest rate is fixed. {Review Filed Exhibit 9} Angel Rabon stated the interest rate is 15%. {Review Filed Exhibit 11} I have presented the documented evidence that the mobile home was purchased. {Review Filed

Exhibits E & F}. SCFCU's filed Complaint states "Fixed Interest Rate Agreement".

{Review Filed Exhibit 24, ¶¶ 7-10, on pg 2} **Therefore, I am not confused. It is the**

Court and SCFCU that are confused. Adjudicative Fact #44: There are no documents in the Court's Records that can or will verify SCFCU's filed Complaint was for an "Open-end Agreement".

(d) **Fourth Judicial Error in Judgment of Fact or Law:** The Court's fourth judicial error of fact or law was filing a judgment, rather than sending or remanding this case back to the Circuit Court for a Trial by Jury.

(1) (*Bateman v. Rouse*, 596 SE 2d 386 (SC. Ct. App. 2004) "[T]he trial judge erred in denying Helen's request for a jury trial and compounded that error when he ruled that the denial of a right to a jury trial was not immediately appealable. Because Helen had no opportunity to appeal from the trial judge's ruling prior to commencing the non-jury trial, we hold she did not waive her right to a jury trial. This case presents both legal and equitable issues, and as such, the legal issues are for determination by a jury and the equitable issues are for determination by the court. *Floyd*, 306 S.C. at 380, 412 S.E.2d at 399. If both the legal claims and the equitable claims are to be tried in a single proceeding, the legal issues are to be determined first, and the findings of the jury are binding on the court. *Johnson v. South Carolina Nat'l Bank*, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987). Therefore, we reverse and remand for a new trial."

(2) *Beacon Theatres, Inc. v. Westover*, 359 US 500 (1959) "[A]s this Court said in *Scott v. Neely*, 140 U. S. 106, 109-110: "In the Federal courts this [jury] right cannot be dispensed with, except by the assent of the parties entitled to it, nor can it be impaired by any blending with a claim, properly cognizable at law, of a demand for equitable relief in aid of the legal action or during its pendency." This longstanding principle of equity dictates that only under the most imperative circumstances, circumstances which in view of the flexible procedures of the Federal Rules we cannot now anticipate, can the right to a jury trial of legal issues be lost through prior determination of equitable claims. See *Leimer v. Woods*, 196 F. 2d 828, 833-836. As we have shown, this is far from being such a case."

(3) **Adjudicative Fact #45:** *Airfare, Inc. v. Greenville Airport Comm.*, 153 SE 2d 846 (SC. S. Ct. 1967) "[U]nder our Code practice legal and equitable issues and rights may be asserted in the same complaint, and legal and equitable remedies and relief afforded in the same action. In such event the legal issues are for determination by the jury, and the equi-

table issues for the judge sitting as a chancellor. The legal and equitable issues should be separated and each tried by the appropriate branch of the court. Standard Warehouse Co. v. A.C.L.R. Co., 222 S.C. 93, 71 S. E. (2d) 893; Winter v. U.S.F. & G. Co., 240 S.C. 561, 126 S.E. (2d) 724. An action for damages for a breach of contract is an action at law and either party has the right of trial by jury. Givens v. North Augusta Electric & Improvement Co., 91 S.C. 417, 74 S.E. 1067; DePass v. Piedmont Interstate Fair Ass'n., 217 S.C. 38, 59 S.E. (2d) 495..."

(4) **Adjudicative Fact #46:** *Rule 38(a), SCRPC* clearly states in pertinent parts; "[T]he right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived."

(5) **Adjudicative Fact #47:** *U.S. Const. – Amend. VII:* "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

(6) **Adjudicative Fact #48:** *Quick v. Donaldson Co., Inc.*, 90 F. 3d 1372 (8th Cir. 1996) "[A] party is entitled to judgment as a matter of law only if it can show that no genuine issue of material fact exists. Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 256, 106 S.Ct. 2505, 2514, 91 L.Ed.2d 202 (1986). The basic inquiry is "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*, 477 U.S. at 251-52, 106 S.Ct. at 2512. At the summary judgment stage, the court should not weigh the evidence, make credibility determinations, or attempt to determine the truth of the matter. *Id.* at 249, 106 S.Ct. at 2510. Rather, the court's function is to determine whether a dispute about a material fact is genuine, that is, whether a reasonable jury could return a verdict for the nonmoving party based on the evidence. *Id.* at 248, 106 S.Ct. at 2510. The evidence of the non-movant is to be believed..,"If reasonable minds could differ as to the import of the evidence," summary judgment is inappropriate. *Id.* at 250, 106 S.Ct. at 2511."

(d) **Fifth Judicial Error in Judgment of Fact or Law:** The Court's fifth judicial error of fact or law was ruling on a Complaint that does not exist. **Adjudicative Fact #49:** There is no Complaint in the Court's Record for an Open-end Disbursement Receipt Plus LOAN-LINER® Credit and Security Agreement ("Open-end Agreement") that was delivered on February 28, 2003 that called for the payment of \$5,500.00.

(1) **Adjudicative Fact #50:** Amy Rogers, May 10, 2012 default loan statement, {Review pg 2}, that is attached to her Corporate Verification of Account, {Review Plaintiff's Exhibit "C"} 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 Dollars (\$5,556.44) that is now in default with an amount due and payable of \$5,274.84. {Review SCFCU's Complaint, pg 2, ¶ 7 & pg 3, ¶ 12 & Review Amy Rogers' Corporate Account Verification, pg 1, ¶ 1, SCFCU's Exhibit "A", pg 1, ¶¶ 1 & 3 and SCFCU's Exhibit "C"}

(2) **Adjudicative Fact #51:** SCFCU's supporting document for a \$5,500.00 "Fixed Rate Loan" is signed and dated 9/5/02. {Review SCFCU's Exhibit "B", "PAGE 2"} My car loan with SCFCU 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. {Review Filed Exhibits 12 & 13} My car loan is paid out. {Review Filed Exhibits 14 & 15} I 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 Dollars (\$5,556.44). {Review Filed Exhibits 5 & 9-15}

(e) **Sixth Judicial Error in Judgment of Fact or Law:** The Court's sixth judicial error of fact or law was failing to consider or rule on my counterclaims of Violation of TILA and SCUTPA and my affirmative defenses; especially, Unjust Enrichment and Unclean Hands.

(1) "[W]hen a party raises affirmative defenses, 'a summary judgment should not be granted where there are issues of fact raised by the affirma-

tive defenses which have not been effectively factually challenged and refuted.” Alejandro v. Deutsche Bank Trust Co. Ams., 44 So. 3d 1288, 289 (Fla. 4th DCA 2010) (quoting Cufferi v. Royal Palm Dev. Co., 516 So.2d 983, 984 (Fla. 4th DCA 1987)). “[T]he movant must disprove the affirmative defenses or show they are legally insufficient. *Id.*

(2) “[A]ffirmative defenses will not be struck if they are sufficient as a matter of law or if they present a question of law or fact.” United States v. 416.81 Acres of Land, 514 F.2d 627, 631 (7th Cir. 1975); FDIC v. Niblo, 821 F. Supp. 441, 449 (N.D. Tex. 1993)

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

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

(5) “[A] reply is required only if the pleader wishes to avoid the affirmative defenses.” Hertz Commercial Leasing Corp. v. Seebeck, 399 So.2d 1110, 1111 (Fla. 5th DCA 1981). “[O]nce an affirmative defense is raised, the Plaintiff has the burden of either disproving it or establishing the legal insufficiency of the affirmative defense. Florida Dept. of Agric. v. Go Bungee, Inc., 678 So.2d 920, 921 (Fla. 5th DCA 1996), citing Wilson v. Pruette, 422 So.2d 351, 352 (Fla. 2d DCA 1982)

(6) “[A]ffirmative defenses raise some new matter that defeats the plaintiff’s claim. Tropical Exterminators, Inc. v. Murray, 171 So. 2d 432 (Fla. 2d DCA 1965) “[A]ffirmative defenses are subject to the same pleading rules as the complaint.” Burns v. Equilease Corp., 357 So.2d 786, 787 (Fla. 3d DCA 1978) “[P]articularity requirement applies to defenses alleging fraud or mistake.” Thompson v. Bank of New York, 862 So.2d 768, 770 (Fla. 4th DCA 2003)

(7) “[I]n order to be entitled to summary judgment as a matter of law, the party seeking summary judgment must not only establish that no gen-

une issues of material fact exist as to the party's claims but must also either factually refute the affirmative defenses or establish that they are legally insufficient." *Jones v. State ex rel. City of Winter Haven*, 870 So. 2d 52, 55 (Fla. 2d DCA 2003); *Kimmick v. U.S. Bank Nat'l Ass'n*, 83 So. 3d 877, 879 (Fla. 4th DCA 2012)

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

VIII. THE PLAINTIFF, SCFCU, IS BARRED FROM CHANGING ITS COMPLAINT BY THE LEGAL DOCTRINE OF JUDICIAL ESTOPPEL

27. **Reason #34 to Alter or Amend:** In addition to SCFCU's personnel significant errors in judgment that the Court cannot ignore, the Court cannot condone SCFCU's changing its Complaint. **Adjudicative fact #52:** There is no Amended Complaint in the Court's Records for an Open-end Disbursement Receipt Plus LOAN-LINER® Credit and Security Agreement ("Open-end Agreement") that was delivered on February 28, 2003 that called for the payment of \$5,500.

28. **Reason #35 to Alter or Amend & Adjudicative Fact #53:** There is no Amended Complaint in the Court's Record for an Open-End Disbursement Receipt Plus LOANLINER® Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about February 28, 2003 that called for the payment of the sum of Five Thousand Five Hundred and 00/100 Dollars (\$5,500.00).

(a) SCFCU's filed Complaint is for 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). {*Re-view Adjudicative Facts Numbers 50 & 51 on pg 26*}

(b) **Reason #36 to Alter or Amend:** SCFCU, Amy Rogers and SCFCU's law firm are effectively barred from changing their Complaint by the legal Doctrine of **Judicial Estoppel**. Therefore, the Equity Court is judicially estopped from ruling on assertions gleaned from the February 15, 2015 hearing that cannot be supported by the evidence and the facts in the Court's Records. {*Review filed Order of Judgment*, ¶ 2, pg 1, i.e., *Attached Exhibit 41*}

(1) **Adjudicative Fact #54:** *Quinn v. Sharon Corp.*, 540 SE 2d 474 (Ct. App. 2000) "[T]he supreme court expressly adopted the doctrine of judicial estoppel, as it relates to matters of fact, in the case of *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). The doctrine precludes a party from adopting a position in conflict with one previously taken in the same or re-lated litigation. *Id.* The purpose of the doctrine is not to protect liti-gants from allegedly improper or deceitful conduct by their ad-versaries, but to protect the integrity of the judicial process and the courts. *Id.* The supreme court explained, In order for the judicial process to function properly, litigants must approach it in a truthful manner. Although parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process. The doctrine thus punishes those who take the truth-seeking function of the system lightly. **When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him.** *Id.* at 251-52, 489 S.E.2d at 477.

(2) **Adjudicative Fact #55:** *Wright v. Craft*, 640 SE 2d 486 (Ct. App. 2006) "[J]udicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted *in the same or related proceeding.*" *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004) (emphasis added). The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary. *Id.* (citing *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003)). Five elements are required for the application of judicial estoppel: (1) two inconsistent positions must be taken by the same party or parties in privity with each other; (2) the two inconsistent positions were both made pursuant to sworn statements; (3) the positions must be taken in the *same or related* proceedings involving the same parties in privity with each other; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent-that is, the truth of one position must necessarily preclude the veracity of the other position."

VIII. SCFCU'S UNCLEAN HANDS EFFECTIVELY BAR ANY JUDICIAL RELIEF

29. **Reason #36 to Alter or Amend:** Any person of reasonable intelligence will agree with that the following undeniable and irrefutable facts that are either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.

(a) In 2002, there was no known method to physically give someone a document over a telephone line. Faxing is sending and receiving, not giving. Mailing is sending and receiving not giving. **Even SCFCU's attorneys and the Court can agree with this undeniable and irrefutable fact,** it was not physically possible to give me an Addendum over the telephone. Documents can only be physically given to another person when they are in each other's physical and immediate presence or in close proximity to each other.

(b) As already judicially noticed, there is no evidence or testimony in the Court's Records that can or will verify SCFCU's personnel witnessed someone or anyone from their Charleston office giving me an Addendum to consummate SCFCU's LOAN-LINER® credit plan or Membership and Account Agreement.

(c) There is no evidence or testimony in the Court's Records that can or will verify SCFCU's personnel from their Columbia office gave me an Addendum when I picked up the check for the car on September 5, 2002. "[a] credit transaction which requires disclosures under the Act [TILA] is completed when the lender and borrower contract for the extension of credit. The disclosures must be made sometime before this event occurs. **If the disclosures are not made, this violation of the Act occurs, at the latest, when the parties perform their contract.** 476 F.2d at 1065."

(d) **Reason #37 to Alter or Amend:** Therefore, by SCFCU's undeniable TILA violations in 2002 and 2003, SCFCU has **Unclean Hands** that effectively bar any judicial relief.

(e) **Reason #38 to Alter or Amend:** SCFCU's personnel and/or law firm also tried to deceive the court by including an Addendum in documents presented to the Court as though I had received one. This is a "Fraud upon the Court". This deception may have been done in ignorance (Negligent Misrepresentation) or with with willful intent to deceive ("Fraud").

(f) **Reason #39 to Alter or Amend:** SCFCU's attorneys knew, as a direct result of this lawsuit, that my loan was handled by phone and not in person. SCFCU's personnel knew from 2002 that my loan was handled by phone and not in person. Therefore, it was impossible for SCFCU to meet the disclosure requirements of CUNA Mutual Group's LOANLINER® credit plan and Membership and Account Agreement. This is additional evidence of SCFCU's **Unclean Hands** that effectively bar any judicial relief.

(1) **Adjudicative Fact #56:** "[O]ne who comes to the court seeking equity must come with clean hands." See *Precision Instrument Mfg. Co. v. Automotive Co.*, 324 U.S. 806, 814 (1945) ("He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief."); *Wilson v. Landstrom*, 281 S.C. 260, 315 S.E.2d 130 (Ct. App. 1984) ("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.")

(2) **Adjudicative Fact #57:** *Wachovia Bank, NA v. Coffey*, 698 SE 2d 244 (Ct. App. 2010) "[H]owever, Mrs. Coffey asserts that the doctrine of unclean hands bars Wachovia from seeking equitable relief from our courts. She argues that Wachovia committed the unauthorized practice of law, and, therefore, Wachovia came into court with unclean hands. We agree." "The doctrine of unclean hands precludes a plaintiff from recovering

in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct.App.1998). "The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." Arnold v. City of Spartanburg, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity. *Id.*"

(3) **Adjudicative Fact #58:** Stauffer v. Stauffer, 351 A.2d 236, 244 (Pa.1976) ("The bar of unclean hands is applicable ... only where the wrongdoing of the plaintiff directly affects the equitable relationship subsisting between the parties and is directly connected with the matter in controversy.").

30. The Plaintiff's hands are not clean relative to this matter before the Court and South Carolina Courts have consistently held, "[n]o person can be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act." Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and maintained by bribery). South Carolina Courts apply this rule for "Unclean Hands" in 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.

31. In, Menominee River Co. v. Augustus Spies L & C Co., 147 Wis. 559 at p. 572; 132 NW 1118 (1912) the court determined, "[i]f 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."

32. In 1879, South Carolina's Supreme Court held, "[T]here can be no doubt of the correctness of the legal proposition that, where money is paid under a mistake of fact, to a person who has no ground in conscience to claim it, the person paying it may recover it back." Glenn v.

Shannon, 12 S.C. 570, 570 (1879); see also *Pilot Life Ins. Co. v. Cudd*, 208 S.C. 6, 36 S.E.2d 860 (1945) (holding the general rule is that money paid to another under a mistake of fact may be recovered because the money belongs, in equity and good conscience, to the person who paid it). See *Castock Corp. v. Bailey*, 492 N.Y.S.2d 921 (Sup. Ct. 1985) (the fact that recipient has parted with the money is an insufficient excuse to forgive repayment); *70 Am. Jur. 2d Payment* § 114(c) (1987) (no defense where money has been paid to another or spent).

IX. UNJUST ENRICHMENT AND RECOUPMENT: SCFCU WOULD BE UNJUSTLY ENRICHED IF THE INTEREST I PAID THEM AND THE CREDIT LIFE AND DISABILITY LIFE PREMIUMS ARE NOT RETURNED.

A. The Law of Natural Immutable Justice and Equity.

33. **Reason #40 to Alter or Amend:** SCFCU's TILA violation effectively voided any legitimate LOANLINER® credit agreement. Therefore, SCFCU is only entitled to keep the money loaned and is effectively barred from earning any interest on a violated credit agreement that violated federal law. Since credit life and disability premiums are only applicable to a legitimate and lawful LOANLINER® Membership and Account Agreement and credit plan, this money must also be returned. This is an appropriate and fair restitution under the Law of Natural Immutable Justice and Equity. The following precedents are also applicable to Defendants.

(a) **Adjudicative Fact #59:** *Ellis v. Smith Grading & Paving, Inc.*, 366 SE 2d 13 (Ct. App. 1988) "[A]n action for an accounting is equitable. *Byrd v. King*, 245 S.C. 247, 140 S.E. (2d) 158 (1965). "Restitution is a remedy designed to prevent unjust enrichment." *Stanley Smith and Sons v. Limestone College*, 283 S.C. 430, 434, 322 S.E. (2d) 474, 478 (Ct. App. 1984). Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. *Barrett v. Miller*, 283 S.C. 262, 264, 321 S.E. (2d) 198, 199 (Ct. App. 1984). The master concluded Smith owed Ellis an obligation "arising out of quasi-contract, that is, a contract arising out of the 'law of natural immutable justice and equity.'" See 66 Am. Jur. (2d) *Restitution and Implied Contracts* Section 2 (1973). The terms "restitution" and "unjust enrichment" are modern designations for the older doctrine of quasi-contracts. *Martin v. Bozeman*, 173 So. (3d) 382 (La. Ct. App. 1965). Unjust enrichment is usually a prerequisite for enforcement of the doctrine

of restitution; if there is no basis for unjust enrichment, there is no basis for restitution. 66 Am. Jur. (2d) *Restitution and Implied Contracts* Section 4 (1973). The essential elements of a quasi-contract are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by defendant of the benefit under conditions that make it inequitable for him to retain it without paying its value. 66 Am. Jur. (2d) *Restitution and Implied Contracts* Section 4 (1973); *Anno.* 62 A.L.R. (3d) 288, 294 (1975). "The law will never impute a promise to pay for a benefit conferred, where it would be unjust to the party to whom it would be imputed and contrary to equity. The law never implies a promise to pay, unless duty creates the obligation to pay; and more especially, it never implies a promise to do an act contrary to duty or contrary to law." 66 Am. Jur. (2d) *Restitution and Implied Contracts* Section 2 (1973)."

(b) Dema v. TENET PHYSICIAN SERVICES-HILTON, 678 SE 2d 430 (SC. S. Ct. 2009) "[A] party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another. Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct.App.1988)."

B. Recoupment is a Defense for SCFCU's verifiable TILA violations.

34. Even though I have already discussed recoupment in ¶ 23 and subparts 23(a)-(f) on pgs 17-19, I feel it is necessary to briefly identify the precedents relative to the Discovery Rule. **Adjudicative Fact #60:** Under the Discovery Rule, the statute of limitations begins to run from the date I knew or should have known, by the exercise of reasonable diligence that a cause of action existed for the wrongful conduct of the SCFCU. *S.C. Code Ann. § 15-3-535 (2005)*; Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). "[T]he statute of limitations begins to run from the point of discovery and not when advice of counsel is sought or a full-blown theory of recovery developed." Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 328-29, 534 S.E.2d 672, 676 (2000) (citations omitted).

35. **Reason #41 to Alter or Amend & Adjudicative Fact #61:** In this case, my defensive claims against SCFCU arise from the same underlying transaction, SCFCU's attempt to collect a debt is based on a LOANLINER® credit plan and a Membership & Account Agree-Agreement that was never consummated pursuant to law or CUNA's procedures.

Recoupment of money's paid because of SCFCU's TILA violation is justifiable, appropriate and statutorily enforceable. **Error of Law #9:** Therefore, the Court's failure to enforce statutory law is another Error of Law. Furthermore, state and federal courts have held that a TILA claim may be asserted defensively as a recoupment action against a lender attempting to enforce contractual obligations.

(a) *Matter of Coxson*, 43 F. 3d 189 (5th Cir. 1995) "[F]urthermore, Texas state courts have held that a TILA claim may be asserted defensively as a recoupment action against a lender attempting to enforce contractual obligations. *Garza v. Allied Finance Co.*, 566 S.W.2d 57, 62-63 (Tex.Civ. App.—Corpus Christi 1978); *Cooper v. Republic Bank Garland*, 696 S.W.2d 629, 634 (Tex.Civ.App.—Dallas 1985) (holding that recoupment claim was raised defensively in response to creditor's foreclosure efforts). We find that the TILA claim was not barred by the statute of limitations, and therefore remand the issue for consideration of the merits of the claim." See also *In re Jones*, 122 B.R. 246 (plaintiff permitted to raise TILA recoupment claim defensively).

(b) *In re Bender*, 86 BR 809 (Bankr. E.D.Pa. 1988) "[T]his civil penalty must be asserted within one year of the occurrence of the statutory violation. "Recoupment" by contrast is "in the nature of a defense arising out of some feature of the transaction upon which the plaintiffs action is grounded." *In re Monongahela Rye Liquors*, 141 F.2d 864, 869 (3d Cir.1944) (quoting *Bull v. United States*, 295 U.S. 247, 55 S.Ct. 695, 79 L.Ed. 1421 (1935)). As applied to TILA, recoupment is purely defensive and can be raised only if the creditor seeks payment from the borrower. The filing of a proof of claim by the creditor is an action to collect a debt which then permits the debtor to raise TILA recoupment, even beyond the one year statute of limitations posed. *Werts v. Federal National Mortgage Ass'n.*, 48 B.R. 980, 983-84 (E.D.Pa. 1985); *In re DiCianno*, 58 B.R. 810, 813 (Bankr.E.D.Pa. 1986). *In re Hanna*, 31 B.R. 424 (Bankr. E.D.Pa.1983). Although the recoupment defense can be raised more than one year after the federal statute was violated, it cannot produce an affirmative recovery; it can only abate or reduce the debt. See *Stulz v. Boswell*, 307 Pa.Super. 515, 453 A.2d 1006 (1982); 4 *Collier on Bankruptcy*, ¶ 503.03 (15th ed. 1987). And while the addition of a statutory recovery in TILA was designed, in part, as a penalty, the concept of recoupment is derived from equitable concerns which also must be considered."

36. **Reason #42 to Alter or Amend & Adjudicative Fact #62:** Unlike 99.99% of LOANLINER® credit cases, I never received an Addendum and still do not have one. Nor can one be given at this point in time. Therefore, I do not have a debt. The car is paid out. Only the interest payments and credit and disability life premiums must be returned. There is no debt on

the mobile home. It is also paid out. SCFCU has received every penny borrowed. As with the car, since there is no consummated credit agreement pursuant to CUNA Mutual Group's LOANLINER® requirements, the credit life, credit disability life and interest payments must be returned. SCFCU's charges, interest, penalties and late fees were never apart of a valid LOAN-LINER® agreement.

(a) **Reason #43 to Alter or Amend & Adjudicative Fact #63:** *Guardian Agency v. Guardian Mut. Savings Bank*, 227 Wis. 550, 279 NW 79 (1938) (Holding that, "The contract is void if it is only in part connected with the illegal transaction and the promise single or entire.")

(b) **Reason #44 to Alter or Amend & Adjudicative Fact #64:** *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (Holding that "illegal contracts are void and unenforceable, such that actions for its breach may not be maintained")

(c) **Reason #45 to Alter or Amend & Adjudicative Fact #65:** *Jones v. TransOhio Sav. Ass'n*, 747 F. 2d 1037 (6th Cir. 1984) "[T]he equitable maxim that "no man may take advantage of his own wrong," older than the country itself, is deeply rooted in our federal jurisprudence."

(d) **Reason #46 to Alter or Amend & Adjudicative Fact #66:** *Jackson v. Bi-Lo Stores, Inc.*, 437 SE 2d 168 (Ct. App. 1993) "[I]t is a well founded policy of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act. 86 C.J.S. *Torts* § 12 (1954). This rule applies at both law and in equity and whether the cause of action is in contract or in tort. 1A C.J.S. *Actions* § 29 (1985). See also *Graham v. Graham*, 276 S.C. 341, 278 S.E.2d 345 (1981); *Nelson v. Bryant*, 265 S.C. 558, 220 S.E.2d 647 (1975); *Roundtree v. Ingle*, 94 S.C. 231, 77 S.E. 931 (1913)." Also see, *RCDI CONST. v. Spaceplan/Architecture*, 148 F. Supp. 2d 607 (Dist. Ct. W.D. NC. 2001); *W & N CONSTRUCTION COMPANY v. Williams*, 472 SE 2d 622 (SC. S. Ct. 1996)

37. **Reason #47 to Alter or Amend & Adjudicative Fact #67:** *Section 36-3-*

305(a)(1)(ii) - SC Code of Laws clearly states the following in pertinent parts:

[(a)] Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (1) a defense of the obligor based on..... (ii) illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms...."

X. SCFCU's SCUTPA VIOLATIONS

38. **Reason #48 to Alter or Amend & Adjudicative Fact #68:** SCFCU's filed Complaint clearly states (Fixed Interest Rate Agreement). Yet when the Court examined SCFCU's filed Exhibit 3, the rate is not fixed, it is Open-end. Since the Federal Reserve Board of Governors categorized the term "fixed" as "[m]isleading" in 2010, If the term fixed interest rate was misleading in 2010, it was misleading in 2003. {See Rubio v. Capital One Bank, 613 F. 3d 1195 (9th Cir. 2010)}

39. **Reason #49 to Alter or Amend & Adjudicative Fact #69:** 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).

40. **Reason #50 to Alter or Amend & Adjudicative Fact #70:** 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). The Federal Reserve Board states the term "fixed interest rate" is misleading to reasonable consumers. *Blacks Law Dictionary* (rev. 4th ed. 1968) on pg 1151, in pertinent parts, defines MISLEADING as; Delusive; calculated to lead astray or to lead into error.

Adjudicative Fact #71: Joe Conte Toyota, Inc. v. LA. MOTOR VEH. COM'N, 24 F. 3d 754 (5th Cir.1994) Peel v. Attorney Disciplinary Commission, 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed.2d 83 (1990). "[A]lthough there was no majority opinion in *Peel*, the opinions of several justices shed some light on the hierarchy of misleading commercial speech. Furthermore, the Court identified a third category of mislead-ing commercial speech, "actually misleading." *Id.* (Stevens, J.). Justice Stevens, in an opinion joined by Justice Brennan, Justice Blackmun

and Justice Kennedy, suggested that commercial speech is "actually" misleading when there is evidence of deception. *Id.* at 106, 110 S.Ct. at 1694. Justice Marshall agreed that a statement is "actually" misleading when the record contains evidence that recipients of commercial speech "actually ha[ve] been misled by the statement." *Id.* at 112, 110 S.Ct. at 1697 (Marshall, J. and Brennan, J., concurring). A statement is "inherently" misleading when, notwithstanding a lack of evidence of actual deception in the record, "the particular method by which the information is imparted to consumers is inherently conducive to deception and coercion." *Id.* (Marshall, J. and Brennan, J., concurring). Included is "commercial speech that is devoid of intrinsic meaning." *Id.* (Marshall, J. and Brennan, J., concurring). **In her dissent, Justice O'Connor added that "inherently misleading" means "inherently likely to deceive the public."** *Id.* at 121, 110 S.Ct. at 1702 (O'Connor, J., Rehnquist, C.J. and Scalia, J., dissenting). Citing *In re R.M.J.*, Justice Marshall noted that states may prohibit actually or inherently misleading commercial speech entirely. *Id.* at 111, 110 S.Ct. at 1697 (Marshall, J. and Brennan, J., concurring). From all of this we conclude that a statement is actually or inherently misleading when it deceives or is inherently likely to deceive." [Note: Boldness and Underlining for emphasis.]

41. **Adjudicative Fact #72:** *Section 39-5-140 – SC Code of Laws* states: "Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by *Section 39-5-20* may bring an action individually, but not in a representative capacity, to recover actual damages. *Section 39-5-140* only protects a "person who suffers any ascertainable loss of money or property, real or personal."

(a) **Adjudicative Fact #73:** Federal courts have held that unfair or deceptive acts as defined in the FTC Act need not constitute ordinary fraud. *Federal Trade Commission v. Algoma Lumber Co.*, 291 U.S. 67, 54 S.Ct. 315, 78 L.Ed. 655 (1934); *D.D.D. Corp. v. Federal Trade Commission*, 125 F. (2d) 679 (7th Cir.1942). Under the statute there is no need to show that a claim or representation was intended to deceive, but only that it had the capacity or effect or tendency to deceive. *Id.* See also *Hardy v. Toler*, 288 N.C. 303, 218 S.E. (2d) 342 (1975); *Heller v. Silverbranch Construction Corp.*, 376 Mass. 621, 382 N.E. (2d) 1065 (1978)

(b) **Adjudicative Fact #74:** Actual knowledge is not required under SCUTPA to hold SCFCU liable for the misrepresentations of its agent/s. At common law actual knowledge is not necessary to hold a principal liable, if misrepresentations are made by the agent while acting within the scope of his agency. See, *West v. Service Life & Health Insurance Co.*, 220 S.C. 198, 66 S.E. (2d) 816 (1951); See also, *Restatement (Second) of Agency* § 261, comment a (1958)

(c) **Adjudicative Fact #75:** Under *Section 39-5-20(a) and (b)*, *SC Code of Laws*, I need not prove the elements of common law deceit in order to establish a violation of the South Carolina Unfair Trade Practices Act since, under the statute, there is no need to show that a claim or representation was intended to deceive but only that it had the capacity, effect, or tendency to deceive. *State ex rel. McLeod v. C & L Corporation*.

(d) **Adjudicative Fact #76:** *Rubio v. Capital One Bank*, 613 F. 3d 1195 (9th Cir. 2010) "[T]he Federal Reserve Board of Governors, the very agency tasked with implementing TILA. The Board has relied on that evidence in promulgating a new regulation that generally prohibits creditors from using the term 'fixed.'" See *United States v. Woods*, 335 F.3d 993, 1001 (9th Cir.2003) (noting that under 44 U.S.C. § 1507, the Federal Register must be judicially noticed)--- the Federal Reserve Board promulgated revisions to Regulation Z that became effective July 1, 2010. See *Truth in Lending*, 74 Fed.Reg. 5244, 5246-48 (Jan. 29, 2009). Based on the research, the revisions specify that in the Schumer Box's APR disclosure, the term *fixed*, or a similar term, may not be used to describe [the annual percentage] rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open. *Id.* at 5401 (to be codified at 12 C.F.R. § 226.5(a)(2)(iii) In explaining the regulation, and stated that it had "found through consumer testing ... that consumers generally believe a 'fixed' rate does not change...."

XI. SUMMARY AND REVIEW

42. **Reason #51 to Alter or Amend:** Based on the facts, the Material Facts, the truth, statutory law, common law and precedent, the Court's Order of Judgment must be Altered, Amended or this case Remanded to the Circuit Court for a Jury Trial on all issues at law. This case can also be *Dismiss with Prejudice* and the Plaintiff must return **\$4,660.89** to the me for the over payment on my mobile home purchase that is not in SCFCU's records and the interest and credit life payments for the car. The Court must also determine statutory damages, punitive damages, if any and include compensation for cost of suit. {Review Filed Exhibits 31 & 32}

43. **Reason #52 to Alter or Amend & Adjudicative Fact #77:** SCFCU's Law Firm of Moore & Van Allen, PLLC, was duly notified in the my *Answer to Complaint* filed on December 21, 2011, that I 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). *{Review SCFCU's Statement of Account & Review Filed Exhibits 5, 9, 10 & 11}*

44. **As judicially noticed**, Amy Rogers, May 10, 2012 default loan statement, *{Page 2}*, that is attached to her Corporate Verification of Account, *{Review SCFCU's Exhibit "C"}* 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. *{Review SCFCU's Filed Complaint, Pg 2, ¶¶ 7-10 & Pg 3, ¶ 12, Review Amy Rogers' Corporate Account Verification, Pg 1, ¶ 1, SCFCU's Exhibit "A", Pg 1, ¶¶ 1 & 3 and SCFCU's Exhibit "C" for Verification}*

45. **As judicially noticed**, SCFCU's supporting document for a \$5,500.00 "Fixed Rate Loan" is signed and dated 9/5/02. *{SCFCU's Exhibit "B", "PAGE 2"}* As stated in this Legal Memorandum, I am not in debt to SCFCU. SCFCU owes me. My car loan 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. *{Review Filed Exhibits 12 & 13}* My car loan is paid out. *{Review Filed Exhibits 14 & 15}* I 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 Dollars (\$5,556.44). *{Review Filed Exhibits 5 & 9-15}*

46. **Reason #53 to Alter or Amend**: The Plaintiff's filed Complaint and Debt Collection are for a loan I never had, signed for, never received and never agreed to repay. The loan never happened and does not exist. A review of Amy Rogers' Corporate Verification of Account, on pg 2, verifies SCFCU's Debt Collection is for a February 24, 2003 loan for \$5,556.44.

As judicially noticed, there is no filed or amended Complaint for a LOANLINER® loan of any kind dated February 28, 2003, for \$5,500.00. The February 28, 2003 paperwork and application is for a mobile home with a fixed interest rate of 15%. Fixed means not changing. This loan only exists on the application and is not in SCFCU's Account Records. **As stated, I am not confused, it is the Court and SCFCU that are confused.**

47. **Reason #54 to Alter or Amend:** 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 SCFCU **misallocated over \$10,340.00** and misrepresented an open-ended credit plan as a 15% Fixed Interest Rate loan. This is a SCUTPA violation.

48. **Reason #55 to Alter or Amend:** Misrepresenting facts in a legal proceeding demand the return of all the money I paid SCFCU.

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.”

49. **As judicially noticed**, Federal guidelines and CUNA Mutual Group's lending guidelines prohibit using open-ended credit plans for home loans, site built or manufactured housing; i.e., ... mobile homes. SCFCU personnel were told the loan was for a mobile home, it is written on the application and SCFCU's personnel did not send any Addendum or other documents for me to sign relative to the mobile home purchase as required by CUNA's own guidelines.

50. Review the following Exhibits that verify my uncontested and never refuted Statements of Fact that the February 28, 2003, application; upon which the Court relied, is for a mobile home purchase and CUNA's LOANLINER® guidelines that govern such a purchase.

(a) Exhibit J.....CUNA Mutual Group Commentary on TILA's Section 226.(2)(a)(20)-3.

(b) Exhibit K.....CUNA Mutual Group Explains Why the Addendum Must be Given to the Borrower and What Must Be Signed.

(c) Exhibit L.....CUNA Mutual Group Subaccounts that Should not be Part of the Plan.

(d) Exhibit M.....CUNA Mutual Group When the Addendum Should Be Given.

51. **As judicially noticed, any attempt to imply that an Addendum was given to me in 2002 is false testimony and a "Fraud upon the Court."** There was no Addendum on file in the Plaintiff's documents or exhibits when the complaint was filed and SCFCU cannot present any documentation, verification, affidavits or sworn testimony from anyone employed by the SCFCU that an Addendum was given to me. **The Reason:** This cannot be done because; except for picking up the check, the loan was handled and approved by telephone and not in person.

52. **Reason #56 to Alter or Amend & Adjudicative Fact #78:** SCFCU's Membership & Account Agreement on pg 21, ¶ #6, **Under Finance Charge & LoanLiner** clearly states that "[t]he 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.**" For over 7 years my mobile home loan payments were improperly applied to an Open-end LOANLINER® Plus Account I never agreed to. There is no valid Membership and Account Agreement without an Addendum.

53. **Reason #57 to Alter or Amend:** SCFCU's misuse of my monthly payments is a clear violation of SCUTPA. **As judicially noticed,** from the Court's Records, SCFCU has not opposed, denied, refuted or controverted any of my Sworn Statements of Fact that are written in my Pleadings in over 3 years, going on 4. Therefore, the Court's Judgment Order is a Manifest Injustice and an egregious Error of Law.

54. **Adjudicative Fact #79:** I realized SCFCU has no legally enforceable right/s to keep any of my money because no valid LOANLINER® Membership and Account Agreement exists. There is no valid signed agreement for the 02/28/2003 advance, no valid signed agreement exists for the non-existent Cyber Loan of 02/24/2003 and no signed agreement exists for the advance the I received on March 5, 2003 for the mobile home purchase. **The Addendum and and the Membership and Account Agreement is the contractual arrangement.**

55. **Adjudicative Fact #80:** Therefore, I made SCFCU a very generous offer, so that SCFCU would not lose any money due to Unjust Enrichment, Fraud, Negligent Misrepresentation of Material Facts, Violations of TILA, SCUPTA and/or Unclean Hands. SCFCU refused the offer and simply lucked out in Court due to a misreading of a loan application by the Court and a failure to rely on the Court's Records. All that has changed with new information relative to TILA violations and unconsummated LOANLINER® credit plans and Membership and Account Agreements.

XII. ISSUES THAT MUST BE DECIDED BY THE TRIAL COURT IN ITS CONSIDERATION AND DELIBERATION RELATIVE TO MY MOTION TO ALTER OR AMEND THE ORDER OF JUDGMENT

A. Why the Trial Court must rule on the issues and arguments.

56. Without a ruling by the Trial Court, a reviewing Court simply will not be able to determine whether or not the Trial Court committed error.

(a) *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App. 2004) ("Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.").

(b) *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997). "[E]rror preservation requirements are intended "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments."

(c) *State v. Nelson*, 331 S.C. 1, 5 n. 6, 501 S.E.2d 716, 718 n. 6 (1998) ("the ultimate goal behind preservation of error rules is to insure that an issue raised on appeal has first been addressed to and ruled on by the trial court.")

B. Issues upon which the Trial Court must rule.

57. The Trial Court must rule on the following issues.

(a) Did the Trial Court err by not considering my **Judicial Admissions** that were filed since December of 2011 and restated in this Verified Legal Memorandum?

(b) Did the Trial Court err by not considering my **Evidentiary Admissions** that were filed since December of 2011 and restated in this Verified Legal Memorandum?

(c) **Violation of CUNA's Membership & Account Agreement:** On pg 21, ¶ #6, **Under Finance Charge & LoanLiner**, CUNA's Membership & Account Agreement clearly states "[t]he 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.**" Can the Trial Court ignore this requirement for a valid LOANLINER® Credit and Membership Agreement and my Counterclaim that **no valid Credit Agreement exists between SCFCU and me** because receiving the Addendum is essential to the credit arrangement?

(d) Can the Trial Court ignore SCFCU's violation of **15 U.S.C. § 1601 et seq.**, that mandate disclosures be made before a credit transaction is consummated?

(e) Can the Trial Court issue a Judgment Order without considering my **Affirmatives Defenses** and **Counterclaims** against SCFCU for violating TILA.

(f) **Policy of Law:** Can the Trial Court ignore South Carolina's long standing and well founded policy of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act?

(g) **Unclean Hands:** "He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief." The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." Can the Trial Court ignore my Affirmative Defense that SCFCU has Unclean Hands due to its TILA violations?

(h) **Recoupment:** "[W]hile the limitation of Section 1640(e) may be interposed to bar an affirmative counterclaim or set-off, it may not be used to defeat the equitable defense of recoupment. This Court has long held the view that: "[Recoupment] grows out of the contract itself which is the cause of action, and is not barred by the statute of limitations. Can the Trial Court ignore my **Affirmative Defense of Recoupment** against SCFCU for its TILA violations that have been ongoing for over 12 years?

(i) **Violation of SCUTPA:** SCUTPA 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.” Can the Trial Court ignore the evidence in the Court’s Record in SCFCU’s filed Exhibit 3? There is no fixed interest rate in SCFCU’s Exhibit 3, while the application states 15% fixed? Does this deception meet Trial Court’s definition of deceptive and the Supreme Court’s definition of misleading? For over 7 years SCFCU misapplied my mobile home payments to an Open-end account that is not written as an agreement. The Agreement was for a fixed rate 15% loan.

(j) **Unjust Enrichment:** In 1879, South Carolina’s Supreme Court held, “[T]here can be no doubt of the correctness of the legal proposition that, where money is paid under a mistake of fact, to a person who has no ground in conscience to claim it, the person paying it may recover it back.” *Glenn v. Shannon*, 12 S.C. 570, 570 (1879); see also *Pilot Life Ins. Co. v. Cudd*, 208 S.C. 6, 36 S.E.2d 860 (1945) (holding the general rule is that money paid to another under a mistake of fact may be recovered because the money belongs, in equity and good conscience, to the person who paid it). See *Castock Corp. v. Bailey*, 492 N.Y.S.2d 921 (Sup. Ct. 1985) (the fact that recipient has parted with the money is an insufficient excuse to forgive repayment); *70 Am. Jur. 2d Payment § 114(c)* (1987) (no defense where money has been paid to another or spent). For over 7 years SCFCU took money from me in the form of interest and without a valid membership agreement. In many states this would be considered **swindling** and **defrauding**.

(k) **SCFCU’s “Fraud upon the Court”**. There was no Addendum filed with SCFCU’s Complaint. Any attempt to include an Addendum as evidence or proof that one was given to me is false testimony and “Fraud upon the Court”. **As judicially noticed**, no Addendum was given to me because my loan was handled and approved by telephone before I became a member of SCFCU’s Credit Union. I never went to Charleston, South Carolina in 2002 and SCFCU’s office in Columbia never gave me Addendum.

(l) **Order of Judgment for a Complaint that was never filed**. There is no filed Complaint or an amended filed Complaint for a February 28, 2003 LOANLINER® loan. The filed Complaint is for a February 24, 2003, loan for \$5,546.44. Can a Judgment Order be issued for a Complaint that was never filed?

XIII. CONCLUSION

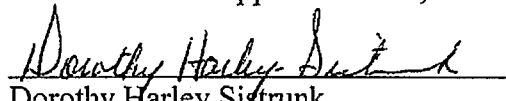
58. I have fully set forth the Facts, the Material Facts, Statutory Law, the Common Law, Precedents, but even more importantly, the Truth that should aid the Trial Court in its deliberations to vacate the Order of Judgment.

Rule 52(a), SCRPC clearly states in pertinent parts; “[U]pon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.”

XIV. RELIEF SOUGHT

59. For all the reason stated in my Legal Memorandum, the Judgment Order of the Court should be vacated and this case *Remanded* to the Circuit Court for a Jury Trial or *Dismissed with Prejudice* that includes the return of all monies paid in interest from 2002, the return of all the premiums I paid in credit life insurance and disability insurance, late fees charged, compensatory and punitive damages, if any, and all lawful statutory damages with cost of suit.

60. Judicial Notice is also requested of the manner and style of my pleadings. I do not argue law. I state the facts and then identify the supporting documentation, case law and/or authorities that support the facts, the evidence, the truth and the law.


Dorothy Harley Sistrunk
423 Bayne Street
Orangeburg, South Carolina
Ph: 803-268-0716 • Fx: 803-534-6727

XIV. NOTIFICATION

A copy of my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC* that has been filed with the Clerk of Court will be mailed to the following:

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

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly *SWORN*, and under the *PENALTY OF PERJURY* declares the facts in her "Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC " are true and correct as of her own knowledge. When it comes to matters stated therein that are based upon information and belief; as to those matters, she believes them to be true. Accordingly, based on the stated facts; Re: C. A. Case #2011-CP-38-1392, has signed, sealed, attested and executed this 6th day of April in the year 2015 in the City and County of Orangeburg, in the State of South Carolina.

Rule 11(c), SCRPC clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

Affiant's Signature: Dorothy Harley Sistrunk
Notary's Signature as Witness (1): William D. Buck

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2015 APR -6 PM 2:00

Signed, sealed and delivered in the presence of:

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

On 4/6/15 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 she executed the same in her authorized capacity, and by her signature on her " Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC " and this Notary Certification presents this document to the Court. WITNESS my hand and official seal.

Notary's Signature William D. Buck

Commission Expires _____ My Commission Expires
July 24, 2022

NOTARY PUBLIC
WILLIAM D. BUCK
ORANGEBURG, SOUTH CAROLINA
TEST: TRUE COPY
CLERK OF COURT
ORANGEBURG COUNTY, SC
(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 NOTICE OF MOTION AND
MOTION FOR A NEW TRIAL PURSUANT
TO RULE 52(b), SCRPC AND IN
CONJUNCTION WITH HER MOTION TO
ALTER OR AMEND THE ORDER OF
JUDGMENT PURSUANT TO RULE 59(e),
SCRPC THAT WAS FILED ON APRIL 6,
2015.**

Today's Date: April 8, 2015

Comes now the Defendant Dorothy Harley Sistrunk to file her *Notice of Motion and Motion for a New Trial* that is being filed in conjunction with her *Notice of Motion and Motion to Alter or Amend the Order of Judgment* pursuant to Rule 59(e), SCRPC that was filed on April 6, 2015.

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

1. **YOU WILL PLEASE TAKE NOTICE** that the above named Defendant has filed this *Motion for a New Trial* pursuant to *South Carolina's Rules of Civil Procedure 52(b)* that is being filed to support her *Motion to Alter or Amend the Order of Judgment* that was filed on April 6, 2015. The Order of Judgment was filed on March 26, 2015 and retrieved from the mailbox at 423 Bayne Street on Saturday, March 28, 2015.

2. The Motion for a *New Trial* is based upon the language of *Rule 52(b), SCRPC*. Please note the section of the Rule that is bold and underlined.

"[U]pon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, **and the motion may be made with a timely motion for a new trial.** When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment."

ATTEST: TRUE COPY

Wingji B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SC

Exhibit 44

3. As the Defendant in this case, I would also like the Court to take judicial notice of *Rules 59(a)-(d), SCRCP*, that state the following:

**“[R]ULE 59
NEW TRIALS; AMENDMENT OF JUDGMENTS**

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter. In non-jury actions the motion shall be made **not later than 10 days after the receipt of written notice of the entry of judgment** or of the filing of an order disposing of the action, if no judgment has been entered. [Note: Boldness for emphasis]

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment, the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.”

4. **Please Note:** *Rule 59(c), SCRCP* above. There is no language in the Rule that bars or prohibits the use of affidavits already filed or **Verified Pleadings** that are affidavits as long as they meet the standards of *Rule 56(e)*.

(a) “*Neal v. Kelly*, 963 F. 2d 453 (D.C. Cir. 1992) “[V]erification is defined as “[c]onfirmation of correctness, truth, or authenticity, by affidavit, oath, or deposition.” BLACK’S LAW DICTIONARY 1400 (5th ed. 1979). Neal verified the complaint under the statutory substitute for the taking of an oath, declaring “under penalty of perjury ... that the foregoing is true and correct,” and dating his signature. See 28 U.S.C. § 1746(1) (1991). Thus, the complaint was verified and constituted an affidavit.”

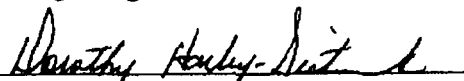
(b) Sheinkopf v. Stone, 927 F.2d 1259, 1262 (1st Cir.1991) “[T]he Fifth, Sixth, Seventh and Ninth Circuits have all held as well that a verified pleading functions as an affidavit when it meets the standards of Rule 56(e). Lodge Hall Music, Inc. v. Waco Wrangler Club, Inc., 831 F.2d 77, 80 (5th Cir.1987); Fowler v. Southern Bell Telephone & Telegraph Co., 343 F.2d 150, 154 (5th Cir.1965); Hooks v. Hooks, 771 F.2d 935, 945 (6th Cir.1985); Khan v. Garanzini, 411 F.2d 210, 212-13 (6th Cir.1969); Carroll v. Sielaff, 514 F.2d 415, 417 (7th Cir.1975); McElyea v. Babbitt, 833 F.2d 196, 197-98 (9th Cir.1987)”

(c) *Rule 56(e)*, SCRPC clearly states in pertinent parts; “[S]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.”

3. My Motion for a New Trial is supported by South Carolina’s Rules of Civil Procedure. Since it is being filed in conjunction with my Motion to Alter or Amend the Order of Judgment it is also supported by relevant case law, South Carolina’s Code of Laws, Public Law, SCFCU’s filed documents, my *Exhibits*, my *Statements of Material Facts that are not in Dispute* that was filed on April 25, 2012, *Affidavits* already on file and my *Legal Memorandum of Law and Authorities* that supports my *Motion to Alter or Amend*.

Respectfully Submitted;

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


Dorothy Harley Sistrunk

Dated: 4/8/15
Orangeburg, South Carolina

NOTIFICATION

A copy of my Notice of Motion and *Motion for a New Trial* that has been filed with the Clerk of Court will be mailed to SCFCU’s Attorney/s of Record:

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

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

NOTICE OF MOTION & 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), SCRPC, SOUTH
CAROLINA'S POLICIES OF LAW,
PRECEDENTS AND THE 7TH AMEND. TO
THE CONSTITUTION OF THE UNITED
STATES OF AMERICA.

JUDICIAL NOTICE REQUESTED
PURSUANT TO RULE 201, SCRE.

April 30, 2015

Comes now the Defendant, Dorothy Harley Sistrunk to her *Notice of Motion & 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), SCRPC, South Carolina's Policies of Law, Precedents, and the 7th Amendment to the Constitution of the United States of America*. The reference documents were retrieved from the mailbox at 423 Bayne Street in Orangeburg, South Carolina on March 28, 2015 (Order of Judgment – Exhibit 41) and April 23, 2015 (The Court denied a Motion that I never filed – Exhibit 46)

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

1. YOU WILL PLEASE TAKE NOTICE that the above named Defendant has filed this *Notice of Motion* pursuant to South Carolina's Rules of Civil Procedure and Precedents that will be identified in the accompanying *Memorandum of Law & Authorities* that are relevant to these proceedings and this action. [**Boldness** and Underling will be for emphasis throughout.]

Rule 7(b)(1), SCRPC, clearly states in pertinent parts; "[A]n application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion."

II. THE GROUNDS THEREFOR - ERRORS OF FACT OR LAW

2. This motion has been filed to *Set Aside the Judgment* due to the following grounds therefor - *Errors of Fact or Law & Misrepresentation or Misconduct by an Adverse Party*. [Note: Numbering is being continued from my Memorandum Supporting Motion to Alter or Amend]

ATTEST: TRUE COPY
W. B. Clark
CLERK OF COURT

(a) **Error of Fact or Law #10, Judicial Error #1 & Adjudicative Fact #81:**

I did not file a Motion to Reconsider on April 6, 2015, the Motion that is filed is to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRCP. {Refer to Clerk of Court's Record/s and/or Calendar/s & See Attached Memorandum}

(1) Rule 78(c), SCRCP, clearly states in pertinent parts; "[T]he clerk shall also keep such other books and records as may be required, and shall produce the Code of Laws, the rules, the calendars and the file book upon request of the court."

(2) Rule 79(e), SCRCP, clearly states in pertinent parts; "[I]n addition to the file book, each clerk of court shall maintain a motion calendar in such form as prescribed by the Office of South Carolina Court Administration. The clerk of court shall place on the motion calendar all pending motions and other matters requiring a summary hearing before the judge. The motion calendar shall contain the case number, date of request, name of the action, attorneys involved and the nature of the motion to be presented." {See Attached Exhibits 43 & 45}

(b) **Error of Fact or Law #11, Judicial Error #2 & Adjudicative Fact #82:**

I did not file a *Motion for a New Trial* in conjunction with a Motion to Reconsider. On April 8, 2015, my *New Trial Motion* was filed pursuant to Rule 52(b), SCRCP and as stated in ¶ 2(a), in conjunction with my *Motion to Alter or Amend* that was filed on April 6, 2014. In conjunction with...because of the language of Rule 52(b), SCRCP. {See Attached Exhibit 44, Pg 1}

Rule 52(b), SCRCP, clearly states in pertinent parts, "[U]pon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, **and the motion may be made with a timely motion for a new trial.** When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment."

(c) **Error of Fact or Law #12, Reason #58 to Alter or Amend & Adjudicative Fact # 83:** There is no filed Complaint or an Amended filed Complaint or Debt Collection for a LOANLINER® loan dated February 28, 2003. This is a Mistake & Error of Fact or Law. {Review the Court's Records Verification}

(1) As my Offer of Proof, SCFCU's filed Complaint and Debt Col-

lection are for an Open-end Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was supposedly 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 were verified by Amy Rogers on 10/26/2011 and filed in Court on 11/23/2011. I never had, never signed for and never agreed to any loan for \$5,556.44 on February 24, 2003. This has not changed in 4 years. {Review Filed Complaint}

(2) As my Offer of Proof, there is no law or CUNA Mutual Group guideline that prohibits purchasing a mobile home for \$5,500. My \$110.00 monthly payments for a 15% fixed interest rate mobile home loan were mistakenly applied to an open-end computer generated "cyber loan" dated February 24, 2003. This is the loan Amy Rogers has been consistently verifying in filed affidavits. And as I have already stated, I am not the person that is confused, it is the Trial Court and SCFCU.

(d) Error of Fact or Law #13, Judicial Error #6 & Reason # 37 to Alter or Amend: In 2003, mobile homes were not a part of CUNA Mutual Group's open-end credit plan for repeat sales. In addition to violating CUNA Mutual Group's lending guidelines, SCFCU also violated TILA's mandatory lending and disclosure guidelines and requirements. {Review 15 U.S.C. § 1601 et seq. & Exhibit 17, ¶ 1} No valid credit agreement exists between me and SCFCU. **The Credit Agreement and the Addendum is the Credit Arrangement.** No Addendum was ever given to me to consummate the arrangement in 2002 and none can be given to me now. As my Offer of Proof, there is no affidavit or testimony in the Court's Record that an Addendum was given to me with the necessary disclosures that are mandated by CUNA Mutual Group and the TILA, 15 U.S.C. § 1601 et seq. As stated, a violation occurred that has been ongoing for over 12 years.

(e) Error of Fact or Law #14, Judicial Error #4 & Reason #27 to Alter or Amend: Due to SCFCU's TILA violations, SCFCU is effectively barred from receiving any judicial relief under the **Legal Doctrine of Unclean Hands** and South Carolina's long standing **Policy of Law**... "[t]hat no person be permitted to acquire a right of action from his own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act." 86 C.J.S. Torts § 12 (1954) [T]his rule applies at both law and in equity and whether the cause of action is in contract or in tort." Jackson v. Bi-Lo Stores, Inc., 437 SE 2d 168 (Ct. App. 1993);.... " Once a Court discovers

a violation, no matter how technical, it has no discretion with respect to liability.

(1) *Smith v. Fidelity Consumer Discount Co.*, 898 F. 2d 896 (3rd Cir. 1990) "**[15] U.S.C. § 1601(a). TILA, as a remedial statute which is designed to balance the scales "thought to be weighed in favor of lenders," is to be liberally construed in favor of borrowers. Bizier v. Globe Financial Services**, 654 F.2d 1, 3 (1st Cir.1981). See *Johnson*, 527 F.2d at 262. TILA achieves its remedial goals by a system of strict liability in favor of the consumers when mandated disclosures have not been made. 15 U.S.C. § 1640(a). A creditor who fails to comply with TILA in any respect is liable to the consumer under the statute regardless of the nature of the violation or the creditor's intent. *Thomka v. A.Z. Chevrolet Inc.*, 619 F.2d 246, 249-50 (3d Cir.1980). "**[O]nce the court finds a violation, no matter how technical, it has no discretion with respect to liability.**" *Grant v. Imperial Motors*, 539 F.2d 506, 510 (5th Cir. 1976). **A single violation of TILA gives rise to full liability for statutory damages.** Damages include actual damages incurred by the debtor plus a civil penalty equal to double the finance charge up to a maximum of \$1,000. 15 U.S.C. § 1640(a)(1)(2)(A)(i). Multiple violations of TILA in the course of a single loan transaction do not yield multiple civil penalties but result in only a single penalty. 15 U.S.C. § 1640(g)"

(2) *US Life Credit Corp. v. James*, 279 SE 2d 367 (SC. S. Ct. 1981) "[T]he trial judge ruled that the one-year statute of limitations under the Truth in Lending Act, 15 U.S.C.A. § 1640(a), barred Debtor from pleading this alleged violation by answer almost five years later. We disagree. In *Tuloka Affiliates v. Moore*, S.C. 268 S. E. (2d) 293 (1980) filed approximately one month after the order in this action), we held that **a debtor can allege these violations as an affirmative defense by recoupment even after the one-year limitation period for bringing an action under the Truth in Lending Act has lapsed.**"

(3) *Beach v. Ocwen Fed. Bank*, 523 US 410 (1998) "[A]ccordingly, the Act requires creditors to provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights. See §§ 1631, 1632, 1635, 1638. Failure to satisfy the Act subjects a lender to criminal penalties for noncompliance, see § 1611, as well as to statutory and actual damages traceable to a lender's failure to make the requisite disclosures, see § 1640. Section 1640(e) provides that an action for such damages "may be brought" within one year after a violation of the Act, but that a borrower may assert the right to damages "as a matter of defense by recoupment or set-off" in a collection action brought by the lender even after the one year is up."

(f) **Error of Fact or Law #15, Judicial Error #8 & Reason #40 to Alter or**

Amend: My Recoupment Defense survives TILA's 1-year limit. {See my *Legal Memorandum Supporting Motion to Alter or Amend*, pgs 11-13 & 18}

(g) **Error of Fact or law #16 & Reason #60 to Alter or Amend:** Rule 54(b), SCRCP mandates all claims and liabilities must be settled before the entry of a final judgment. Therefore, my counterclaims are still pending and must be ruled upon by the court.

Rule 54(b), SCRCP, clearly states in pertinent parts; "[W]hen more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." **SCFCU owes me, I do not owe SCFCU.**

(h) **Error of Fact or Law #17 & Reason #61 to Alter or Amend:** The Courts ruling and/or decisions do not meet the requirements of Rules 56(c)-(d), SCRCP, and since I never filed a Motion to Reconsider, it is only appropriate to review the Court's most recent decisions in accordance with Rules 56(c)-(d), SCRCP. {See *Attached Exhibits 41 & 46*}

(1) Rule 56(c), SCRCP, clearly states in pertinent parts; "----- [T]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

(2) Rule 56(d), SCRCP, states the following in pertinent parts; "[I]f on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually

and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly. As previously stated on pg 2, SCFCU owes me, I do not owe SCFCU and my Counterclaims are still pending.

III. ADDITIONAL GROUNDS FOR MOTION TO SET ASIDE JUDGMENT

3. **Error of Fact or Law #18:** Rule 60(b)(3), SCRCP allows for relief from judgments or orders for 3 reasons;

- (a) Fraud,
- (b) Misrepresentation
- (c) Misconduct of an Adverse Party

4. Pursuant to Rule 60(b)(3), SCRCP, any attempt by SCFCU or SCFCU's attorney/s to present an Addendum to the Court as though one were given to me on September 5, 2002 is "Fraud" – a deliberated deception, a "Misrepresentation of Fact" and can only be characterized as "Misconduct by an Adverse Party". As stated in my filed Pleadings, my loan was handled by telephone and not in person. Therefore, it was impossible to give me an Addendum over the telephone. This statement has been Sworn to, Notarized and Verified and has never been denied or refuted by anyone from SCFCU that was alive or employed by SCFCU in 2002 or 2003. Any such attempt by SCFCU's personnel would be Perjury and Dishonest Conduct. {See Exhibit 3 in SCFCU's Hearing Presentation Book from 02/18/2015}

5. If the Court is deceived by false testimony or the presentation of false evidence by an adverse party and enters a judgment based on the presentation of false testimony and/or false evidence a Fraud upon the Court has been committed. The evidence must be clear and convincing. Therefore, see Exhibit 3 in SCFCU's Presentation Notebook that was used at the hearing on February 18, 2015.

6. **Error of Fact or Law #19 & Reason #54 to Alter or Amend:** The Court's Judgments fail to consider or realize, SCFCU's account records clearly and convincingly prove the essential elements of my case against SCFCU that are as follows:

- (a) My car loan with SCFCU is paid out.
- (b) There is no mobile home purchase in SCFCU's account records.

(c) There is no signed application for a loan of any kind dated February 24, 2003 and no reference on any document to an open-end loan dated February 24, 2003 or February 28, 2003.

(d) The signed application is clearly for a 15% fixed interest rate loan for \$5,500.00 that is dated February 28, 2003. There is no filed Complaint for this loan and the loan is not in default.

(e) The interest payments in SCFCU's accounting records are clearly not fixed.

(f) SCFCU misapplied my payments to an open-end account that their own account records verify and I never agreed to it or signed any loan application for it.

IV. CONCLUSION

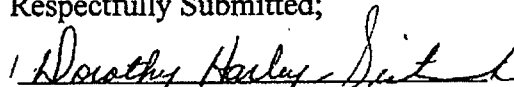
8. My *Motion to Set Aside the Judgment* is firmly supported by South Carolina's Rules of Civil Procedure, relevant case law, Public Law, SCFCU's filed documents, my Exhibits, my *Statements of Material Facts That are not in Dispute* that was filed on April 25, 2012, my *Legal Memorandum Supporting Motion to Alter or Amend the Order of Judgment* that was filed on April 6, 2015 and my *Objections to Judicial Errors* that is also being filed with this Motion.

V. NOTIFICATION

A copy of my *Notice of Motion & 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), SCRPC, South Carolina's Policies of Law, Precedents, and the 7th Amendment to the Constitution of the United States of America*. that has been filed with the Clerk of Court will be mailed to SCFCU's Attorney/s of Record:

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

Respectfully Submitted;


Dorothy Harley Sistrunk
423 Bayne Street
Orangeburg, SC 29115
Ph: 803-268-0716 Fx: 803-534-6727

Dated: 4/30/2015
Orangeburg, 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

**LEGAL MEMORANDUM OF LAW &
AUTHORITIES SUPPORTING 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), SCRPC,
SOUTH CAROLINA'S POLICIES OF LAW,
PRECEDENTS AND THE 7TH AMEND. TO
THE CONSTITUTION OF THE UNITED
STATES OF AMERICA.**

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

April 30, 2015

I. Let it be known that 18 U.S. Code § 1621 clearly states in pertinent parts; "[W]hoever—
(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a
law of the United States authorizes an oath to be administered, that he will testify, declare,
depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by
him subscribed, is true, willfully and contrary to such oath states or subscribes any material
matter which he does not believe to be true; or (2) in any declaration, certificate, verification, or
statement under penalty of perjury as permitted under section 1746 of title 28, United States
Code, willfully subscribes as true any material matter which he does not believe to be true; is
guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this
title or imprisoned not more than five years, or both. This section is applicable whether the
statement or subscription is made within or without the United States."

II. 28 U.S. Code § 1746 clearly states in pertinent parts; "[W]herever, under any law of the
United States or under any rule, regulation, order, or requirement made pursuant to law, any
matter is required or permitted to be supported, evidenced, established, or proved by the sworn
declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making
the same (other than a deposition, or an oath of office, or an oath required to be taken before a
specified official other than a notary public), such matter may, with like force and effect, be
supported, evidenced, established, or proved by the unsworn declaration, certificate, verification,
or statement, in writing of such person which is subscribed by him, as true under penalty of
perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state)
under penalty of perjury under the laws of the United States of America that the forego-
ing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)". "

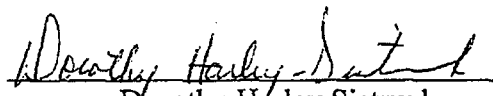
III. Finally, Rule 11(c), SCRCPP clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

(1) United States v. Bueno-Vargas, 383 F.3d 1104, 1111 (9th Cir. 2004). ("true test" for whether a declaration is made under oath or affirmation "is whether the procedures followed were such that perjury could be charged therein if any material allegation contained therein is false.").

(2) Jones v. Blanas, 393 F.3d 918 (9th Cir. 2004) "[U]nder 28 U.S.C. § 1746, a matter may be proved by a signed statement, executed within the United States, that reads: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date)."

(3) Schroeder v. McDonald, 55 F.3d 454, 460 n. 10 (9th Cir.1995) (pleading counts as "verified" if the drafter states under penalty of perjury that the contents are true and correct).

IV. Based on the above Laws, Rule and Precedents; as the Defendant in this case, I, Dorothy Harley Sistrunk, declare; under the PENALTY of PERJURY, under the laws of the United States of America and in compliance with Rule 11(c), SCRCPP, that the following stated facts are true and correct. Executed on April 30, 2015.


Dorothy Harley Sistrunk

As the Defendant in this case, I, Dorothy Harley Sistrunk, having set forth the penalty for perjury and declared that the following facts are true and correct under the Penalty of Perjury now file my *Legal Memorandum of Law & Authorities Supporting 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), SCRPC, South Carolina's Policies of Law, Precedents, and the 7th Amendment to the Constitution of the United States of America*. The reference documents were retrieved from the mailbox at 423 Bayne Street in Orangeburg, South Carolina on March 28, 2015 (Order of Judgment – Exhibit 41) and April 23, 2015 (The Court denied a Motion that I never filed – Exhibit 46)

V. JUDICIAL NOTICE REQUESTED FOR ADJUDICATIVE FACTS THAT ARE NECESSARY AND ESSENTIAL

1. Like in my *Motion to Alter or Amend the Judgment*, in this *Memorandum of Law and Authorities* supporting my *Motion to Set Aside the Judgment*, rather than write as the Defendant, I will plead in the first person. Accordingly, and pursuant to *Rule 201, SCRE*, as the Defendant in this case, I am requesting Judicial Notice of Adjudicative Facts. *Rule 201, SCRE*, clearly states in pertinent parts, [Note: Boldness and/or Underlining will be added for emphasis.]

(a) “[T]his rule governs only judicial notice of adjudicative facts.

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

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

(d) **[Adjudicative Fact #1]**: A court shall take judicial notice if requested by a party and supplied with the necessary information. [Note: Shall means mandatory] *State v. Foster*, 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981) (“Taken literally, the word ‘shall’ is mandatory.”)

(e) A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Judicial notice may be taken at any stage of the proceeding....”

(1) “[A] trial court may take judicial notice of a fact only if sufficient notoriety attaches to the fact involved as to make it proper to assume its existence without proof.” *Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 228 S.E.2d 108 (1976). “[A] fact is not subject to judicial notice unless the fact is either of such common knowledge that it is accepted by the general pub-

lic without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.” *Masters v. Rodgers Dev. Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984).

(2) *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) “[A] court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records. 31 C.J.S., Evidence, Section 50(1), p. 1018-1021.”

(i) *Value Oil Company v. Town of Irvington*, 377 A. 2d 1225 (N.J. Superior Ct. Law Div. 1977) “[T]he general rule of construction is that “may” means permissive and “shall” means mandatory. *Harvey v. Essex Cty. Freeholder Bd.*, 30 N.J. 381, 391 (1959). Accord, *Franklin Estates, Inc. v. Edison Tp.*, 142 N.J. Super. 179, 184 (App. Div. 1976).”

(ii) *Ratliff v. Phillips*, 746 SW 2d 405 (Ky. S. Ct. 1988) “[B]oth by dictionary definition and legislative enactment the word “shall” means mandatory. KRS 446.010 (29). In the common understanding of most individuals, the word “shall” means must and such a view is supported by the dictionary and the statute.”

Note: To avoid confusion and constant explanations, the numbering of Errors of Fact or Law, Judicial Errors, Reasons to Alter or Amend and Adjudicative Facts will be continued from my Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend the Order of Judgment that was filed on April 6, 2015 and from my Objections to Judicial Errors; Re: A Judgment on a Complaint That Was Never Filed; a Denial of a Motion Never Filed, and Additional Errors of Fact or Law That Are Not in Accordance with South Carolina’s Rules of Civil Procedure, Rules of Evidence, Precedent and Amendment VII to the Constitution of the United States of America that is being filed with this Memorandum.

ARGUMENT #1: The motion I filed must be ruled on by the Court, to Alter or Amend, not one I did not file, Motion to Reconsider.

1. **Error of Fact or Law #10, Judicial Error #1 & Adjudicative Fact #81:** I did not file a Motion to Reconsider the Order of Judgment. On April 6, 2015, I filed a Motion to Alter or Amend the Judgment pursuant to Rule 59(e), SCRPC. {For Judicial Notice; See *Attached Exhibits 42-43*} In South Carolina, issues are not preserved for Appellate Review, if a Motion to Alter or Amend the Judgment is not filed. This is in accordance with Federal Courts and South Carolina’s Appellate Court that have nearly identical adjudicative positions relative to a proper Motion to Alter or Amend.

(1) North River Ins. Co. v. CIGNA Reinsurance Co., 52 F. 3d 1194 (3rd Cir. 1995) "[A] proper motion to alter or amend judgment "must rely on one of three major grounds: (1) an intervening change in controlling law; (2) the availability of new evidence [not available previously]; [or] (3) the need to correct clear error [of law] or prevent manifest injustice" Natural Resources Defense Council v. United States Envtl. Protection Agency, 705 F.Supp. 698, 702 (D.D.C.1989) (quoting All Hawaii Tours, Corp. v. Polynesian Cultural Ctr., 116 F.R.D. 645, 649 (D.Haw. 1987)."

(2) From I'ON, LLC v. Town of Mt. Pleasant, 526 S.E.2d 716 (2000), "[A]n appellate court may not, of course, reverse for any reason appearing in the record. The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments. E.g., Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (199) (appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court); State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991) (same); Sumter Building & Loan Ass'n v. Winn, 45 S.C. 381, 23 SE 29 (1895) (same)."

(3) From the same case; I'ON, LLC v. Town of Mt. Pleasant, 526 S.E.2d 716 (2000), "[I]f the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review. E.g., Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton, 311 S.C. 56, 427 S.E.2d 673 (1993); Hoffman v. Powell, 298 S.C. 338, 380 S.E.2d 821 (1989); see also Rules 52(b) and 59(e), SCRC.P."

(4) Innovative Home Health Care v. PT-OT ASSOCIATES, 141 F. 3d 1284 (8th Cir. 1998) "[R]ule 59(e) motions serve a limited function of correcting "manifest errors of law or fact or to present newly discovered evidence." Hagerman, 839 F.2d at 414 (quoting Rothwell Cotton Co. v. Rosenthal & Co., 827 F.2d 246, 251 (7th Cir.), as amended, 835 F.2d 710 (7th Cir.1987)). Such motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment. *Id.* A case in which a timely Rule 59(e) motion has been filed lacks finality because the motion tolls the time limitation for appeal in order to provide the trial court with jurisdiction to resolve the motion. This "tolling process" encourages "both correctness and finality." Jackson v. Schoemehl, 788 F.2d 1296, 1298 (8th Cir. 1986). See also Sanders v. Clemco Indus., 862 F.2d 161, 170 (8th Cir.1988); 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2821, at 220-21 (2d ed.1995)."

(5) Marlar v. State, 653 SE 2d 266 (2007) “[T]he cases this Court remanded for specific findings were unique cases in which the Court attempted to remind circuit court judges and parties that: (1) specific findings of fact and conclusions of law were required; and (2) a Rule 59(e) motion must be filed if issues are not adequately addressed in order to preserve the issues for appellate review. Although the cases apparently have not accomplished the Court’s goal, they do not change the general rule that issues which are not properly preserved will not be addressed on appeal.”

2. As the Defendant in this case, I do not speculate or argue law, I state the facts and support my Statements of Fact with the appropriate evidentiary basis and/or material/s; be it an exhibit, affidavit, document and/or citation of an authority or from the Court’s own records.

(1) Straeter Distributing v. Fry-Wagner Moving, 862 S.W.2d 415, 417 (Mo.App.E.D.1993) at 417. “[T]he three components of a point relied on are: a concise statement of the challenged ruling of the trial court; the rule of law the court should have applied; and the evidentiary basis upon which the asserted rule is applicable. Points which do not state what ruling of the trial court is challenged nor provide a proper evidentiary basis, but instead set out abstract statements of law, preserve nothing for appeal. Id.”

(2) Battle v. State, 478 P. 2d 1005 (Okla. Ct. Crim. App. 1970) “[I]t is necessary for counsel for Plaintiff in error not only to assert error, but to support his contentions by both argument and the citations of authorities.”

(3) First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting that when a party fails to cite supporting authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal).

(4) Freeman v. McBee, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) “[A] court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records. 31 C.J.S., Evidence, Section 50(1), p. 1018-1021.”

ARGUMENT #2: My New Trial Motion was filed pursuant to Rule 52(b), SCRCP in conjunction with a Motion to Alter or Amend.....not Reconsider.

3. **Error of Fact or Law #11, Judicial Error #2 & Adjudicative Fact #82:** I did not file a Motion for a New Trial in conjunction with a Motion to Reconsider. On April 8, 2015, my New Trial Motion was filed pursuant to Rule 52(b), SCRCP, that is incorporated by reference as though I have written it herein verbatim. This was clearly stated in the caption and on pg 1. In

conjunction with..because of the language of Rule 52(b), SCRPC. {For Judicial Notice, See Exhibits 44-45}

Rule 52(b), SCRPC, clearly states in pertinent parts, “[U]pon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, **and the motion may be made with a timely motion for a new trial.** When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.”

ARGUMENT #3: There is no filed Complaint or an Amended file Complaint for a LOANLINER® loan dated February 28, 2003 & there is no default.

4. As stated in Reason #35 to Alter or Amend, Judicial Error #3 & Adjudicative Fact #53; in ¶ 28, on pg 28, in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend Judgment* and in my filed Pleadings that are Notarized and Sworn to pursuant to Rule 11(c), SCRPC or Verified pursuant to 28 U.S. Code § 1746(2) that are incorporated by reference as though I have written them herein verbatim, there is no filed Complaint or an Amended filed Complaint or Debt Collection for a LOANLINER® loan dated February 28, 2003. This is an egregious Mistake & Error of Fact or Law. {Review the Court's Records for Verification}

(a) As my Offer of Proof, that should have been apparent from context, I requested Judicial Notice of the Court's Records. {*Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984)} As stated in Adjudicative Fact #49; in ¶ 26(d), on pg 25, in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend* that is incorporated by reference as though I have written it herein verbatim, there is no Complaint in the Court's Record for an Open-end Disbursement Receipt Plus LOANLINER® Credit and Security Agreement (“Open-end Agreement”)

that was delivered on February 28, 2003 that called for the payment of \$5,500.00.

{Review the Court's Records & Rule 103(a)(2), SCRE}

(b) As stated in **Adjudicative Fact #80**; in ¶ 55, on pg 43, in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend* that is incorporated by reference as though I have written it herein verbatim, SCFCU's filed Complaint and Debt Collection are for an Open-end Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was supposedly 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 were verified by Amy Rogers on 10/26/2011 and filed in Court on 11/23/2011. I never had, signed for, and never agreed to any loan for \$5,556.44 on February 24, 2003.

5. As an **Offer of Proof**, in my **Third Judicial Error in Judgment of Fact or Law**, in ¶ 26(c), on page 23, in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend*, that is incorporated by reference as though I have written it herein verbatim, **there is no state or federal law limiting the price of a mobile home and no CUNA Mutual Group guideline limiting the price or that prohibits purchasing a mobile home for \$5,500.** My \$110.00 monthly payments for a 15% fixed interest rate mobile home loan were mistakenly applied to an open-end computer generated "cyber loan" dated February 24, 2003. This is the loan Amy Rogers has been consistently verifying in filed affidavits. And as I have already stated, **I am not the person that is confused, it is the Trial Court and SCFCU.**

ARGUMENT #4: In 2003, mobile homes were not included in CUNA's Mutual Group's open-end credit plan.

6. **Error of Fact of Law #12, Reason #58 to Alter or Amend & Adjudicative Fact # 83:** In 2003, mobile homes were not a part of CUNA Mutual Group's open-end credit

plan for repeat sales. In addition to violating CUNA Mutual Group's lending guidelines, SCFCU also violated TILA's mandatory lending and disclosure guidelines and requirements. {Review 15 U.S.C. § 1601 et seq., Exhibit 17, ¶ 1 & for Judicial Notice, Filed Exhibits D, K-M & Beach v. Ocwen Fed. Bank, 523 US 410 (1998), pgs 18-19 in Legal Memorandum Supporting Motion to Alter or Amend.}

ARGUMENT #5: The Credit Agreement and the Addendum is the Credit Arrangement.

7. Reason #59 to Alter or Amend & Adjudicative Fact # 84: No valid credit agreement exists between me and SCFCU. The Credit Agreement and the Addendum is the Credit Arrangement. Review Filed Exhibit 17, ¶ 1 and Exhibit K. No Addendum was ever given to me to consummate the arrangement.

8. In ¶ 13, on pg 10 in Reason #5 to Alter or Amend & Adjudicative Fact #15, in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend*, that is incorporated by reference as though I have written it herein verbatim, as my Offer of Proof, I requested Judicial Notice of the fact that at the trial, SCFCU did not present any eyewitness/es and/or a verified and/or certified and/or sworn to depositions, interrogatories, admissions, sworn testimony or an affidavit from an official or any authorized employee at SCFCU in Charleston, South Carolina that stated under the Penalty of Perjury that he/she/they witnessed my receiving an Addendum; either on, or prior to September 5, 2002. This cannot be done and any such statement would be...and...would have been Perjured Testimony.

9. Reason #42 to Alter or Amend & Adjudicative Fact # 85: There is no evidence or testimony in the Court's Record that an Addendum was given to me with the necessary disclosures that are mandated by CUNA Mutual Group and the TILA, 15 U.S.C. § 1601 et seq. As consistently stated, a violation occurred that has been ongoing for over 12 years. {For Judicial Notice, Review Exhibit M – *How Should the Addendum Be Used & the Court's Records*}

(1) Rhodes v. Sutter Health, 940 F. Supp. 2d 1258 (Dist. Ct. ED Cal. 2013) “[a] defendant can seek summary judgment by “pointing out the absence of evidence to support plaintiff’s claim. Dove v. PNS Stores, Inc., 982 F.Supp. 1420, 1425 (C.D.Cal.1997).”

(2) Dresher v. Burt, 75 Ohio St. 3d 280 (Ohio: S. Ct. 1996) “[J]ustice White, who provided the fifth and deciding vote in Celotex, stated, in a separate concurring opinion: “I agree that the Court of Appeals was wrong in holding that the moving defendant must always support his motion with evidence or affidavits showing the absence of a genuine dispute about a material fact. I also agree that the movant may rely on depositions, answers to interrogatories, and the like, to demonstrate that the plaintiff has no evidence to prove his case and hence that there can be no factual dispute. *But the movant must discharge the burden the Rules place upon him: It is not enough to move for summary judgment without supporting the motion in any way or with a conclusory assertion that the plaintiff has no evidence to prove his case.*”” See also Russ v. International Paper Co., 943 F. 2d 589 (5th Cir. 1991); Exigent Technology, Inc. v. Atrana Solutions, Inc., 442 F. 3d 1301 (Ct. App. Fed. Cir. 2006); French v. Hawaii Pizza Hut, Inc., 99 P. 3d 1046 (Haw: S. Ct. 2004) [Unlike these cases, my case is supported by documented evidence. As a Judicial Notice, review my filed exhibits and the Court’s Records that support all my Statements of Fact.]

ARGUMENT #6: The Plaintiff’s, SCFCU’s, TILA violations constitute Unclean Hands.

10. Error of Fact or Law #13, Judicial Error #6 & Reason # 37 to Alter or

Amend: Due to SCFCU’s TILA violations. SCFCU is effectively barred from receiving any judicial relief under the **Legal Doctrine of Unclean Hands** and South Carolina’s long standing **Policy of Law**.. “[t]hat no person be permitted to acquire a right of action from his own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act.” 86 C.J.S. Torts § 12 (1954) [T]his rule applies at both law and in equity and whether the cause of action is in contract or in tort.” Jackson v. Bi-Lo Stores, Inc., 437 SE 2d 168 (Ct. App. 1993); 1A C.J.S. Actions § 29 (1985); Restatement (Second) of Torts § 774 (1977)”

11. Error of Fact or Law #14, Judicial Error #4 & Reason #27 to Alter or

Amend: My **Recoupment Defense** survives TILA’s 1-year limit. {See my *Legal Memorandum Supporting Motion to Alter or Amend*, pgs 11-13 & 18}

VI. THE COURT'S RULINGS OR DECISIONS DO NOT COMPLY WITH KEY PROVISIONS OF SOUTH CAROLINA'S RULES OF CIVIL PROCEDURE

ARGUMENT #7: The Court's Judgment & Ending Order do not comply with Rule 42(b), SCRCP.

12. Error of Fact or Law #15, Judicial Error #8 & Reason #40 to Alter or

Amend: My Counterclaim that SCFCU owes me money for misapplying my mobile home payments to an open-end plan is a separate issue from any supposed default that is owed to SCFCU. In addition, my compulsory Counterclaim that SCFCU's misapplication of my mobile home payments is a SCUTPA violation is an action at law that mandates a jury trial. Therefore, the Court's Order of Judgment and Ending Order do not comply with Rule 42(b), SCRCP that clearly states the following in pertinent parts;

(1) "[T]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State."

(2) *Advance Intern., Inc. v. NC BANK OF SC*, 449 SE 2d 580 (Ct.App. 1994) "[W]here a complaint is equitable and the counterclaim, for which a jury trial is requested, is legal and compulsory, the trial court must order separate trials pursuant to Rule 42(b), SCRCP. *First-Citizens Bank and Trust Co. of S.C. v. Hucks*, 305 S.C. 296, 408 S.E.2d 222 (1991) ----. See *Payne v. Holiday Towers, Inc.*, 283 S.C. 210, 321 S.E.2d 179 (Ct.App.1984) (action alleging unfair trade practices is an action at law).

(3) *Wright v. Hiester Const. Co., Inc.*, 698 SE 2d 822 (Ct.App. 2010) "[A] trial court 'may order a separate trial...of any separate issue ... always preserving inviolate the right of trial by jury....' Rule 42(b), SCRCP (emphasis added). 'Trial judges have discretion as to whether to bifurcate a trial.' *Durham v. Vinson*, 360 S.C. 639, 644 n. 2, 602 S.E.2d 760, 763 n. 2 (2004). 'A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice.' *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct.App. 1998)."

(4) *Johnson v. SC National Bank*, 354 SE 2d 895 (1987) "[w]here a complaint is equitable and the counterclaim is legal and compulsory, the

trial judge has two options. He may either order separate trials pursuant to Rule 42(b) or may order the claims tried in a single proceeding. In making this determination, caution should be taken to assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues ---- Moreover, when issues common to both legal and equitable claims are to be tried in a single proceeding, legal issues are to be determined first, and the findings of the jury are binding on the sitting judge, as trier of the equitable claims....” (Citations omitted)

ARGUMENT #8: The Court’s Judgment & Ending Order do not comply with Rule 54(b), SCRCF.

13. Error of Fact or law #16 & Reason #60 to Alter or Amend: Rule 54(b),

SCRCF mandates all claims and liabilities must be settled before the entry of a final judgment.

Therefore, my counterclaims are still pending and must be ruled upon by the court.

(1) Rule 54(b), SCRCF, clearly states in pertinent parts; “[W]hen more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. **In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the the parties.**” SCFCU owes me, I do not owe SCFCU.

(2) Morrison-Knudsen Co., Inc. v. Archer, 655 F. 2d 962 (9th Cir. 1981) “[T]he trial court should not direct entry of judgment under Rule 54(b) unless it has made specific findings setting forth the reasons for its order. Those findings should include a determination whether, upon any review of the judgment entered under the rule, the appellate court will be required to address legal or factual issues that are similar to those contained in the claims still pending before the trial court. A similarity of legal or factual issues will weigh heavily against entry of judgment under the rule, and in such cases a Rule 54(b) order will be proper only where necessary to avoid a harsh and unjust result, documented by further and specific findings.”

(3) General Acquisition, Inc. v. GenCorp, Inc., 23 F. 3d 1022 (6th Cir. 1994) “[I]n Liberty Mutual, the Supreme Court found it unnecessary to

delineate precisely "what constitutes a claim for relief" under Rule 54(b). 424 U.S. at 744 n. 4, 96 S.Ct. at 1206 n. 4. The lack of any "generally accepted test" often makes the task of ascertaining whether a particular action presents one or more claims a formidable one. Wright, Miller & Kane § 2657; 2A Federal Procedure § 3:342 ("The question of what constitutes a single claim for relief is unsettled and the courts are reluctant to articulate a hard-and-fast test."); 6 Moore ¶ 54.33[2] ("With the doctrine thus in ferment it is difficult to state any reliable litmus for identifying a distinct 'claim for relief.'")."

(4) Noble v. Colwell, 44 Ohio St. 3d 92 (Ohio: S. Ct. 1989) "[R]ule 54(b) makes mandatory the use of the language, 'there is no just reason for delay.' Unless those words appear where multiple claims and/or multiple parties exist, the order is subject to modification and it cannot be either final or appealable. Jarrett v. Dayton Osteopathic Hospital, Inc. (1985), 20 Ohio St.3d 77, 20 OBR 407, 486 N.E.2d 99; Whitaker-Merrell Co. v. Geupel Construction Co. (1972), 29 Ohio St.2d 184, 58 O.O.2d 399, 280 N.E.2d 922, syllabus. The required language puts the parties on notice when an order or decree has become final for purposes of appeal."

14. **Error of Fact or Law #17 & Reason #61 to Alter or Amend:** The Courts ruling and/or decisions do not comply with the requirements of Rules 56(c)-(d), SCRP. The Court's Order of Judgment is based almost entirely on SCFCU's presentation of February 18, 2015 that includes the fraudulent presentation of an Addendum as Exhibit 3. Rule 56(c), requires the Court to use the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any to determine if there are any material facts that mandate a trial. This clearly was not done on or after February 18, 2015. In addition, if judgment is not rendered for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogation, shall, if practicable ascertain what material facts exist without substantial controversy...etcetera....

(1) Rule 56(c) SCRPC, clearly states in pertinent parts; ".....[T]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

(2) Rule 56(d). SCRPC, that states in pertinent parts....."[I]f on motion

under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.”

(3) Hall v. Fedor, 561 SE 2d 654 (Ct. App. 2002) “[S]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997); Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 511 S.E.2d 699 (Ct.App.1999), *aff’d*, 341 S.C. 320, 534 S.E.2d 672 (2000).

(4) Anderson v. Liberty Lobby, Inc., 477 US 242 (1986) “[a]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. ----- there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” (Some supra citations omitted)

ARGUMENT #9: The Court's Judgment failed to consider SCFCU's filed documents clearly and convincingly prove my case against SCFCU.

15. **Error of Fact or Law #18 & Reason #62 to Alter or Amend:** Amy Rogers has never demonstrated she has any personal knowledge of the events leading up to and on September 5, 2002 or up to...and...on February 28, 2003. I refuted every Affidavit Amy Rogers filed in Pleadings and in Affidavits. My Affidavits refuting Amy Rogers' Affidavits and Corporate Verification of Accounts are incorporated by reference as though I have written them herein verbatim.

16. **Error of Fact or Law #19 & Reason #54 to Alter or Amend:** The Court's Judgments fail to consider or realize, SCFCU's account records clearly and convincingly prove the essential elements of my case against SCFCU that are as follows:

- (a) My car loan with SCFCU is paid out.
- (b) There is no mobile home purchase in SCFCU's account records.

(c) There are is no signed application for a loan of any kind dated February 24, 2003 and no reference on any document to an open-end loan dated February 24, 2003 or February 28, 2003.

(d) The signed application is clearly for a 15% fixed interest rate loan for \$5,500.00 that is dated February 28, 2003. There is no filed Complaint for this loan and the loan is not in default.

(e) The interest payments in SCFCU's accounting records are clearly not fixed.

(f) SCFCU misapplied my payments to an open-end account that their own account records verify and I never agreed to it or signed any loan application for it.

17. **Error of Fact or Law #20, Judicial Error #5 & Reason #63 to Alter or Amend:**

The Court failed to acknowledge the **Offers of Proof** in my **Adjudicative Facts** that should have been apparent from the context. I specifically requested **Judicial Notice of Adjudicative Facts** in my *Legal Memorandum Supporting Motion to Alter or Amend the Order of Judgment*. **Judicial Notice** is mandatory when requested and my **Adjudicative Facts** should have been considered by the Court. Therefore, the current order to end this case was also entered in violation of Rules 103(a)(2), and 201(d), SCRE. {*State v. Foster*, 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981)}

ARGUMENT #10: The Court's Judgment ignores SCFCU's Misrepresentation and/or Misconduct and possible Fraud upon the Court if an attorney is involved in the deception.

18. **Error of Law or Fact #21, Judicial Error #7 & Reason #4 to Alter or Amend:**

The Court's acceptance of false evidence is not only a violation of South Carolina's and the Federal Rules of Evidence, it is also a violation of Rule 60(b)(3), SCRCF, that specifically allows for judgments to be set aside for **Fraud**, **Misrepresentation** or **Misconduct by an Adverse Party**. SCFCU's presenting an Addendum to the Court as though one were given to me on September 5, 2002; by definition; is either, "**Fraud**" - a deliberated deception; a "**Misrepresentation**" - false evidence; or "**Misconduct by an Adverse Party**" that can also be defined as...and/or...described as..**Improper Conduct** or **Dishonest Conduct** during a legal proceeding. The Court must also decide this issue.

(1) Pope v. Federal Express Corp., 138 F.R.D. 675, 683 (W.D. Mo. 1990), *aff'd in part, vacated in part on other grounds*, 974 F.2d 982, 984 (8th Cir. 1992) (court has inherent power to sanction litigants for improper conduct) Pope, 138 F.R.D. at 682 (dishonest conduct by a party or conduct that "threatens the integrity of the judicial process" is grounds for dismissal with prejudice under Rule 41(b)).

(2) Black's Law Dictionary (rev. 4th ed. 1968) pg 1150, defines **Misconduct** in pertinent parts as; "[A] transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness."

ARGUMENT #11: The Court has failed to rule on my Affirmative Defense of Recoupment. This is an Error of Law and an Abuse of Discretion.

19. **Judicial Error #9 & Reason #30 to Alter or Amend:** Ending this case without a ruling on my Affirmative Defenses of Recoupment is another Manifest Injustice, another egregious Error of Law and another Abuse of Discretion. As stated in my filed Pleadings, my loan was handled by telephone and not in person. Therefore, it was impossible for SCFCU's personnel to give me an Addendum over the telephone. This statement has been Sworn to, Notarized and Verified and has never been denied or refuted by anyone from SCFCU that was alive or employed by SCFCU in 2002 or 2003. Any such attempt by SCFCU's personnel would be Perjury and Dishonest Conduct.

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

(2) Smith v. Fidelity Consumer Discount Co., 898 F. 2d 896 (3rd Cir. 1990) "[15] U.S.C. § 1601(a). TILA, as a remedial statute which is designed to balance the scales "thought to be weighed in favor of lenders," is to be liberally construed in favor of borrowers. Bizier v. Globe Financial Services, 654 F.2d 1, 3 (1st Cir.1981). See Johnson, 527 F.2d at 262. TILA achieves its remedial goals by a system of strict liability

in favor of the consumers when mandated disclosures have not been made. 15 U.S.C. § 1640(a). A creditor who fails to comply with TILA in any respect is liable to the consumer under the statute regardless of the nature of the violation or the creditor's intent. *Thomka v. A.Z. Chevrolet Inc.*, 619 F.2d 246, 249-50 (3d Cir.1980). "**[O]nce the court finds a violation, no matter how technical, it has no discretion with respect to liability.**" *Grant v. Imperial Motors*, 539 F.2d 506, 510 (5th Cir. 1976). **A single violation of TILA gives rise to full liability for statutory damages.** Damages include actual damages incurred by the debtor plus a civil penalty equal to double the finance charge up to a maximum of \$1,000. 15 U.S.C. § 1640(a)(1)(2)(A)(i). Multiple violations of TILA in the course of a single loan transaction do not yield multiple civil penalties but result in only a single penalty. 15 U.S.C. § 1640(g)"

(2) *US Life Credit Corp. v. James*, 279 SE 2d 367 (S.C. S. Ct. 1981) "[T]he trial judge ruled that the one-year statute of limitations under the Truth in Lending Act, 15 U.S.C.A. § 1640(a), barred Debtor from pleading this alleged violation by answer almost five years later. We disagree. In *Tuloka Affiliates v. Moore*, S.C. 268 S. E. (2d) 293 (1980) filed approximately one month after the order in this action), we held that **a debtor can allege these violations as an affirmative defense by recoupment even after the one-year limitation period for bringing an action under the Truth in Lending Act has lapsed.**"

(3) *Beach v. Ocwen Fed. Bank*, 523 US 410 (1998) "[A]ccordingly, the Act requires creditors to provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights. See §§ 1631, 1632, 1635, 1638. Failure to satisfy the Act subjects a lender to criminal penalties for noncompliance, see § 1611, as well as to statutory and actual damages traceable to a lender's failure to make the requisite disclosures, see § 1640. Section 1640(e) provides that an action for such damages "may be brought" within one year after a violation of the Act, but that a **borrower may assert the right to damages "as a matter of defense by recoupment or set-off" in a collection action brought by the lender even after the one year is up.**"

20. If the Court is deceived by false testimony or the presentation of false evidence by an adverse party and enters a judgment based on the presentation of false testimony and/or false evidence, such reliance voids the Judgment of the Court. However, the evidence must be clear and convincing. Therefore, see Exhibit 3 in SCFCU's Presentation Notebook that was used at the hearing on February 18, 2015. Amy Rogers' Affidavits verify she has no personal knowledge of the events of February 28, 2003.

(1) "[A]ccordingly, cases require a party seeking to show fraud on the court to present clear and convincing evidence of the following elements: "1) [conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court." Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010); (quoting Carter v. Anderson, 585 F.3d 1007, 1011–12 (6th Cir. 2009))."

(2) Giglio v. United States, 405 US 150 (1972) "[A]s long ago as Mooney v. Holohan, 294 U. S. 103, 112 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." This was reaffirmed in Pyle v. Kansas, 317 U. S. 213 (1942). In Napue v. Illinois, 360 U. S. 264 (1959), we said, "[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Id.*, at 269."

(3) Nix v. Whiteside, 475 US 157 (1986) "[I]n Strickland, we recognized counsel's duty of loyalty and his "overarching duty to advocate the defendant's cause." *Ibid.* Plainly, that duty is limited to legitimate, lawful conduct compatible with the very nature of a trial as a search for truth. Although counsel must take all reasonable lawful means to attain the objectives of the client, counsel is precluded from taking steps or in any way assisting the client in presenting false evidence or otherwise violating the law. This principle has consistently been recognized in most unequivocal terms by expositors of the norms of professional conduct since the first Canons of Professional Ethics were adopted by the American Bar Association in 1908."

(4) "[W]henever an officer of the court commits fraud during a procedure in the court, he is engaged in fraud upon the court." Bulloch v. United States 763 F 2d 1115, 1121 (10th Cir. 1985). "[F]raud upon the court makes void the orders and judgments of that court. It is well settled law that any attempt to commit "fraud upon the court" vitiates the entire proceeding." People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354,192, NE 229 (1934)

(5) "Fraud upon the court is committed when a representative of the court mediators, evaluators, administrators, special appointees, lawyers, judges, referees or guardian ad litem, fraudulently present facts to the court that interfere with a just and equitable decision making process. This is an extremely serious crime, and so in dire opposition to the definition of justice that this crime is not subject to any statute of limitations." {SEO Law Firm, Tampa, FL.}

ARGUMENT #12: The Court's Judgment Orders violate Amendment VII to the Constitution of the United States and another Abuse of Discretion.

21. **Judicial Error #10 & Reason #64 to Alter or Amend:** Ending this case without a jury trial would be a violation of Amendment VII to the Constitution of the United States of America. Amendment VII preserves "the right of trial by jury" in civil cases.

(1) Amendment VII clearly states; "[I]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

(2) Landgraf v. Ellsworth, 126 NW 2d 766 (Minn. S. Ct. 1964) "[I]t has been held that Amendment VII of the United States Constitution applies only to Federal and not to state action. However, determination of the right to a jury trial under the facts of this case would be much the same under either the Federal or state constitution. One of the best discussions of this question may be found in Dairy Queen, Inc. v. Wood, 369 U.S. 469, 477, 82 S. Ct. 894, 899, 8 L. ed. (2d) 44, 51, where the court said: "[W]e think it plain that their claim for a money judgment is a claim wholly legal in its nature however the complaint is construed. As an action on a debt allegedly due under a contract, it would be difficult to conceive of an action of a more traditionally legal character ---- Where a party has a constitutional right to a jury trial, denial of the right is reversible error.""

IV. IT IS IMPORTANT FOR THE TRIAL COURT TO REMEMBER I AM A PRO SE LITIGANT

22. There are no schools, classes or in home services to educate Pro Se litigants about court rules and/or procedures. There is no Pro Se channel on broadcast or cable TV. Unless an individual is an indigent, there are no government programs to pay attorney fees for Pro Se litigants and the online FAQs in South Carolina are practically worthless as information sources or resources for a variety of reasons....

- (a) You must have the financial resources to get online and stay online.
- (b) You must have a working system that is capable of high speed Internet access.
- (c) You must know how to use keywords to find websites without having megabytes of unwanted information automatically downloading to your computer, ipad, notebook, tablet and/or iphone. Finally....
- (d) Pro Se litigants are at the mercy of the Judge and the Civil Justice System.

23. Therefore, if a Pro Se litigant has the misfortune to end up in a Court Room with a Judge whose only advice is to get a lawyer, or that has little or no interest in helping a Pro Se litigant/s understand what he, she or they must do, the litigant did not, could not and will not benefit himself/herself by investing hundreds of dollars in electronic access or media systems that cannot and will not provide any immediate or long term benefit.

24. Pro Se litigants in civil matters are in an inherently unjust legal system that depends on the depth and size of an individual's financial pockets and/or access to financial resources to consult and pay attorneys. Lawyers are provided for criminals and those accused of crimes. Instructions and information from a Judge is not legal advice. The absence of instructions..and...information from the Judge is the reason why so many lose out in Court. America really does have a Criminal Justice System....not....a Civil Justice System; especially for non indigents, not involved in Family Court.

25. Consequently whatever mistakes I made...were made in ignorance of what to do. My actions in this matter are based on a layperson's understanding of Court Rules and/or Procedures and not from any knowledge of law or from the Trial Court. In addition, in the absence of guidance from South Carolina's Courts, I am forced to seek understanding, guidance and precedents from other State Courts, District Courts and the United States Supreme Court.

(1) "[T]rial courts possess '[a] discretionary range of control over parties and proceedings' that allows reasonable accommodations to self-represented litigants." Blair v. Maynard, 324 S.E.2d 391, 396 (West Virginia 1984)."

(2) Birl v. Estelle, 660 F.2d 592, 593 (5th Cir.1981), "[t]rial courts have been directed to read pro se papers liberally, Haines v. Kerner, 404 U.S. at 520, 92 S.Ct. at 595, and to allow amendment of pro se complaints "fairly freely, Holmes v. Goldin, 615 F.2d 83, 85 (2nd Cir.1980)."

(3) "[C]ourt errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings." Plaskey v. CIA, 953 F.2d 25.

V. STANDARD OF REVIEW FOR VACATING A JUDGMENT PURSUANT TO
RULE 60(b), SCRCP

A. Clerical Mistakes.

26. Rule 60(a), SCRCP; relative to clerical mistakes, clearly states in pertinent parts:

“[C]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court. The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.”

27. The trial judge is authorized to vacate a judgment only in the limited circumstances as defined by *Rule 60*. Under *Rule 60(a)*, the trial judge has authority to correct a clerical mistake in a final judgment on his own initiative or on the motion of a party. *Clearwater Oaks Bank v. Plumtree*, 477 So.2d 1023 (Fla. 2nd DCA 1985).

28. A judicial error is one that is brought about by an intentional but incorrect judicial act. The trial judge has no authority to make a substantive change in a final judgment in the guise of correcting a clerical error. If the mistake is one that has a material effect on the matter in controversy, then it cannot be regarded as a clerical mistake. A mistake in the application of the law is not a clerical error and, therefore, is not subject to correction under *Rule 60(a)*. *Curbelo v. Ullman*, 571 So.2d 443 (Fla. 1990); *Tucker v. Ohren*, 739 So.2d 684 (Fla. 4th DCA 1999).

B. Rule 60(b)(1)-(3), SCRCP allows relief from an order or judgment that is unjust and the courts are obligated to construe the rule liberally to achieve this objective.

29. *Rule 60 (b)(1)-(3)* gives the court the authority to vacate a final order or judgment on the motion of a party on a showing of any of the following grounds: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct of an adverse party.

(a) Mistake, inadvertence, surprise or excusable neglect; refers to errors and omissions that affect the decision of the court and not the form...or...wording of the order that is used to convey the decision. A judgment obtained because a party did not appear at the trial or hearing can be vacated if the failure to appear was excusable. A mistake as to the time or place of a hearing may amount to excusable neglect. *Debello v. Faske*, 668 So.2d 324 (Fla. 3rd DCA 1996); *Heller v. Geneco, Inc.*, 661 So.2d 950 (Fla. 4th DCA 1995); *Wilson v. Woodward*, 602 So.2d 547 (Fla. 2nd DCA 1992)

(b) Newly Discovered Evidence is limited to evidence "[w]hich by due diligence could not have been discovered in time to move for a new trial or rehearing." Newly discovered evidence claims apply to cases that are tried, and not to those settled by agreement or mediation. *Sponga v. Warro*, 698 So.2d 621 (Fla. 5th DCA 1997) Claims of newly discovered evidence are disfavored. The moving party has the burden of showing the exercise of due diligence. *Brown v. McMillian*, 737 So.2d 570 (Fla. 1st DCA 1999).

(1) "[T]o obtain a new trial based on newly discovered evidence, a movant must establish that the newly discovered evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching." *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005).

(2) "[W]hen the party knew of and possessed evidence at the time of trial, it is not newly discovered for the purposes of Rule 60(b)(2)." *Lanier*, 364 S.C. at 218, 612 S.E.2d at 459. "[R]ule 60(b)(2) allows the court to grant a new trial only, if the newly discovered evidence could not have been discovered by due diligence prior to trial."

(3) *State v. Needs*, 333 S.C. 134, 157-158, 508 S.E.2d 857, 869 (1998) (outlining what is required for a defendant to prevail on a motion for a new trial based on after discovered evidence and providing that "the granting of such a motion is not favored and, absent error of law or abuse of discretion" the trial court should be affirmed).

(c) Fraud, Misrepresentation, or Other Misconduct of an Adverse Party; is properly alleged as either intrinsic or extrinsic fraud. "[E]xtrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987).

VI. SUMMARY, CONCLUSION & RELIEF SOUGHT

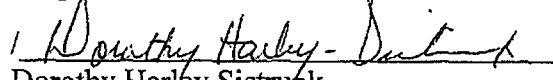
30. Relief Sought: I pray that this Honorable Court will vacate or rescind its Order of Judgment, *Remand* this case to the Circuit Court for a Jury Trial or *Dismiss it with Prejudice* that includes the return of all monies paid in interest from 2002, the return of all the premiums I paid in credit life insurance and disability insurance, late fees charged, compensatory damages with cost of suit included, punitive damages, if any, and all lawful statutory damages.

VII. NOTIFICATION

A copy of my "Legal Memorandum of Law & Authorities Supporting 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), SCRCF, South Carolina's Policies of Law, Precedents, and the 7th Amendment to the Constitution of the United States of America" that has been filed with the Clerk of Court will be mailed to SCFCU's Attorney/s of Record:

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

Respectfully Submitted;


Dorothy Harley Sistrunk
423 Bayne Street
Orangeburg, SC 29115
Ph: 803-268-0716 Fx: 803-534-6727

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly **SWORN**, and under the **PENALTY OF PERJURY** declares the facts in her "Legal Memorandum of Law & Authorities Supporting 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 Amendment to the Constitution of the United States of America" are true and correct as of her own knowledge. When it comes to matters stated therein that are based upon information and belief; as to those matters, she believes them to be true. Accordingly, based on the stated facts; Re: C. A. Case #2011-CP-38-1392, has signed, sealed, attested and executed this 30 day of April in the year 2015 in the City and County of Orangeburg, in the State of South Carolina.

Rule 11(c), SCRCP clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

Affiant's Signature:

Dorothy Harley Sistrunk

Notary's Signature as Witness (1):

Lucy A. Heller

Signed, sealed and delivered in the presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On 4-30-2015 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 she executed the same in her authorized capacity, and by her signature on her " Legal Memorandum of Law & Authorities Supporting 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 Amendment to the Constitution of the United States of America"" and this Notary Certification presents this document to the Court. WITNESS my hand and official seal.

Notary's Signature

Lucy A. Heller

Commission Expires

01-21-2015

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

2015 MAY -1 PM 1:04
NOTARY
EUBISEN
SOUTH-CAROLINA