

22339

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

RECEIVED

Diane Shafer Goodstein, Circuit Court Judge

SEP 25 2015

Case No. 2014-001683

SC Court of Appeals

Wells Fargo Bank, N.A.,

Respondent,

v.

Dorothy Sistrunk,

Appellant.

RECORD ON APPEAL
VOLUME IV OF V - PART 2

July 17, 2015

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

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

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

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

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

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

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

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

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

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

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

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

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2014	- Defendant Dorothy Sistrunk's Reasons for Opting Out of the Fladell Settlement and Filed with the United States District Court for the Southern District of Florida. Re: Case No. 0:13-cv-60721-(FAM), [70 pgs] - Filed: June 28, 2014	1441-1510

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Exhibit 2 - Not included. See SOTE

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

Exhibit 6 - Not included. See SOTE

Exhibit 7 - Not included. See SOTE

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

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Exhibit 16 - Not included. See SOTE

Exhibit 17 - Not included. See SOTE

Exhibit 18 - Not included. See SOTE

Exhibit 21 - Not included. See SOTE

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

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

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

Exhibit 29 - Not included. See SOTE

Exhibit 30 - Not included. See SOTE

Exhibit 31 - Not included. See SOTE

Exhibit 32 - Not included. See SOTE

Exhibit 33 - Not included. See SOTE

Exhibit 34 - Not included. See SOTE

Exhibit 35 - Not included. See SOTE

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

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

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

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

Exhibit 42 - Not included. See SOTE

Exhibit 43 - Not included. See SOTE

Exhibit 44 - Not included. See SOTE

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

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

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

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

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Exhibit 51 - Not included. See SOTE

Exhibit 52 - Not included. See SOTE

Exhibit 53 - Not included. See SOTE

Exhibit 54 - Not included. See SOTE

Exhibit 55 - Not included. See SOTE

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Exhibit 57 - Not included. See SOTE

Exhibit 58 - Not included. See SOTE

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Exhibit 62 - Not included. See SOTE

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Exhibit 204 - Not included. See SOTE

Exhibit 209 - Not included. See SOTE

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Exhibit 297 - **Proof**: Defraud & Swindling; Vol. I - Part 2, Answer to Complaint, pg 68.

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Exhibit 326 - **Proof**: Description: Vol. V - Part 1, Index Aix, then go to 1585-1586

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Exhibit 331 - **Proof**: Description: Vol. V - Part 1, Index Ax, then go to 1589-1590

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- WF00002** - Not reviewed or discussed in Court. See description: Index pg, Bi.
- WF00003** - Not reviewed or discussed in Court. See description: Index pg, Bi.
- WF00004** - Not reviewed or discussed in Court. See description: Index pg, Bi.
- WF00005** - Not reviewed or discussed in Court. See description: Index pg, Bii.
- WF00006** - Not reviewed or discussed in Court. See description: Index pg, Bii
- WF00007** - Not reviewed or discussed in Court. See description: Index pgs, Bii-Biii.
- WF00008** - Not reviewed or discussed in Court. See description: Index pg, Biii.
- WF00009** - Not reviewed or discussed in Court. See description: Index pg, Biii.
- WF00010** - Not reviewed or discussed in Court. See description: Index pg, Biii.
- WF00011** - Not reviewed or discussed in Court. See description: Index pg, Biii.
- WF00012** - Not reviewed or discussed in Court. See description: Index pg, Biv.
- WF00013** - Not reviewed or discussed in Court. See description: Index pg, Biv.
- WF00014** - Not reviewed or discussed in Court. See description: Index pg, Bv.
- WF00015** - Not reviewed or discussed in Court. See description: Index pg, Bv.
- WF00016** - Not reviewed or discussed in Court. See description: Index pg, Bv.
- WF00017** - Not reviewed or discussed in Court. See description: Index pg, Bv.
- WF00018** - Not reviewed or discussed in Court. See description: Index pg, Bv.
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- WF00020** - Not reviewed or discussed in Court. See description: Index pg, Bvi.
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2008-2014

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

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

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

Wells Fargo Bank, N. A.,
)
)

Plaintiff,)

Vs.)

) **LEGAL MEMORANDUM OF LAW AND**
) **AUTHORITIES TO SUPPORT MY**
) **NOTICE OF MOTION AND MOTION TO**
) **VACATE THE PLAINTIFF'S PARTIAL**
) **SUMMARY JUDGMENT ORDER**
) **PURSUANT TO RULE 60(b), SCRCF FOR**
) **EXTRINSIC FRAUD UPON THE COURT**
) **BY OFFICERS OF THE COURT IN**
) **CONJUNCTION WITH 28 U.S.C. § 455**
) **& 42 U.S.C. § 1983.**
)

Dorothy Sistrunk;
)
)

Defendants,)
)

) **TODAY'S DATE: MAY 28, 2014**
)

FILED FOR RECORD
MAY 28 PM 4:23

Comes now the Defendant, Dorothy Sistrunk, to file a *Legal Memorandum of Law and Authorities to Support Her Notice of Motion and Motion to Vacate the Plaintiff Partial Summary Order Judgment Pursuant to Rule 60(b), SCRCF for Extrinsic Fraud Upon the Court by Officers of the Court in Conjunction with 28 U.S.C. § 455 & 42 U.S.C. § 1983 – The Civil Rights Act & and Her Statement of Uncontested Facts and Material Facts in Support of Motion and Legal Memorandum of Law and Authorities*. Due to Constitutional violations, this foreclosure action may have evolved into a Civil Rights matter.

I. VACATING A JUDGMENT ORDER

A. Why the judge that signs the Court Order must be the Judge that vacates and/or rescinds it.

1. It took me a while to understand the logic, reasoning and purpose and why a judge that signs a Court Order....must be the same judge that vacates it. The logic is flawless. If a judge cannot and will not judge himself/herself by the same standards of law.. and vacate orders based on errors of law or an improper assessment of the facts and law of a case, then that judge is not qualified to judge others. The black robe represents the rule of law.... not lawlessness.

2. It is the same reasoning behind 28 U.S.C. § 455 - a self extracting rule.. and.. principle of law that mandates a judge recuses himself/herself from a case..... if he/she has prejudices. The reasoning is admirable and the logic impervious, that is to say, incapable of being impaired by the misunderstanding of uninformed others. If a judge cannot judge his own partiality, biasness and prejudices by the same standard of conduct that is required of law, then he/she cannot fairly and/or impartially judge the facts or law relative to the litigants in the case as it relates to law. When and if this happens, such an individual removes himself/herself. In addition to the black robe symbolizing the rule of law, it also represents the search for truth as it applies to law.

3. Unfortunately; as great as these principles of law are in concept, abiding by them in the real world, rarely, if ever happens. They are incapable of addressing the imperfections in human nature. To demand perfection in another human being is an unreasonable demand. Therefore.....

(1) "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.*}

(2) "[j]udicial independence is predicated on "good faith" decision-making. It was never intended to include "bad-faith" decision-making, where a judge knowingly and deliberately disregards the facts and law of a case. This is properly the subject of disciplinary review, irrespective of whether it is correctable on appeal." {*The Long Term View, Massachusetts School of Law, Vol. 4, No. 1, 1997, pp. 90-97*}

(3) "[W]e must never forget Judges are not GODS. They are people that have power and "power tends to corrupt". "Absolute power corrupts absolutely" to believe otherwise is the wishful thinking of a fool. This quotation is by *John Emerich Edward Dalberg Acton, first Baron Acton* (1834–1902). A historian and moralist, known as Lord Acton. He expressed his opinion, relative to power's corrupting influence, in a letter to Bishop Mandell Creighton in 1887: "Power tends to corrupt, and absolute power corrupts absolutely: Great men are almost always bad." {*Additional Quote by GMS*}

(4) "[F]raud upon the court should...embrace only that species of fraud which does or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court, so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication...." See 7*Moore, Federal Practice* p 60.33 at 511 (1971 ed.)

B. An overview of appellate practice as it relates to statutory interpretation of Sections 16-9-10, 16-13-10, 26-1-95, 26-3-40, 26-3-60, 30-5-30, 34-3-110, 37-5-108, 37-23-40(1)-(2), 37-23-60, 39-5-20(a)-(b), 39-5-50 (a)-(b) 40-58-30 (A)-(B) and 40-58- 50 (E)(1) – SC Code of Laws; see my Statement of Undisputed Facts that is filed with this Verified Pleading from pgs 14-26 that are incorporated by reference as though fully set forth herein verbatim.

4. “[A]n issue regarding statutory interpretation is a question of law.” *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 274-75, 617 S.E.2d 135, 137 (Ct. App. 2005). See *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002) (“All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.”); *Russo v. Nationwide Mut. Ins. Co.*, 334 S.C. 455, 458, 513 S.E.2d 127, 128 (Ct. App. 1999) (“In statutory construction, legislative intent prevails where it can be reasonably ascertained from the plain meaning of the statutory language.”). See *Anderson v. State Farm Mut. Auto. Ins. Co.*, 314 S.C. 140, 143, 442 S.E.2d 179, 181 (1994) (holding the words of a statute should be accorded their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand a statute's operation).

C. An overview of appellate practice as it relates to Illegality of Contracts.

5. The general rule is that contracts for performance of illegal conduct are unenforceable and void. The Minnesota Court of Appeals addressed this, stating “[t]he application of the doctrine of *in pari delicto* is appropriate for (1) preventing enforcement of a contract the performance of which is illegal.” *Brubaker v. Hi-Banks Resort Corp.*, 415 N.W.2d 680, 684 (Minn. App. 1987). The Supreme Court of Minnesota has held “[a]nyone who engages in a fraudulent scheme forfeits all right to protection, either at law or in equity.” *State by Head v. AAMCO Automatic Transmissions, Inc.*, 293 Minn. 342, 347 (1972).

6. A contract can be invalidated if it is based on any misrepresentation of a material matter,

whether the misrepresentation was intentional or innocent. A contract can be set aside if it is discovered after the execution of the contract that information, documents and/or statements were discovered to be false, misrepresented, forged, and/or counterfeited or concealment of a material fact, or non-disclosures. Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis. 550, 279 NW 79 (1938) (Holding that, "The contract is void if it is only in part connected with the illegal transaction and the promise single or entire."); Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (Holding that "illegal contracts are void and unenforceable, such that actions for its breach may not be maintained")

7. "[a] misrepresentation may make a contract voidable if it is either fraudulent or material." *Restatement (Second) Contracts ch. 7, Introductory Note (1981)* "[T]he question of whether a party was fraudulently induced into a contract may go to the formation of the contract. A party that is misled as to the essential terms of a contract does not technically agree to the contract, as no assent to its terms has been formulated due to the misrepresentation. In this situation, it is irrelevant whether the misrepresentation was made by the other party to the contract or a third person. See *Restatement (Second) Contracts § 163 (1981)* ("It is immaterial under the rule stated in this Section whether the misrepresentation is made by a party to the transaction or by a third person.").

8. "[W]hen a contract is void, it is as if it never existed. See Operating Eng'rs Pension Trust v. Gilliam 737 F.2d 1501, 1505 (9th Cir.1984) (where employer's signature on CBA is procured by fraud in the execution, it is as though "no collective bargaining agreement exists").

9. "[W]here a person is fraudulently induced to sign or endorse a bill or note in the reasonable belief that he is signing something else, he cannot really be said to have made or indorsed the bill or note; hence the ancient plea of *non est factum* is applicable. He is in effect stating that this is not his contract; in fact, it is not a contract at all." 12 Williston on Contracts §

1488, at 333.

10. "[A] promisor's signature procured by fraud in the execution gives no more effect to a contract than a promisor's signature that has been forged. In either case the contract is void; it has never had any legal effect. See Andrews v. Tallman, 47 R.I. 111, 131 A. 50, 51 (R.I.1925) "[U]nder the plea of *non est factum* [a defendant] may be entitled to prove fraud in the execution of the bond whereby the instrument never had a legal existence as in cases of forgery...."; Crocker v. Bellangee, 6 Wis. 645, 1858 WL 2281, at 11 (Wis.1858)

11. - "[A] void contract is null *ab initio*, and the subject of it may be bought, sold, or otherwise dealt with, in all respects precisely as though it had never been — for it never hath been of any force. Instance, a forged or stolen deed, or a deed obtained by fraud in the execution...." Laborers' Pension Fund v. A & C Envtl., Inc., 301 F.3d 768, 780 (7th Cir 2002).

12. In Regions Bank v. Schmuck, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct. App. 2003). "[T]he right to rely must be determined in light of the plaintiff's duty to use reasonable prudence and diligence under the circumstances in identifying the truth with respect to the representations made to him." Id. at 672, 582 S.E.2d at 445. **Wells Fargo was duly notified.**

13. "[A] party may not rely upon a misstatement of fact when the truth is easily within his reach." King v. Oxford, 282 S.C. 307, 312, 318 S.E.2d 125, 128 (Ct. App. 1984). "[I]t is the policy of the courts not only to discourage fraud, but also to discourage negligence and inattention to one's own interests." Id. "[H]owever, a party may rely on representations without making further inquiry when a fiduciary or confidential relationship exists between the parties. Epstein v. Howell, 308 S.C. 528, 530-31, 419 S.E.2d 379, 380-82 (Ct. App. 1992). [WF00125]

14. "[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." Armstrong v. Collins, 366 S.C. 204, 223, 621 S.E.2d 368, 377 (Ct. App. 2005)

15. “[G]enerally, South Carolina Courts will not enforce contracts that are illegal or violate public policy.” See White v. J.M. Brown Amusement Co., Inc., 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) (“The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.”) [WF00001-WF00137 is the documented evidence of a Conspiracy to Defraud]

D. An overview of procedural due process.

16. “[P]rocedural due process mandates that a litigant be placed on notice of the issues which the court is to consider.” Murdock v. Murdock, 338 S.C. 322, 526 S.E.2d 241 (Ct. App. 1999). “[T]he Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). [My witness was not allowed to speak at a Summary Judgment Hearing]

17. “[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 Procedural due process requires notice, the opportunity to be heard in a meaningful way, and judicial review.” 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); South Carolina Dep’t of Health and Envtl. Control v. Armstrong, 293 S.C. 209, 359 S.E.2d 302 (Ct. App. 1987). [Failure to notify me that my could not speak is a failure of due process.]

18. “[w]ithout 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.”

Murdock v. Murdock, 338 S.C. 322, 526 S.E.2d 241 (Ct. App. 1999).

19. In Bolling v. Sharpe, 347 U.S. 497 (1954), the Supreme Court of the United States held that: “[T]he concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive.” South Carolina’s Supreme Court has written: “[T]he constitutional guaranty of equal protection of the laws requires that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.... The equal protection guaranty is intended to secure equality of protection not only for all, but against all similarly situated.” Thompson v. South Carolina Comm’n on Alcohol and Drug Abuse, 267 S.C. 463, 472, 229 S.E.2d 718, 722 (1976). Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). See also Carlson v. Green, 446 U.S. 14, 100 S.Ct. 1468, 64 L.Ed.2d 15 (1980); Davis v. Passman, 442 U.S. 228, 99 S.Ct. 2264, 60 L.Ed.2d 846 (1979); Butz v. Economou, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978).

II. STANDARD OF REVIEW FOR VACATING A JUDGMENT PURSUANT TO RULE 60(b) FOR MISREPRESENTING FACTS & FRAUD UPON THE COURT

A. New Trial.

20. “[T]he decision to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial court.” Bowman v. Bowman, 357 S.C. 146, 151, 591 S.E.2d 654, 656 (Ct. App. 2004) (citing Coleman v. Dunlap, 306 S.C. 491, 413 S.E.2d 15 (1992)); Saro Invs. v. Ocean Holiday P’ship, 314 S.C. 116, 441 S.E.2d 835 (Ct. App. 1994) (noting that Rule 60(b) motions are addressed to the discretion of the court and appellate review is limited to determining whether the trial court abused its discretion). {Also See Pelegina v. United States, 601 F.2d 18, 20-21 (1st Cir. 1979); Johnson v. United States, 32 F.2d 127, 129 (8th Cir. 1929); C. Wright & A. Mil-

B. Clerical Mistakes.

21. *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.”

22. 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)

23. 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)

24. An error that results in a material change in the judgment is not a clerical error. *Dolin v. Dolin*, 654 So.2d 223 (Fla. 5th DCA 1995) (the trial judge attempted to change the nature of the final order from indirect criminal contempt to civil contempt.)

C. Rule 60(b), SCRCP enables the Defendant to obtain relief from an order or judgment that is unjust and the courts are obligated to construe the rule liberally to achieve this objective.

25. *Subdivision (b)(1)-(3) of Rule 60* 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;

26. **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) (the defendant's failure to attend the trial was excusable because it was caused by a failure of communication); *Heller v. Geneco, Inc.*, 661 So.2d 950 (Fla. 4th DCA 1995) (the moving party was present in court but because of his unfamiliarity with the local procedure he was not present in the judge's chambers); *Wilson v. Woodward*, 602 So.2d 547 (Fla. 2nd DCA 1992) (the secretary for the moving party's lawyer failed to calendar the hearing).

27. Based on precedent in Appellate Courts, **Newly Discovered Evidence** is limited to evidence "which 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)

28. "[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).

29. "[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.

30. “[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.”

31. “[D]ue diligence is the “diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.” Lanier, 364 S.C. at 220, 612 S.E.2d at 460. “Diligence looks not to what the litigant actually discovered, but what he or she could have discovered.” Lanier, 364 S.C. at 220, 612 S.E.2d at 460.

32. “[A]ccordingly, when parties could have discovered the new evidence prior to trial, they are not entitled to relief under Rule 60(b)(2).”

See Raby Constr., L.L.P., 358 S.C. at 21, 594 S.E.2d at 484 (citing Bowman v. Bowman, 357 S.C. 146, 152, 591 S.E.2d 654, 657 (Ct. App. 2004)). 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). Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 590 S.E.2d 502 (Ct. App. 2003) (A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief.)

33. **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).

34. “[I]ntrinsic fraud, on the other hand, is fraud which was presented and considered in the trial.” Hagy v. Pruitt, 339 S.C. 425, 529 S.E.2d 714 (2000). “[I]t is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.” Hilton

35. "[T]here is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court. *Rule 60(b)*, *SCRCP*; *Hagy v. Pruitt*, (court has the inherent authority to set aside a judgment on the ground of extrinsic fraud in spite of any facially applicable statute of limitations). "[I]n order to secure equitable relief on the basis of fraud, the fraud must be extrinsic." *Bryan v. Bryan*, 220 S.C. 164, 66 S.E.2d 609 (1951). (extrinsic fraud is necessary in order to secure equitable relief vacating a prior judgment).

36. "[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). Fraud 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. See *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").

37. When an Officer of the Court commits **Fraud upon the Court**, the orders and judgments of that court are void, of no legal force or effect. The judge who committed **Fraud upon the Court** acted without jurisdiction. The judge that acts without jurisdiction has no absolute immunity protection. "[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).

38. As former Chief Justice Burger stated, "[p]erjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings.", *United States v. Mandujano*, 425 U.S. 564, 576 (1976); see also *Defendant's Filed Exhibit 32, page 3, paragraph 4*. "[F]alse testimony

threatens the fair and effective administration of justice and the integrity of the courts. Trials are ideally a search for the truth.” Nix v. Whiteside, 475 U.S. 157 (1986) (holding that a criminal defendant's constitutional right to effective assistance of counsel was not violated when his attorney refused to help him give perjured testimony); Tehan v. United States ex rel. Shott, 382 U.S. 406, 416 (1966) If an attorney and a judge deliberately falsify testimony and/or conceal and/or distort material facts, a **Conspiracy to Defraud** exists and **Fraud upon the Court**.

39. “[T]his truth-determining process depends upon the partisan, but accurate, presentation of truthful evidence by the parties.” Clark v. United States, 289 U.S. 1 (1933) “[T]hus, the United States Supreme Court has aptly observed that all perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. Therefore, it cannot be denied that it tends to defeat the sole ultimate objective of a trial.” In re Michael, 326 U.S. 224, 227 (1945)

See, e.g., United States v. Agurs, 427 U.S. 97, 103 (1976); (holding that “the Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair”, Pyle v. Kansas, 317 U.S. 213; Alcorta v. Texas, 355 U.S. 28; Napue v. Illinois, 360 U.S. 264; See Miller v. Pate, 386 U.S. 1; Giglio v. United States, 405 U.S. 150; Donnelly v. DeChristoforo, 416 U.S. 637....and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. See Giglio v. United States, at 154, quoting from Napue v. Illinois, at 271”); [and see Defendant’s Filed Exhibits 11, 12, Affidavits & Exhibit 32, page 3, paragraph 4 relative to the hearing on March 14, 2013.]

40. In Demjanjule v. Petrovsky, 10 F. 3d 338 at 352 (6th Cir 1993), the court relied upon professor Moore's frequently cited definition of fraud upon the court.

“[A] verdict may be set aside for fraud on the court if an attorney and a witness have conspired to present perjured testimony.”; Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir.1978) (fabrication of evidence where attorney is implicated is fraud upon the court); 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.”); Dixon v. Comm’n of Internal Revenue, 2003 WL 1216290 (9th Cir.2003) (fraud on the court occurred where attorneys entered into secret settlement agreements with taxpayers in exchange for false testimony); 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); Porcelli v. Joseph Schlitz Brewing Co., 78 F.R.D. 499 (E.D.Wis.1978) (noting distinction between perjury involving officers of the court and witness or party); Moore’s Federal Practice ¶ 60-21[4][b] (3d ed.2002).

41. In addition *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.”

42. “[L]ong ago, the Supreme Court made it clear that deliberate 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). In *Napue v. Illinois*, 360 U.S. 264 (1959), “[t]he Supreme Court reiterated that a conviction obtained through use of false testimony known to be such by representatives of the State, is a denial of due process. The Court further ruled that there is also a denial of due process when the State, though not soliciting false evidence, allows it to go uncorrected when it appears. In cases involving false or misleading testimony, a new trial is required if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . ." *Napue*, 360 U.S. at 271.” “[T]he adjudicative integrity of a court may be defiled by the behavior of parties or attorneys which results in depriving adverse parties of substantive rights.” *Mallonee v. Grow*, 502 P.2d 432 (Alaska 1972)

43. As Justice Black said, in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250, 1256 (1944):

“[T]ampering with the administration of justice ... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and help-

less victims of deception and fraud.”

44. “[W]hether the deprivation of a party's rights by actions of the court are attributable to a willful intent to defraud or a reckless disregard of rules or statutory provisions, the court has the same duty to rectify the wrong. The mechanism for protecting and maintaining the decisional integrity of our judicial system is found in the statutes and rules which govern the procedures to be followed by parties, attorneys and judges.” *Mallonee v. Grow*, 502 P.2d 432 (Alaska 1972)

45. “[T]he purposeful or reckless disregard of those procedural safeguards which results in the deprivation of substantive rights constitutes an impermissible corruption of court process.” 2 *F. Pollock & F. Maitland, The History of English Law* 535 (2d ed. 1968).

Dishonesty is the key element of a Conspiracy to Defraud and Fraud upon the Court by Officers of the Court.

“**Dishonesty**” as defined by *Wikipedia*, “[i]s to act without honesty. It is used to describe a lack of probity, cheating, lying or being deliberately deceptive or a lack in integrity, knavishness,.... corruption or treacherousness. Dishonesty is the fundamental component of a majority of offences relating to the acquisition, conversion and disposal of property..... defined in criminal law such as fraud.”

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

46. I have cited almost 100 authorities in support of my defense, Wells Fargo has cited few if any that are relevant. Judge Goodstein even quoted Wells Fargo's irrelevant case law in her reason for a partial summary judgment order. Judge Goodstein's failure of “Due Process” and “Prejudicial Treatment” of me is also documented in the Court's Index. You won't find a single hearing scheduled for me.

RELIEF SOUGHT

47. The *Relief Sought* has never been objected to by the Plaintiff and no Affidavit or **Verified Pleading** has been controverted, refuted and/or denied since 2008. Therefore, the *Relief Sought* must be granted forthwith.

48. **FORTHWITH;** Under the direction and authority of this Court...

(a) Vacate the March 27, 2014 Partial Summary Judgment Order and Rescind the Plaintiff's falsely obtained Order of Reference. Render a Judgment in my favor to Dismiss the Plaintiff's Complaint and this foreclosure proceeding with Prejudice in its entirety and permanently enjoin Wells Fargo from any relief relative to 423 Bayne Street and/or any other assets I might have.

(b) Render a Judgment in my favor for whatever monetary damages the Court deems as just, fair and proper including Punitive Damages, Compensatory Damages, Legal Defense Compensation and restitution of all cost incurred in the preparation and execution of my Defense because of Wells Fargo's unjustifiable persecution of me, after all the facts were known.

(c) Render a Judgment in my favor in an appropriate dollar amount based on Wells Fargo's ability to pay; and any other relief the Court of Common Pleas deems proper.

(d) Render a Judgment against Wells Fargo in my favor to prohibit any set-offs for Wells Fargo's illegal Predatory Lending Scheme, Home Improvement and Mortgage Fraud and for perpetuating the **Scheme to Defraud** of the Seller, the Broker and the Appraiser.

(e) Ascertain the amount of legal Defense Fees that I shall be paid because of Wells Fargo's unwarranted and unjustifiable act of using the Courts to foreclosure on a **Falsely Certified** Note and Mortgage Instrument without legal authority, or statutory authority and engaging in a **Scheme to Defraud** by covering up the truth and seeking a foreclosure judgment based on lies and half truths that included misrepresentations of material facts, **Fraud upon the Court** and unwarranted harassment for documents Wells Fargo already had.

(f) Deny Wells Fargo any claim to 423 Bayne Street in Orangeburg, South Carolina.

OUT OF COURT SETTLEMENT RECOMMENDED

49. Wells Fargo has not filed an acceptable brief since 2008 relative to my Verified Pleadings and Sworn Statements. The evidence strongly suggests Burns and Moise were relying on Judge Goodstein's favorable Court Orders and rulings. Based on the facts and the evidence, Burns and Moise crossed the line into criminal behavior during the Stay/TRO. Judge Goodstein crossed it when she signed a judgment order based on lies, half truths, misstatements of facts and misrepresentations of material facts.

50. Since no real financial harm has been done yet, I recommend an Out of Court Settlement to end this matter . Since this **Verified Pleading** is a public record, it is up to the Commission on Lawyer Conduct and Judicial Conduct to act or not act after this Pleading is filed..... not me.

51. Even though "**False Certification**" and Wells Fargo's **Complicity** in the illegal broker-ing activity of the Unlicensed Seller is a matter for the law, law enforcement, the Courts and/or a Jury to decide, I recommend Wells Fargo do the right thing for reasons that have already been identified and stated in this **Verified Pleading** and in every **Verified Pleading** that I have filed in the Court of Common Pleas relative to this action since 2008.

52. I am incorporating every **Verified Pleading** filed by reference as though I have written every one of them line by line... herein.... verbatim.

53. A negotiated a settlement of this matter Out of Court as soon as humanly possible will be in everyone's best interest. This will save time, money and the reputations of all concerned that need not be tainted or destroyed.

54. **WHEREFORE**, I pray my *Legal Memorandum of Law and Authorities to Support my Notice of Motion and Motion to Vacate Wells Fargo's Partial Summary Judgment Order and Rescind Wells Fargo's Order of Reference pursuant to Rule 60(b), SCRPC for Extrinsic Fraud Upon the Court by Officers of the Court* has been clearly written and properly supported by the evidence, the facts, SC Code of Laws, my Exhibits, Well's Fargo's filed documents, my Affidavit/s, Averments and Legal Precedents.

NOTIFICATION & SERVICE VERIFICATION

55. A copy of my *Legal Memorandum of Law and Authorities to Support my Notice of Motion and Motion to Vacate Judgment pursuant to Rule 60(b), SCRPC for Extrinsic Fraud Upon the Court by Officers of the Court* that has been filed with the Clerk of Court will also be mailed to others not yet listed; Re: Possible Civil Rights Violations pursuant to 42 U.S.C. § 1983 and to the following:

Nelson Mullins Riley & Scarborough, LLP

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

James H. Burns
SC Bar No. 70313
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

The Judges Affiliated with this Case,
The NAACP, CORE, Columbia Urban League, SCLC, Congressional Black Caucus,
American Civil Liberties Union,
American Center for Law and Justice,
Commission on Judicial Conduct,
Commission on Lawyer Conduct,
The United States Justice Department & Others to be Determined.

NOTARY CERTIFICATION

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

When it comes to matters stated therein that are based upon her 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 28th day of May in the year 2014 in City and County of Orangeburg, in the State of South Carolina.

Affiant Signature: Dorothy Sistrunk

Notary's Signature as Witness (1): Jill D Staley

Signed, sealed and delivered in the presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

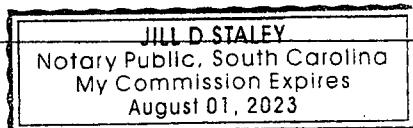
On 5/28/2014 before me appeared Dorothy Sistrunk

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 that by her signature on this Verified Pleading presents this document to the Court.

WITNESS my hand and official seal.

Notary's Signature Jill D Staley

Commission Expires _____



(Seal)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
	)	Civil Action Case No. 2008-CP-38-1024
Wells Fargo Bank, N. A.,	)	
	)	
	)	LEGAL MEMORANDUM OF LAW AND
	)	AUTHORITIES TO SUPPORT MY
Plaintiff,	)	NOTICE OF MOTION AND MOTION
	)	FOR A NEW TRIAL WITH A JURY
Vs.	)	PURSUANT TO RULES 38(a)-(d), 39,
	)	59(a)(2) & 60(b)(1), SCRCF FOR
	)	EXTRINSIC FRAUD UPON THE COURT
	)	BY OFFICERS OF THE COURT IN
Dorothy Sistrunk;	)	CONJUNCTION WITH 28 U.S.C. § 455
	)	& 42 U.S.C. § 1983.
	)	
Defendants,	)	
	)	TODAY'S DATE: JUNE 9, 2014

Comes now the Defendant, Dorothy Sistrunk, to file a *Legal Memorandum of Law and Authorities to Support My Notice of Motion and Motion for a New Trial with a Jury Pursuant to Rules 38(a)-(c), 39, 59(a)(2) & 60(b)(1), SCRCF for Extrinsic Fraud Upon the Court by Officers of the Court in Conjunction with 28 U.S.C. § 455 to Recuse Judge Goodstein & 42 U.S.C. § 1983 – The Civil Rights Act and My Statement of Uncontested Facts and Material Facts in Support of Motion and Legal Memorandum of Law and Authorities*. Due to Constitutional violations, this foreclosure action may have evolved into a Civil Rights matter.

I. A NEW TRIAL IS MANDATED FOR FRAUD UPON THE COURT AND DENIAL OF DUE PROCESS IN ACCORDANCE WITH STARE DECISIS

A. My demand for a Trial by Jury was never ruled upon by Judge Goodstein in 6 years nor any explanation given in 6 years after attending 4 hearings, filing numerous objections to Wells Fargo's Orders of Continuance and Demanding Placement on the Trial Roster.

1. This *Legal Memorandum of Law and Authorities to Support my Notice of Motion and Motion for a New Trial Pursuant to Rules 38(a)-(d), 39, 59(a)(2) & 60(b)(1), SCRCF, for Extrinsic Fraud Upon the Court by Officers of the Court in Conjunction with 28 U.S.C. § 455 to Recuse Judge Goodstein & 42 U.S.C. § 1983 – The Civil Rights Act.....* is also supported by my *Legal Memorandum of Law and Authorities* that was filed on May 28, 2014 that is support-

ing my *Notice of Motion and Motion to Vacate the Plaintiff's Partial Summary Judgment Order and Rescind Wells Fargo's Order of Reference Pursuant to Rule 60(b), SCRCP for Extrinsic Fraud upon the Court by Officers of the Court* that is incorporated by reference as though fully set forth herein verbatim.

2. My motion for a New Trial is also supported by my *Statement of Uncontested Facts and Material Facts* that were also filed on May 28, 2014. My *Statement* supports both *Motions and Legal Memoranda of Law and Authorities*. My *Opposition to Plaintiff's Wells Fargo Bank, N.A.'s Motion for Summary Judgment and Demand for a Jury Trial*; that is incorporated by reference as though fully set forth herein verbatim, that was filed on July 17, 2013, will also support all my currently filed *Motions* and any subsequent *Motion/s* and *Statements of Material Facts* that are not in dispute that will be filed in this case.

3. In order to avoid needless repetition, in addition to all the aforementioned **Verified Pleadings** even more objections, citations, authorities and Jury Trial Demands can be found in the following **Verified Pleadings** that have never been ruled upon, refuted, denied, contested and/or controverted; pursuant to *Rule 56(e), SCRCP*, or by any Court ruling in 6 years.

- (a) *Dorothy Sistrunk's Demand for a Jury Trial and Legal Memorandum Supporting Opposition to Plaintiff Wells Fargo Bank, N.A.'s Motion for Summary Judgment* that was filed on July 17, 2013.
- (b) *Dorothy Sistrunk's Objects to Granting of Partial Summary Judgment, Prejudicial Treatment & to the Violation of Rule 30(b)(2), SCRCP* that was filed on .
- (c) *Dorothy Sistrunk's Objection to Plaintiff Wells Fargo Bank, N.A.'s Motion and Order for Continuance and Demands Trial Roster Placement on October 7, 2013* that was filed on September 30, 2013.
- (d) *Dorothy Sistrunk's Objects to Plaintiff's Motion for Order of Reference to Master In Equity* that was filed on March 31, 2014.
- (e) *First Amendment to Answer To Complaint with Counterclaims* that was filed on July 31, 2008 – the easily verifiable condition of 423 Bayne Street.
- (f) *Defendant Dorothy Sistrunk Objects to the Evidence Cited to Support Summary Judgment and Demands Placement on the Trial Roster Placement on November 18, 2013. Judicial Notice Requested Pursuant to Rule 201, SCRE* that was filed on November 8, 2013.
- (g) *Dorothy Sistrunk's Objection to Plaintiff Wells Fargo Bank, N.A.'s Second*

- Motion and Order for Continuance* that was filed on November 9, 2013.
- (h) *Dorothy Sistrunk Objection to Case Management & Scheduling Order. The Proposed Date of Transfer to the Jury Trial Roster is June 25, 2012* that was filed on October 24, 2011.

B. The undeniable evidence of Judge Goodstein's denial of due process of law, equal protection under the law, biasness, partiality and prejudicial treatment of me that can be proven by the preponderance of the evidence, beyond any reasonable doubt and clearly....and convincingly.... can be found in the Court's Public Index, Transcripts of the Hearings, Filed Affidavits, Eyewitness Testimony and by her signed Court Orders.

4. The evidence is undeniable, it is preponderous, it is beyond any reasonable doubt and it is clear and convincing. I filed my first Demand for a Jury Trial on August 12, 2008. Additional demands followed over the years. None was ever acted upon by Judge Goodstein. In addition, no hearing was ever scheduled for my *Rule 41(b) Motion to Dismiss* that was filed on August 15, 2012. You won't find in any Court Order a direct reference to any of my Affidavits or any ruling on my Verified Pleadings, Maturing Counterclaims and/or Affidavits. In Judge Goodstein's

Kangaroo Court, I did not exist.

(1) "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.*}

(2) "[j]udicial independence is predicated on "good faith" decision-making. It was never intended to include "bad-faith" decision-making, where a judge knowingly and deliberately disregards the facts and law of a case. This is properly the subject of disciplinary review, irrespective of whether it is correctable on appeal." {*The Long Term View, Massachusetts School of Law, Vol. 4, No. 1, 1997, pp. 90-97*}

(3) "[W]e must never forget Judges are not GODS. They are people that have power and "power tends to corrupt". "Absolute power corrupts absolutely" to believe otherwise is the wishful thinking of a fool. This quotation is by *John Emerich Edward Dalberg Acton, first Baron Acton* (1834–1902). A historian and moralist, known as Lord Acton. He expressed his opinion, relative to power's corrupting influence, in a letter to Bishop Mandell Creighton in 1887: "Power tends to corrupt, and absolute power corrupts absolutely: Great men are almost always bad." {*Additional Quote by GMS*}

(4) "[F]raud upon the court should...embrace only that species of fraud which

does or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court, so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication...." See 7Moore, *Federal Practice* p 60.33 at 511 (1971 ed.)

(5) *Black's Law Dictionary* (5th ed. 1979) pg 780, defines a **Kangaroo Court** as the following: "[T]erm descriptive of a sham legal proceeding in which a person's rights are totally disregarded and in which the result is a foregone conclusion because of the bias of the court.."

5. Rule 38, SCRPC – Jury Trial of Right – Clearly states in pertinent parts;

(a) "**Right Preserved.** The 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. **[I never waived my right to a trial by jury.]**

(b) **Demand.** Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party. [As already stated, **I filled a Demand for a Trial by Jury on August 12, 2008, that was never ruled upon by Judge Goodstein in 6 years.]**

(c) **[S]ame: Specification of Issues.** In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) **[W]aiver.** The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. **A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a)."** [Boldness added for emphasis. **Based on the evidence provided in this Verified Pleading, I never withdrew my demand for a Jury Trial and no consent of the parties will be found in the Court's records of my case.]**

(1) UNITED STATES CONSTITUTION - AMENDMENT V: states in pertinent parts.. "[N]o person shall be.... deprived of life, liberty, or property, without due process of law.....;"

(2) UNITED STATES CONSTITUTION – AMENDMENT XIV: states in pertinent parts.. “[A]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

6. *Rule 39, SCRCF* – Trial by Jury or by the Court – clearly states in pertinent parts;

(a) **“[B]y Jury.** When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the calendar and the clerk's filebook as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist. **[There is no ruling by Judge Goodstein in the Court's records of this case that Judge Goodstein ruled that some or all of my issues did not exist for a Trial by Jury.]**

(b) **[B]y the Court.** Issues of law and issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court or may be referred to a master as provided in Rule 53; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues. **[The evidence clearly shows, my demand of right for a Jury Trial was repeatedly made.]**

(c) **[A]dvisory Jury and Trial by Consent.** In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or the court, with the consent of both parties may order a trial by jury whose verdict has the same effect as if trial had been a matter of right.” **[There is no evidence of an advisory Jury or consent for one in the Court's records of my case.]**

(1) STATE OF SOUTH CAROLINA CONSTITUTION – ARTICLE 1 - § 3: states in pertinent parts.. “[T]he 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.”

(2) STATE OF SOUTH CAROLINA CONSTITUTION – ARTICLE 1 - § 14: states in pertinent parts.. “[T]he right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.”

(3) *Re: The Civil Rights Act. 42 U.S.C.A. § 1983*: “[E]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected.....any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

7. *Rule 52(b)-(d), SCRCF* – Findings by the Court – Clearly states in pertinent parts;

(b) **Amendment**. Upon 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) **Time for Appeal; End of Term**. The time for appeal for all parties shall be stayed by a timely motion to amend the judgment and shall run from the receipt of written notice of entry of the order granting or denying such motion. The time within which to make the motion under this Rule shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the trial judge shall retain jurisdiction of the action for the purpose of hearing and

disposing of such motion if not heard and disposed during the term. Except by consent of the parties, argument on the motion shall be heard in the circuit where the trial was held. The motion may in the discretion of the court be determined on briefs filed by the parties without oral argument.

(d) **Judge to be Provided with Copy.** 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. motion.”

(1) *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.” [Boldness added for emphasis]

(2) *Gadson v. Hembree*, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005) (“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.”)

(3) From *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 nonexistence 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. *United States v. Neder*, 527 U.S. 1 (1999); *United States v. Gaudin*, 515 U.S. 506 (1995) (materiality in a false statement case is a jury question).

8. Rule 53(b), SCRCP - Masters and Special Referees – Clearly states in pertinent parts; “.....[A]ny party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court.....”

C. **An overview of appellate practice as it relates to statutory interpretation of Sections 16-9-10, 16-13-10, 26-1-95, 26-3-40, 26-3-60, 30-5-30, 34-3-110, 37-5-108, 37-23-40(1)-(2), 37-23-60, 39-5-20(a)-(b), 39-5-50 (a)-(b) 40-58-30 (A)-(B) and 40-58- 50 (E)(1) – SC Code of Laws; see my Statement of Undisputed Facts that is filed with this Verified Pleading from pgs 14-26 that are incorporated by reference as though fully set forth herein verbatim.**

9. The above stated statutes have been violated relative to this action. Therefore, “[A]n issue regarding statutory interpretation is a question of law.” *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 274-75, 617 S.E.2d 135, 137 (Ct. App. 2005). See *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002) (“All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.”); *Russo v. Nationwide Mut. Ins. Co.*, 334 S.C. 455, 458, 513 S.E.2d 127, 128 (Ct. App. 1999) (“In statutory construction, legislative intent prevails where it can be reasonably ascertained from the plain meaning of the statutory language.”). See *Anderson v. State Farm Mut. Auto. Ins. Co.*, 314 S.C. 140, 143, 442 S.E.2d 179, 181 (1994) (holding the words of a statute should be accorded their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand a statute's operation).

D. An overview of appellate practice as it relates to Illegality of Contracts.

10. The general rule is that contracts for performance of illegal conduct are unenforceable and void. The Minnesota Court of Appeals addressed this, stating “[t]he application of the doctrine of *in pari delicto* is appropriate for (1) preventing enforcement of a contract the performance of which is illegal.” *Brubaker v. Hi-Banks Resort Corp.*, 415 N.W.2d 680, 684 (Minn. App. 1987). The Supreme Court of Minnesota has held “[a]nyone who engages in a fraudulent scheme forfeits all right to protection, either at law or in equity.” *State by Head v. AAMCO Automatic Transmissions, Inc.*, 293 Minn. 342, 347 (1972).

11. A contract can be invalidated if it is based on any misrepresentation of a material matter, whether the misrepresentation was intentional or innocent. A contract can be set aside if it is discovered after the execution of the contract that information, documents and/or statements were discovered to be false, misrepresented, forged, and/or counterfeited or concealment of a

material fact, or non-disclosures. Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis. 550, 279 NW 79 (1938) (Holding that, "The contract is void if it is only in part connected with the illegal transaction and the promise single or entire."); Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (Holding that "illegal contracts are void and unenforceable, such that actions for its breach may not be maintained")

12. "[a] misrepresentation may make a contract voidable if it is either fraudulent or material." *Restatement (Second) Contracts ch. 7, Introductory Note (1981)* "[T]he question of whether a party was fraudulently induced into a contract may go to the formation of the contract. A party that is misled as to the essential terms of a contract does not technically agree to the contract, as no assent to its terms has been formulated due to the misrepresentation. In this situation, it is irrelevant whether the misrepresentation was made by the other party to the contract or a third person. See *Restatement (Second) Contracts § 163 (1981)* ("It is immaterial under the rule stated in this Section whether the misrepresentation is made by a party to the transaction or by a third person.").

13. "[W]hen a contract is void, it is as if it never existed. See Operating Eng's Pension Trust v. Gilliam 737 F.2d 1501, 1505 (9th Cir.1984) (where employer's signature on CBA is procured by fraud in the execution, it is as though "no collective bargaining agreement exists").

14. "[W]here a person is fraudulently induced to sign or endorse a bill or note in the reasonable belief that he is signing something else, he cannot really be said to have made or indorsed the bill or note; hence the ancient plea of *non est factum* is applicable. He is in effect stating that this is not his contract; in fact, it is not a contract at all." 12 Williston on Contracts § 1488, at 333.

15. "[A] promisor's signature procured by fraud in the execution gives no more effect to a contract than a promisor's signature that has been forged. In either case the contract is void; it has

never had any legal effect. See Andrews v. Tallman, 47 R.I. 111, 131 A. 50, 51 (R.I.1925)

"[U]nder the plea of *non est factum* [a defendant] may be entitled to prove fraud in the execution of the bond whereby the instrument never had a legal existence as in cases of forgery...."; Crocker v. Bellangee, 6 Wis. 645, 1858 WL 2281, at 11 (Wis.1858)

16. "[A] void contract is null *ab initio*, and the subject of it may be bought, sold, or otherwise dealt with, in all respects precisely as though it had never been — for it never hath been of any force. Instance, a forged or stolen deed, or a deed obtained by fraud in the execution...." Laborers' Pension Fund v. A & C Envtl., Inc., 301 F.3d 768, 780 (7th Cir 2002).

17. In Regions Bank v. Schmuck, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct. App. 2003). "[T]he right to rely must be determined in light of the plaintiff's duty to use reasonable prudence and diligence under the circumstances in identifying the truth with respect to the representations made to him." Id. at 672, 582 S.E.2d at 445. **Wells Fargo was duly notified.**

18. "[A] party may not rely upon a misstatement of fact when the truth is easily within his reach." King v. Oxford, 282 S.C. 307, 312, 318 S.E.2d 125, 128 (Ct. App. 1984). "[I]t is the policy of the courts not only to discourage fraud, but also to discourage negligence and inattention to one's own interests." Id. "[H]owever, a party may rely on representations without making further inquiry when a fiduciary or confidential relationship exists between the parties." Epstein v. Howell, 308 S.C. 528, 530-31, 419 S.E.2d 379, 380-82 (Ct. App. 1992). [WF00125]

19. "[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." Armstrong v. Collins, 366 S.C. 204, 223, 621 S.E.2d 368, 377 (Ct. App. 2005)

20. "[G]enerally, South Carolina Courts will not enforce contracts that are illegal or violate public policy." See White v. J.M. Brown Amusement Co., Inc., 360 S.C. 366, 371, 601 S.E.2d 342 345 (2004)("The general rule, well established in South Carolina, is that courts will not enforce

a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.”)
[WF00001-WF00137 is the documented evidence of a **Conspiracy to Defraud**]

E. An overview of procedural due process.

21. “[P]rocedural due process mandates that a litigant be placed on notice of the issues which the court is to consider.” *Murdock v. Murdock*, 338 S.C. 322, 526 S.E.2d 241 (Ct. App. 1999).

“[T]he Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). [My witness was not allowed to speak at a Summary Judgment Hearing]

22. “[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 Procedural due process requires notice, the opportunity to be heard in a meaningful way, and judicial review.” *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); *South Carolina Dep’t of Health and Envtl. Control v. Armstrong*, 293 S.C. 209, 359 S.E.2d 302 (Ct. App. 1987). [No notification that my witness cannot speak is a failure of due process.]

23. “[w]ithout 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.” *Murdock v. Murdock*, 338 S.C. 322, 526 S.E.2d 241 (Ct. App. 1999).

24. In Bolling v. Sharpe, 347 U.S. 497 (1954), the Supreme Court of the United States held that: "[T]he concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive." South Carolina's Supreme Court has written: "[T]he constitutional guaranty of equal protection of the laws requires that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.... The equal protection guaranty is intended to secure equality of protection not only for all, but against all similarly situated." Thompson v. South Carolina Comm'n on Alcohol and Drug Abuse, 267 S.C. 463, 472, 229 S.E.2d 718, 722 (1976). Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). See also Carlson v. Green, 446 U.S. 14, 100 S.Ct. 1468, 64 L.Ed.2d 15 (1980); Davis v. Passman, 442 U.S. 228, 99 S.Ct. 2264, 60 L.Ed.2d 846 (1979); Butz v. Economou, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978).

II. STANDARD OF REVIEW FOR VACATING A JUDGMENT PURSUANT TO RULE 60(b) FOR MISREPRESENTING FACTS & FRAUD UPON THE COURT

A. New Trial.

25. "[T]he decision to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial court." Bowman v. Bowman, 357 S.C. 146, 151, 591 S.E.2d 654, 656 (Ct. App. 2004) (citing Coleman v. Dunlap, 306 S.C. 491, 413 S.E.2d 15 (1992)); Saro Invs. v. Ocean Holiday P'ship, 314 S.C. 116, 441 S.E.2d 835 (Ct. App. 1994) (noting that Rule 60(b) motions are addressed to the discretion of the court and appellate review is limited to determining whether the trial court abused its discretion). {Also See Pelegrina v. United States, 601 F.2d 18, 20-21 (1st Cir. 1979); Johnson v. United States, 32 F.2d 127, 129 (8th Cir. 1929); C. Wright & A. Miller Federal Practice and Procedure § 557 at 515 (1969).}

B. 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).
29. An error that results in a material change in the judgment is not a clerical error. *Dolin v. Dolin*, 654 So.2d 223 (Fla. 5th DCA 1995) (the trial judge attempted to change the nature of the final order from indirect criminal contempt to civil contempt.)
- C. ***Rule 60(b), SCRCP enables the Defendant to obtain relief from an order or judgment that is unjust and the courts are obligated to construe the rule liberally to achieve this objective.***
30. *Subdivision (b)(1)-(3) of Rule 60* 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;

31. **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) (the defendant's failure to attend the trial was excusable because it was caused by a failure of communication); *Heller v. Geneco, Inc.*, 661 So.2d 950 (Fla. 4th DCA 1995) (the moving party was present in court but because of his unfamiliarity with the local procedure he was not present in the judge's chambers); *Wilson v. Woodward*, 602 So.2d 547 (Fla. 2nd DCA 1992) (the secretary for the moving party's lawyer failed to calendar the hearing).

32. Based on precedent in Appellate Courts, **Newly Discovered Evidence** is limited to evidence "which 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)

33. "[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).

34. "[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.

35. "[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."

36. “[D]ue diligence is the “diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.” Lanier, 364 S.C. at 220, 612 S.E.2d at 460. “Diligence looks not to what the litigant actually discovered, but what he or she could have discovered.” Lanier, 364 S.C. at 220, 612 S.E.2d at 460.

37. “[A]ccordingly, when parties could have discovered the new evidence prior to trial, they are not entitled to relief under Rule 60(b)(2).”

See Raby Constr., L.L.P., 358 S.C. at 21, 594 S.E.2d at 484 (citing Bowman v. Bowman, 357 S.C. 146, 152, 591 S.E.2d 654, 657 (Ct. App. 2004)). 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). Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 590 S.E.2d 502 (Ct. App. 2003) (A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief.)

38. **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).

39. “[I]ntrinsic fraud, on the other hand, is fraud which was presented and considered in the trial.” Hagy v. Pruitt, 339 S.C. 425, 529 S.E.2d 714 (2000). “[I]t is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.” Hilton Head Ctr. v. South Carolina Pub. Serv. Comm’n.

40. “[T]here is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court. *Rule 60(b)*, SCRCF; Hagy v. Pruitt (court has the inherent authority to set

aside a judgment on the ground of extrinsic fraud in spite of any facially applicable statute of limitations). “[I]n order to secure equitable relief on the basis of fraud, the fraud must be extrinsic.” Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951). (extrinsic fraud is necessary in order to secure equitable relief vacating a prior judgment).

41. “[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). Fraud 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. See 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”).

42. When an Officer of the Court commits **Fraud upon the Court**, the orders and judgments of that court are void, of no legal force or effect. The judge who committed **Fraud upon the Court** acted without jurisdiction. The judge that acts without jurisdiction has no absolute immunity protection. “[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).

43. As former Chief Justice Burger stated, “[p]erjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings.”, United States v. Mandujano, 425 U.S. 564, 576 (1976); see also *Defendant’s Filed Exhibit 32, page 3, paragraph 4*. “[F]alse testimony threatens the fair and effective administration of justice and the integrity of the courts. Trials are ideally a search for the truth.” Nix v. Whiteside, 475 U.S. 157 (1986) (holding that a criminal defendant’s constitutional right to effective assistance of counsel was not violated when his

attorney refused to help him give perjured testimony); Tehan v. United States ex rel. Shott, 382 U.S. 406, 416 (1966) If an attorney and a judge deliberately falsify testimony and/or conceal and/or distort material facts, a **Conspiracy to Defraud** exists and **Fraud upon the Court**.

44. “[T]his truth-determining process depends upon the partisan, but accurate, presentation of truthful evidence by the parties.” Clark v. United States, 289 U.S. 1 (1933) “[T]hus, the United States Supreme Court has aptly observed that all perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. Therefore, it cannot be denied that it tends to defeat the sole ultimate objective of a trial.” In re Michael, 326 U.S. 224, 227 (1945)

See, e.g., United States v. Agurs, 427 U.S. 97, 103 (1976); (holding that “the Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair”, Pyle v. Kansas, 317 U.S. 213; Alcorta v. Texas, 355 U.S. 28; Napue v. Illinois, 360 U.S. 264; See Miller v. Pate, 386 U.S. 1; Giglio v. United States, 405 U.S. 150; Donnelly v. DeChristoforo, 416 U.S. 637....and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. See Giglio v. United States, at 154, quoting from Napue v. Illinois, at 271”); [and see Defendant’s Filed Exhibits 11, 12, Affidavits & Exhibit 32, page 3, paragraph 4 relative to the hearing on March 14, 2013.]

45. In Demjanjule v. Petrovsky, 10 F. 3d 338 at 352 (6th Cir 1993), the court relied upon professor Moore's frequently cited definition of fraud upon the court.

“[A] verdict may be set aside for fraud on the court if an attorney and a witness have conspired to present perjured testimony.”; Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir.1978) (fabrication of evidence where attorney is implicated is fraud upon the court); 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.”); Dixon v. Comm’n of Internal Revenue, 2003 WL 1216290 (9th Cir.2003) (fraud on the court occurred where attorneys entered into secret settlement agreements with taxpayers in exchange for false testimony); 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); Porcelli v. Joseph Schlitz Brewing Co., 78 F.R.D. 499 (E.D.Wis.1978) (noting distinction between perjury involving officers of the court and witness or party); Moore’s Federal Practice ¶ 60-21[4][b] (3d ed.2002).

46. In addition 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."

47. "[L]ong ago, the Supreme Court made it clear that deliberate 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). In *Napue v. Illinois*, 360 U.S. 264 (1959), "[t]he Supreme Court reiterated that a conviction obtained through use of false testimony known to be such by representatives of the State, is a denial of due process. The Court further ruled that there is also a denial of due process when the State, though not soliciting false evidence, allows it to go uncorrected when it appears. In cases involving false or misleading testimony, a new trial is required if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . ." *Napue*, 360 U.S. at 271." "[T]he adjudicative integrity of a court may be defiled by the behavior of parties or attorneys which results in depriving adverse parties of substantive rights." *Mallonee v. Grow*, 502 P.2d 432 (Alaska 1972)

48. As Justice Black said, in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250, 1256 (1944):

"[T]ampering with the administration of justice ... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."

49. "[W]hether the deprivation of a party's rights by actions of the court are attributable to a willful intent to defraud or a reckless disregard of rules or statutory provisions, the court has the same duty to rectify the wrong. The mechanism for protecting and maintaining the decisional

integrity of our judicial system is found in the statutes and rules which govern the procedures to be followed by parties, attorneys and judges.” *Mallonee v. Grow*, 502 P.2d 432 (Alaska 1972)

50. “[T]he purposeful or reckless disregard of those procedural safeguards which results in the deprivation of substantive rights constitutes an impermissible corruption of court process.” 2 *F. Pollock & F. Maitland, The History of English Law* 535 (2d ed. 1968).

(1) Dishonesty is the key element of a Conspiracy to Defraud and Fraud upon the Court by Officers of the Court.

“**Dishonesty**” as defined by *Wikipedia*, “[i]s to act without honesty. It is used to describe a lack of probity, cheating, lying or being deliberately deceptive or a lack in integrity, knavishness,.... corruption or treacherousness. Dishonesty is the fundamental component of a majority of offences relating to the acquisition, conversion and disposal of property..... defined in criminal law such as fraud.”

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

III. WELLS FARGO IS EFFECTIVELY BARRED FROM ANY LEGITIMATE RELIEF PRECEDENTIALLY AND/OR STATUTORILY

A. Wells Fargo has unclean hands and federal and state law prohibits unjust enrichment for participating in unlaw acts. Relief in Equity is barred.

51. Well Fargo has “**Unclean Hands**” as a direct result of violating a South Carolina and/or a Federal Law and/or Regulation in the procurement of a home loan. South Carolina and Federal Law also prohibits “**Unjust Enrichment**”. {See my Statement of Undisputed Material Facts that is incorporated by reference as though fully set forth herein verbatim.}

(a) “[T]he doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. *First Union Nat’l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998). “[T]he expression ‘clean hands’ means a clean record with respect to the transaction with the defendants themselves and not with respect to others.” *Arnold v. City of Spartanburg*, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). “[T]he rule must be understood to refer to some

misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity. *Id.*”

(b) See also *Menominee River Co. v. Augustus Spies L & C Co.*, 147 Wis. 559 at p. 572; 132 NW 1118 (1912). (holding that “[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.”)

(c) *Whipp v. Iverson*, 43 Wis. 2d 166, 168 N.W.2d 201 (1969) (holding that, “[I]t 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.”)

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

B. A New Trial is needed Because Wells Fargo’s mortgage is Falsely Certified.

52. The Secretary of State for the State of South Carolina established the procedures and requirements for commissioned Notaries. In the Secretary’s Notary Reference Manual, it is clearly written in chapter 2, on page 6, #6. **False Certification** was not adjudicated in Judge Goodstein’s court because she did not address any maturing Counterclaims and/or Affirmative Defenses in my **Verified Pleadings**. See Court Orders, Records and Transcripts to verify.

(1) “[Y]our responsibility as a notary public is to verify that the signer of the document “personally appeared” before you and signed the document or acknowledged he/she signed the document.”

(2) See New York’s, Penal Law, §§170.10 and 70.00 2(d), (“[a] notary public who knowingly makes a false certificate that a deed or other written instrument was acknowledged by a party thereto is guilty of forgery in the second degree, which is punishable by imprisonment for a term of not exceeding seven years. The essence of the crime is false certification, intention to defraud *see People v. Abeel*, 182 NY 415.” (“[W]hile the absence of guilty knowledge or criminal intent would absolve the notary from criminal liability, the conveyance, of which the false certification is an essential part, is a forgery and, therefore, invalid.”)

(3) 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.”** **Wells Fargo 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); *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.}

(4) 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.} The key words are: **“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.”**

(5) South Carolina Courts that refuse 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.”)

(6) South Carolina’s Code of Laws that prohibits **False Certification** by a notary pursuant to Sections 26-1-95, 30-5-30, 30-5-40 & 26-3-40 to 26-3-70. It is

documented as [WF00058, WF00060 & WF00097] and it is verifiable to the highest legal standard. S. Hammond was never in my presence before, during or after the closing on December 21, 2007.

C. **A New Trial is needed because Wells Fargo has benefitted from Fraud upon the Court by Officers of the Court and a Denial of Due Process of Law.**

53. “[T]he prevalence of intellectually dishonest decisions is described by Northwestern Law Professor Anthony D’Amato in *“The Ultimate Injustice: When the Court Misstates the Facts”* [1]. He shows how judges at different levels of the state and federal systems manipulate the facts and the law to make a case turn out the way they want it to. It quotes from a speech by Hofstra Law Professor Monroe Freedman to a conference of federal judges:

(1) “Frankly, I have had more than enough of judicial opinions that bear no relationship whatsoever to the cases that have been filed and argued before the judges. I am talking about judicial opinions that falsify the facts of the cases that have been argued, judicial opinions that make disingenuous use or omission of material authorities, judicial opinions that cover up these things with no-publication and no-citation rules.”

(2) “[A]fterward, when Professor Freedman sat down, a judge sitting next to him turned to him and said, “You don’t know the half of it.”” {*Excerpts from The Long Term View, Massachusetts School of Law, Vol. 4, No. 1, 1997, pp. 90-97*}.

54. While broad, the trial court’s discretion is not unlimited. The [trial] judge must consider the proper mix of factors and juxtapose them reasonably. “[A]buse occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them.” *Independent Oil and Chemical Workers of Quincy, Inc. v. Procter & Gamble Mfg. Co.*, 864 F.2d 927, 929 (1st Cir. 1988); see also *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 923 (1st Cir. 1988) (to warrant reversal for abuse of discretion, it must “plainly appear that the court committed a meaningful error in judgment”).

55. In *Demjanjule v. Petrovsky*, 10 F. 3d 338 at 352 (6th Cir 1993), the court relied upon professor Moore’s frequently cited definition of fraud upon the court. Professor Moore explained

fraud upon the court as follows:

"Fraud upon the court should...embrace only that species of fraud which does or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court, so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication, and relief should be denied in the absence of such conduct." *See 7 Moore, Federal Practice p 60.33 at 511 (1971 ed.)*

56. "Fraud upon the court" is grounds for relief under the savings clause of *Rule 60(b)*, *SCRCP* and is distinguishable from the "fraud ... misrepresentation, or other misconduct" under subsection *60(b)(3)*, *SCRCP*. See *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir.1978).

57. However, *Rule 60(b)*, *SCRCP*'s relief based on "**Fraud upon the Court**" is reserved for the most egregious misconduct, and requires a showing of "[a]n unconscionable plan or scheme which is designed to improperly influence the court in its decision." *Rozier v. Ford Motor Co.* at 1338 (quoting *England v. Doyle*, 281 F.2d 304, 309 (9th Cir.1960)).

58. Attorneys and Judges are officers of the court, therefore, the narrow concept of "**Fraud upon the Court**" embraces fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.

59. "[E]very case has many facts, any of which may be inadvertently "misstated" in judicial decisions. But judicial misconduct is not about innocent "misstatement" of facts, and certainly not about peripheral facts. It involves a Judge's knowing and deliberate misrepresentation of the material facts on which the case pivots. These facts determine the applicable law. When a Judge make rulings and decisions which are not only a gross abuse of discretion, but which knowingly and deliberately disregard "clear and controlling law" and obliterate, distort, or fabricate the facts in the record to do so", {*Excerpts from The Long Term View, Massachusetts School of Law, Vol. 4, No. 1, 1997, pp. 90-97*}. this is "Fraud upon the Court".

60. The common law rule of universal application is that a court of competent jurisdiction

"[h]as the power, during the term at which its judgments are rendered, to modify, vacate, or set aside those judgments, and that such judgments are absolute only upon the adjournment of the court for that term." *Rottman v. Schmuker*, 94 Mo. 169, 7 S.W. 119 (1888); *In re Henry County Burial Ass'n*, 229 Mo. App. 300, 77 S.W.2d 124 (K.C. Ct. App. 1935)

61. "[D]uring the term, the court has the power to act upon its own initiative, or upon an outside suggestion provided by motion of a party or from any source whatever." *Ramsey v. Rothwell*, 168 Mo. App. 271, 153 S.W. 792 (K.C. Ct. App. 1913)

D. A New Trial is needed because as the Court's records and transcripts will verify, in additional to violating the Due Process Clauses in South Carolina's and the United States Constitution, Judge Goodstein even violated the Rules of Civil Procedure and South Carolina's Rules of Evidence.

62. Not allowing my witness to give testimony on December 6, 2011, September 6, 2012 and September 3, 2013 during the Summary Judgment hearing not only prejudiced my case, her actions also violated South Carolina's and the Federal Rules of Civil Procedure and South Carolina's Rules of Evidence. Judge Goodstein struck counterclaims without notice or a hearing, used a deposition that could not be used against me without notification or a hearing and by denying me a Trial by Jury effectively eliminated April Primrose's ability to identify Thomas Jacobs as the broker and seller on 11/26/2007. **Golden Gate Mortgage did not broker any loan.**

(1) *Rule 56(c), SCRCP*. In order to determine whether a triable issue of fact exists, the trial court "must view all evidence and all inferences that can be reasonably drawn from it in the light most favorable to the non-moving party." *Rawlinson Rd. Homeowners Ass'n, Inc. v. Jackson*, 395 S.C. 25, 32, 716 S.E.2d 337, 341 (Ct. App. 2011). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Id.* at 32-33, 716 S.E.2d at 341. {See My *Verified Pleading* dated July 17, 2013}

(2) *Restatement, Second, Torts* § 538 clearly states the following.... "[a] matter is material if: (A) A reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question; or

(B) The maker of the representation knows or has reason to know that the recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard.

(3) “[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.” Armstrong v. Collins, 366 S.C. 204, 223, 621 S.E.2d 368, 377 (Ct. App. 2005); *see also* Small v. Springs Indus., Inc., 292 S.C. 481, 483, 357 S.E.2d 452, 454 (1987) (same).

(4) “[A]n issue is 'material' if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action.” PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc., 297 S.C. 176, 179, 375 S.E.2d 331, 332 (Ct. App. 1988).

(5) “[P]robative means tending to prove or disprove.” Black's Law Dictionary 1323 (9th ed. 2009). Probative value is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues. “[T]he more essential the evidence, the greater its probative value.” United States v. Stout, 509 F.3d 796, 804 (6th Cir. 2007). Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates.

(6) “[S]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” Ellis v. Davidson, 358 S.C. 509, 520, 595 S.E.2d 817, 823 (Ct. App. 2004)

(7) Having personal knowledge of an event and having physical evidence that proves an event are two entirely different matters. One can have personal knowledge of an event without having any physical evidence relative to it. April Primrose, My husband and I have personal knowledge and experienced the events in question that gives our testimony probative force as “Relevant Evidence”. **Nothing we have stated in 6 years has been refuted, denied, contested and/or controverted.**

(8) *Rule 401, SCRE* clearly states in pertinent parts, “[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.”

(9) *Rule 402, SCRE* clearly states the following in pertinent parts, “[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.”

(10) *Rule 601(a), SCRE* clearly states in pertinent parts... “[E]very person is competent to be a witness except as otherwise provided by statute or these rules.”

(11) *Rule 701, SCRE* firmly states in pertinent parts... “[I]f the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.”

(12) *Rule 704, SCRE* emphatically states in pertinent parts; “[T]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.”

(13) Fraud is one of the exceptions to the *Parole Evidence Rule*.

(14) *The Discovery Rule*. Under the discovery rule, the statute of limitations begins to run from the date I either know or should know, by the exercise of reasonable diligence, that a cause of action exists for wrongful conduct. *Section 15-3-535 – SC Code of Laws; Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). The exercise of reasonable diligence simply means I had to act with some promptness where the facts and circumstances would put a person of common knowledge and experience on notice that some right of mine has been invaded or that some claim against Wells Fargo 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)

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

63. It is not within a Trial Judge’s “sound discretion” or any Officer of the Court to:

Violate or ignore South Carolina’s Rules of Civil Procedure. Under depositions upon oral

examination, *Rule 30(b)(2), SCRCF* clearly states the following in pertinent parts... “[I]f a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.”

(1) Judge Goodstein violate this rule by using a deposition that could not be used against me. Judge Goodstein knows, I am a Pro Se / Pro Per litigant and cannot afford counsel? Judge Goodstein violated the rule without giving me an opportunity to clarify any statement/s before she misquoted them and turned them into misstatements of fact and/or misrepresentations.

(2) *Rule 32(a)(4), SCRCP*, clearly states in pertinent parts.. “[I]f only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.” **Judge Goodstein quoted from excerpts from Attorney Calub’s deposition that I never received...and to date...still have not received.**

(3) *Rule 32(a)(5), SCRCP*, states the following in pertinent parts.... “[A] t least 1 day prior to offering excerpts from a deposition in the case in chief counsel, unless otherwise ordered by the trial judge, shall furnish to the trial judge and, at the same time and by the same means, furnish to all opposing counsel the excerpts from depositions (by page and line number) and a list of deposition exhibits which counsel expects to introduce in the case in chief at trial. When the deposition excerpt is offered at trial counsel for the adverse party shall furnish to the trial judge and, at the same time and by the same means, furnish to all opposing counsel any objections (by page and line number) to opposing counsel's deposition excerpts and any additional excerpts from the depositions (by page and line number) which counsel expects to be read pursuant to SCRCP (a)(4), as well as a list of deposition exhibits to be used. With reasonable notice to the trial judge and all counsel, other excerpts may be read.” **Judge Goodstein violated this rule as well. Rule 32(a)(5) requires that excerpts of depositions and deposition exhibits that are to be used in the party's case in chief are to be provided to the judge and counsel 1 day before use. This was not done before or after Judge Goodstein’s Order.**

(4) *Rule 56(c), SCRCP* also 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.” **Judge Goodstein did not consider or refer to any of my affidavits, pleadings, answers to interrogatories and/or admissions. I have already stated my witness was not even allowed to speak....and as already stated, attorney Burns knows what I am say is true. Attorney Burns was in court with me.**

(5) *Rule 56(d), SCRCP* clearly 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.” **Judge Goodstein did not examine any of my evidence or exhibits. Material facts were not even discussed and she has**

never directed any further proceedings into the action as just. She has simply agreed to or followed everything Wells Fargo suggests or wants by way of Court Orders. This is the classic definition of a Kangaroo Court or a Jim Crow Court in the South before the Civil Rights Act. {Review American History 16th – 20th Century}

(A) *Black's Law Dictionary* (2nd ed. 1910), pg 1172, defines **Trial** in pertinent parts as the following; "[T]he examination before a competent tribunal, according to the law of the land, of the facts or law put in issue in a cause, for the purpose of determining such issue. A trial is the judicial examination of the Issues between the parties, whether they be issues of law or of fact." **This never happened for me in Judge Goodstein's Court.**

(B) *Blacks Law Dictionary* (Rev. 4th ed. 1968), pg 287, defines **Certified Copy** as the following: "[A] copy of a document or record, signed and certified as a true copy by the officer to whose custody the original is intrusted. *People v. Foster*, 27 Misc. 576, 58 N.Y.Supp. 574; *Ehrlich v. Mulligan*, 104 N.J.Law, 375, 140 A. 463,465, 57 A.L.R. 596. If the court is going to pass judgment, I have a legal right to demand Judge Goodstein follow South Carolina's Rules of Civil Procedure or re- cuse herself from this case pursuant to 28 U.S.C. 455(a).

(6) *Rule 56(e)*, *SCRCP* 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. 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." **My affidavit refuting Amanda Weatherly's claims were not even discussed and attorney Burns did not offer any other affidavits based on personal knowledge and no certified copies were presented.**

64. "[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"). "[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). "[W]hen 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).

65. From Ray vs. Ray, "[I]n Chewning, we held "the subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud." *Id.* at 82, 579 S.E.2d at 610. However, our holding in Chewning does not limit the finding of extrinsic fraud to misconduct of an attorney or an officer of the court. As we noted in Evans, fraud upon the court has been defined as "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (1988) (quoting H. Lightsey, J. Flanagan, *South Carolina Civil Procedure*, 408 (2nd ed. 1985)) (emphasis added)"

66. "[j]urisdiction" is to be broadly construed to effectuate the purposes of judicial immunity. Stump, 435 U.S. at 356, 98 S.Ct. at 1104-05. "[A]cts done **"in the clear absence of jurisdiction," for which no immunity is afforded, should be distinguished from actions in "excess of jurisdiction,"** which fall within the ambit of immunity protection." *Id.* at 357 n. 7, 98 S.Ct. at 1105 n. 7 (quoting Bradley, 80 U.S. (13 Wall.) at 351-52). [Boldness added for emphasis]

67. From Peterson v. Peterson, 135 Cal. App. 2d 812, "[I]t is a well-recognized principle that a court of general jurisdiction has the inherent power to set aside a judgment obtained through fraud practiced upon the court." (McKeever v. Superior Court, 85 Cal.App. 381 [259 P.

373]; *McGuinness v. Superior Court*, 196 Cal. 222 [237 P. 42, 45, 40 A.L.R. 1110].") "There can be no question as to the inherent power of the court to set aside the final decree if obtained by fraud." *Miller v. Miller*, 26 Cal. 2d 119, 121 [156 P.2d 931] (It should be pointed out that the relief obtained in this case by defendant in having **the final decree set aside was based upon the alleged false representations of plaintiff to the court.**") "[i]t is immaterial whether the fraud be extrinsic or intrinsic." (*In re Johnson*, 7 Cal.App. 436 [94 P. 592].)" (See also *Rice v. Rice*, 93 Cal. App. 2d 646, 651 [209 P.2d 662].) [Boldness added for emphasis]

68. *Hartford v. Hartford* (1977), 53 Ohio App.2d 79, 83-84, 7 O.O.3d 53, 55-56, 371 N.E.2d 591, 595-596, the court stated: "[F]raud upon the court,' as used in regard to obtaining relief from judgment must be narrowly construed to embrace only that type of conduct which defiles court itself, or fraud which is perpetrated by officers of the court so as to prevent the judicial system from functioning in the customary manner of deciding the cases presented in an impartial manner," such as bribery of a judge or jury, fabrication of evidence by counsel, or prevention of an opposing party from fairly presenting his case."

69. In *Coulson v. Coulson* (1983), 5 Ohio St.3d 12, 15, 5 OBR 73, 76, 448 N.E.2d 809, 811-812, the Supreme Court of Ohio acknowledged that "[a]ny fraud connected with the presentation of a case to a court is a fraud upon the court, in a broad sense," quoting *11 Wright & Miller, Federal Practice and Procedure* (1973) 253, Section 2870.

70. From *Marquette Law Review*, Vol. 71:703, "[A] judgment procured by fraud, however, clearly does not represent a just and accurate determination. Thus, as the official comments to the Restatement (Second) of Judgments explain: "[T]o immunize such a judgment from attack is to compound the injustice of its result on the merits with the injustice of the means by which it was reached. Equally important, if judgments were wholly immune it would give powerful incentive to use of fraudulent tactics in obtaining a judgment." *RESTATEMENT (SECOND) OF*

JUDGMENTS § 70 comment a (1982).”

71. “[F]raud upon the court by an attorney, whether or not intrinsic or extrinsic, can be used to set aside a prior judgment” Chewning v. Ford Motor Co., 354 S.C. 72, 79 S.E.2d 605 (2003) “[F]ederal Rule 60(b)(3), by its express terms, permits judgments to be set aside for fraud, whether the fraud is intrinsic or extrinsic.” Mr. G. v. Mrs. G., 320 S.C. 305, 465 S.E.2d 101 (Ct. App. 1995) “[F]raud upon the court includes fraud by bribing a judge, or tampering with a jury, or fraud by an officer of the court, including an attorney.” Cleveland Demolition Co. v. Azcon Scrap Corp., 827 F.2d 984, 986 (4th Cir. 1987)

E. **A New Trial is needed because a Trial by Jury is a substantial right; as well as, a fair hearing before an impartial, unbiased Judge that is not prejudicial.**

72. As a citizen of this country and state, I have witnessed, experienced and know the abuses that a Pro Se litigant can suffer at the hands of a corrupt judge and corrupt attorneys. Therefore, an interlocutory order is appealable in the interest of justice and for good cause shown. Ex parte Wilson, 367 S.C. 7, 625 S.E.2d 205 (2005) (generally only final judgments are appealable, but an interlocutory order may be immediately appealable if it falls under S.C. Code Ann. § 14-3-330); S.C. Code Ann. § 14-3-330 (1976 & Supp. 2006) (interlocutory orders involving the merits or affecting a substantial right are immediately appealable); Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 335 n.4, 426 S.E.2d 777, 780, 780 n.4 (1993) (An interlocutory order involving the merits is one that “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.” An interlocutory order affects a substantial right when it will “discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.”).

73. “[I]f there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory.” Hooper v. Rockwell, 334 S.C. 281, 513 S.E.

2d 358 (1999); Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993); Adickes v. Allison & Bratton, 21 S.C. 245 (1884).

74. “[A] judgment which determines the applicable law, but leaves open questions of fact, is not a final judgment.” Hooper v. Rockwell; Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford Accident & Indemnity Co., 201 S.C. 32, 21 S.E.2d 209 (1942).

75. “[A] final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined. Good v. Hartford Accident & Indemnity Co., S.C. Code Ann. § 14-3-330(2) (1976) (stating interlocutory orders affecting a substantial right may be immediately appealed if they in effect determine the action and prevent a judgment from which an appeal might be taken); Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993) (“South Carolina case law has established what constitutes an interlocutory appeal. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment.”)

F. Law and Analysis – A New Trial can remedy most errors.

76. “[T]he right of appeal arises from and is controlled by statutory law.” North Carolina Federal Sav. and Loan Ass’n v. Twin States Dev. Corp., 289 S.C. 480, 347 S.E.2d 97 (1986).

“[A]n appeal ordinarily may be pursued only after a party has obtained a final judgment.” Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993); S.C. Code Ann. § 14-3-330(1) (1976); Rule 72, SCRCP; Rule 201(a), SCACR.

77. “[T]he determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330 (1976 & Supp. 2003). An order generally must fall into one of several categories set forth in that statute in order to be im-

mediately appealable.” *Baldwin Constr. Co. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004); *Woodard v. Westvaco Corp.*, 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), overruled on other grounds, *Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002); *Mid-State Distributors*, 310 S.C. at 333 n.3, 426 S.E.2d at 780 n.3.

78. “[A]n order affects a substantial right and is immediately appealable when it “(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]” *Section 14-3-330(2) – SC Code of Laws*

79. “[T]he provisions of Section 14-3-330, including subsection (2), have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. **Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.** *See e.g. Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) (order denying motion for change of venue is not immediately appealable because any error in the order can be corrected by new trial) [Note: **Boldness** added for emphasis]

80. In 6 years, I have cited almost 100 authorities in support of my defense, Wells Fargo has cited few if any that are relevant. Judge Goodstein even quoted Wells Fargo’s irrelevant case law in her reason for a partial summary judgment order. Judge Goodstein’s failure of “Due Process” and “Prejudicial Treatment” of me is also documented in the Court’s Index. You won’t find a single hearing scheduled for me.

RELIEF SOUGHT

81. The *Relief Sought* has never been objected to by the Plaintiff and no Affidavit or **Verified Pleading** has been controverted, refuted and/or denied since 2008. Therefore, the *Relief Sought* must be granted forthwith.

82. **FORTHWITH;** Under the direction and authority of this Court...

(a) Vacate the March 27, 2014 Partial Summary Judgment Order and Rescind the Plaintiff's falsely obtained Order of Reference in favor of a New Trial. Render a Judgment in my favor to Dismiss the Plaintiff's Complaint and this foreclosure proceeding with Prejudice in its entirety and permanently enjoin Wells Fargo from any relief relative to 423 Bayne Street and/or any other assets I might have.

(b) Render a Judgment in my favor for whatever monetary damages the Court deems as just, fair and proper including Punitive Damages, Compensatory Damages, Legal Defense Compensation and restitution of all cost incurred in the preparation and execution of my Defense because of Wells Fargo's unjustifiable persecution of me, after all the facts were known.

(c) Render a Judgment in my favor in an appropriate dollar amount based on Wells Fargo's ability to pay; and any other relief the Court of Common Pleas deems proper.

(d) Render a Judgment against Wells Fargo in my favor to prohibit any set-offs for Wells Fargo's illegal Predatory Lending Scheme, Home Improvement and Mortgage Fraud and for perpetuating the **Scheme to Defraud** of the Seller, the Broker and the Appraiser.

(e) Ascertain the amount of legal Defense Fees that I shall be paid because of Wells Fargo's unwarranted and unjustifiable act of using the Courts to foreclosure on a **Falsely Certified** Note and Mortgage Instrument without legal authority, or statutory authority and engaging in a **Scheme to Defraud** by covering up the truth and seeking a foreclosure judgment based on lies and half truths that included misrepresentations of material facts, **Fraud upon the Court** and unwarranted harassment for documents Wells Fargo already had.

(f) Deny Wells Fargo any claim to 423 Bayne Street in Orangeburg, South Carolina.

OUT OF COURT SETTLEMENT RECOMMENDED

83. Wells Fargo has not filed an acceptable brief since 2008 relative to my **Verified Pleadings** and Sworn Statements. The evidence strongly suggests Burns and Moise were relying on Judge Goodstein's favorable Court Orders and rulings. Based on the facts and the evidence, Burns and Moise crossed the line into criminal behavior during the Stay/TRO. Judge Goodstein crossed it when she signed a judgment order based on lies, half truths, misstatements of facts and misrepresentations of material facts.

84. Since no real financial harm has been done yet, I recommend an Out of Court Settlement to end this matter . Since this **Verified Pleading** is a public record, it is up to the Commission on Lawyer Conduct and Judicial Conduct to act or not act after this Pleading is filed..... not me.

85. Even though "**False Certification**" and Wells Fargo's **Complicity** in the illegal brokering activity of the Unlicensed Seller is a matter for the law, law enforcement, the Courts and/or a Jury to decide, I recommend Wells Fargo do the right thing for reasons that have already been identified and stated in this **Verified Pleading** and in every **Verified Pleading** that I have filed in the Court of Common Pleas relative to this action since 2008.

86. I am incorporating every **Verified Pleading** filed by reference as though I have written every one of them line by line... herein.... verbatim.

87. A negotiated a settlement of this matter Out of Court as soon as humanly possible will be in everyone's best interest. This will save time, money and the reputations of all concerned that need not be tainted or destroyed.

"A securitization model _ a system wherein parties that provide the money for loans and drive the entire origination process from afar and behind the scenes _ does nothing to abolish the basic right of a borrower to assert a defense to the enforcement of a fraudulent loan, regardless of whether it was induced by another party involved in the origination of the loan transaction, be it a broker, appraiser, closing agent, or another." *Herrod v. First Republic Mortg. Corp.*, 625 S.E.2d 373 (W. Va. 2005).

88. **WHEREFORE**, I pray my *Legal Memorandum of Law and Authorities to Support My Notice of Motion and Motion for a New Trial with a Jury Pursuant to Rules 38(a)-(d), 39, 59(a)(2) & 60(b)(1), SCRPC for Extrinsic Fraud Upon the Court by Officers of the Court in Conjunction with 28 U.S.C. § 455 to Recuse Judge Goodstein & 42 U.S.C. § 1983 – The Civil Rights Act* has been clearly written and properly supported by the evidence, the facts, SC Code of Laws, my Exhibits, Well's Fargo's filed documents, my Affidavit/s, Averments and Legal Precedents.

NOTIFICATION & SERVICE VERIFICATION

89. A copy of my *Legal Memorandum of Law and Authorities to Support My Notice of Motion and Motion for a New Trial with a Jury Pursuant to Rules 38(a)-(d), 39, 59(a)(2) & 60(b)(1), SCRPC for Extrinsic Fraud Upon the Court by Officers of the Court in Conjunction with 28 U.S.C. § 455 to Recuse Judge Goodstein & 42 U.S.C. § 1983 – The Civil Rights Act* that has been filed with the Clerk of Court will also be mailed to others not yet listed; Re: Possible Civil Rights Violations pursuant to 42 U.S.C. § 1983 and to the following:

Nelson Mullins Riley & Scarborough, LLP

Elizabeth Scott Moise
SC Bar No. 012945
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
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James H. Burns
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1320 Main Street / 17th Floor
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Columbia, SC 29201
(803) 799-2000

The Judges Affiliated with this Case, **(Documents Sent May 28, 2014)**
The NAACP, CORE, Urban League, SCLC, Congressional Black Caucus, **(Documents Sent May 28, 2014)**
American Civil Liberties Union, **(Documents Sent May 28, 2014)**
American Center for Law and Justice, **(Documents Sent May 28, 2014)**
Commission on Judicial Conduct, **(Documents Sent May 28, 2014)**
Commission on Lawyer Conduct, **(Documents Sent May 28, 2014)**
The United States Justice Department & Others to be Determined. **{Waiting for notification to participate in a Class Action Law Suit, before sending documents}**

Rogers Townsend, PC
Jason D. Wyman
POB 100200
Columbia, SC 29202
(803) 771-7900

NOTARY CERTIFICATION

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

When it comes to matters stated therein that are based upon her 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 9th day of June in the year 2014 in City and County of Orangeburg, in the State of South Carolina.

Affiant Signature: Dorothy Dietz
Notary's Signature as Witness (1): Dorothy Garrick

Signed, sealed and delivered in the presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On 6/09/14 before me appeared Dorothy Dietz
and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on this Verified Pleading presents this document to the Court.

WITNESS my hand and official seal.

Notary's Signature Dorothy Garrick
Commission Expires _____

Dorothy Garrick
South Carolina Notary Public
Commission Expires 06-15-16

(Seal)

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Wells Fargo Bank, N.A.,

Plaintiff,

Vs.

Dorothy Sistrunk

Defendant,

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT

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

)
) **DEFENDANT DOROTHY SISTRUNK**
) **OBJECTS TO NOTICE OF MOTION**
) **AND MOTION FOR CONTINUANCE**
) **AND ANY PURPOSED ORDER**
) **GRANTING A CONTINUANCE DUE**
) **TO EXTRINSIC FRAUD UPON THE**
) **COURT BY OFFICERS OF THE**
) **COURT, WELLS FARGO'S**
) **MORTGAGE IS DEFECTIVE AND**
) **FILED MOTIONS TO VACATE THE**
) **PLAINTIFF'S PARTIAL SUMMARY**
) **JUDGMENT ORDER, RESCIND THE**
) **ORDER OF REFERENCE AND A NEW**
) **TRIAL WITH JURY PURSUANT TO**
) **RULES 38(a)-(d), 39, 59(a)(2) & 60(b)(1),**
) **SCRCP**

) **TODAY'S DATE: JUNE 9, 2014**

Comes now the Defendant, Dorothy Sistrunk, to file my *Objection to the Motion for Continuance and any Purposed Order Granting Continuance Due to Extrinsic Fraud upon the Court by Officers of the Court, Wells Fargo's Mortgage is Defective and Filed Motions to Vacate the Plaintiff's Partial Summary Judgment Order, Rescind the Order of Reference and a New Trial with Jury Pursuant to Rules 38(a)-(d), 39, 59(a)(2) & 60(b)(1), SCRCP*. The Plaintiff's Notice of Motion and Motion for Continuance and unsigned purposed Order was retrieved from the mailbox at 423 Bayne Street in Orangeburg, South Carolina on Saturday, June 7, 2014. The Order is dated June 5, 2014.

I. THE PLAINTIFF'S FILED & RECORDED MORTGAGE IS DEFECTIVE BECAUSE IT IS FALSELY CERTIFIED BY DEBRA C. GALLOWAY AND STEPHANIE HAMMOND

A. Stephanie Hammond was not at the closing on December 21, 2007 and did not witness me deliver and execute any mortgage for or to Wells Fargo [WF00058, WF00060 & WF00097].

1. Wells Fargo's Mortgage is **Falsely Certified** by Stephanie Hammond and Debra C. Galloway. The Plaintiff's Mortgage is recorded in violation of South Carolina Law and is therefore invalid as a matter of law. The Plaintiff's mortgage does not comply with *The Uniform*

Recognition of Acknowledgement Act. Section 30-5-30 – SC Code of Laws clearly states in pertinent parts.. “[E]xcept as otherwise provided by statute, before any deed or other instrument in writing can be recorded in this State, it must be acknowledged or proved by the method described in (A) or (B): “(A)(1) the execution of the deed or other instrument must be first proved by the affidavit of a subscribing witness to the instrument, taken before some officer within this State competent to administer an oath....., **(2) The Uniform Recognition of Acknowledgments Act must be complied with;** or (3) the person executing it shall submit an affidavit subscribed to before a person authorized to perform notarial acts herein or by the Uniform Recognition of Acknowledgments Act that the signature on the deed or other instrument is his signature and that the instrument was executed for the uses and purposes stated in the instrument. (B) A deed or other instrument must be signed by the grantor, mortgagor, vendor, or lessor and the signing must be acknowledged by the grantor, mortgagor, vendor, or lessor in the presence of two witnesses, taken before some officer within this State competent to administer an oath.” *[Note: Boldness will be added for emphasis]*

“(C) Where the instrument is acknowledged by the grantor or maker, the form of acknowledgment must be in substance as follows:

"South Carolina,

_____ County.

I (here give the name of the official and his official title), do hereby certify that (here give the name of the grantor or maker), **personally appeared before me this day** and acknowledged the due execution of the foregoing instrument. **[Boldness added for emphasis.]**

Witness my hand and (where an official seal is required by law) official seal this the _____ day of _____ (year).

Signature of Officer"

2. The Seller - Thomas Jacobs - did not introduce Stephanie Hammond to me on December 21, 2007.

3. The closing attorney - Debra C. Galloway - did not introduce Stephanie Hammond to me on December 21, 2007.

4. Stephanie Hammond did not introduce herself to me on December 21, 2007.
5. Stephanie Hammond was not in the room with Debra C. Galloway before, during or after the closing on December 21, 2007. She may have appeared after I left.
6. I do not recall any mirrors or two way mirrors in the office where the closing took place.
7. I do not recall any cameras in the office where the closing took place.
8. Debra C. Galloway did not request Stephanie Hammond's presence, before or during the closing while I was there.
9. South Carolina's Notary Public Reference Manual in chapter 2, on page 6, in paragraph #6, under **Notarize for absent people**; clearly states the following:

"[Y]our responsibility as a notary public is to verify that the signer of the document 'personally appeared' before you and signed the document or acknowledged he / she signed the document." [See Attached Exhibits 346-348]
10. Stephanie Hammond misrepresented material facts or LIED relative to WF00058.
11. Stephanie Hammond did not witness me sign any document accepting and agreeing to the terms and covenants contained in Wells Fargo's Security Instrument. WF00058 was not signed, sealed and delivered in the presence of S. Hammond and Debra C. Galloway. WF00058 is one of the blank documents Debra C. Galloway had me sign and initial.
12. Stephanie Hammond misrepresented material facts or LIED relative to WF00060.
13. Stephanie Hammond did not see me or witness me sign and/or seal as my act or deed and/or deliver any written Mortgage to Wells Fargo or anyone else. WF00060 was not signed, sealed and delivered in the presence of S. Hammond and Debra C. Galloway. WF00060 is another blank document Debra C. Galloway had me initial. {See My Filed Exhibits 68-69}
14. Stephanie Hammond misrepresented material facts or LIED relative to WF00097.
15. Stephanie Hammond did not see me or witness me sign, seal and as my act and deed deliver any written Mortgage to Wells Fargo or anyone else. WF00060 was not signed, sealed

and delivered in the presence of S. Hammond and Debra C. Galloway. WF00097 is another blank document Debra C. Galloway had me initial.

16. Stephanie Hammond misrepresented material facts or LIED relative to WF00058, WF00060 & WF00097.

17. Debra C. Galloway misrepresented material facts or LIED by notarizing a document on which and in which Stephanie Hammond misrepresented material facts or LIED and Debra C. Galloway knows Stephanie Hammond misrepresented material facts or LIED and Stephanie Hammonds knows Debra C. Galloway misrepresented material facts or LIED. Both Hammond and Galloway participated in a **fraudulent representation** in violation of State and Federal Law.

(1) *Blacks Law Dictionary (Rev. 4th ed. 1968), on pg 1071*, defines **LIE**, n., as.."[A]n untruth deliberately told; the uttering or acting of that which is false for the purpose of deceiving; [an] intentional misstatement. *Brothers v. Brothers*, 208 Ala. 258, 94 So. 175, 177." [Brackets insert added]

(2) The U. S. Supreme Court made it clear that deliberate 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). In *Napue v. Illinois*, 360 U.S. 264 (1959), the Supreme Court reiterated that a conviction obtained through use of false testimony, known to be such by representatives of the State, is a denial of due process. The Court further ruled that there is also a denial of due process when the State, though not soliciting false evidence, allows it to go uncorrected when it appears. In cases involving false or misleading testimony, a new trial is required if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . ." *Napue*, 360 U.S. at 271.

(3) "**Dishonesty**" as defined by *Wikipedia*, "[i]s to act without honesty. It is used to describe a lack of probity, cheating, lying or being deliberately deceptive or a lack in integrity, knavishness,.... corruption or treacherousness. Dishonesty is the fundamental component of a majority of offences relating to the acquisition, conversion and disposal of property..... defined in criminal law..... as..... fraud."

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

(5) *Black's Law Dictionary (Revised 4th ed. 1968) pg. 414*, defines **Corruption** in pertinent parts as the following:. "[I]llegality; a vicious and fraudulent intention to evade the prohibitions of the law; something against or forbidden by law; moral turpitude or exactly opposite of honesty involving intentional disregard of law from improper motives. *State v. Barnett*, 60 Okl.Cr. 355, 69 P.2d 77, 87. An

act done with an intent to give some advantage inconsistent with official duty and the rights of others. *Johnson v. U. S.*, C.C.A.Alaska, 260 F. 783, 786. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. *U. S. v. Johnson*, C.C.Ga., 26 F. 682; *Worsham v. Murchison*, 66 Ga. 719; *U. S. v. Edwards*, C.C.Ala., 43 F. 67.”

(6) From *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 nonexistence 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. *United States v. Neder*, 527 U.S. 1 (1999); *United States v. Gaudin*, 515 U.S. 506 (1995) (materiality in a false statement case is a jury question).

(7) *Blacks Law Dictionary* (4th ed. 1968) pg 1152, defines **Misrepresentation** in pertinent parts as.. “[A]ny manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts. *A. P. Landis, Inc., v. Mellinger*, 116 Pa.Super. 167, 175 A. 745, 746. An untrue statement of fact. An incorrect or false representation. That which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists. Colloquially it is understood to mean a statement made to deceive or mislead. *Haigh v. White Way Laundry Co.*, 164 Iowa 143, 145 N.W. 473, 474, 50 L.R.A.,N.S., 1091; *Zackwik v. Hanover Fire Ins. Co.*, Mo. App., 225 S.W. 135, 138. In a limited sense, an intentional false statement respecting a matter of fact, made by one of the parties to a contract, which is material to the contract and influential in producing it. *Wise v. Fuller*, 29 N.J. Eq. 262; *Hicks v. Wynn*, 137 Va. 186, 119 S.E. 133, 135. A “misrepresentation,” which justifies the rescission of a contract, is a false statement of a substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead. *Rhodes v. Uhl*, 189 Iowa 408, 178 N.W. 394, 400. Misrepresentation such as will amount to false pretense is not confined to mere oral misstatements of fact but includes distribution of printed matter, or a course of conduct, manifestly intended to deceive as to conditions actually existing. *Commonwealth v. Dougherty*, 84 Pa.Super. Ct. 319, 321.

18. Debra C. Galloway and Stephanie Hammond also conspired to conceal material facts from Wells Fargo Bank, N.A., and engaged in **Fraudulent Misrepresentation**; as well as, **Fraudulent Misrepresentation** to Wells Fargo.

(1) **False or Fraudulent Misrepresentation** is defined as “[a] representation contrary to the fact, made by a person with a knowledge of its falsehood, and being the cause of the other party's entering into the contract.”

(2) *Blacks Law Dictionary* (5th ed. 1979) page 596, defines **Fraudulent Concealment** in pertinent parts, as the following: “[T]he hiding or suppression of a ma-

terial fact or circumstance which the party is legally or morally bound to disclose. The employment of artifice planned to prevent inquiry or escape investigation and to mislead or hinder the acquisition of information disclosing a right of action; in acts relied on must be of an affirmative character and fraudulent. *Fundunburks v. Michigan Mut. Liability Co.*, 63 Mich.App. 405, 234 N.W.2d 545, 547. The test of whether failure to disclose material facts constitutes fraud is the existence of a duty, legal or equitable, arising from the relation of the parties; failure to disclose a material fact with intent to mislead or defraud under such circumstances being equivalent to an actual "fraudulent concealment." Fraudulent concealment justifying a rescission of a contract is the intentional concealment of some fact known to the party charged, which is material for the party injured to know to prevent being defrauded; the concealment of a fact which one is bound to disclose being the equivalent of an indirect misrepresentation that such fact does not exist." {Also see 18 U.S. Code § 1346 & attorney Elizabeth Scott Moise's Filed Statements}

B. Wells Fargo's filed and recorded mortgage is defective because it is recorded in violation of Section 30-5-40 – SC Code of Laws.

19. The Plaintiff's mortgage was notarized and recorded in violation of *Section 30-5-40 – SC Code of Laws* that states in pertinent parts..

“(1) Any deed or other instrument purporting to convey an interest in or lien upon real estate executed after May 11, 1972 and prior to June 22, 1973, which in all other respects meets the requirements of law, whether executed within or without this State, and whether or not such instrument was executed in the presence of and subscribed by two or more witnesses, as provided in Section 27-7-10, is hereby validated as to execution from the time of such execution and entitled to recordation if:

- (a) The execution thereof was acknowledged in a form substantially identical to the forms set forth in Section 26-3-70, Uniform Recognition of Acknowledgments Act; or
- (b) The execution thereof was acknowledged in a form conforming substantially to the provisions of Section 30-5-30, subsection (3), as amended in 1972.

(2) The recordation of any such instrument is hereby validated and declared to have constituted legal notice from the time of such recordation, if such instrument complies with the recording of statutes of this State.”

C. Wells Fargo's filed and recorded mortgage is defective because it was recorded and filed in violation of Section 26-3-40 – SC Code of Laws.

20. Well Fargo's filed mortgage was notarized and recorded in violation of *Section 26-3-40 – SC Code of Laws* that states the following in pertinent parts.... [Note: Boldness added for emphasis.]

“[T]he person taking an acknowledgment shall certify that:

- (1) The person acknowledging **appeared before him** and acknowledged he executed the instrument; and
- (2) The person acknowledging was known to the person taking the acknowledgment or that **the person taking the acknowledgment had satisfactory evidence** that the person acknowledging was the person described in and who executed the instrument.”

D. Wells Fargo’s filed and recorded mortgage is defective because it was recorded and filed in violation of Section 26-3-50 – SC Code of Laws.

21. Wells Fargo’s filed and recorded mortgage was notarized in violation of *Section 26-3-50 – SC Code of Laws* that states in pertinent parts.....

“[T]he form of a certificate of acknowledgment used by a person whose authority is recognized under Section 26-3-20 shall be accepted in this State if:

- (1) The certificate is in a form prescribed by the laws or regulations of this State;
- (2) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or
- (3) The certificate contains the words "acknowledged before me," or their substantial equivalent.

E. Wells Fargo’s filed and recorded mortgage is defective because it was recorded and filed in violation of Section 26-3-60 – SC Code of Laws.

22. Wells Fargo’s filed and The Plaintiff’s mortgage was notarized, filed and recorded in violation of South Carolina Law and without “Substantially Complying with South Carolina Law. *Section 26-3-60 – SC Code of Laws* clearly states what "Acknowledged before me" means in pertinent parts.....

“[T]he words "acknowledged before me" mean:

- (1) That the person acknowledging appeared before the person taking the acknowledgment;
- (2) That he acknowledged he executed the instrument;
- (3) That, in the case of:
 - (a) A natural person, he executed the instrument for the purposes therein stated;

23. Wells Fargo’s mortgage is invalid and therefore must be cancelled by Court Order and the Equity Court must initiate an investigation into the “**False Certification**” of a mortgage by the attorney Debra C. Galloway and Stephanie Hammond.

(1) See also *Stubbs v. Chase Manhattan Mortgage Corp. (In re Stubbs)*, 330 B.R. 717, 726-30 (Bankr. N.D. Ind. 2005), *aff'd*, No. 2:05-CV-439, 2006 WL 236181 (N.D. Ind. August 2006) (the court ruled that the mortgage was defective because the mortgage did not include in the acknowledgment the name of the mortgagor as the person who personally appeared before the notary public.."); *Rogan v. America's Wholesale Lender (In re Vance)*, 99 Fed. Appx. 25, 27-28 (6th Cir. 2004); *Simon v. Chase Manhattan Bank (In re Zaptocky)*, 250 F.3d 1020, 1027-28 (6th Cir. 2001) (holding that, "the trustee may avoid mortgage that was improperly recorded under Ohio law.") *In re Vance*, 99 F. App'x at 27; (the Sixth Circuit quoted the language of Kentucky's Revised Statute § 423.130 which is titled, "Certificate of person taking acknowledgment": The person taking an acknowledgment shall certify that: (1) The person acknowledging appeared before him and acknowledged he executed the instrument; and (2) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.)

(2) The Sixth Circuit then stated, "[t]he notary failed to include this [§ 423.130] information in the certification." See also *Gardner v. Chase Home Fin. (In re Patton)*, 2006 WL 3877755, 2 (Bankr. E.D. Ky. 2006); *Miller v. Raisor (In re Raisor)*, 2006 WL 3885132, 2 (Bankr. E.D. Ky.2006); *Schlarman v. Suntrust Mortgage, Inc. (In re Helvey)*, 2006 WL 3877754, 2 (Bankr. E.D. Ky.2006) & *Baker v. CIT Group/Consumer Fin., Inc. (In re Hastings)*, 353 B.R. 513, 516-17 (Bankr. E.D.Ky. 2006) (the information required by Kentucky Revised Statute § 423.130 includes identifying the debtors) & see *Dunlap v. Commonwealth Cmty. Bank (In re Phelps)*, 341 B.R. 848, 852-53(Bankr. W.D. Ky. 2006).

F. Wells Fargo's filed and recorded mortgage is defective because it was recorded and filed in violation of Section 26-1-95 – SC Code of Laws.

24. Wells Fargo's Mortgage and its accompanying Note were "Falsely Certified" in violation of *Section 26-1-95 SC Code of Laws*. The Secretary of State for the State of South Carolina established the procedures and requirements for commissioned Notaries. In the Secretary's Notary Reference Manual, it is clearly written in chapter 2, on page 6, #6,

(1) "Your responsibility as a notary public is to verify that the signer of the document "personally appeared" before you and signed the document or acknowledged he/she signed the document."

(2) *New York's, Penal Law, §§170.10 and 70.00 2(d)*, "(a notary public who knowingly makes a false certificate that a deed or other written instrument was acknowledged by a party thereto is guilty of forgery in the second degree, which is punishable by imprisonment for a term of not exceeding seven years. The essence of the crime is false certification, intention to defraud.) (While the absence of guilty knowledge or criminal intent would absolve the notary from criminal

liability, the conveyance, of which the false certification is an essential part, is a forgery and, therefore, invalid.”)

25. Section 26-1-95 – SC Code of Laws – clearly states in pertinent parts:

“[A] notary public who, in his official capacity, falsely certifies to affirming, swearing, or acknowledging of a person or his signature to an instrument, affidavit, or writing is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days. A notary public convicted under the provisions of this section shall forfeit his commission and shall not be issued another commission. The court in which the notary public is convicted shall notify the Secretary of State within ten days after conviction.”

26. “A notary public is always liable for all actions, whether intentional or unintentional.

This liability is unlimited to financial losses and damages. Even if the notary public is guilty of negligent or intentional acts, the notary will be personally liable to the injured party.” In United States Fidelity & Guaranty Co. v. State, 211 Miss. 864 (Miss. 1951), the court stated, “that a notary public is liable on his official bond, for wrongful official acts resulting in loss or injury. It is not necessary that the wrongful act of the notary shall be the sole cause of the loss. If it is a concurring cause and plays a part in bringing about the injury, the liability for the loss is fixed. A notary public engages in misconduct by affixing the notarial stamp and signature to an acknowledgment that the subscriber personally appeared on a specific date. A notary who knowingly purports to authenticate a document which, in fact, has not been properly authenticated, to the detrimental reliance of innocent third parties, is liable for fraud.”

27. “A public officer who negligently makes a defective or untrue certificate is liable, together with his surety, on his official bond for any damages resulting from such negligent act.

Again in United States Fidelity & Guaranty Co. v. State, 211 Miss. 864 (Miss. 1951), the court held that where a notary is called on to perform an act which he is authorized by law to perform, and he does so carelessly or fraudulently, he and his surety are liable for any loss proximately resulting therefrom. A notary public is not an insurer, but he is under a duty to his clients to act

honestly, skillfully and with reasonable diligence.”

28. “The notary bears a duty to take reasonable care to ascertain the identity of the individual whose signature is to be acknowledged. An action for negligence, therefore, must be predicated upon the notary’s failure to exercise reasonable care in establishing the subscriber’s identity. Once it has been established that an acknowledged signature is forged, the evidentiary burden shifts to the notary to establish that the proper standard of care was exercised. To recover for the negligent default of a notary, it should appear that such default was the proximate cause of the loss.” *See also James, Inc. v. Carr*, 170 Wn. 2d, 14 P.2d 1113 (1932)

29. “A notary public who fails to take the required care in properly ascertaining the identity of a forger, fails to read a jurat in its entirety before certifying its truth, fails to complete a certificate before signing it, is negligent. A notary who totally fails to get any such evidence under circumstances which would have made any reasonable person suspicious is negligent and liable for damages proximately resulting therefrom. The notary’s surety is liable to the one damaged by the notary’s false certification of a fraudulent acknowledgment to a deed of trust, the forging of a mortgage, or, similarly, by the fraudulent acknowledgment of a fictitious mortgage.”

II. JUDGE GOODSTEIN DID NOT STRIKE ANY OF MY COUNTERCLAIMS AND AFFIRMATIVE DEFENSES IN MY VERIFIED PLEADINGS. THIS IS VERIFIED BY SIGNED COURT ORDERS AND HEARING TRANSCRIPTS

30. A **Verified Pleading** is a written sworn statement or declaration that meets the legal requirements of *Rules 11(c) and 56(e), SCRCP* and the Federal Rules of Civil Procedure, *Rule 11(b), FRCP*. My **Verified Pleadings** are based on my own knowledge and not belief.

(1) *Rule 11(c), SCRCP* 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."

(2) *Rule 56(e), SCRCF* 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...."

(3) *Rule 11(b), FRCP* 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:

(A) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(B) 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;

(C) identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(D) 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."

31. Except for conclusions of law, a **Verified Pleading** is admissible when submitted to the court as statements of fact and cannot be summarily dismissed or 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.

(1) *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).

(2) "[A]llegations 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).

(3) *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),

32. 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.

(1) 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).

(2) 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.)

(3) 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).

33. "[W]hen a contract is void, it is as if it never existed. See Operating Eng's Pension Trust v. Gilliam 737 F.2d 1501, 1505 (9th Cir.1984) (where employer's signature on CBA is procured by fraud in the execution, it is as though "no collective bargaining agreement exists").

34. "[W]here a person is fraudulently induced to sign or endorse a bill or note in the reasonable belief that he is signing something else, he cannot really be said to have made or indorsed the bill or note; hence the ancient plea of *non est factum* is applicable. He is in effect stating that this is not his contract; in fact, it is not a contract at all." 12 Williston on Contracts § 1488, at 333.

35. "[A] promisor's signature procured by fraud in the execution gives no more effect to a contract than a promisor's signature that has been forged. In either case the contract is void; it has never had any legal effect. See Andrews v. Tallman, 47 R.I. 111, 131 A. 50, 51 (R.I.1925) "[U]nder the plea of non est factum [a defendant] may be entitled to prove fraud in the execution of the bond whereby the instrument never had a legal existence as in cases of forgery...."; Crocker v. Bellangee, 6 Wis. 645, 1858 WL 2281, at 11 (Wis.1858)

36. "[A] void contract is null *ab initio*, and the subject of it may be bought, sold, or otherwise dealt with, in all respects precisely as though it had never been — for it never hath been of any force. Instance, a forged or stolen deed, or a deed obtained by fraud in the execution...." Laborers' Pension Fund v. A & C Env'tl., Inc., 301 F.3d 768, 780 (7th Cir 2002).

37. Section 36-3-305(a)(1)(ii)(iii) - SC - Code of Laws clearly states in pertinent parts....

"(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (1) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms...."

38. My Counterclaims and Affirmative Defenses in my **Verified Pleadings** are based on Wells Fargo's **Complicity**, promotion, furtherance and defense of the "Seller's illegal brokering

activities that is Defrauding others; including ME. See Jackson v. S. Holland Dodge, 755 N.E2d 462, 466 (2001); Cumis Ins. Soc'y, Inc. v. Peters et al., 983 F. Supp. 787, 794 (N.D. Ill. 1997) (holding under Illinois law defendant is liable if he “either knowingly participated in the fraud or knowingly accepted the fruits of the fraudulent conduct”); Hearthside Baking Co., Inc. v. Maurice Lenell Cookie Co., 402 B.R. 233, 251 (Feb. 27, 2009). State v. Small, 272 SE 2d 128 - NC: S. Ct. 1980; State v. Williams, 216 N.C. 446, 5 S.E.2d 314 (1939); 16 Am.Jur.2d Conspiracy § 19 (1979); Nye & Nissen v. United States, 336 U.S. 613, 626 (1949); United States v. Rosenberg, 888 F.2d 1406, 1426 (D.C. Cir. 1989); United States v. Peoni, 100 F.2d 402 (1938); Hyde v. United States, 225 US 347 - Supreme Court 1912; Pinkerton v. United States, 328 U.S. 640 (1946); Section 16-17-410 – SC Code of Laws

39. There is no sales contract or appraisal. The forgeries on WF00001-26 and on WF00029 are clearly fraudulent. Howell v. Midway Holdings, Inc., 362 F.Supp.2d 1158, 1165 (D. Ariz. 2005) (“[T]he conscious evil of such behavior [forgery and alteration of a car lease contract] is obvious.”); Walker Bank & Trust Co. v. Thorup, 317 P.2d 952, 953 (Utah 1957)

40. The doctrine of in pari delicto is... “[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing.” Black’s Law Dictionary 94 (7th ed. 1999). “[I]n South Carolina, this doctrine precludes one joint tortfeasor from seeking indemnity from another.” See Rock Hill Tel. Co. v. Globe Commc’ns, Inc., 363 S.C. 385, 389 n.2, 611 S.E.2d 235, 237 n.2 (2005) (“In general, there is no right to indemnity between joint tortfeasors.”); Atlantic Coast Line R. Co. v. Whetstone, 243 S.C. 61, 68, 132 S.E.2d 172, 176 (1963) (holding that there generally is no right to indemnity between joint tortfeasors). Based upon the facts (the witnesses & my personal knowledge of the events), the evidence is verifiable [WF00065, WF00066-73 & WF00074] that Golden Gate Mortgage and Wells Fargo are joint tortfeasors in violating a Federal law - 15 USC § 1681n(a) - that states the following in pertinent

parts.....,

“Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of — (1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or (B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater; (2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney’s fees as determined by the court...”

41. “[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)

42. “[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). 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.").

45. In United States Fidelity & Guaranty Co. v. State, 211 Miss. 864 (Miss. 1951), the court stated that "[a] notary public is liable on his official bond, for wrongful official acts resulting in loss or injury. It is not necessary that the wrongful act of the notary shall be the sole cause of the loss. If it is a concurring cause and plays a part in bringing about the injury, the liability for the loss is fixed. A notary public engages in misconduct by affixing the notarial stamp and signature to an acknowledgment that the subscriber personally appeared on a specific date. A notary who knowingly purports to authenticate a document which, in fact, has not been properly authenticated, to the detrimental reliance of innocent third parties, is liable for fraud."

46. "A public officer who negligently makes a defective or untrue certificate is liable, together with his surety, on his official bond for any damages resulting from such negligent act. where a notary is called on to perform an act which he is authorized by law to perform, and he does so carelessly or fraudulently, he and his surety are liable for any loss proximately resulting therefrom. A notary public is not an insurer, but he is under a duty to his clients to act honestly, skillfully and with reasonable diligence." United States Fidelity & Guaranty Co. v. State, 211 Miss. 864 (Miss. 1951)

47. No legitimate judgment or foreclosure can be rendered in favor Wells Fargo because the mortgage on 423 Bayne Street in Orangeburg, South Carolina does not comply with the recording requirements of Section 30-5-30(A)(2) – SC Code of Laws. As already stated, there is no reference in the acknowledgement section on the mortgage that Dorothy Sistrunk personally appeared with the two witnesses as mandated by Section 30-5-30(B) – SC Code of Laws. There

is no reference in the acknowledgement section on the mortgage that Dorothy Sistrunk personally appeared before Debra C. Galloway as mandated by *Section 30-5-30(C) – SC Code of Laws*. The Plaintiff's filed document clearly identifies the "**Fraudulent Certification**", even though, Debra Galloway is the closing attorney. [WF00060]

48. The Plaintiff's filed mortgage in M-BK 01914, from pages 221-239 [WF00042-WF00060] is "**Falsely Certified**" and is... therefore invalid.

49. *Section 34-3-110 - SC Code of Laws* that clearly states in pertinent parts...

"(A) A person knowingly may not execute, or attempt to execute, a scheme or artifice to: defraud a federally chartered or insured financial institution; or obtain monies, funds, credits, assets, securities, or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretenses, representations, or promises. (B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than five years, or both."

50. A "**Falsely Certified**" Mortgage and Note is a fraudulent pretense, a misrepresentation of material facts, and a false promise. If the mortgage is invalid, its note is also invalid.

51. Wells Fargo hands are not clean by virtue of its numerous violations of South Carolina and Federal law and its perpetuation of the illegally brokered loan of an "Unlicensed" Seller after all the facts were known. *Arnold v. City of Spartanburg*, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). *Ingram v. Kasey's Assoc's.*, 340 S.C. 98, 107, 531 S.E.2d 287, 292 (2000). "[T]his is consistent with South Carolina precedent asserting that no person be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act."

52. *18 U.S.C. § 1344* clearly states in pertinent parts;

"Whoever knowingly executes, or attempts to execute, a scheme or artifice to defraud a financial institution; or to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both".

53. Section 39-5-20 – *SC Code of Laws* that clearly states in pertinent parts..“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). And..

54. Actual knowledge is not necessary to hold Wells Fargo liable, if misrepresentations are made by Wells Fargo’s employees while acting within the scope of their agency/ies. *See, West v. Service Life & Health Co.*, 220 S.C. 198, 66 S.E. (2) 816 (1951); *see also, Restatement (Second) of Agency* § 261, *comment a* (1958). South Carolina’s Unfair Trade Practices Act (SCUTPA) should not be construed to increase the Defendant’s burden of proving liability. “[I]ts purpose is to give additional protection to the victims of unfair trade practices, not to make a case harder to prove than it would be under common law principles. Consistent with this policy, the federal courts hold that actual knowledge of the principal is not necessary to hold him liable for the acts of his agent committed within the scope of authority.” {*See Goodman v. Federal Trade Commission*, 244 F. 2d 584 - Court of Appeals, 9th Circuit 1957}

55. Under Section 39-5-20(a) and (b), *SC Code of Laws*, I do have to prove the elements of common law deceit in order to establish a violation of the *South Carolina’s 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. {*See State Ex Rel. McLeod v. C & L CORP. INC.*, 313 SE 2d 334 - SC: Court of Appeals 1984}

56. In order to be actionable under *SCUTPA*, an unfair deceptive act or practice must have an impact upon the public interest and the act and practice must have the potential for repetition. Using falsified documents to secure notes has the potential for repetition. {*See Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 351

S.E.2d 347 (Ct. App. 1986) (wherein the court held in an action brought by one corporation against another that the UTPA is not available to address a private wrong where the public interest is unaffected)}

57. In addition, asking me to make monthly payments on a known “Illegally Brokered Loan”, with known violations of Federal and State law, a known “Illegal Predatory Lending Scheme” as defined by the United States Justice Department, that is based on a verifiable “Forged” and “Altered” Contract of Sale, verifiably “Falsified” 7-59 Appraisals, a verifiably “Falsified” 7-59 Satisfaction Completion Certificate and a verifiable “Unauthorized” Credit Report is **Unconscionable**.

58. The Plaintiff’s falsely valued mortgage and note did offer me any legitimate choice. No sane and rational person would make payments on a mortgage loan under these conditions or be hounded by attorneys from Nelson Mullins Riley & Scarborough, LLP in a foreclosure proceeding to violate State and Federal law. It is for a Jury to decide whether or not Wells Fargo has violated *Section 37-5-108 – SC Code of Laws* that clearly states in pertinent parts.....

(1) “(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....”

(3) “[U]nconscionability 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).

(4) “[P]enal statutes must be strictly construed”, Bostic v. Am. Home Mortg. Servicing, Inc., 375 S.C. 143, 149, 650 S.E.2d 479, 482 (Ct. App. 2007) (“South Carolina has long recognized the principle that penal statutes are to be strictly construed.”). The Court of Appeals in Rorrer v. P.J. Club, Inc., 347 S.C. 560, 567, 556 S.E.2d 726, 730 (Ct. App. 2001) clearly stated, “[W]hen a law imposes a punishment which acts upon the offender alone, and not as a reparation to the party injured, ...it is entirely within the discretion of the lawgiver.”

59. In addition to Wells Fargo’s use and reliance on verifiably “Falsified” documents and a verifiably “Unauthorized” credit report that is so in your face until a child in middle school with reasonable intelligence can prove it is “Unauthorized”, Wells Fargo’s violations of *Section 37-23-40(1)&(2) – SC Code of Laws* are also verifiable.

60. Because Wells Fargo’s supporting documents are verifiably falsified. Wells Fargo’s use of falsified documents to support any mortgage backed security is a securities violation, a violation of the SEC’s disclosure requirements for securities and Wells Fargo continues the Seller’s “Illegal Predatory Lending Scheme” that is aiding and abetting the Seller; with help from the Broker, the Appraiser and Wells Fargo’s employees, to defraud others. {See Nye & Nissen v. United States, 336 U.S. 613, 626 (1949) (holding that, “[I]t makes a defendant a principal when he consciously shares in any criminal act whether or not there is a conspiracy.”)}

61. Under *Administrative Order #2011-05-02-01*, attorneys James H. Burns & Elizabeth Scott Moise initiated and implemented **The Massive Filing Fraud** that concealed Wells Fargo’s failed compliance during the Stay/TRO.

62. To prove the existence and perpetuation of the **Massive Filing Fraud** by Burns and/or Scott Moise, and to prove my *Sworn Statements of Fact* are true, all the Court/Judge has to do is

demand Burns and/or Moise verify their filed Case Status Update statements with hard evidence; i.e., phone records, date/s, time/s, HMP/HAMP determination methods and the name/s of the personnel that contacted the Defendant during the dates and times in question and prove the Defendant refused to talk with Wells Fargo. If done so, the Court/Judge will discover these records do not exist.

63. Regardless of who Wells Fargo pays to do an appraisal, it will be revealed by due diligence that Austin's 7-59 Appraisals are falsified and the value inflated. Therefore, it is immaterial that the Defendant signed loan documents on December 21, 2007 or on November 26, 2007 for the "Unlicensed" Seller. Wells Fargo never had a legal loan, mortgage or note. Wells Fargo's note and mortgage began in fraud and it ended in fraud.

64. Wells Fargo's mortgage fails the legal requirements of *South Carolina's Uniform Recognition and Acknowledgment Act* because I did not appear before Debra C. Galloway on the mortgage instrument as required by South Carolina law. As stated, I do know STEPHANIE HAMMOND and like, the Appraiser and the Broker has never met her or seen her. Therefore Wells Fargo's mortgage was void on 12/21/2007 and do not require an Order of Reference for what can be easily be determined by looking at the documents [WF00058, 60 & 97] and reading *Sections 29-1-95, 30-5-30(A)-(B) – SC Code of Laws*.

65. *Rule 1, SCRCF* and *Rule 41(b), SCRCF* effectively ends this matter. **Fraud upon the Court, Fraudulent Concealment of Material Facts, Misrepresentation of Material Facts** and the Denial of Due Process of Law has kept this illegal loan transaction alive and in the Courts. The only remaining element of the case that needs a decision is how much compensation I am to receive for cost of suit and legal defense of an illegal loan transaction and any punitive damages that is required as a deterrence for Wells Fargo's **Complicity** in violating State and Federal laws.

66. Based on the known facts, Wells Fargo's filed exhibits, affidavits, the Witness's unrebut-

ted, uncontested, never refuted, never denied and never controverted "*Sworn Statements*", and after all the facts were known....and based upon those facts and the law, Wells Fargo has shown no right to relief. (Wells Fargo Bank's) behavior is indicative of an **Accomplice** before, during and after the fact.

67. Wells Fargo did not rely on any legitimate representations from me for its lending decision. Even the credit report is "Unauthorized" [WF00066-WF00073]. Wells Fargo has had ample time and Wells Fargo's attorneys have had ample time and opportunity to discover the truth in the public records, but chose to defend the illegal brokering activities of the Seller, that was helped by the Broker, the Appraiser and Wells Fargo's own employees, most notably, Janet Frotscher. National Republic Bank v. National Homes Construction Corp. (1978), 63 Ill. App.3d 920, 925, 21 Ill.Dec. 80, 84, 381 N.E.2d 15, 19.) (Central States Joint Board v. Continental Assurance Co. (1983), 117 Ill.App.3d 600, 606, 73 Ill. Dec. 107, 111, 453 N.E.2d 932, 936.) (holding that "[I]f ample opportunity existed to discover the truth, then reliance is not justified.)

68. Wells Fargo's Chairman and Wells Fargo legal department {My Exhibits 327 & 328} were duly notified and chose not to act. In Smith v. Ethell (1986), 144 Ill.App.3d 171, 98 Ill.Dec. 742, 494 N.E.2d 864, the following standard for investigating the status of real estate was set forth:

"[W]hen an individual of ordinary prudence is on notice of a possible problem and that further investigation may be required, it is only where under the circumstances the facts should be apparent to one of his knowledge and intelligence from a cursory glance where he has discovered something which serves as a warning that he is being deceived, that he is required to make an investigation of his own."

69. Wells Fargo's personnel knowingly participated in the fraud of the "Unlicensed" Seller after being duly notified and extended the Seller's, Broker's, Appraiser's and it's own employees' fraudulent conduct to others; especially to Me. See Jackson v. S. Holland Dodge, 755 N.E.2d 462, 466 (2001); Cumis Ins. Soc'y, Inc. v. Peters et al., 983 F. Supp. 787, 794 (N.D. Ill. 1997) (holding

under Illinois law defendant is liable if he “either knowingly participated in the fraud or knowingly accepted the fruits of the fraudulent conduct”); Hearthside Baking Co., Inc. v. Maurice Lenell Cookie Co., 402 B.R. 233, 251 (Feb. 27, 2009).

70. Rule 41(b), SCRCP clearly states in pertinent parts..... “on the ground that upon the facts and the law the plaintiff has shown no right to relief.” Well.. What are facts [*What actually occurred based on personal knowledge*]... and..... what law? [*Any State or Federal rule*] (**Note: Law is singular not plural**) Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009), Iqbal at 1950 (“[W]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.”). In addition....

71. My **Verified Pleadings** must be construed to do substantial justice. Rule 8(f), SCRCP.

"[A]ll pleadings shall be so construed as to do substantial justice to all parties." *see also Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 340 (1991) (*holding to ensure substantial justice to the parties, the pleadings must be liberally construed*). "[T]echnical, restrictive or outmoded requirements of Code Pleading are not necessarily required [under the SCRCP]." Gaskins v. S. Farm Bureau Cas. Ins. Co., 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000) (*quoting Harry M. Lightsey, Jr. & James F. Flanagan, South Carolina Civil Procedure* 93-94 (2nd ed. 1996)).

72. There is no reference in Rule 41(b) to material facts and there is no requirement in the language of Rule 41(b) that the facts must be material. Personal knowledge of events is material.

"[A] fact is 'material' if a dispute over it might affect the outcome of a suit under the governing law; factual disputes that are 'irrelevant or unnecessary' do not affect the summary judgment determination." Holcomb v. Powell, 433 F.3d at 895 (*quoting Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248). "[A]n issue is 'genuine' if the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party." See Anderson v. Liberty Lobby, Inc., 477 U.S. at 248; Holcomb v. Powell, 433 F.3d at 895. "[W]hen a motion for summary judgment is under consideration, 'the evidence of the non-movant[s] is to be believed,' and all justifiable inferences are to be drawn in [their] favor." Anderson v. Liberty Lobby, Inc., 477 U.S. at 255; See also Mastro v. Potomac Electric Power Co., 447 F.3d 843, 849-50 (D.C. Cir. 2006). [W]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving [parties], there is 'no genuine issue for trial.'" Scott v. Harris, 550 U.S. 372, 380 (2007) (*quoting Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). "[A]s noted, in this case defendants have provided no affidavits, declarations or other competent evidence, setting forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)

73. A fact is defined as “[A] thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence. A fact is either a state of things, that is, an existence, or... a motion, that is.... an event.” *Black’s Law Dictionary 2nd Edition*. In the Law of Evidence, 1 Benth. Jud. Ev. 48A, “[A] fact is a circumstance, event or occurrence as it actually takes or took place; a physical object or the appearance, as it actually exists or existed. An actual and absolute reality, as distinguished.... from mere.... supposition or opinion. A fact is a truth, as distinguished from..... fiction or..... error.”

74. “[L]aw is a principle; Fact is an event. Law is conceived. A fact is what actually happened. Law is a rule of duty. A fact is that, which has been according to.. or in contravention of the rule. Law operates as an obligatory rule which judges must recognize and enforce.” *The Online Law Dictionary*. Hence, “upon the facts [what actually happened according to personal knowledge - Rules 11c and 56(e), SCRCP] and the law [the Federal and/or State Rules]”

Wells Fargo has shown no right to relief. *Rule 41(b), SCRCP*

“[I]n interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.” *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (2003); *Green v. Lewis Truck Lines, Inc.*, 314 S.C. 303, 443 S.E.2d 906 (1994). “[I]f a rule’s language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced. See *Maxwell*, 356 S.C. at 617, 591 S.E.2d at 26; *Knotts v. S.C. Dep’t of Natural Resources*, 348 S.C. 1, 10, 558 S.E.2d 511, 516 (2002). “[C]ourts should consider not only the particular clause in which a word may be used, but the word and its meaning in conjunction with the purpose of the whole rule and the policy of the rule. *S.C. Coastal Council v. S.C. State Ethics Comm’n*, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991) (applying this rule of construction to a statutory provision). “[I]n construing a rule, language in the rule must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Mun. Ass’n of S.C. v. AT&T Communications of Southern States, Inc.*, 361 S.C. 576, 606 S.E.2d 468 (2004) (applying this rule of construction to a statutory provision). “[T]he Rules of Civil Procedure “shall be construed to secure the just, speedy, and inexpensive determination of every action.” *Rule 1, SCRCP*.

75. In *Regions Bank v. Schmuck*, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct. App. 2003).

“[T]he right to rely must be determined in light of the plaintiff’s duty to use reasonable prudence

and diligence under the circumstances in identifying the truth with respect to the representations made to him.” *Id.* at 672, 582 S.E.2d at 445. “[A] party may not rely upon a misstatement of fact when the truth is easily within his reach.” *King v. Oxford*, 282 S.C. 307, 312, 318 S.E.2d 125, 128 (Ct. App. 1984). “[I]t is the policy of the courts not only to discourage fraud, but also to discourage negligence and inattention to one’s own interests.” *Id.* “[H]owever, a party may rely on representations without making further inquiry when a fiduciary or confidential relationship exists between the parties. *Epstein v. Howell*, 308 S.C. 528, 530-31, 419 S.E.2d 379, 380-82 (Ct. App. 1992).

76. In *Regions*, 354 S.C. at 671, 582 S.E.2d at 444, “[a] bank may be held to a fiduciary duty if it undertakes to advise a depositor as part of the services the bank offers.” It has already been firmly established in *Nelson v. Production Credit Ass’n of the Midlands*, 930 F.2d 599, 605 (8th Cir. 1991) and by “Stare Decisis” that courts cannot impose a duty on banks or any other lender to use reasonable care when making a loan. Therefore, Wells Fargo’s employees, staff, officers and/or executives are liable and responsible for any losses they incur if their lending behavior becomes reckless and/or inappropriate.

77. Neither the Court nor I can make a bank lend responsibly. Nor can the Courts impose a duty on me to make a bank or lender act responsibly. The Seller lost the right to recovery for his illegal acts and Wells Fargo lost the right to recovery for its illegal acts. *Rule 41(b), SCRCF* allows me to file a motion.... and.... for the court to act upon a motion..... based on the Plaintiff’s failure to show a right to relief.

78. *Rule 41(b), SCRCF* clearly states in pertinent parts...

“After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.....”

Dorothy Sistrunk
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Orangeburg, SC 29115
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NOTIFICATIONS

A copy of my **Verified Pleading** that has been filed as Defendant Dorothy Sistrunk's *Objection to the Motion for Continuance and any Purposed Order Granting Continuance Due to Extrinsic Fraud upon the Court by Officers of the Court*, that has been filed with the Clerk of Court will be mailed to the following:

Elizabeth Scott Moise	Attorney James H. Burns	Rogers Townsend & Thomas
SC Bar No. 012945	SC Bar No. 70313	Jason D. Wyman
151 Meeting Street	1320 Main Street / 17 th Floor	POB 100200
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Charleston, SC 29401-2239	Columbia, SC 29201	Ph: (803) 771-7900
803-853-5200	(803) 799-2000	Fx: (803) 343-7017

NOTARY VERIFICATION

IN WITNESS WHEREOF, The undersigned, being duly **SWORN**, and under the **PENALTY OF PERJURY** declares the afore stated facts are true and correct as of her own knowledge. When it comes to matters stated therein that are based upon her 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 9th day of June in the year 2014 in City and County of Orangeburg, in the State of South Carolina.

Affiant Signature: Dorothy Sistrunk

Notary's Signature as Witness (1): Dorothy Garrick

Signed, sealed and delivered in the presence of:

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

On 6/09/14 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 Dorothy Garrick

Commission Expires Dorothy Garrick
South Carolina Notary Public
Commission Expires 06-15-16

(Seal)

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Wells Fargo Bank, N.A.,

Plaintiff,

Vs.

Dorothy Sistrunk

Defendant,

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

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

) **DEFENDANT DOROTHY SISTRUNK'S**
) **STATEMENT OF THE EVIDENCE**
) **TO BE INCLUDED IN THE RECORD**
) **ON APPEAL Re: 2014-001683**
)

) **Began: July 30, 2014**
) **Filed: August 14, 2014**
)

FILED FOR RECORD
WITH CLERK OF COURT
ORANGEBURG COUNTY, SC

2014 AUG 15 PM 12:43

Comes now the Defendant, Dorothy Sistrunk, to file her *Statement of the Evidence for my Appeal in a Civil Case*, i.e., Wells Fargo Bank, N.A., Respondent v. Dorothy Sistrunk, Appellant - Case 2014-001683, that shall be included in the **Record on Appeal**.

(a) Pursuant to *Rule 10(c), F. R. App. P.*, that clearly states in pertinent parts;

"[I]f the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection."

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

(c) *Rule 56(c), SCRCP* (providing summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"); *Spence v. Wingate*, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) ("In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing the motion." (citation omitted)); *id.* ("Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial." (citation omitted)).

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

ATTEST: TRUE COPY

Wingja B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

I. THE EVIDENCE ON FILE SUPPORTS THE ORIGINAL REMEDY SOUGHT

A. No viable transcript or Court Order referencing the evidence currently exist.

1. In 6 years, Judge Goodstein never referred to or considered any of the evidence, any of my objections or any statement of fact in any one of my **Verified Pleadings**, affidavits, exhibits, the witness' deposition and/or affidavits, interrogatories and/or admissions on file in any hearing or Court Order. Therefore, there is no viable transcript of the evidence for appellate review. Hence....a **Statement of the Evidence** is needed. If...Wells Fargo Bank, N.A., orders transcripts, they can be used to verify my *Sworn Statements of Fact* relative to *Fraud upon the Court*.

B. The Statement of the Evidence supports the original remedy that was sought; and is still being sought in Case 2008-CP-38-1024.

2. The Statement of the Evidence supports the legal remedies that were sought in case 2008-CP-38-1024 in July of 2008 and....are still being sought.....6 years later. The legal remedies are...

(a) Cancellation of Wells Fargo's mortgage, loan and note 0174072777. The value of Wells Fargo's mortgage that is recorded in Orangeburg County's Office of the Register of Deeds in Mortgage Book 01914 is falsified based on verifiable misrepresentations of material facts and must be removed by voluntary cancellation...Court Order..or...any other legal means. Wells Fargo's mortgage is defined as ***Mortgage Fraud*** by the FBI and by statutory definition in thirteen (13) states; including South Carolina's § 40-58-70(1)---(3) that clearly states in pertinent parts;

“[I]n addition to the activities prohibited by other provisions of state or federal law, **it is unlawful for a person in the course of a mortgage loan transaction to:** (1) misrepresent the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan. This includes presenting the broker in the guise of a lender or pursuing a course of misrepresentation through agents or otherwise; (2) intentionally misrepresent or conceal a material factor, term, or condition of a transaction to which he is a party, pertinent to an applicant for a mortgage loan or a mortgagor; (3) **engage in a transaction, practice, or course of business which is unconscionable,** as provided in Section 37-5-108, **or which operates a fraud upon a person in connection with the making of or purchase or sale of a mortgage loan;**”

(b) The truth must be reported to Orangeburg County's Tax Assessor's Office. The Tax Assessor's Office must be notified about the falsified value of 423 Bayne Street in order to reset property taxes to their true value. {Exhibit 115} When Wells Fargo stops paying the taxes on it's fraudulent property value, I will have to pay them. {Wells Fargo's Exhibits WF00001-26}

18 U.S. Code § 1346 - Definition of "scheme or artifice to defraud" "[F]or the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services."

(c) Removal of Wells Fargo's false Lis Pendens from the records. Well Fargo has known about the falsified value of its mortgage, loan and note as early as December 22, 2007, specifically, by January 14, 2008 and definitely by the end of February 2008. Janet Frotscher deliberately concealed the subject matter of **Mortgage Fraud** in the faxed documents and letters she received by calling it "correspondence". {Wells Fargo's Exhibit WF00120 @ ¶ 1}

(1) "[W]here a claim requires proof of intent to defraud, knowledge of the fraud can be shown where the defendant had information but "failed to inquire further because he was afraid of what the inquiry would yield. Willful blindness is knowledge enough." Louis Vuitton S.A. v. Lee, 875 F.2d 584, 590 (7th Cir. 1989) (trademark infringement by selling counterfeit goods); United States v. Campbell, 977 F.2d 854, 857 (4th Cir. 1992) ("A defendant is willfully blind when he 'purposefully and deliberately contrive[s] to avoid learning all the facts.'")

(2) Childs, et al. v. Charske et al., 822 N.E.2d 853, 858 (Ohio Ct. Com. Pl. 2004) ("Willful blindness exists 'only where it can almost be said that the defendant actually knew. He suspected the fact; he realised [sic] its probability; but he refrained from obtaining the final confirmation because he wanted in the event... to be able to deny knowledge.'")

(3) "[T]he passive nondisclosure of information, one party has an affirmative duty to disclose information; and that party's failure to disclose the information serves as a substitute for the false representation element required in fraud." Triggs v. Risinger, 772 S.W.2d 381, 382 (Mo.App.1989)

(4) Smith v. General Motors Corp., 979 S.W.2d 127, 129 (Ky.Ct. App.1998); Osterberger v. Hites Construction Co., 599 S.W.2d 221, 227 (Mo.App. 1980). "[I]t is, of course, well established that mere silence is not fraudulent absent a duty to disclose." Smith, 979 S.W.2d at 129. "[A] duty to disclose may arise from a fiduciary relationship, from a partial disclosure of information, or from particular circumstances such as where one party to a contract has superior knowledge and is relied upon to disclose this knowledge." *Id*

(5) “[W]hether a legal duty exists is a question of law.” Hallquist v. Midden, 196 S.W.3d 601, 604 (Mo.App. E.D.2006). “[A] legal duty owed by one party to another may arise under at least three sources: (1) the legislature; (2) the law; or (3) a contract.” Cupp v. National Railroad Passenger Corp., 138 S.W.3d 766, 771 (Mo.App. E.D.2004). “[I]n nondisclosure cases, a party's silence amounts to representation where the law imposes a duty to speak.” Andes, 853 S.W.2d at 943.

(6) “[F]or a case of fraud based on suppression of a fact, a plaintiff must establish that the defendant had a duty to disclose a material fact.” Smith v. General Motors Corp., 979 S.W.2d 127, 129 (Ky.Ct. App.1998); Osterberger v. Hites Construction Co., 599 S.W.2d 221, 227 (Mo.App. 1980). “It is, of course, well established that mere silence is not fraudulent absent a duty to disclose. A duty to disclose may arise from a fiduciary relationship” Smith, 979 S.W.2d at 129.

(7) *Section 551 of the Restatement (Second) Torts*, makes it clear that under some circumstances a person's failure to disclose information constitutes a positive misrepresentation. Kesselring v. St. Louis Group, Inc., 74 S.W.3d 809, 814 (Mo.App. E.D.,2002). The Missouri Court of Appeals has made it clear that non-disclosure amounts to a misrepresentation only when the person is under a duty to disclose. Id.

(8) “[S]ilence can be an act of fraud where matters are not what they appear to be and the true state of affairs is not discoverable by ordinary diligence.” Bayne v. Jenkins, 593 S.W.2d 519, 529 (Mo. banc 1980). See Groothand v. Schlueter, 949 S.W.2d 923, 930 (Mo.App. W.D.1997) (buyer may rely on seller where the facts are ‘peculiarly within the knowledge’ of seller and ‘the truth is difficult for the buyer to ascertain’) “[I]n nondisclosure cases, a party's silence amounts to a representation where the law imposes a duty to speak.” Andes v. Albano, 853 S.W.2d 936, 943 (Mo. banc 1993) at 943.

(9) “[O]ne who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability as for an affirmative misrepresentation if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter.” Arctic Tug & Barge, Inc. v. Raleigh, Schwarz & Powell, 956 P.2d 1199, 1202 (Alaska 1998).

(10) “[C]oncealment of a fact which one has a duty to disclose properly serves as a substitute element for a false and fraudulent misrepresentation.” Denny v. Guyton, 327 Mo. 1030, 40 S.W.2d 562, 590 (banc 1931). [T]he test of whether a plaintiff relied upon a misrepresentation is simply whether the representation was a material factor influencing final action.” Grossoehme v. Cordell, 904 S.W.2d 392, 397 (Mo.App. W.D.1995)

(11) “The recording of a deliberately misleading mortgage instrument in the public record constitutes actionable mortgage fraud, even though there is no direct communication of a fraudulent statement to the victim of the fraud.”

3. In the Court of Appeal, Fourth District, Division 1, California; Marvin B. Graham, Plaintiff and Appellant, v. Bank of America, N.A., et al., Defendants and Respondents; D063779, Decided: May 23, 2014, clearly states the difference between an appraisal value based on misrepresentations of material facts as opposed to value based on conjecture and/or opinion.

“[S]tatements regarding the appraised value of the property are not actionable fraudulent misrepresentations. Representations of opinion, particularly involving matters of value, are ordinarily not actionable representations of fact. (Neu-Visions Sports Inc. v. Soren/McAdam/Bartells (2000) 86 Cal.App.4th 303, 308 (Neu-Visions) [accountant's opinion of the value of a building not actionable misrepresentation of fact]; Padgett v. Phariss (1997) 54 Cal.App.4th 1270, 1284 [opinion of fair market value of property not actionable misrepresentation].) A representation is an opinion “if it expresses only (a) the belief of the maker, without certainty, as to the existence of a fact; or (b) his judgment as to quality, value or other matters of judgment.” (5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 774, p. 1123.) Appraisals are “an opinion as to the market value” of a property prepared by a qualified independent appraiser. (12 C.F.R. §§ 34.42(a), 34.45 (2014); 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 498, p. 576.) It is an estimate of the price a buyer would be willing to pay and a seller would be willing to accept at a given time based upon market conditions.”

C. **Wells Fargo v. Sistrunk is a precedent setting case not a precedent following case.**

4. This is a precedent setting case, not a precedent following case. There are few, if any, mortgage foreclosure cases where the home buyer never communicated in any fashion or form with the broker or the lender. The seller and property owner brokered the loan by himself. Therefore, the lender, Wells Fargo, did not rely on or used any information from me.

(a) I know for a fact, Wells Fargo did not use any authorized information from me to approve loan 0174072777. The information I had on the application that I completed for the seller was not used by Wells Fargo, Goldengate Mortgage/David Terrell or **Golden Gate Mortgage, Inc.**, {See Wells Fargo's Exhibits WF00032-38 & Compare With WF00061-62} i.e.,

- (1) Monthly income {Also See My Exhibits 65, 66, 72, & 170 }
- (2) Monthly debt obligations that were not charged off accounts,
- (3) The 1950 year built information, {Also See My Exhibit 26 for Year Built}
- (4) Not even my former address...5074 Coburg Lane...was used.

(b) I know for a fact Wells Fargo's 7-59 Appraisals are falsified. There is no central

air conditioning at 423 Bayne Street, patio or deck. I know for a fact there is no working fireplace, scuttles, new walls, floors, fixtures, fresh paint and there was no working electricity, sinks or toilets in 2007. {See Wells Fargo's Exhibit WF00015 & My Exhibit 10}

(c) I know for a fact there are no new kitchen appliances or work done on any seals or electrical wiring. I know for a fact there is evidence of deferred maintenance, water damage, termite damage and parts of the electrical system is still connected to antique Knob & Tube wiring. This is why the lights do not work. {Electrician Ricky Padgett can verify this fact}

(d) None of Wells Fargo's 7-59 appraisals were ordered for me or by me. By definition, Wells Fargo's loan, note and mortgage is fraudulent. {Exhibits WF00001-137}

(e) Therefore, my **Statement of Fact**, that Wells Fargo's mortgage, loan and note is **Mortgage Fraud** by definition is not based on my belief, as Judge Goodstein and Wells Fargo's attorneys kept implying in arguments and in her Court Orders. The FBI, a Federal Regulation or Administrative Law and 13 states define it as **Mortgage Fraud**.

(1) *FBI 2007 Mortgage Fraud Report*: "[M]ortgage Fraud is defined as the intentional misstatement, misrepresentation, or omission by an applicant or other interested parties, relied on by a lender or underwriter to provide funding for, to purchase, or to insure a mortgage loan."

(2) [M]ortgages based on falsified documentation, inflated appraisals, fraudulent appraisal information, intentional misstatement, misrepresentation, or omission of a material fact are illegal." *Federal Bureau of Investigation (FBI)*

(3) *12 CFR § 1731.2(c)* states in pertinent parts.. "[M]ortgage fraud means a material misstatement, misrepresentation, or omission relied upon by an Enterprise to fund or purchase—or not to fund or purchase—a mortgage, including a mortgage associated with a mortgage-backed security or similar financial instrument issued or guaranteed by an Enterprise. Such mortgage fraud includes, but is not limited to, a material misstatement, misrepresentation, or omission in identification and employment documents, mortgagee or mortgagor identity, and appraisals that are fraudulent."

(4) *12 CFR § 1731.2(e)* states in pertinent parts.. "[P]ossible mortgage fraud means that an Enterprise has a reasonable belief, based upon a review of information available to the Enterprise, that mortgage fraud may be occurring or has occurred. [Note: **Boldness & Underling** has been added and will continue to be added for emphasis]

(5) 13 states in which **Mortgage Fraud** is defined and prosecuted as a statutory offence...Arizona Rev. Stat. § 13-2320(A)(1)-(4); Colorado Rev. Stat. § 18-4-401(9)(a)-(e); Florida Stat. Ann. § 817.545(2)(a)-(d); Georgia Code Ann. §§ 16-8-102 to 16-8-106; Kentucky Rev. Stat. Ann. § 286.8-990; Maryland Code Ann. Real Property, § 7-401 to 7-409; Minnesota Stat. § 609.822; Mississippi Code Ann. § 97-23-107; Missouri Rev. Stat. § 570.310; N.Y. Penal §§ 187.00 to 187.25; North Carolina Gen. Stat. §§ 14-118.10 to 14-118.17; Utah Code Ann. §§ 76-6-1203 to 76-6-1204; Washington Rev. Code § 19.144.080.

(f) Section 40-58-70(6) – SC Code of Laws gave Wells Fargo ample opportunity to correct defects in Jim H. Austin, III's 7-59 Appraisals. Wells Fargo choose not to take advantage of South Carolina law after being notified by phone and written correspondence and after all the facts were known about misrepresented facts upon which Wells Fargo had relied.

(g) The evidence will show, as I have consistently stated during the past six years, Wells Fargo's legitimate cause of action is against those that submitted the misrepresentations to Wells Fargo. In the same case, Graham v. Bank of America, the Court of Appeal, Fourth District, Division 1, California stated the following as it relates to appraisals:

"[A]n appraisal is performed in the usual course and scope of the loan process to protect the lender's interest to determine if the property provides adequate security for the loan. Since the appraisal is a value opinion performed for the benefit of the lender, there is no representation of fact upon which a buyer may reasonably rely. "While it [is] foreseeable the appraisal might be considered by plaintiff in completing the loan transaction, the foreseeability of harm [is] remote. Plaintiff [is] in as good a position as defendant to know the value and condition of the property. One who seeks financing to purchase real property has many means available to assess the property's value and condition, including comparable sales, advice from a realtor, independent appraisal, contractors' inspections, personal observation and opinion and the like. Stated another way, the borrower should be expected to know that the appraisal is intended for the lender's benefit to assist it in determining whether to make the loan, and not for the purpose of ensuring that the borrower has made a good bargain, i.e., not to insure the success of the investment." (Nymark v. Heart Fed. Savings & Loan Assn. (1991) 231 Cal.App.3d 1089, 1099.)"

(h) Unlike Graham v. Bank of America, Wells Fargo's reliance on Jim H. Austin, III's 7-59 Appraisals did not protect its interest, created no security for its loan and failed to establish value or the property's condition. **No valid appraisal...means no valid value...means no valid mortgage or note.**

(I) If Wells Fargo wants to pay \$75,000.00 for Thomas Jacobs', the Appraiser's and Goldengate Mortgage's/David Terrell's lies, deceit and deception that's Wells Fargo's choice. **Therefore, I have no liability for Wells Fargo's errors in judgment, reckless lending behavior, negligence or for any choice/s Wells Fargo made after being duly notified and after all the facts were known.**

(1) Since Judge Goodstein did not do any fact finding, reviewed any evidence or heard witness testimony, unlike Moseley vs. All Things Possible, Inc., that she relied on, there is considerable evidence of Wells Fargo's own scheme or artifice to **Defraud** or **Swindle** me out of \$75,000.00 with the falsified documents of the Seller, Broker and Appraiser (2nd and/or 3rd parties); as well as, with the forgery, document falsifications, concealment of material facts, false accusations and unauthorized use of my credit report by Wells Fargo's own employees. Hence, Summary Judgment should have been denied.

(2) In addition to the aforementioned, there is no reference in the appellate review of either case to any of the following:

(A) The loan in question was brokered by an unlicensed seller and property owner – Thomas Jacobs. *{Eyewitness testimony can verify it was Thomas Jacobs that began the paperwork and obtained signatures on loan paperwork for **Golden Gate Mortgage, Inc.** on 11/26/2007 – not Golden Gate Mortgage/David Terrell. Affidavits on file verify this fact as well},*

(B) False certification, constructive fraud and fraudulent concealment by a notary – Debra C. Galloway that was aided and abetted by a person that claims to be Stephanie Hammond. On December 21, 2007, besides Thomas Jacobs, who left shortly after the closing began, Debra C. Galloway was the only person in the room with me, during and after the closing. If Stephanie Hammond did appear, it was after I left.

(C) Falsification of income by **Golden Gate Mortgage, Inc.**, and Wells Fargo's Underwriters to avoid compliance with South Carolina's High Cost Consumer Home Loan Act,

(D) Altered and forged documents by Wells Fargo's personnel, Golden Gate Mortgage/David Terrell, the Seller, **Golden Gate Mortgage, Inc.**, and the Appraiser.

(E) Fraudulent concealment and/or concealment of material facts and misrepresentation of material facts by the Seller, Broker, Appraiser, the Closing Attorney and Wells Fargo's own personnel.

(F) False accusations by Wells Fargo's personnel,

(G) Use of an Unauthorized Credit Report by Wells Fargo's Underwriters,

(H) No evidence Golden Gate Mortgage/David Terrell actually brokered a loan by statutory definition,

(I) No evidence Golden Gate Mortgage, Goldengate Mortgage and **Golden Gate Mortgage, Inc.**, are the same company. This evidences a sophisticated scheme to Defraud by industry insiders that know banks and courts will prosecute the innocent victims and not the perpetrators of the fraud in a brokered foreclosure action....with the following legal doctrines....

- (1) Justifiable Reliance & Clear and Convincing Evidence,
- (2) Pleading with Specificity and Particularity,
- (3) Pleading Intent with Specificity and a Duty to Disclose,
- (4) Evidence of Knowledge and Intent,
- (5) The 9 -Step Actionable Fraud Procedure,
- (6) Actionable Fraudulent Misrepresentation, and many more...

(These legal procedures and rules that were implemented years ago for arm-length transactions at local banks and/or Savings & Loans and/or between borrower and lender are totally inadequate today and makes it possible for all manner of illegal schemes to flourish...relative to mortgage loans. The courts themselves are inadvertently aiding and abetting this criminal enterprise. Victims of these schemes; like myself, rarely have the financial means or the legal expertise to defend themselves from it or within the courts as a *pro se* defendant or plaintiff.)

- (3) Wells Fargo's attorneys and Judge Goodstein committed **Fraud upon the Court** by changing my defense pleading from **Defraud** to *fraud* because *fraud* was winnable for them. This is analogous to changing an innocent plea...to guilty..and writing up a Court Order based on what the judge and the prosecution changed.
- (4) My pleading has been and always will be Wells Fargo is perpetuating a **Conspiracy to Defraud** that is based on the falsified, forged, altered and/or unauthorized documents of 2nd and/or 3rd parties, i.e., the Broker, the Appraiser, the Seller, the Player Law Firm and Wells Fargo's own employees and Wells Fargo is using those documents to **Defraud** of **Swindle** me out of 75,000.00 one month at a

time and one payment at a time. Wells Fargo was duly notified of this *fraud*.....and chose not to end it.

II. NO REAL TRIAL..... MEANT.....NO REAL TESTIMONY....FROM WITNESSES

5. I would not have lasted, if it were not for the mistakes the perpetrators made. Since Judge Goodstein..did not allow any testimony from my witness...I did not feel comfortable or felt that I could legally use subpoenas on the following individuals to testify in court.

- (a) **City of Orangeburg Building Inspector's Office** (Can verify Thomas Jacobs did not have a Building Permit to do any repairs at 423 Bayne Street.)
979 Middleton Street
Orangeburg, South Carolina 29115
Phone: 803-533-6052
- (b) **Thomas Jacobs** (Can explain to the Court why he LIED to me, SCDCA, misrepresented **Golden Gate Mortgage** as a lender and conspired to Defraud Wells Fargo.)
532 Knox Abbot Drive
Cayce, South Carolina 29003
Phone: 803-238-3550
803-395-5518 / 803-393-4483 / 803-395-5582 / 803-788-2880 (last known)
Fx: 803-736-9290 - Additional phone number: 803-796-0880
- (c) **Mr. Lambright** (no longer lives in Orangeburg) (Can verify no repairs completed)
Phone: 803-664-1419 / 803-664-1826 / 803-539-0775 (last known)
- (d) **John Smith and/or Carl Owens** (Can verify Thomas Jacobs was not a licensed broker or loan originator and was not legally employed by **Golden Gate Mortgage, Inc.**, as a loan originator pursuant to South Carolina law.)
South Carolina Department of Consumer Affairs
3600 Forest Drive, 3rd Floor
POB 5757
Columbia, South Carolina 29250
Ph: 803-734-4200
Fx: 803-734-4286
- (e) **David Terrell/Golden Gate Mortgage** (Can explain why he LIED to Wells Fargo, SCDCA, forged my signature, falsified information, misrepresented facts and joined a scheme to Defraud Wells Fargo out of \$75,000.00)
3102 Millwood Avenue
Columbia, South Carolina 29205
Phone: 803-788-2880
Fx: 803-736-9290
- (f) **Jim H. Austin III** (Can explain why he falsified the 7-59 Appraisals, Satisfaction Completion Certificate forged my name by substitution and participated in a scheme to Defraud Wells Fargo.)
1825 St. Julian Place, 15F
Columbia, South Carolina 29205
Phone: 803-920-9093 / 803-788-2880

- (g) **Lee Orr (Deceased)**
437 Bayne Street
Orangeburg, SC 29115
- (h) **Kathryn R. Perkinson** (Can explain to the Court why she did not
Wells Fargo notify Wells Fargo to stop funding on loan
2301 Rexwood Drive. Suite 260 0174072777 after learning about the seller's
Raleigh, NC 27607 deceit, deception and misrepresentations of
Phone: 919-474-5347 (last known) material facts that Wells Fargo relied upon.)
- (i) **April Primrose** (Can identify Thomas Jacobs as the man leaving
437 Bayne Street 423 Bayne Street with paperwork on 11/26/2007.
Orangeburg, SC 29115 April can only identify by sight, not by name.)
- (j) **Ricky Padgett** (Can verify Thomas Jacobs lied to SCDCA about
Dukes Electric contacting him and he can verify 423 Bayne has
823 Broughton Street Knob and Tube electrical wiring that is indicative
Orangeburg, South Carolina of homes built before World War II. This also
803-534-0407 verifies why 1950 had to be on the loan application.
- (k) **Trent Green** (Can verify Thomas Jacobs lied to SCDCA about him and
Phone: 803-240-4453 can verify Knob and Tube electrical wiring at Bayne St..)
- (l) **George M Sistrunk** (Not only my husband, my most important witness.
423 Bayne Street In addition to editing and formatting, he discovered
Orangeburg, SC 29115 all of the discrepancies and illegalities associated
Phone: 803-268-0716 with loan 0174072777 and he researches for me.)
- (m) **Orangeburg County Tax Assessor's Office** (Can verify the last known sales
1437 Amelia Street price of 423 Bayne Street is
Orangeburg, South Carolina 29115 \$14,000.00 and all subsequent owners
Phone: 803-533-6220 acquired Bayne St., from tax sales.)
- (n) **Janet Frotscher** (Can verify that she was not present at 423 Bayne Street on
Wells Fargo 11/26/2007 and saw David Terrell. She can also verify she
POB 10335 has no evidence that I ordered appraisals, explain why she
1 Home Campus falsely accused me of meeting with the appraiser on 9/14/
Des Moines, IA 50328 2007, why she concealed information from SCDCA, OCC,
Phone: 866-234-8271 and the Court about the fraudulent representations of the
Fx: 866-278-1179 broker, seller and appraiser that she received on 2/7/2008.)
- (o) **Debra C. Galloway** (Can explain to the Court who is Stephanie
Player Law Firm Hammond and why she and Stephanie Hammond
1415 Broad River Road LIED about Stephanie witnessing me signing and
POB 21005 executing documents when Stephanie Hammond
Columbia, SC 29210 was not in the room with us on 12/21/2007. She can
Phone: 803-772-8008 also explain why she closed a loan in violation of 24
Fx: 803-772-8037 CFR Part 35 - Subpart A.

(p) **Underwriter(s) that Approved Loan 0174072777** Used an Unauthorized Credit Report
Wells Fargo (Can explain to the Court why they ignored
2301 Rexwood Drive. Suite 260 the fraud on the 7-59 Appraisals, who order-
Raleigh, NC 27607 ed the second appraisal that is forgery by
Phone: 919-474-5347 substitution and who forged my initials.)

(q) **Members of Janet Frotscher's Executive Resolution Team**
Wells Fargo (Can explain to the Court why they choose to
POB 10335 ignore my letters and faxes that the appraisals were
1 Home Campus falsified, the satisfaction completion certificate
Des Moines, IA 50328 was a scam, the sales contract was altered and
Phone: 866-234-8271 forged and the loan was brokered by Thomas
Fx: 866-278-1179 Jacobs and not **Golden Gate Mortgage, Inc.**)

6. After Judge Goodstein refused to let the most important witness speak or give testimony; my husband, I did not see any need to bring anyone else, especially, April Primrose and Lee Orr to Court. Lee could identify Thomas Jacobs as the only regular visitor to 423 Bayne Street beginning in 2006 and verify the condition of 423 Bayne as written in my First Amendment to Answer to Complaint with Counterclaims that was filed on July 31, 2008. April can identify Thomas Jacobs as the man leaving 423 Bayne Street with paperwork for a loan.... on 11/26/2007.

7. In addition, I did not even know what a subpoena was until my husband told me. When case 2008-CP-38-1024 began 6 years ago, I assumed it was an unauthorized practice of law for me to quote law, issue subpoenas, take depositions and/or interview witnesses. In fact, my husband did not want to assist me for the same reason. However, after he investigated the matter and could not find any rulings about it, no statutory restrictions or precedents relative to a spouse assisting with a court case, he finally decided to help me prepare my pleadings by editing, formatting, ensuring paragraphs conformed with citations; as well as, doing the case law research.

III. EXHIBITS THAT VERIFY WELLS FARGO WAS NOTIFIED ABOUT FRAUD

8. My exhibits verify **Statements of Fact** and they also prove Burns, Scott Moise, Calub & Judge Goodstein's signed Order misrepresented the facts. Wells Fargo is still being notified.

(1) **Exhibit 1** – 1-page - Fax Memo to Kathryn R. Perkinson @ Wells Fargo. Dated: December 27, 2007. This memo verifies notification and my intent to cancel the loan.

(2) **Exhibit 2** – 1-page - Fax Memo to Thomas Jacobs, David Terrell/Golden Gate Mortgage and Player Law Firm. Dated: January 9, 2008. [Copy later sent to Wells Fargo, Office of the Comptroller of the Currency (OCC) and South Carolina Department of Consumer Affairs (SCDCA) – verifying my request for the appraisal and closing documents.]

(a) You will also notice on Exhibit 2, a decision not to cancel the loan. At this point in time, I had no choice but to follow Kathryn R. Perkinson's advice to work things out with the Seller – [Thomas Jacobs] and I followed that advice until March 1, 2008. In December of 2007, I did not have any evidence to fax. I did not have signed closing documents, no appraisal, no sales contract or copies of the loan paperwork.

Note #1: This lack of evidence in December of 2007, led Judge Goodstein, Moise and Burns to mistakenly believe no evidence existed. After the closing on 12/21/2007, this was only true...for a very short period. Over a 6 year period, the documents Wells Fargo sent me, started combining with my personal knowledge of the events that eventually led to exposing a sophisticated scheme to Defraud Wells Fargo and have the victim – me....pay the price for it. For example: On the surface, these four companies seem the same. Goldengate Mortgage – Golden Gate Mortgage, GoldenGate Mortgage and Golden Gate Mortgage, Inc. There is no evidence in Wells Fargo's filed documents that all these company names are licensed in South Carolina to broker loans. There is no evidence these 4 company names are the result of misspelling or mistake. I have no idea how to plead something like this in a language acceptable to the court.

Note #2: Wells Fargo and Wells Fargo's attorneys do not have any idea whose documents WFHM underwriters approved – Goldengate Mortgage, Golden Gate Mortgage and/or Golden Gate Mortgage, Inc. As I have stated in a previous pleading, 90% of Wells Fargo's supporting documents are either falsifications, forgeries, alterations, fraudulent representations and/or unauthorized by me. The Mortgage Fraud (by definition) associated with loan 0174072777 is staggering. I was not aware of the extent of the fraud until Nelson Mullins Riley & Scarborough, LLP (attorneys Burns & Moise) sent me WF00001-137 in late October or early November in 2008. As I have repeatedly stated, I have no personal evidence... my evidence comes from Wells Fargo's own document file. Since Wells Fargo does not have any personal knowledge of the events, Wells Fargo did not realize loan 0174072777 is based on one lie after another. In legal terminology, intentional misstatements of fact and misrepresentations of material facts with deliberate intent by those involved; including Wells Fargo's own employees.

(b) **Exhibit 2** was sent to Wells Fargo Home Mortgage (hereafter WFHM), OCC and SCDCA as a handwritten Exhibit 5. This notification is being done to alert the Appellate Court; in the event, Wells Fargo's attorney/s claim WFHM's Exhib-

it 2 and the Exhibit 2 filed in Court are completely different. That would be the truth. WFHM's handwritten Exhibit 5 was renumbered to Court Exhibit 2.

Note: Case 2008-CP-38-1024 mandated putting all my exhibits in numerical order. Since there are not enough alphabets....and alpha-numeric numbering will eventually create confusion, the simplest course of action was to number my exhibits in sequence so that they would be easy to sort through, find and follow.

(3) **Exhibit 4** – 9 page - Fax Memo - **Are We The Victims of Fraud?** – was sent to Wells Fargo, Thomas Jacobs, David Terrell/Golden Gate Mortgage and the Player Law Firm. Dated: February 5, 2008. Copy sent to OCC and SCDCA - concerning the conduct of the seller, the itemization of falsified entries on the appraisal and Debra C. Galloway's failed compliance with a federal law, i.e., *24 CFR Part 35 - Subpart A*.

(4) **Exhibit 5** – 5 pages - Rogers Townsend & Thomas, PC., Summons and Complaint.

Note: Rogers Townsend & Thomas, PC., did not realize their Summons and Complaint provided documented evidence and proof that Wells Fargo's WF00014-26 [7-59] Appraisal is **Appraisal Fraud** (by definition and with deliberate intent by Jim H. Austin, III). On page 2 @ ¶ 8 of Rogers Townsend & Thomas' Complaint is the hard evidence and proof that I was not the property owner on October 8, 2007 as stated on the appraisal.

(5) **Exhibit 6** – 20 page - Fax Memo and Letter To C. Rye @ Rogers Townsend & Thomas, PC, Dated: July 20, 2008. Not originally listed as a Court Exhibit or sent to Janet Frotscher's Executive Resolution Team (hereafter also called JFERT) or Wells Fargo's in-house attorney(s). They already had this information. **I am filing it for Appellate Review and inclusion in the Record on Appeal as proof Rogers Townsend & Thomas was notified and under the Compliance Agreement – WF00117 - had to notify Wells Fargo if the loan's documentation did not conform to the marketplace for sale or transfer to any entity.**

(6) **Exhibit 7** – 7 page - "**Addendum To The Disputed Note & Mortgage And Evidence of Falsification**". Dated: July 21, 2008. This faxed letter to C. Rye. at Rogers Townsend & Thomas, PC., identified the non-disclosure of material facts and misrepresentations of material facts on Wells Fargo's 7-59 Appraisals. Not originally listed as a Court Exhibit or sent to JFERT or sent to Nelson Mullins Riley & Scarborough, LLP. They could obtain the same information from Wells Fargo. Judge Goodstein or any other Circuit Court Judge already had access to this information. **It is in My First Amendment to Answer to Complaint with Counterclaims that was filed on July 31, 2008. I am filing it for Appellate review and inclusion in the Record on Appeal as proof Rogers Townsend & Thomas were duly notified and under the Compliance Agreement – WF00117 - had to notify Wells Fargo if the loan's documentation did not conform to the marketplace for sale or transfer to any entity.**

(7) **Exhibits 8 –14** – 7 page – Documentation of the evidence of the fraudulent misrepresentations on Appraisal [7-59] that were faxed to Wells Fargo Home Mortgage (WFHM) on February 7, 2008 and sent to Rogers Townsend & Thomas, PC., on July 21, 2008.

(8) Exhibit 15 – 20 page - Letter that was sent to J. William Clark – Orangeburg County Administrator. Dated: July 21, 2008. This letter has essentially the same information that was sent to WFHM, Wells Fargo's Legal Department, SCDCA, OCC and filed in Court. **I am filing this exhibit for Appellate review and inclusion in the Record on Appeal as proof Orangeburg County Administrator was duly notified about Wells Fargo's fraudulent mortgage that is currently filed in Orangeburg County's Office of the Register of Deeds.**

(9) Exhibit 16 – 5 page - Addendum To The Disputed Note & Mortgage And Evidence of Falsification. Dated: July 21, 2008 – Sent to: J. William Clark – Orangeburg County Administrator. This is essentially the same information that was sent to Rogers Townsend & Thomas, PC. **I am filing this exhibit for Appellate review and inclusion in the Record on Appeal as proof Orangeburg County was duly notified about Wells Fargo's fraudulent mortgage that is still filed in Orangeburg County's Office of the Register of Deeds.** Exhibits 1-16 also support the 12/22/07 taped message that my loan is mired in fraud, deceit..and..deception that was left on WFHM's answering machine in Raleigh, N.C., by my husband.... and...the 12/24/2007 notification....to Kathryn R. Perkinson.

Note: The following week, Mr. Clark called us and invited us (my husband and I) to come to his office to discuss the matter. He regretted what had happened and told us mortgage filing procedures are established by state law and there was nothing he could do it about at the county level. However, he did tell us if the value of the mortgage were based on falsified documentation, a Court order would probably be needed to remove it.

(10) Exhibit 17- 1 – page - Discharge Form. Dated: October 10, 2007 – Palmetto Health Center. This document verifies I was at the hospital from October 1, 2007 to October 10, 2007. Therefore, I could not have seen the property until October 10, 2007. Faxed to: WFHM in Des Moines, Iowa on February 5, 2008 to refute WFHM's false accusation that I had ordered an appraisal on October 8, 2007, via, **Golden Gate Mortgage, Inc.** WFHM had no evidence or documents stating I ordered an appraisal from anybody on 10/08/2007.

(11) Exhibit 18 – 1 page - Letter from Tommy Mitchell. Dated: September 7, 2007. This letter verifies the reason why we were looking for another home. This letter was faxed to JFERT on February 5, 2008.

Note: This exhibit also proves Elizabeth Scott Moise misrepresented the facts in the Court Order Nelson Mullins Riley & Scarborough, LLP drafted for Judge Goodstein to sign. The cost of yard work had nothing to do with us leaving 5074 Coburg lane. Judge Goodstein accepted and signed this misrepresentation of fact in her Court Order that is dated March 27, 2014 – See Exhibit 329, Pg 2 @ ¶ 1.

(12) Exhibit 21 – 1 page - Copy of the payment I sent to Wells Fargo. The statement is dated January 30, 2008. **I am filing this exhibit for Appellate Review and inclusion in the Record on Appeal as proof of my willingness to work with Wells Fargo to resolve all outstanding issues relative to loan 0174072777. My offer was simple: repair 423 Bayne Street according to the appraisal or lower the price to the unfinished value of 423 Bayne Street as it was October 8, 2007 after verification and certification.**

Note: Janet Frotscher in her letter dated February 21, 2008, acknowledged receiving this payment and Wells Fargo would not cooperate to resolve outstanding legal issues relative to loan 0174072777. This exhibit also proves Thomas Jacobs lied to SCDCA in his reply to my complaint filed against him. {See Exhibit 36, pg #2, ¶ 1 @ sentence #12.}

(13) Exhibit 26 – 1 page – Document from Orangeburg County’s Tax Assessor’s Office proving no central air is at 423 Bayne Street, no office, patio, or fireplace and year built.

Note: This document verifies why **1950** was on my application as the year built and 423 Bayne Street’s true square footage on October 8th and 9th, 2007 of 1274 square feet, not the 2900+ square feet David Terrell refers to in his letter that is dated May 1, 2008 – Exhibit 49. This document is also additional evidence that Jim H. Austin, III misrepresented material facts on his 7-59 Appraisals. After acquiring the property in the 1980’s, Bond Ceal Dantzler converted the storeroom into a meeting room for her church members. This document was faxed to JFERT on February 5, 2008.

(14) Exhibit 29 – 2 page - Evidence of continued “**Insurance Fraud**” by Wells Fargo after all the facts were known. Dated: May 5, 2008. By May of 2008, Wells Fargo knew the value of 423 Bayne Street was based on misrepresented material facts and could not be substantiated by the facts or the evidence. Jim H. Austin, III’s [7-59] appraisals misrepresented...or omitted every essential material fact about 423 Bayne Street except the address.

(15) Exhibit 30 – 2 page – Unsigned..Lease Agreement..from the Seller – Thomas Jacobs that verifies my husband’s initial relationship with the Seller was that of renter not buyer / borrower. My husband would not and did not sign the lease because it was back dated to October 9, 2007. On October 9, 2007, the property was unfit for human habitation. This Lease Agreement is also additional evidence I was not the property owner as stated on Jim H. Austin, III’s 7-59 Appraisal – WF00014-26. This unsigned Lease Agreement was faxed to JFERT on June 13, 2008 as additional evidence and proof the appraisals WFHM sent me are based on falsified information.

Note: The unsigned lease agreement also proves the representations Judge Goodstein relied upon for her March 27, 2014 Court Order granting Partial Summary Judgment that was drafted by Nelson Mullins Riley & Scarborough, LLP’s attorney/s,.....Elizabeth Scott Moise and/or James H. Burns on page 2, in Exhibit 329 @ ¶¶ #2 and #3 are false.

(16) Exhibit 31 – 4 page – Copy of the completed Complaint Form that evidences I contacted the Office of the Comptroller of the Currency (OCC) on May 16, 2008.

(17) Exhibit 32 – 1 page – Letter from the Luginbill Law Firm, LLC, declining to take the case that evidences I sought the help of paid legal counsel. Luginbill’s letter is dated July 2, 2008. **The value of this evidence was limited to its presentation to the Court and Jury as proof that I sought the help of paid counsel and Judge Goodstein’s violation of Rule 30(b)(2) & Rule 32(a)(4) & (5), SCRPC.**

(18) Exhibit 33 - 1 page – Letter from Dean Law, declining to take the case that evinces I sought the help of paid legal counsel. Dean’s letter is dated July 8, 2008. **The value of**

this evidence was limited to its presentation to the Court and Jury as proof that I sought the help of paid counsel and proof Judge Goodstein violated *Rule 30(b)(2)* & *Rule 32(a)(4)* & (5), *SCRCP*.

Note #1: These letters from the Dean Law Firm and from Luginbill's Law firm now serve as additional evidence to prove the representation Judge Goodstein relied upon for her March 27, 2014 Court Order granting Partial Summary Judgment that was drafted by Nelson Mullins Riley & Scarborough, LLP's attorney/s, Elizabeth Scott Moise.... and....or James H. Burns on page 3, Exhibit 329 @ ¶ #12 is false.

Note #2: The law firms we (hereafter "we" and/or "us" refers to me and my husband) contacted, told us one of the following stories. (1) The case would not go to court. If the appraisals were falsified, Wells Fargo would send a Resolution Team to investigate the matter and if..what we were saying is true, the matter would be over. This was useless information because the case was already in court. (2) Every law firm contacted automatically assumed, I ordered the appraisals or the broker ordered the appraisals for me. This is the same mistake Janet Frotscher made. (3) There is no evidence of fraud by the bank, our issue is with origination. (4) Not one law firm entertained the possibility that Wells Fargo actually accepted and funded a loan brokered by an unlicensed seller. (5) To prove our claim of an illegally brokered loan....would cost more money in legal fees than the property was worth. (**Comment:** "the 'WE'" refers to David Terrell & his associates.)

Note #3: Some law firms did not even return our call. Based on what we were hearing from licensed attorneys, the perpetrators of mortgage fraud have all the legal advantages and real victims that are not "Straw Buyers" have none. Several online sources for legal help told us, proving fraud in court is virtually impossible. Missing any step is fatal to the claim. **Unless we had deep pockets for legal fees,** bankruptcy was recommended. Filing for bankruptcy would not solve the problem because the value of the property, loan and note would still be based on misrepresentations of material facts and the mortgage would still be **Mortgage Fraud** by definition..and...an **Illegal Contract** by definition.

These letters from the Dean Law Firm and from Luginbill's Law firm also serve as additional evidence and proof that Judge Goodstein violated *Rule 30(b)(2)*, *SCRCP* by using unclarified statements in an unverified deposition, rather than **Sworn Statements of Fact** in my **Verified Pleadings**. I have been *Pro Se*, since filing my *Answer* in July of 2008.

(19) Exhibit 34 – 1 page – Letter that evidences, I contacted Thomas J. Miller, Iowa's Attorney General in 2008. His return letter is dated July 22, 2008.

Note: We did contact South Carolina's Attorney General's Office as advised. South Carolina's Office of the Attorney General told us they could not give us any legal advice and the Attorney General's Office only dealt with state matters. The individual that answered the phone recommended we contact an attorney.... not....a law enforcement agency.

(20) Exhibit 35 – 1 page – Copy of the letter SCDCA sent to me with Thomas Jacobs' reply to my complaint against him. This letter is additional evidence of Thomas Jacobs' deceit, deception and ability to lie. Dated: 1/08. According to the stamped date, his letter was received at the Department of Consumer Affairs on May 12, 2008.

Note #1: In his letter, Thomas Jacobs did not reference Jim H. Austin, III's Satisfaction Completion Certificate [WF00002 & 22] that states all the work on 423 Bayne Street was completed satisfactorily, including work on the seals and the electrical work. The Certificate states the borrower [Jacobs] showed the appraiser invoices for the work completed.

Note #2: WF00027 identifies Jacobs as the borrower – not me. Thomas Jacobs lied. He did not have an electrician ready to go to get the job completed. According to Ricky Padgett, Thomas Jacobs never called him and in 2008, Ricky Padgett was willing to testify to this in court. Thomas Jacobs has not contacted us since 11/26/2007. The last time I saw Thomas Jacobs was at the closing on 12/21/2007. Since SCDCA did not conduct any hearings, Carl Owens/John Smith had no way of knowing Thomas Jacobs was lying.

(21) Exhibit 36 – 2 page – Copy of the second letter SCDCA sent me. The letter has no stamped received date. This letter is additional evidence of Thomas Jacobs' deceit, deception and capacity to lie with a straight face. Unknown to Thomas Jacobs, even though his letter is replete with lies, he inadvertently verified, my husband's **Statement of Fact** that he worked alone to restore 423 Bayne Street to livability after October 9, 2007. Thomas Jacobs also inadvertently verified Jim H. Austin, III's [7-59] Satisfaction Completion Certificate and Appraisals are scam documents that misrepresented material facts.

Note #1: Thomas Jacobs admits that he sold the property and he was careful not to admit he brokered the loan through Wells Fargo Bank by using David Terrell's company/s as the conduit.. Sentence #2 is also a lie. Thomas Jacobs spoke to my husband not to me. Thomas Jacobs also inadvertently verified my husband's **Statement of Fact**, that he would make the house livable, in exchange for rent or any down payment. This also proves Judge Goodstein signed a Court Order for Nelson Mullins Riley & Scarborough, LLP with misrepresented facts. Sentence #3 is also a lie. We did not immediately move into the house. We were still at 5074 Coburg Lane. Sentence #4 is also a lie. My husband did not ask Thomas Jacobs for any money and he never gave my husband any money.

(A) Mr. Lambright did show up a few times with lies of his own. Sentence #5 is also a lie. Mr. Lambright was a licensed contractor not a laborer. Sentence #6 is another lie. The electricity at 423 Bayne Street does not work and has never worked. What power we do have comes from my husband's resourcefulness. Sentence #7 is also a lie. There are lights and power at 423 Bayne Street. My husband told Thomas Jacobs the same thing he told Ricky Padgett, he cannot do ceilings by himself. Sentence #8 is also a lie. Ricky Padgett examined the house and provided an estimate. Thomas Jacobs never showed up to get it.

(B) Sentence #9 is also a lie. I did not meet Thomas Jacobs in a parking

lot with an estimate. It was inside at the Player Law Firm before we entered the closing room. Sentence #10 is a lie. Thomas Jacobs took the estimate, looked it and put it in his pocket. Sentences #11 and #12 never happened. These are all lies. @ sentence #13 is some truth. I did go inside to close a loan to lower the price of 423 Bayne Street. To be frank, all I knew for a fact was the price would be less than \$75,000. I was supposed to be signing to cancel one contract for \$75,000, in exchange for a much lower price on another contract. Thomas Jacobs failed to admit to SCDCA that he told me in the presence of witnesses...the price of 423 Bayne Street will be lowered during the closing.

(C) @ Sentences #14 and #15 is some truth. @ Sentence #16, Thomas Jacobs returns to lying. Trent Green did not repair any flashing on the chimney. 423 Bayne Street does not have a chimney. The fireplace lie is on the 7-59 appraisal. I have no knowledge or information to dispute sentences #17 and #18. The remaining statement in sentence #18 is an absolute lie, my husband did not usher Mr. Green off the property. In fact, Trent Green told us, the money Thomas Jacobs offered would not cover the work that needs to be done. Rewiring the house and putting back walls and ceilings would run pretty close to \$15,000.00. He offered to wire 4/5 rooms and repair the plumbing for \$3,200.00. My husband told Mr. Green that he could wire all the rooms from the inside himself, as well as repair the plumbing that's why the offer was rejected.

(D) @ Sentence #19, Thomas Jacobs returns to his lying. He never tried to contact us. Sentences #20 - #26 are all lies. My husband called Ricky Padgett. Ricky told him that no one by the name of Thomas Jacobs called him to discuss wiring 423 Bayne Street. I have no knowledge or information to refute sentence #27. @ Sentence #28, Thomas Jacobs lied. He never sent us any letter.

Note #2: Sentence #1 on page #2 is partly true. Thomas Jacobs did indirectly hear from us through David Terrell. Sentence #2 is also partially true. We not only demanded restitution, we threaten to sue for \$250,000.00. @ Sentence #3, Thomas Jacobs tells SCDCA that David Terrell is the owner of Golden Gate Mortgage and does not spell it as Goldengate Mortgage. Nor did he reference **Golden Gate Mortgage, Inc.** Sentences #4 - #7 are all lies because Thomas Jacobs has not contacted my husband since 11/26/2007. The last time I saw him was on December 21, 2007. Sentence # 8 is true. We still have a copy of the check marked as **Exhibit 46A** and the \$700.00 is still in the bank.

(A) Sentence #9 is a lie. There was no note with the check. Sentence #10 and #11 are lies. Thomas Jacobs has not returned a call in 7 years. Sentence #12 is a lie. We paid February's payment ourselves as a Good Will gesture to Wells Fargo. Check #1658 and the receipt is marked as **Exhibit 21** that is being filed with the Record on Appeal. Sentence #13 is true. We will not perpetuate Thomas Jacobs' or Wells Fargo's Mortgage Fraud as defined by the FBI, 12 CFR § 1731.2(c), and the Mortgage Fraud Statutes in 13 states. South Carolina's own § 40-58-70(1)-(3) prohibits a

person in the course of a mortgage loan transaction from operating a **fraud upon a person in connection with the making of or purchase or sale of a mortgage loan**,” This includes Wells Fargo.

(B) Even the Appellate Court will know Thomas Jacobs is lying. The Appellate Court will have copies of Jim H. Austin, III's [7-59] Appraisals and Satisfaction Completion Certificate that states the work was completed on September 14, 2007. The appraisals identify the work that was supposedly completed. Unless the Appellate Court decides Thomas Jacobs had no real duty or responsibility to tell the truth, statutorily or morally, Thomas Jacobs statements verify a scheme to Defraud Wells Fargo by his failure to tell SCDCA and Wells Fargo the truth.

Note #3: Thomas Jacobs trapped himself and David Terrell by referring to David Terrell as the broker and owner of Golden Gate Mortgage on page 2, @ ¶ 1. According to Janet Frotscher; on page 1, @ ¶ 5, in her letter dated February 21, 2008, *Wells Fargo's Exhibit WF00120 and my Exhibit 45*, the loan's paperwork was submitted by **Golden Gate Mortgage, Inc.**, not Golden Gate Mortgage or Goldengate Mortgage. In her letter, dated June 2, 2008, Janet Frotscher; on page 1, @ ¶ 4, verified her lack of knowledge as to which company is licensed to broker the loan - Golden Gate Mortgage or **Golden Gate Mortgage, Inc.**.

Note #4: According to Wells Fargo's filed documents [WF00001-26], the [7-59] appraisals were ordered by the lender – Goldengate Mortgage – [Wells Fargo's Exhibit WF00027] for the borrower – Jacobs -[WF00016 & 27] According to Wells Fargo's filed documents [WF00064 & 74], **Golden Gate Mortgage, Inc** is a lender...not a broker. As I have stated, Wells Fargo's filed documents verify the **Mortgage Fraud** and Wells Fargo's knowledge of it, participation in it and perpetuation of it. My **Statements of Fact** have not been refuted, contested, controverted, denied or proven false in Court for 6 years.

Note #5: Unfortunately, for Thomas Jacobs, he included Trent Green's phone number in his letter. In 2008, Trent Green volunteered to be a witness to verify Thomas Jacobs lied about everything to SCDCA. In 2008, Mr. Lambright and Ricky Padgett voluntarily agreed to testify about the misrepresentations of material facts that are on the [7-59] Appraisals and Satisfaction Completion Certificate. This does not include family members, neighbors, friends and associates that can all verify Jim H. Austin, III 's Appraisals and Satisfaction Completion Certificate are scam documents that completely misrepresented material facts and fraudulently concealed material facts from Wells Fargo Bank.

(22) **Exhibit 37** – 1 page – Letter from David Terrell after I filed a complaint against him with SCDCA. This letter evidences our first written contact from David Terrell or contact of any kind. Dated: February 6, 2008.

Note: GoldenGate Mortgage is spelled differently in this letter also. Heading - **Golden Gate Mortgage, Inc.**, @ ¶ 1 and closing – GoldenGate Mortgage. Notice also David Terrell does not state he brokered the loan. He only states, “I am the person that put you with Wells Fargo.” David Terrell also did not refer-

ence any conversation, meeting, faxes, memos or any agreement/s about his brokering a loan for me and/or what was discussed at any meeting. He never stated he obtained the paperwork for the loan at any date or time.

(23) **Exhibit 38** – 1 page – Letter from Janet Frotscher. Dated: April 10, 2008. Notice how Janet Frotscher conceals the **Mortgage Fraud** subject matter of my letters, faxes, memos and documents by referring to them as “correspondence”...and....this is after all the facts were known since February of 2008.

(24) **Exhibit 40** – 1 page – Letter from Janet Frotscher. Dated: June 17, 2008. This letter acknowledges receiving my letters dated June 7, 2008, June 9, 2008 and June 10, 2008. Janet Frotscher is still concealing the subject matter of my letters that refers to **verifiable Mortgage Fraud** by the seller, broker and appraiser as “correspondence”;...and this is after all the facts were known since February of 2008.

(25) **Exhibit 41** – 2 page - Letter from SCDCA. Dated: July 15, 2008. According to the date stamp, this letter was received by SCDCA on July 18, 2008. This letter is a copy of a letter Janet Frotscher sent to John Smith at SCDCA. Janet Frotscher is still concealing the evidence sent to her of **verifiable Mortgage Fraud** by referring to it as “correspondence”; and this is after all the facts were known since February of 2008.

(26) **Exhibit 42** – 3 page - Letter that is a Notice of Temporary Insurance that evidences Wells Fargo’s continued “**Insurance Fraud**” – after receiving documented evidence the value of loan 0174072777 is based on misrepresentations of all the material facts (except the address), omissions and in many instances outright lies. Dated: March 24, 2008.

(27) **Exhibit 43** – 4 page – Letter that provides more evidence Wells Fargo was duly notified about **Mortgage Fraud**....and....**Appraisal Fraud** and choose not to act. Dated: February 25, 2008.

(28) **Exhibit 44** – 2 page – Letter from *State Farm Insurance Companies, Atlanta Operations Center, 11350 Johns Creek Parkway, Duluth, GA 30098-000* notifying me Home-owners Insurance has been cancelled due to “Insufficient Underwriting”; the letter is dated January 16, 2008. **To date:** Wells Fargo has not proven how I harmed Wells Fargo Bank.

(29) **Exhibit 45** – 1 page – Letter from Janet Frotscher. Dated: February 21, 2008. Until this letter arrived on February 25, 2008, I had no idea Thomas Jacobs and/or Goldengate Mortgage / Golden Gate Mortgage / **Golden Gate Mortgage, Inc.**, had brokered a loan.

Note: This letter also arrived after I called WFHM on January 14, 2008. In the first paragraph, Janet Frotscher acknowledges receiving the documented evidence of mortgage fraud that was faxed to WFHM on February 7, 2008 that she refers to as correspondence. {Exhibits 8-14} The reference to February 5, 2008 is *Exhibit 4* and Wells Fargo’s *Exhibit B* that was filed in October of 2008. Paragraph #5, indicates Wells Fargo did not realize **Golden Gate Mortgage, Inc.**, did not broker the loan. The loan was brokered by Thomas Jacobs. On the same day, February 25, 2008, I called WFHM and put my husband on the phone with the representative. February 25, 2008 is the day Wells Fargo and all its subsidiaries knew or should have known after the conversation was over, Thomas Jacobs – an unlicensed seller - brokered the loan by himself..and...used Goldengate Mortgage/

Golden Gate Mortgage and/or **Golden Gate Mortgage, Inc.**, as the conduit for approval. David Terrell was not present at 423 Bayne Street on 11/26/2007 and I was not in Columbia, South Carolina at Millwood Avenue. David Terrell did not participate in the actual brokering process in any way fashion or form or by any means known to man.

(30) **Exhibit 47** – 2 page – Letter in which Janet Frotscher accused me of meeting with the appraiser on page 1, @ ¶ 4 and after all my “correspondence” about **Mortgage Fraud** and after all the facts were known. In this letter, Janet Frotscher admits the documents supporting loan 0174072777 were accepted by Wells Fargo on December 4, 2007. She identifies the appraiser as Jim H. Austin, III...and....the brokers as being Golden Gate Mortgage and/or **Golden Gate Mortgage, Inc.** The letter is dated June 2, 2008.

Note #1: This letter also arrived after Wells Fargo’s Loss Mitigation Department, in Fort Mill, South Carolina, instructed me to resend the evidence of fraud back to Des Moines, Iowa in May of 2008 to have the loan cancelled. This letter is Janet Frotscher’s reason/s for not cancelling loan 0174072777 and she does not identify which company is licensed and neither did Wells Fargo’s hired lawyers.

Note #2: On page 1, @ paragraph #4, like Thomas Jacobs who inadvertently provided additional insights into the scheme to Defraud Wells Fargo, Janet Frotscher provided insight that she did not know which company is the licensed broker. In sentence #1; she states the broker is **Golden Gate Mortgage, Inc.** In sentence #3, she states it is Golden Gate Mortgage. Neither Janet Frotscher nor anyone else associated with this case has presented any evidence or documentation that Goldengate Mortgage, Golden Gate Mortgage, GoldenGate Mortgage and **Golden Gate Mortgage, Inc.** are licensed brokers or upon which company’s documents Wells Fargo relied, or which company name is licensed as a broker, pursuant to South Carolina law. The connection between the 4 company names, based on the documents, seems to be David Terrell and Thomas Jacobs.

Note #3: It is not my duty to provide documents to support the Plaintiff’s Complaint. It is the Plaintiff’s duty to file his/her/their/its documents at the time the Complaint is filed to support the Complaint. No documents have been filed to verify Wells Fargo has a legally brokered loan. Wells Fargo does not even know who brokered the loan by its own documents and out of the mouths of its own personnel and hired lawyers. There is no evidence filed in the Court of Common pleas to verify GoldenGate Mortgage, Goldengate Mortgage or Golden Gate Mortgage is licensed to broker loans in South Carolina. I know for a fact Thomas Jacobs is not licensed. Sophisticated **Mortgage Fraud** Schemes like this are prosecuted by the FBI and State law enforcement, not by a *Pro se* litigant in a foreclosure case. As I stated on Day One, this case is not about foreclosure. This case is about **Mortgage Fraud** and a **Conspiracy to Defraud** that Wells Fargo is perpetuating

(31) **Exhibit 48** – 1 page – Letter from *Return Mail Operations, POB 10368, Des Moines, IA 50306-0368*. Dated: June 16, 2008. This letter proves Wells Fargo is attempting to col-

lect on an illegal loan transaction after all the facts were known. Wells Fargo has presented no evidence proving the loan was legally brokered by a licensed company name.

Note: Broker Agreements can be forgeries or obtained by Fraud in the Inducement or Fraud in Factum. In addition, Wells Fargo has received numerous letters, faxes and memos notifying Wells Fargo that Wells Fargo is perpetuating an illegal predatory lending scheme (my income was falsified to avoid compliance with South Carolina law), a home improvement and mortgage fraud (by statutory definition), an illegally brokered loan (by statutory definition), a loan that was obtained with an unauthorized credit report (a violation of a federal law), a falsely certified mortgage (a violation of state law) that was closed in violation of a federal law (24 CFR 35-Subpart A) and Wells Fargo is actively engaged in **Defrauding** or **Swindling** me out of \$75,000.00 with the misrepresented material facts, fraudulently concealed material facts, falsifications, forgeries, document alterations, errors and omissions of Second (2nd) and/or Third (3rd) parties that includes the Broker, the Appraiser, the Seller, the Player Law Firm and Wells Fargo's own employees.

(32) Exhibit 49 – 2 page – Letter from David Terrell. Dated: May 1, 2008. In addition to the complaint I filed against him with SCDCA, it is important to note that this letter arrived after he visited 423 Bayne Street in March of 2008 with his electrician.

Note: #1: On page 1, ¶ 1, in sentence #1, David Terrell correctly states I accused him of failing to represent the borrower.....me; that he did not do, and failing to validate information on an appraisal [7-59], which he did not do. He left out failing to validate information. From late September to late November of 2007, my husband was at the property on a daily basis until midnight, and no one showed up to appraise the property from early morning to late evening. My husband left at midnight. **The reason:** Lee Orr (now deceased) turned off the power to 423 Bayne Street at midnight.

Note #2: @ Sentence #2, David Terrell simply states, "We ordered an appraisal." David Terrell, like Thomas Jacobs, inadvertently gives additional insight into the scheme to Defraud and verifies his knowing, willing and intent to participate in it... by stating, "We ordered the appraisal and then submitted it to an underwriter, who then reviewed the appraisal and made an underwriting decision on whether to accept the value..." According to his statement, the appraisal was done for "We" – "the 'WE'". David Terrell does state he ordered an appraisal for Dorothy Sistrunk or I knew about his appraisal. Based on Wells Fargo's documents, "the 'WE'" included Thomas Jacobs and Jim H. Austin, III.

Note #3: @ Sentence #3 is his first substantial lie or misstatement of fact. This statement is not supported by the evidence or the facts. Jim H. Austin, III did not show up on October 8, 2007 or October 9, 2007 to do any appraisal. There is no mentioning of anyone showing up to do an appraisal.. My husband's affidavit that was filed on August 15, 2011, documented all the people that came and went while he was cleaning up the property from early morning to midnight. No appraiser is mentioned. In addition, April Primrose pointed out to us, the appraisal could not have been done in October of 2007 period. In October of 2007, the yard

and driveway were covered with leaves and the hedges were overgrown. No one had raked or trimmed any hedges for quite sometime. There are no leaves or overgrown hedges in Jim H. Austin, III's pictures. In addition, during the dates....and...times in question, no car was parked in the driveway. This means the entire appraisal including the interior is a complete fabrication by "the 'WE'".

Note #4: @ Sentence #3 is his second substantial lie or misstatement of fact. 423 Bayne Street never appraised for \$78,000.00 because no real appraisal was done by Jim H. Austin, III in October of 2007. According to Orangeburg County's Tax Assessor's Office, the highest sales price in the record book is \$14,000.00. {Refer to Exhibit 115} Every owner after Virginia B. Weeks acquired the property for delinquent taxes including Bond Ceal Dantzler (the owner after Weeks) and Thomas Jacobs (the owner in 2007).

Note #5: @ Sentence #3 is his third substantial lie or misstatement of fact. The official living area of 423 Bayne Street is 1274 square feet in downtown Orangeburg not 2900+. As already stated, after acquiring the property in the 1980's, Bond Ceal Dantzler converted the storeroom into a meeting room for her church members. {Refer to Exhibit 26}

Note #6: @ Sentence #4 is David Terrell's fourth substantial lie and not a misstatement of fact. As the evidence has revealed, the appraisal was done in a fraudulent manner and was not done "as is". Not only is this truth and these facts verifiable from eyewitness testimony, Jim H. Austin, III's **Appraisal Fraud**; that was done for "the 'WE'", is also verifiable by Orangeburg's public records.

Note #7: @ Sentence #5, David Terrell inadvertently verifies and supports my **Affirmative Defense**, that I have no liability for the value of Wells Fargo's fraudulent note and mortgage. Janet Frotscher clearly states in her letter, dated February 21, 2008, @ ¶ 5; {Review Exhibit 45} the appraisal was reviewed "and found... acceptable for our lending purposes." David Terrell's statement @ Sentence #5 also verifies another **Statement of Fact**. "The 'WE'" that includes David Terrell, Thomas Jacobs and Jim H. Austin, III, not only misrepresented material facts, "the 'WE'" also fraudulently concealed material facts from Wells Fargo and SCDCA; most notably, the 7-59 Appraisals and Satisfaction Completion Certificate are complete fabrications by "the 'WE'" from beginning to end. David Terrell's statement @ Sentence #5, also verifies another **Statement of Fact**. No appraisal was ordered for me or by me. Another **Affirmative Defense** is also verified and supported. I am an innocent victim of the Seller's, Broker's and Appraiser's **Conspiracy to Defraud** and Wells Fargo's own scheme and/or artifice to perpetuate **Mortgage Fraud** to **Defraud** or **Swindle** me out of \$75,000.00 with the falsified, forged, altered and unauthorized documents that belong to the Seller, Broker, Appraiser, the Player Law Firm and Wells Fargo's own employees..

Note #8: @ Sentences #6 - #7 is David Terrell's most outrageous lie of them all. I never agreed to purchase 423 Bayne Street for \$75,000. If I had not been deceived...those documents...would have never been signed. The evidence David Terrell is not being genuine is...

(A) The 7 years I have been fighting to cancel loan 0174072777.

(B) Janet Frotscher's false accusations, misrepresentations and concealment of material facts prevented cancellation in February and May of 2008.

(C) Judge Goodstein's and attorney's Burns and Moise's **Fraud upon the Court** that includes Burns and Moise's **Massive Filing Fraud** from 2009-2011, prevented cancellation from 2009 to 2014; as well as, misrepresented material facts. My fight to cancel this loan is now in the Appellate Court. And I will continue to fight to the United States Supreme Court if necessary to end this blight on my name and credit; as well as, get this criminally induced loan off the mortgage books in Orangeburg County so no one else will be victimized by its inflated and fraudulent value.

(D) *ARTICLE III of the Uniform Commercial Code 305(ii)-(iii) and Section 36-3-305(ii)-(iii) - SC Code of Laws* that 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...."

(E) "The term *void* has a precise meaning. A void contract is not a contract at all because the parties are not, and cannot be, bound by its terms. Therefore, no action can be maintained for breach of a void contract, and it cannot be made valid by ratification. Because it is nugatory."

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

(G) "[a] misrepresentation may make a contract voidable if it is either fraudulent or material." *Restatement (Second) Contracts ch. 7, Introductory Note (1981)* "[T]he question of whether a party was fraudulently induced into a contract may go to the formation of the contract. A party that is misled as to the essential terms of a contract does not technically agree to the contract, as no assent to its terms has been formulated due to the misrepresentation. In this situation, it is irrelevant whether the misrepresentation was made by the other party to the contract or a third person. See *Restatement (Second) Contracts § 163 (1981)* ("It is immaterial under the rule stated in this Section whether the misrepresentation is made by a party to the transaction or by a third person.").

(H) As the *Fourth Circuit* stated in *Schmidt v. Milhauser*, 130 A.2d 572, 576 (Md. 1957) (quoting *Bishop v. E.A. Strout Realty Agency*, 182 F.2d 503, 505 (4th Cir. 1950)) (“[T]here is nothing in law or in reason which requires one to deal as though dealing with a liar or a scoundrel, or that denies the protection of the law to the trustful who have been victimized by fraud. The principle underlying the caveat emptor rule was more highly regarded in former times than it is today; but it was never any credit to the law to allow one who had defrauded another to defend on the ground that his own word should not have been believed.”)

Note #9: @ Sentence #8 is another one of David Terrell’s outrageous lies. How could I expect more work to be done, when I went to the closing to lower the price because no work was done? @ Sentence #9 is a curious admission. David Terrell was at 423 Bayne Street in March of 2008 with an electrician to repair the lights. Therefore, it is no belief. He knows for a fact the appraisal and satisfaction completion certificate are falsified documents. Instead of admitting falsification to SCDCA, he states, “It was not required for financing.” If I am going to pay for a house for 30 years, it is required by me and any other home buyer with reasonable intelligence that all the work be completed before any financing; otherwise, the house might never be completed. However, for a **Conspiracy to Defraud**, whether the house is done or not done is immaterial for financing. The entire scheme to Defraud is based on lies, deceit and deception anyway.

Note #10: If accurate appraisals are not necessary for financing....why would Janet Frot-scher engage in false accusations about satisfaction completion certificates? Why would the FBI call it **Mortgage Fraud**...if it does not matter what is on the appraisal that is used to determine value? **DAVID TERRELL IS TELLING SCDCA WHAT “THE ‘WE’” DID TO ME...NOT FOR ME.** SCDCA has no way of knowing, David Terrell is not telling the truth, the whole truth and telling nothing but lies, he is actively concealing information and misrepresenting the facts; as well as, the material facts.

Note #11: In Paragraph #2, in sentences #1 - #5, David Terrell addresses my accusation against him for participation in a predatory lending scheme and a fraudulent mortgage loan transaction, South Carolina’s High Cost and Consumer Home Loan Act, is not based on broker fees or profit sharing. It is based on ability to pay as a percentage of gross monthly income and any other verifiable income source. Therefore, David Terrell’s argu-ment is without any merit and lacks genuine sincerity. SCDCA’s personnel should have known this and assessed his bond for damages. David Terrell also tries to distance himself from Thomas Jacobs by stating in sentences #3 - #4, “I am in no way involved in the real estate business with Thomas Jacobs, nor have we done any real estate transactions as partners.” My husband believed this lie, until he called 803-788-2880..and a man answered the phone that identified himself as David Terrell. 803-788-2880 is a telephone number Thomas Jacobs gave to my husband in October of 2007 to a friend and business associate that; according to Thomas Jacobs, could reach him 24 hours a day. Thomas Jacobs emergency phone number is to **Golden Gate Mortgage, Inc.** Wells Fargo’s filed documents WF00 032 & WF00080 also verifies this is a telephone number to **Golden Gate Mort-**

gage, Inc., My letter to SCDCA to file a claim against David Terrell's bond had nothing to do with real estate or real estate transactions. This is another...meritless defense for not paying the claim.

Note #12: No where in David Terrell's letters to SCDCA does he claim he knows me or my husband or has ever seen me or met me. Therefore, if all of us are complete strangers that have never seen each other, know each other and have never met, how did my husband get his number, if Thomas Jacobs did not give it to him? This same scenario also proves David Terrell did not broker the loan and it supports my **Statement of Fact** that loan 0174072777 was brokered by Thomas Jacobs...not David Terrell. David Terrell failed to disclose to SCDCA the illegal brokering activities of Thomas Jacobs; as well as, his own complicity with and support of.....Thomas Jacobs' illegal brokering activities.

Note #13: The same line of reasoning applies to copies of my social security number, driver's license, check stub and W-2 form. David Terrell had every opportunity to explain to SCDCA how he met me, what I said to him in letters, emails, memos and/or faxes, at meetings and/or visits. David Terrell does not even mention a single telephone conversation to support his defense. He simply lied, concealed material facts and misrepresented material facts to SCDCA. In his effort to impress upon SCDCA the legality of the work he did, like Thomas Jacobs and Janet Frotscher, David Terrell inadvertently condemned himself and cemented his participation in "the 'WE's'" **Conspiracy to Defraud Wells Fargo. Someone substituted my name on appraisal – W00001-13 and inserted it on WF00014-26. David Terrell does not deny supporting this Forgery by "the 'WE'".**

Note #14: @ Paragraph 3, in sentence #1, David Terrell says I indicated there was no mortgage broker agreement. David Terrell responded in sentence #2, by stating, "That is incorrect." In sentence #3, he states, "We have a signed mortgage broker fee agreement in the file." I no longer have the computer, from which, this letter was written and faxed, and I did not save a hard copy, therefore, I am no longer certain how the statement was actually written. nevertheless, David Terrell condemns himself again. David Terrell does not deny, refute or contest my **Statement of Fact** that Thomas Jacobs obtained the signed Mortgage Broker Agreement as a requirement for Goldengate Mortgage funding the loan. Wells Fargo's filed documents WF00001-27 also identify Goldengate Mortgage as a Lender. David Terrell has never stated anywhere in writing that he personally obtained the Broker's Agreement, nor did he identify the person that did or rejected my **Statement of Fact** that it was obtained by Thomas Jacobs on 11/26/2007...an unlicensed originator.

Note #15: On page 2, @ Paragraph #1, in sentence #1, David Terrell defends himself from my **Statement of Fact** that he represented the seller and not me. @ Sentence #2 is his first lie on page 2. David Terrell did not deliver any loan for me that is 100% of the purchase price. He did that for "the 'WE'".

(A) I went to the closing to cancel any loan or agreement, verbal or otherwise, for \$75,000.00 and I have been actively trying to cancel it since December of 2007.

(B) The second lie in this sentence is I agreed to. I never agreed to any loan for \$75,000.00. The evidence is hundreds of pages of letters and Court pleadings.

(C) The third lie in this sentence is that he worked. He did not do anything. Most of the falsifications that were necessary to approve loan 0174072777 were done by Wells Fargo's own underwriters and/or personnel.

Note #16: @ Sentence #3 is his fourth lie. David Terrell did not give me any opportunity to buy a run down house at the lowest price possible. My husband's low price that was discussed with Thomas Jacobs was \$30,000.00. @ Sentence #4 is another one of his outrageous lies. David Terrell never discussed the loan with me period, end of discussion. David Terrell only wanted to know why I filed a claim against him with SCDCA.

Note #17: I am answering sentence #5 with this case law, because "the 'WE'" includes Thomas Jacobs; As the *Fourth Circuit* stated in *Schmidt v. Milhauser*, 130 A.2d 572, 576 (Md. 1957) (quoting *Bishop v. E.A. Strout Realty Agency*, 182 F.2d 503, 505 (4th Cir. 1950)) ("[T]here is nothing in law or in reason which requires one to deal as though dealing with a liar or a scoundrel, or that denies the protection of the law to the trustful who have been victimized by fraud. The principle underlying the caveat emptor rule was more highly regarded in former times than it is today; but it was never any credit to the law to allow one who had defrauded another to defend on the ground that his own word should not have been believed.")

Note #18: @ Sentence #6 is the same spelling of Golden Gate Mortgage that was used by Thomas Jacobs and Janet Frotscher. This is not the spelling of Golden Gate Mortgage David Terrell used in Exhibit 37, i.e., **GoldenGate Mortgage**. My complaint "IS" with him for participation in a predatory lending scheme and a fraudulent mortgage loan transaction.

(A) David Terrell lied on the loan paperwork he submitted to WFHM that he interviewed me on 11/26/2007 – Exhibits WF00030-32. He never showed up.

(B) David Terrell's signature on the application indicates he approved of the deliberate falsification of my income on WF00031 to bypass *Section 37-23-40(1)-(2) – SC Code of Laws*,

(C) David Terrell's signature on the application indicates he approved of the deliberate exclusion of the **1950** year built information I had handwritten on the loan application I completed for Thomas Jacobs on 11/26/2007 – WF00033.

(D) David Terrell's signature on the application indicates he approved of the deliberate exclusion of the debts I had handwritten on the loan application for Thomas Jacobs on 11/26/2007 – WF00031, also Refer to Exhibits 65, 66 & 72.

(E) Wells Fargo's document file verifies and proves David Terrell approved of the deliberate use of loan paperwork from an unlicensed loan originator and/or broker in violation of *Section 40-58-30(A)&(B) & 40-58-50(E)(1) – SC Code of Laws*.

(F) Wells Fargo's document file verifies and proves David Terrell / **Golden Gate Mortgage, Inc.**, deliberately used an unauthorized Credit Report on October 3, 2007 – WF00066-73. Wells Fargo used it on 12/04/2007.

(G) Wells Fargo's document file and civil action case 2008-CP-38-1024 verifies and proves David Terrell deliberately concealed from Wells Fargo that Thomas Jacobs brokered the loan not Goldengate Mortgage, Golden Gate Mortgage, **GoldenGate Mortgage**, **Golden Gate Mortgage, Inc.**, or David Terrell.

(H) After visiting 423 Bayne Street, David Terrell deliberately concealed the material facts that Jim H. Austin, III's appraisal and satisfaction completion certificate are not only falsified. both are complete fabrications and except for the address....every material fact does exist in reality or actuality.

(I) David Terrell concealed from SCDCA and Wells Fargo, the undeniable fact that Dorothy Sistrunk did not order an appraisal, did not know about any appraisal and he did not tell her about any appraisal Wells Fargo was using.

(J) Neither Wells Fargo nor David Terrell has presented any evidence or docu-mentation that Goldengate Mortgage [WF00001-27] and **Golden Gate Mortgage, Inc.**, [WF00064 & 74] are licensed as mortgage lenders in South Carolina.

(K) Neither Wells Fargo nor David Terrell has presented any evidence or documents verifying Golden Gate Mortgage or **GoldenGate Mortgage** is licensed as a loan broker pursuant to South Carolina law.

Note #19: @ Sentence #7 & #8 is David Terrell's verification of my **Statement of Fact** that David Terrell visited 423 Bayne Street and knows for a fact Jim H. Austin, III's appraisal and satisfaction completion certificate that belong to "the 'WE'" are fabrications. David Terrell admits the house is not in great condition. The remaining statement is another lie. "The customer did not live in the house for months prior to closing." The source of this lie is Thomas Jacobs. He said this in his letter to SCDCA that "She immediately moved into the house." This is a lie because the house was not fit for human habitation. (*Review Exhibit 36, Pg 1, @ sentence #3*) My husband began cleaning up at the end of September 2007, per his verbal agreement with Thomas Jacobs. { *Review Exhibit 36, Pg 1, @ sentence #2*} Thomas Jacobs did not speak to me and I did not agree to anything. Thomas Jacobs spoke to my husband and the agreement was with my husband, not with me. The letters also verify James H. Burns'..and/or...Elizabeth Scott Moise's mis-statement of facts..in Judge Goodstein's signed Partial Summary judgment Order.

(A) We did not move into 423 Bayne Street until November 27, 2007. This is a day after, signing the paperwork for a loan from Goldengate Mortgage – WF00001-27 / **Golden Gate Mortgage, Inc.**, - WF00064 & 74 on November 26, 2007. In addition, Thomas Jacobs has already verified in his letter to SCDCA that he and my husband had an agreement that all the work done to restore 423 Bayne Street was in exchange for rent payments or any down payment needed for purchase. 6 months x \$595.00 = \$3,570.00. Thomas Jacobs gave us permission to move in at anytime. However, this was not done immediately for 2 reasons:

(1) 423 Bayne was not fit for human habitation until the last week in November of 2007. This fact is omitted on the 7-59 appraisals.

(2) We had to stay at 5074 Coburg Lane until Tommy Mitchell's sales representative Karen Atkinson showed up. Ms. Atkinson was ill and could not come to Coburg Lane until late November of 2007.

(B) In November of 2007, Mr. Lambright, Thomas Jacob's contractor, told my husband the restoration work my husband did at 423 Bayne Street could not have been done by a licensed contractor for less than \$7,000.00. Trent Green; Thomas Jacobs' second contractor, also agreed the restoration could not have been done for less than \$7,000.00. $\$7,000.00 \div \$595.00 =$ approximately 11 months of rent payments under the original verbal agreement or any down payment needed for purchase, including rent to own. {Review Exhibit 36, page 1 @ sentence #2} Thomas Jacobs had every opportunity to tell SCDCA about the details of the agreement and he choose not to. For 7 years, Thomas Jacobs had every opportunity to refute our **Statements of Fact**. He did not, has not and cannot because he already knows, we are telling, speaking and writing the truth.

Note #20: @ Sentences #9 and #10, David Terrell again tries to distance himself from the deceit and deception that led to the loan being closed on 12/21/2007, under the mistaken impression that I was cancelling the agreement and/or contract to pay \$75,000.00 for 423 Bayne Street and signing an agreement to pay much less with Goldengate Mortgage. When I got home, I told my husband I had looked through the paperwork, but I could not find where the price was lowered. I gave him the paperwork. That's when he told me, I had been tricked and scammed. "[T]here is nothing in these documents to lower the price. In fact, this paperwork is not from Goldengate Mortgage, its from Wells Fargo." Therefore, I'll answer sentence #9 with this case law reference, because "**the 'WE'**" includes Thomas Jacobs; As the *Fourth Circuit* stated in Schmidt v. Milhauser, 130 A.2d 572, 576 (Md. 1957) (quoting Bishop v. E.A. Strout Realty Agency, 182 F.2d 503, 505 (4th Cir. 1950)) ("[T]here is nothing in law or in reason which requires one to deal as though dealing with a liar or a scoundrel, or that denies the protection of the law to the trustful who have been victimized by fraud. The principle underlying the caveat emptor rule was more highly regarded in former times than it is today; but it was never any credit to the law to allow one who had defrauded another to defend on the ground that his own word should not have been believed.")

Note #21: Before answering sentence #11, about the customer wanting him to “personally inspect the house”, that is a lie. David Terrell already admitted on page 1, in sentence #2 in this letter, that “We ordered the appraisal...” David Terrell does not indicate when this was done or for whom. Therefore, the \$75,000.00 price was already set and already approved by “the ‘WE’”.

(A) David Terrell demonstrates he is a mortgage industry insider that knows how loans are approved and the legal obstacles that will be in place for any victim trapped in the scheme.

(B) David Terrell’s statements on page 2, also indicate prior knowledge of successful operations with falsified appraisals and successful outcomes against victims that allowed “the ‘WE’” to escape any liability and/or accountability for their schemes.

(1) The vast majority of victims are not going to be able to afford attorneys, write pleadings, learn court rules, do legal research, issue subpoenas, admissions, interrogatories or understand the importance of affidavits or know the difference between a trial without a jury and/or a hearing. Contrary to belief, an attorney’s services are not cheap

(2) The vast majority of victims are not going to know anything about justifiable reliance, the parole evidence rule, pleading with specificity and particularity, what is clear and convincing evidence or what motion to file and/or when to file it or that fraud cannot be based on a future promise or an opinion. Victims are going to be just as lost as I was and still am in a legal system. The bottom line is victims of these schemes don’t stand a snowball’s change in a place that is extremely hot...that many call HELL.

(C) David Terrell’s statements mirror what I have seen in Rogers Townsend & Thomas, PC.’s filed complaint, in Burns’, Scott Moise’s and Brian A. Calub’s filed arguments and in Judge Goodstein’s Court Orders.

Note #22: @ Sentence #12, David Terrell tries to shift blame back to me. This is the classic use of justifiable reliance. How was I to know, there is no legal duty to rely upon anything Thomas Jacobs said. Since I have already proven and Thomas Jacobs own admissions prove his statement about living somewhere rent free is a lie, I will answer his remaining statements in sentences #13 - #16 with this... “[a] misrepresentation may make a contract voidable if it is either fraudulent or material.” *Restatement (Second) Contracts ch. 7, Introductory Note (1981)* “[T]he question of whether a party was fraudulently induced into a contract may go to the formation of the contract. A party that is misled as to the essential terms of a contract does not technically agree to the contract, as no assent to its terms has been formulated due to the misrepresentation. In this situation, it is irrelevant whether the misrepresentation was made by the other party to the contract or a third person. *See Restatement (Second) Contracts § 163 (1981)* (“It is immaterial under the rule stated in this Section whether the misrepresentation is made by a party to the transaction or by a third person.”).

(33) Exhibit 51 – 2 page - Faxed letter to: Janet Frotscher, “This Could Be Construed As Insurance Fraud”. Dated: February 29, 2008.

Note #1: Janet Frotscher in her letters; dated February 21, 2007 and June 2, 2008 {Wells Fargo’s Exhibits WF00120 & 125} clearly and firmly establishes the value of loan 0174072777 is based entirely on Jim H. Austin, III’s { Exhibits WF00078-79} appraised value of \$75,000.00. { Exhibits WF00001-26} According to Janet Frotscher, Wells Fargo relied upon this value for lending purposes. { Exhibit WF00120 @ ¶ 5}

Note #2: Wells Fargo was notified these values are falsified due to fraudulent concealment and misrepresentations of material facts by the appraiser. {Exhibits 8-14, the Eyewitness Description of 423 Bayne Street in the Public Record & Exhibit 113 – the Property} Wells Fargo maintaining this value; after all the facts were known, is evident by the value based Hazard Insurance Wells Fargo has maintained on 423 Bayne Street to cover the falsified value of its loan, note and mortgage. In 7 years, Wells Fargo has not changed the value of its \$75,000.00 **Title Insurance**; after all the facts were known. {Exhibit WF00109} Without personal knowledge, a company will not know about the lies.

A. The following exhibits verify Wells Fargo and others were continuously notified about Mortgage Fraud. These letters like the previous letters prove Scott Moise’s statement that neither the Defendant nor her husband notified Wells Fargo about the fraudulent representations of the seller is false.

(34) Exhibit 52 – 4 page - Faxed letter to: David Terrell, Copy to Wells Fargo, Debra C. Galloway and Thomas Jacobs. Dated: March 6, 2008 “I Will Not Perpetuate A Fraud By Continued Payments” “Notice of Intent To Stop Payments & Risk Foreclosure”.

Note: This letter was written shortly after ending our reliance on Kathryn R. Perkinson’s advice and before David Terrell showed up at 423 Bayne Street with his electrician. It was also written at a point in time when I thought all I had to do is tell the truth. After 7 years of telling the truth...all it has gotten for me is a trip to the Appellate Court; while the perpetrators of this fraud have no liability, no court cost, no years spent in research and no accountability whatsoever for telling lies. Telling the truth must only work with real Juries in a real trial. Judges sitting without a Jury like Martin R. Banks and Diane Goodstein can wreck financial havoc on families that do not have deep pockets. Both Judges have written court orders based on verifiable misrepresentations from attorneys, both never reviewed any evidence from the defendant and under *Rule 56, SCRPC* neither one had to engage in fact finding.

(35) Exhibit 53 – 3 page - Faxed letter to: OCC. Copy sent to Wells Fargo and all the others listed on the letter. Dated: May 15, 2008. Verifies notifying OCC about Wells Fargo’s Insurance Fraud....if I had to pay...Lender Placed Hazard Insurance premiums.... predatory Lending and Mortgage Fraud.

(36) Exhibit 54 – 5 page - Faxed letter to: Janet Frotscher and all the others listed on the letter: “Let Us Reason Together,” is dated June 6, 2008

- (37) **Exhibit 55** – 4 page - Faxed letter to: John Smith, Janet Frotscher and all the others listed on the letter. “Addendum To Let Us Reason Together,” is dated June 7, 2008.
- (38) **Exhibit 56** – 4 page - Faxed letter to: John Smith, Janet Frotscher and all the others listed on the letter. “Addendum To Let Us Reason Together II,” is dated June 9, 2008.
- (39) **Exhibit 57** – 4 page - Faxed letter to: Janet Frotscher and all the others listed on the letter. , “Let Us Reason Together II”, is also dated June 9, 2008.
- (40) **Exhibit 58** – 4 page - Faxed letter to: Janet Frotscher and all the others listed on the letter. “Suspend Foreclosure Proceedings – Don’t Make Matters Worse,” is dated June 10, 2008.
- (41) **Exhibit 59** – 5 page - Faxed letter to: John Smith, Janet Frotscher and all the others listed on the letter., “Reality Check,” is dated June 13, 2008.
- (42) **Exhibit 60** – 5 page - Faxed letter to: Janet Frotscher and all the others listed on the letter. “If My Mortgage Were Not Based On A Falsified Appraisal,” is dated June 16, 2008.
- (43) **Exhibit 61** – 4 page - Faxed letter to: Janet Frotscher and all the others listed on the letter. “This Is A Formal Request,” is dated June 24, 2008.
- (44) **Exhibit 62** – 9 page - Faxed letter to: Carl S. Owens, Janet Frotscher and all the others listed on the letter. “The Evolution Of A Problem,” is dated June 25, 2008.
- (45) **Exhibit 63** – 4 page - Faxed letter to: Carl S. Owens, Janet Frotscher and all the others listed on the letter. “Addendum To Evolution of a Problem – Why Not Find Out For Sure?,” is dated June 26, 2008.
- (46) **Exhibit 64** – 2 page - Faxed letter to: Iowa Attorney General – Mr. Tom Miller. Dated: July 3, 2008.

B. The following exhibits prove my income and debt obligations were falsified and/or misrepresented by Golden Gate Mortgage, Inc., and Wells Fargo’s own personnel and/or employees.

- (47) **Exhibit 65** – 1 page – Worksheet from DAC. Submitted on June 3, 2008. According to DAC, the Worksheet is the evidence that verifies and proves violation of *Section 37-23-40(1)-(2)* by Wells Fargo. DAC’s Financial Worksheet clearly shows my monthly debt obligations exceeds 50% of monthly gross income in 2007.
- (48) **Exhibit 66** – 4 page - Worksheet from ACORN. Submitted July 24, 2008. According to ACORN, this Worksheet is additional evidence that Wells Fargo violated *Section 37-23-40(1)-(2) SC Code of Laws* – ACORN’s Financial Worksheet also verifies my monthly debt obligations exceeded 50% of monthly gross income in 2007.
- (49) **Exhibit 72** – 1 page – Worksheet from WELLS FARGO. Submitted May 14, 2008. Wells Fargo’s own Worksheet also verifies my monthly debt obligations exceeded 50% of gross monthly income in 2007. These debts were excluded from Wells Fargo’s and **Golden Gate Mortgage, Inc.’s** loan application. Wells Fargo will never admit to any violation.

C. The following exhibits proves Debra C. Galloway closed a residential mortgage loan in violation of 24 CFR Part 35 - Subpart A.

(50) Exhibit 68 – 1 page – “Parties Acknowledgement & Affidavit” – Player Law Firm’s Form document verifies Debra C. Galloway could have and should have stopped the closing. There was no Contract of Sale at the closing, no CL-100 wood infestation report completed on the property to review and no smoke detector/s were installed at 423 Bayne Street. Since I had never been to a closing, I did not know what to do or what to ask. I followed Debra C. Galloway’s instructions to initial and sign. She was the attorney, I had no reason to believe she would deceive me or not do what the law and the Player Law Firm required.

(A) *Restatement 2d of Torts*, § 552, dealing with negligent misrepresentation says that “[1] One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.”

(B) *Doe Law Firm v. Richardson*, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006) (citing *Buyers and McMaster*) (clarifying that a lender may prepare legal documents for use in financing or refinancing a real property loan as long as an independent attorney reviews them and makes any corrections necessary to ensure their compliance with the law and reaffirming that mortgage loan closings should be conducted only under an attorney’s supervision)

(C) “[O]ne of the interests protected by the law of deceit is ‘the interest in formulating business judgments without being misled by others’ into making unwise decisions which result in financial loss.” *Fleming & Gray, Misrepresentation, Part I*, 37 Maryland L. Rev. 286-287 (1977). “[I]t is well established that an action for fraud and deceit is maintainable not only as a result of affirmative misrepresentations, but also for negative ones, such as the failure of a party to a transaction to fully disclose facts of a material nature where there exists a duty to speak. *Prosser on Torts* (4 Ed. 1971) 695-696, *Representation and Nondisclosure, Section 106*; 37 *American Jurisprudence 2d* 197-201, *Fraud and Deceit, Sections 144 and 145*; *Barder v. McClung* (1949), 93 Cal.App.2d 692, 697, 209 P.2d 808.”

(D) “[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.

(51) Exhibit 69 – 1 page – Second page of the Player Law Firm’s – “Parties Acknowledgement & Affidavit” @ paragraph #7. At the closing, I had no idea what this meant. Debra C. Galloway told me to sign it and I did. The Seller – Thomas Jacobs – and Debra C. Galloway violated... the Lead-Based Paint Hazard Reduction Act of 1992.... I did not

know. However, it was the Seller's and the Closing Agent that should have known. This affidavit is dated December 21, 2007. The affidavit is not properly dated or notarized.

(52) **Exhibit 115** – 1 page – 423 Bayne Street Sales History Form from Orangeburg County Tax Assessors Office verifying my **Statement of Fact** - the last recorded sales price of 423 Bayne Street is \$14,000.00, reportedly paid by Virginia Weeks in 1982.

(53) **Exhibit 117** – 1 page - Tax Appeal filed with Orangeburg County's Tax Assessor's Office that was filed on October 2, 2008. We were told there is nothing that can be done without a Court Order.

(54) **Exhibits 140 – 141** - 2 page – Contract of Sale that was sent by Janet Frotscher in June of 2008. Compare this Contract of Sale with WF00028-29 – that came from Nelson Mullins Riley & Scarborough, LLP, both were submitted by Wells Fargo.

(55) **Exhibit 152** – 2 page – Copy of complaint filed with SCDCA against Wells Fargo Bank on May 16, 2008. The complaint is stamped Received on May 19, 2008.

(56) **Exhibit 165** – 2 page – Notice of Appeal to Final Action Tax Notice: 2008 Tax Year Dated: June 26-2008. Nothing could be done at the appeal hearing because it was filed too late. In addition, nothing could be done anyway without a Court Order.

(57) **Exhibit 166** – 2 page – Verifying my **Statement of Fact** that it was my husband that contacted GreenPath debt Solutions during the Stay/TRO and not Wells Fargo or Nelson Mullins Riley & Scarborough, LLP's attorneys James H. Burns or Elizabeth Scott Moise.

IV. FILED AFFIDAVITS INCLUDING NOTARIZED OR VERIFIED PLEADINGS THAT MUST BE INCLUDED IN THE RECORD ON APPEAL

9. The following are filed affidavits and specific **Notarized** or **Verified Pleadings** that must be included in the Record on Appeal. Only an overview, details are in the affidavits or pleadings.

(a) The **Affidavit of George M. Sistrunk – Background and History the Signed Broker's Agreement**. This affidavit verifies the Seller and property owner; Thomas Jacobs brokered loan 0174072777 and not Goldengate Mortgage, GoldenGate Mortgage, Golden Gate Mortgage, **Golden Gate Mortgage, Inc.**, or David Terrell. The affidavit was filed on 8/15/2011.

(b) **Dorothy Sistrunk's Affidavit of Facts, Material Facts & Truth to Refute Allegations by Wells Fargo's Personnel & Attorney/s**. This affidavit was filed to refute the misinformation, distortions, misrepresentations and outright lies of Wells Fargo's attorney/s and Wells Fargo's personnel. This affidavit was filed on May 25, 2012.

(c) **George M. Sistrunk's Affidavit Regarding Judge Diane Shafer Goodstein's Refusal to Let Me Give Testimony & Evidence that Refutes Her Statements, the Statements of Wells Fargo's Attorneys, Personnel & Their Misrepresentation of Facts.** This affidavit covers

- (1) Burns & Moise **Massive Filing Fraud** during the Stay/TRO,
- (2) The evidence of Wells Fargo's own scheme to Defraud,
- (3) The hard evidence Wells Fargo forged the sales contract,
- (4) Wells Fargo's knowingly perpetuated the Seller's, Appraiser's and the Broker's **Conspiracy to Defraud** by using the unauthorized credit report,
- (5) Judge Goodstein's fabrications are an abuse of her immunity,
- (6) The Court's acceptance of Janet Frotscher's misrepresentation of material facts and outright lies and/or negligent misrepresentation of facts and/or material facts, Wells Fargo knew from the beginning.....loan #0174072777 was mired in fraud, deceit....., and deception,
- (7) Janet Frotscher's Big Lie, Janet Frotscher's Ultimate Lies, concealment of material facts and others who are associated with this loan that have also engaged in fraudulent concealment of material facts.

(d) **Dorothy Sistrunk's Affidavit of Facts & Truth Regarding Debra C. Galloway & Stephanie at the Closing on December 21, 2007 at the Player Law Firm; 1415 Broad River Rd, Columbia, SC 29210 & Other Pertinent Material Matters.** This Affidavit was filed to tell the truth relative to the December 21, 2007 closing that was rarely discussed in my pleadings.

- (1) Debra C. Galloway was represented as an attorney by Thomas Jacobs a/k/a Thomas D. Jacobs and Debra C. Galloway a/k/a Debra Galloway represented herself as an attorney,
- (2) Debra C. Galloway did not represent herself as a Notary Public,
- (3) Stephanie Hammond was never in my presence at the Player Law Firm, before, during or after the closing,
- (4) Debra C. Galloway & Stephanie Hammond's Falsely Certified Wells Fargo's "Mortgage",
- (5) When did I discover the loan is brokered & not financed?
- (6) When did I discover the Contract of Sale was forged and altered?
- (7) When did I discover the unauthorized use of my credit report?

(8) Do I have any personal evidence against Wells Fargo? Because Judge Diane Shafer Goodstein, Wells Fargo, Elizabeth Scott Moise, Brian A. Calub, Amanda Weatherly, Elizabeth S. Hodgson and James H. Burns do not have any personal knowledge of the events, none of them realized Wells Fargo's document file has all the necessary evidence. When combined with my personal knowledge and the personal knowledge of my husband, we can identify with specificity, particularity and clearly and convincing the evidence of the **Conspiracy to Defraud** by the Seller, Broker and the Appraiser, the violations of state and federal laws; fraudulent concealment of material facts, misrepresentation of material facts and Wells Fargo's own scheme and/or artifice to **Defraud** or **Swindle** me out of property and/or money with its own falsified, altered and unauthorized documents.

(9) Additional frauds associated with loan #0174072777.....and...

(10) Constitutional violations are also a 42 USC § 1983 Legal Matter.

This affidavit was filed on May 28, 2014.

(e) **Dorothy Sistrunk's Affidavit of Facts & Truth Regarding Judge Diane Shafer Goodstein's violation of South Carolina's...and...the United States Constitution's Due Process Clauses.** This affidavit was filed on May 28, 2014.

(f) **Dorothy Sistrunk's Rebuttal and Counter Affidavit of Facts & Truth That Refutes & Opposes the Affidavit of Amanda Weatherly Wells Fargo's Vice President for Loan Documentation for Wells Fargo Bank, N. A., in Support of Wells Fargo's Motion for Summary Judgment.** This affidavit was filed on July 17, 2013. Amanda Weatherly's affidavit did not state any facts that would support a summary judgment motion. To date: Wells Fargo has not produce any evidence..or...documentation to support its cause of action based on a legitimately brokered loan. Wells Fargo's loan is an illegal loan transaction under South Carolina law and was obtained in violation of South Carolina and Federal law.

(1) "[T]he purpose to be served by the summary judgment procedure is to expedite litigation by avoiding needless trials. While it is not a substitute for a regular trial and does not authorize the trial of any bona fide issues of fact which the affidavits may reveal, it permits the court to pierce the allegations of the pleadings to ascertain whether a genuine cause of action in fact exists or whether the defense interposed is sham or feigned." Barry v. Rodgers, 141 Cal. App. 2d 340, 342 [296 P.2d 898]; Cone v. Union Oil Co., 129 Cal. App. 2d 558, 562 [277 P.2d 464]; Kelly v. Liddicoat, 35 Cal. App. 2d 559, 561 [96 P.2d 186]

(2) “[O]nly a slight showing is needed to raise a triable issue of fact, nor is it required that all elements of the cause of action need be substantiated by evidence. Whaley v. Fowler, 152 Cal. App. 2d 379 [313 P.2d 97]

(3) “[A] party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party’s claims.” Dresher v. Burt (1996), 75 Ohio St.3d 280, 293, 662 N.E.2d 264

(4) “[T]he moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case.” Vahila v. Hall (1997), 77 Ohio St.3d 421, 429, 674 N.E.2d 1164. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party’s claims. *Id.* If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. *Id.*

(5) “[T]he erroneous granting of a motion for summary judgment is a denial of a fair trial and has been held reversible in other decisions too numerous to mention.” Jack v. Wood, 258 Cal. App.2d 639

(g) **Response to Plaintiff’s Affidavit.** This is a notarized response that was filed on May 26, 2009 to counter Elizabeth S. Hodgson’s Sham Affidavit that she was familiar with my case. This is my *Exhibit 266*. Elizabeth S. Hodgson did not show any personal knowledge or familiarity with my case or with my allegation that the value of Wells Fargo’s note and mortgage are based on misrepresentations of material facts by the Seller, the Broker and the Appraiser.

(1) “[T]he duty of a party resisting a motion for summary judgment is more than that of resisting the allegations in the motion.” Baughn v. Reynoldsburg (1992), 78 Ohio App.3d 561, 563, 605 N.E.2d 478

(2) “[I]nstead, this burden requires the nonmoving party to “produce evidence on any issue for which that (the nonmoving) party bears the burden of production at trial.” Wing v. Anchor Media Ltd. Of Texas (1991), 59 Ohio St.3d 108, 570 N.E.2d 1095, paragraph three of the syllabus; Welco Indus., Inc. v. Applied Companies (1993), 67 Ohio St.3d 344, 346, 617 N.E.2d 1129; Gockel v. Ebel (1994), 98 Ohio App.3d 281, 292, 648 N.E.2d 539

(3) “[T]he nonmovant must present documentary evidence of specific facts showing that there is a genuine issue for trial and may not rely on the pleadings or unsupported allegations.” Shaw v. J. Pollock & Co. (1992), 82 Ohio App.3d 656, 659, 612 N.E.2d 1295

(4) “[O]pposing affidavits, as well as supporting affidavits, must be based on personal knowledge, must set forth facts as would be admissible into evidence, and must show affirmatively that the affiant is competent to testify on the matters stated therein. *Civ.R.56(E)*; *Carlton v. Davisson* (1995), 104 Ohio App.3d 636, 646, 662 N.E.2d 1112.

(5) “[P]ersonal knowledge” is defined as “knowledge of the truth in regard to a particular fact or allegation, which is original and does not depend on information or hearsay.” *Brannon v. Rinzler* (1991), 77 Ohio App.3d 749, 756, 603 N.E.2d 1049.

(6) “[A]ccordingly, affidavits which merely set forth legal conclusions or opinions without stating supporting facts are insufficient to meet the requirements of *Civ.R.56(E)*, which sets forth the types of evidence which may be considered in support of or in opposition to a summary judgment motion.” *Stamper v. Middletown Hosp. Assn.* (1989), 65 Ohio App.3d 65, 69, 582 N.E.2d 1040

(7) “Under *Civ.R.56(C)*, the only evidence which may be considered when ruling on a motion for summary judgment are “pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action.” These evidentiary restrictions exist with respect to materials which are submitted both in support of and in opposition to a motion for summary judgment.”

(h) **Defendant Dorothy Sistrunk Objects to the Evidence Cited to Support the Plaintiff's Summary Judgment Order and Demands Placement on the Trial Roster.** This **Verified Pleading** was filed on March 24, 2014. The case law cited by attorney James H. Burns and Judge Diane Shafer Goodstein is not relevant to my defense of **Defrauding..or...Swindling**. The falsified, forged, altered, unauthorized, uncertified and unverified supporting documents attorney Burns used and Judge Goodstein approved..actually supports my case for dismissal with prejudice, not a Partial Summary Judgment or Order of Reference for Wells Fargo. According to Janet Frotscher, in letter dated June 2, 2008 the following documents were used in whole...or...in part to approve loan 0174072777.

(1) **The 7-59 Appraisals** that are verifiably forged and falsified. [WF00001-26]

(2) **The Contract of Sale** that is verifiably forged and altered. [WF00028-29 compare with Exhibits 140-141 – both come from Wells Fargo]

(3) **The 7-59 Satisfaction Completion Certificate** is falsified. [WF0009]

(4) **The Credit Report** is verifiably unauthorized [WF00066-73] and Wells Fargo's and Golden Gate Mortgage, Inc.'s unauthorized use is a violation of 15 USC § 1681n(a).

(5) Wells Fargo has provided no evidence, the lending decision was made on a copy of my driver's license and/or W-2 form.

(6) **The Loan Applications** do not even belong to me. My application was written by hand, x-ed by hand and **1950** was hand written as the year built. My debts were written by hand on 11/26/2007. Neither Wells Fargo, **GoldenGate Mortgage**, **Goldengate Mortgage**, Golden Gate Mortgage, **Golden Gate Mortgage, Inc.**, Thomas, Jacobs, Jim H. Austin, III nor David Terrell has presented my handwritten application or a copy of it.

(7) Wells Fargo has provided no evidence of a legitimately brokered loan or supporting documents that are not falsified.

(8) No "Unlicensed Seller" is involved in the transaction that was using the loan paperwork of a licensed broker. There is no evidence in the Law of the Case, that *Moseley* was duly notified of misrepresentations, falsity, misstatements, deceit, deception, errors, omissions and/or non disclosure of material facts, like Wells Fargo was notified and the *Moseleys* still proceeded with the purchase anyway; demonstrating willful intent and **Complicity** to perpetuate the fraud of *Whitehead* and/or *All Things Possible, Inc.*, after all the facts were known. Finally, there are no "False Accusations" by bank personnel falsely accusing the *Moseleys* of being *Whitehead*; like Janet Frotscher accused me of being Thomas Jacobs. [WF00120 & WF00125-126]

V. WELLS FARGO'S EXHIBITS THAT MUST BE INCLUDED IN THE RECORD ON APPEAL

A. Wells Fargo's Mortgage was Mortgage Fraud from the beginning.

10. Wells Fargo's mortgage documents were never valid or legitimate before the closing.

(1) **September 14, 2007** – the date the Scam Satisfaction Completion Certificate was completed. [WF00022]

(2) **October 03, 2007** – the date on the Unauthorized Credit Report. [WF00066]

(3) **October 08, 2007** – the date of the 7-59 Appraisals. [WF000014]

(4) **October 09, 2007** – the date Jim H. Austin, III signed the falsified, forged and fabricated 7-59 Appraisals. [WF00015 & WF00021]

(5) **November 26, 2007** – the date Thomas Jacobs obtained signatures on Goldengate Mortgage's loan paperwork. [WF00029-32, 63-77, 80-87]

(6) **December 04, 2007** – the date the illegal Predatory Lending Scheme was received by Wells Fargo and the date Wells Fargo became **Complicit** in the illegal activities of the Unlicensed Seller, with help from the Broker, Appraiser & Wells Fargo's own employees [WF00001-32]

(7) **December 04, 2007** – is also date the Wells Fargo became **Complicit** in the **Conspiracy to Defraud** by violating 15 USC § 1681n(a) by using an unauthorized credit report. [WF00065-73]

(8) **December 20, 2007** – is the date the loan was approved and became an illegally brokered loan, a home improvement and mortgage fraud and an illegal predatory lending scheme with falsified information. [WF00103, 115-116 & 119]

(9) **December 20, 2007** – is also the date Wells Fargo violated § 37-23- 40(1)-(2) by falsifying my monthly gross income. [Compare WF00034 with WF00061-62]

(10) **December 21, 2007** – is the date “Fraud in Factum”... and... “Fraud in the Inducement” led to the closing of loan 0174072777 [WF00033-59] instead of cancelling a loan with Goldengate Mortgage. [WF00001-26] and/or **Golden Gate Mortgage, Inc.** [WF00064 & 74]

(11) **December 21, 2007** – is also the date Debra C. Galloway & Stephanie Hammond falsely certified Wells Fargo’s Mortgage in violation of §§ 26-1-95, 26-3-20, 26-3-40, 26-3-50, 27-7-10, 30-5-30 & 24 CFR Part 35. [WF00058, 60 & 97]

(12) **December 21, 2007** – is also the official date Wells Fargo began Defrauding me with the falsified, forged, & unauthorized documents of the Seller, Broker Appraiser & Wells Fargo due to violations of § 37-23- 40(1)-(2), 15 USC § 1681n (a), 18 U.S.C. § 1346, & 24 CFR Part 35. [WF00001-137]

(13) **December 21 & 28, 2007** – are the dates Wells Fargo’s fraudulent mortgage via Debra C. Galloway, entered Mortgage Book 01914 in Orangeburg County in violation of §§ 27-7-10 & 30-5-30. [WF00092-97 & Exhibit 238]

B. Wells Fargo failed to present evidence of a legitimately brokered loan and has presented no evidence of how I harmed Wells Fargo and caused losses or damages. Appraisals & Completion Certificates are done for lenders.

11. Neither Wells Fargo nor Nelson Mullins Riley & Scarborough, LLP or Rogers Townsend & Thomas, PC has filed any certified documents, affidavits, depositions, interrogatories, admissions, sworn statements or any other testimony or any other documentation that is in the Court’s Records that supports Wells Fargo’s cause of action for a legally brokered loan; pursuant to law, in C. A. Case 2008-CP-38-1024. There is no supporting documentation or evidence that...

(1) Goldengate Mortgage / David Terrell actually brokered loan 0174072777 and not Thomas Jacobs. This is also my Affirmative Defense.

(2) Wells Fargo was not notified on December 22, 2007 that the loan is mired in fraud, deceit and deception or that the loan was in dispute on 12/27/2007.

(3) Kathryn R. Perkinson testified or submitted an interrogatory, deposition, affidavit...or....admission that she did not call Dorothy Sistrunk on December 24, 2007 and was not told about the misrepresentations of the Seller - Thomas Jacobs.

(4) Wells Fargo was not notified about the **Conspiracy to Defraud** of the Seller, Broker and/or Appraiser at any time prior to June 2008.

(5) Janet Frotscher was present or anyone else at 423 Bayne Street on September

- 14, 2007 and submitted an interrogatory, deposition, affidavit or admission that she witnessed Dorothy Sistrunk showing invoices to the Appraiser on this date.
- (6) Janet Frotscher was present or anyone else and submitted an interrogatory, deposition, affidavit..or...admission that she witnessed David Terrell offering and accepting the loan paperwork to and from Dorothy Sistrunk on 11/26/2007.
- (7) Janet Frotscher was present or anyone else when Goldengate Mortgage or Golden Gate Mortgage, Inc. submitted the loan paperwork to WFHM prior to or on 12/3/2007; in order to be stamped received on 12/04/2007.
- (8) Wells Fargo's 7-59 Appraisals are not falsified or forgeries and all the improvements on the Appraisal actually exist, new walls, floors, fixtures, central air conditioning, patio, deck, alarm system, working fireplace, scuttles, no deferred maintenance was present....and...the property was freshly painted as of October 8, 2007. Also an Affirmative Defense.
- (9) Janet Frotscher was present and saw Dorothy Sistrunk initial the changes on the contract of sale at some point in time..because there is no date when it was actually received. Also an Affirmative Defense.
- (10) Jim H. Austin, III testified or submitted an interrogatory, deposition, affidavit.....or....admission that he showed Dorothy Sistrunk invoices on September 14, 2007, in the presence of Janet Frotscher. Also an Affirmative Defense.
- (11) David Terrell testified or submitted an interrogatory, deposition, affidavit, admission or testified that he did the loan paperwork and not Thomas Jacobs.
- (12) Thomas Jacobs testified or submitted an interrogatory, deposition, affidavit, or admission that he did not offer and accept the loan paperwork on 11/26/2007.
- (13) James H. Burns, attorney for Wells Fargo, submitted an affidavit that he is an eyewitness to the events relative to Wells Fargo's loan, note and mortgage and he can verify the documents are the ones signed by Dorothy Sistrunk.
- (14) Elizabeth Scott Moise, attorney for Wells Fargo, submitted an affidavit that she was present at 423 Bayne Street on 11/26/2007 and is an eyewitness to the events relative to Wells Fargo's loan, note and mortgage and can verify Dorothy Sistrunk ordered appraisals, showed invoices and approved the repairs.
- (15) Bryan A. Calub, attorney for Wells Fargo, submitted an affidavit that he was present at 423 Bayne Street on 11/26/2007 and is an eyewitness to the events relative to Wells Fargo's loan, note and mortgage and can verify Dorothy Sistrunk ordered appraisals, showed invoices and approved the repairs.
- (16) Elizabeth S. Hodgson, Senior Counsel for Wells Fargo, submitted an affidavit that she was present at 423 Bayne Street on 11/26/2007 and is an eyewitness to the events relative to Wells Fargo's loan, note and mortgage and can verify Dorothy Sistrunk ordered appraisals, showed invoices and approved the repairs.
- (17) Amanda Weatherly, Vice President of Loan Documentation for Wells Fargo,

submitted an affidavit that she was present at 423 Bayne Street on 11/26/2007 and is an eyewitness to the events relative to Wells Fargo's loan, note and mortgage and can verify the documents are ones signed by Dorothy Sistrunk and the values are not based on a falsified appraisal or any other fraudulent documentation.

(18) Elizabeth S. Hodgson, Senior Counsel for Wells Fargo, submitted an affidavit stating Janet Frotscher misspoke when she said the value of loan 0174072777 is based on the appraisal.

(19) Amanda Weatherly, Vice President of Loan Documentation for Wells Fargo, submitted an affidavit stating Janet Frotscher misspoke when she said the value of loan 0174072777 is based on the appraisal. Also an Affirmative Defense.

(20) Amanda Weatherly, Vice President of Loan Documentation for Wells Fargo, submitted documentation verifying Wells Fargo is exempt for complying with South Carolina and Federal Law and is not bound by any regulation of the Federal Reserve Bank, its Board of Governors or any agency; including the United States Justice Department.

(21) Wells Fargo paid me the \$75,000.00 and not Thomas Jacobs for his representations or called me or communicate with me at any time prior to 12/21/2007 to inquire about loan number 0174072777.

(22) Thomas Jacobs did not submit the loan paperwork himself as **Golden Gate Mortgage, Inc.** and/or Golden Gate Mortgage. [WF00125 @ ¶ #4]

C. **The evidence that Wells Fargo is Defrauding Or Swindling me with falsified values, documents, Mortgage Fraud (as defined), Illegal Brokering (as defined by South Carolina law), a falsely certified mortgage as defined by South Carolina law, a home improvement and mortgage fraud & Who Is Responsible For It.**

12. The evidence of Wells Fargo's willing **Complicity** in the Seller's, Broker's and Appraiser's **Conspiracy to Defraud** is not only found in Wells Fargo's use of an Unauthorized Credit Report, Janet Frotscher's Letters, Wells Fargo's Forged Contract of Sale and Wells Fargo's Forgery by Substitution 7-59 Appraisal, additional evidence can also be found on the Seller's Residential Loan Application that was received by Wells Fargo on December 4, 2007. [WF00030-32] There is no indication or notification on the application that 423 Bayne is a pre-1978 property. This notification is mandated by Federal law. Wells Fargo's underwriters knowingly and with deliberate intent violated a federal mandate.

(1) **WF00001-WF00026** – The false value, falsifications and forgery on these exhibits is well documented and written in the Court's Public Record.

(2) **WF00027** – The 7-59 Invoice from the Appraiser is the evidence that proves the 7-59 file number belongs to Thomas Jacobs not me. All 7-59 exhibits refer to Thomas Jacobs not Dorothy Sistrunk; otherwise forgery has occurred.

(3) **WF00028-29** – Is the evidence that supports my **Affirmative Defense** the sales contract was altered and forged at **Wells Fargo Home Mortgage** by **Wells Fargo's** employees. The proof is (*filed Exhibit 140-141*) – both come from Wells Fargo. **WF00029** & **141** also support my **Counterclaim** that Wells Fargo is involved in a scheme or artifice to **Defraud** with falsified documents after all the facts were known.

(4) **WF00030-32** – Supports my **Affirmative Defense** that the Broker/David Terrell..LIED. He never brokered loan 0174072777 and he never interviewed me on 11/26/2007. David Terrell knowingly misrepresented material facts and fraudulently concealed the illegal brokering activity of Thomas Jacobs from Wells Fargo and SCDCA – a South Carolina government agency.

(A) **WF00030-32** – This is not the Golden Gate Mortgage application that I completed and signed for Thomas Jacobs on 11/26/2007. The original application was written by hand and all the boxes were x-ed by hand at 423 Bayne Street. This application is typed – Golden Gate Mortgage or **Golden Gate Mortgage, Inc.**, did not use any loan information from me. Janet Frotscher lacked personal knowledge and misstated the facts.

(B) **WF00031** – The income (\$2,253.33) and debt information on this application is falsified. (*See WF00061-62 for Proof*)

(C) **WF00034** – Supports my **Counterclaim** that Wells Fargo is involved in a scheme or artifice to **Defraud**. The income (\$2,038.31) on this application is also falsified. (*See WF00061-62 for Proof & compare falsifications & alterations with WF00031 from David Terrell*)

(5) **Note:** Whatever income increases I have had in my years with South Carolina's Department of Mental Health came from working overtime at the Wolf House that was scheduled to be permanently closed at the end of 2008. If **Wells Fargo** had contacted me, rather than relying on the Broker / David Terrell, **Wells Fargo** would have known this; as well as David Terrell if he had contacted me.

(A) This is why I have no liability for Wells Fargo's fraudulent loan, note and mortgage. Wells Fargo relied exclusively on representations that came from the Broker, the Seller, the Appraiser, Janet Frotscher, Wells Fargo's Underwriting Department and Debra C. Galloway (the Player Law Firm), Wells Fargo's Legal Department and Wells Fargo has relied exclusively on the representations or lack thereof from its hired lawyers and not from me or witnesses. This also includes Judge Diane Shafer Goodstein who relied on the representations of Wells Fargo's hired lawyers and not from me or any witnesses to the events.

(B) My gross income for tax purposes has consistently been around \$19,300.00 [*WF00062*] (give or take a few dollars and cents here & there.)

(C) In addition to being typed and not hand written, additional evidence that the information on the application I completed for Thomas Jacobs on 11/26/2007 was not even used by **Wells Fargo** or David Terrell, is the address (*WF00030 – the Broker's and WF00033 – Wells Fargo's*). My former address is not 5774 Colburg Lane. For 7 years, it was 5074 Coburg Lane. **These applications also provide additional evidence and proof that neither David Terrell nor Wells Fargo spoke to me and Thomas Jacobs brokered the loan.**

(D) **WF00030-38** - Is also additional evidence that verifies neither **Wells Fargo**, nor **Wells Fargo's** hired lawyers has presented the original application that was completed for Thomas Jacobs on 11/26/2007 or the original contract of sale. Yet all of these documents have signatures that look remarkably like my own.

(E) Nevertheless, [*WF00030-32*] supports my *Affirmative Defense* of forgery and [*WF00033-38*] supports my *Affirmative Defense* of misrepresentations of material facts. Since I was never in Columbia at Millwood Avenue or in Raleigh, North Carolina during the dates and times in question.

(F) **WF00030 & WF00033** – Supports my *Counterclaim* that Wells Fargo has violated *24 CFR Part 35 – Subpart A*, that mandates notification of a house built before 1978 due to possible lead-based paint usage.

(G) The original **Goldengate Mortgage** Uniform Residential Loan Application has 1950 hand written in the year built box. **These applications also provide additional evidence that neither David Terrell nor Wells Fargo spoke to me and Thomas Jacobs brokered the loan.**

Background

(H) After receiving loan applications from Thomas Jacobs' assistant with 1980 typed in, my husband investigated the matter because he knew 423 Bayne Street was built before 1980. We wanted the exact year 423 Bayne Street was built on the application. He knew this because; as a child in the late 50's and 60's, he had walked the neighborhood. He remembered the house because of the light pole and cactus plants in the front yard. The light pole and cactus plants are still here, even though the light is missing from the pole. According to my husband the light was missing when Bond Ceal Dantzler acquired the property in the 1980's. Bond Ceal Dantzler is the mother of one of his best friends, Bradford C. Lucas. He was invited to the house by Bradford C. Lucas on a number of occasions. Since he was already familiar with the house, this was an additional reason why 423 Bayne Street was chosen as the property to clean up to rent, rent to own or lease.

1950 Established By Law

(I) An employee at Orangeburg County Tax Assessor's Office told my husband...1950 is the year that was arbitrarily chosen and established by

law for taxation purposes for any home built before 1950. Therefore, even if I wanted to... I could not write any other year in the box. All I know for a fact is 423 Bayne Street was built around the same time the Orangeburg Cotton Gin was built and that was before World War II. This is also evidenced by the "Knob" & "Tube" or "Spool" wiring that is in the house.

Penalties for Violating 24 CFR Part 35 – Subpart A

(J) § 35.96 Enforcement (a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30. (c) **Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.** (d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails. (e) Failure or refusal to comply with §§35.88 (disclosure requirements for sellers and lessors), §35.90 (opportunity to conduct an evaluation), § 35.92 (certification and acknowledgment of disclosure), or §35.94 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689). (f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall be not more than \$10,000. *{Exhibit 4 Verifies Wells Fargo was Duly Notified in February of 2008}*

(6) **WF00039-57** – Supports my **Affirmative Defense** that Wells Fargo's mortgage, loan and note are based on the falsified value and forgeries of Jim H. Austin, III's 7-59 Appraisals [WF00001-26]. **Responsibility** for maintaining a fraudulently supported loan, note and mortgage after being duly notified lies with Wells Fargo, Wells Fargo's Legal Department, hired lawyers and Wells Fargo's Executive Resolution Team headed by Janet Frotscher. Wells Fargo has been continually notified for 6 years. *{Exhibits 4-64 & Case 2008-CP-38-1024}*

(7) **WF00058** – Supports my **Counterclaim** of False Certification by a notary. Stephanie Hammond was never in my presence on December 21, 2007.

(8) **WF00059** – Is neutral. As a document, it is basically public information.

(9) **WF00060** – Supports my **Counterclaim** of False Certification by a notary. Debra C. Galloway was aided and abetted by Stephanie Hammond at the Player Law Firm. *{See Section 26-1-95 – SC Code of Laws}*

(10) **WF00061** – Supports my **Affirmative Defense** that Wells Fargo's loan was brokered illegally by Thomas Jacobs – This is a copy of my *Pay Stub from the State of South Carolina for November 01, 2007*. The \$22,749.70 reflects overtime pay; as well as, an increase in pay for studying for the Administrator

Exam. However, the Department of Mental Health took the money back because I failed the exam and the position was terminated..permanently. Responsibility for a copy of my pay stub being in the Broker's and Wells Fargo's file belongs to Thomas Jacobs. How did Golden Gate Mortgage/Goldengate Mortgage/David Terrell get it if he has never contacted me in any way fashion or form?

(11) **WF00062** – Supports my **Affirmative Defense** that Wells Fargo's loan was brokered illegally by Thomas Jacobs – This is a copy of my *2006 W-2 Form from the State of South Carolina*. As stated, the income on this W-2 Form is more reflective of my real income at the Department of Mental Health. Based on debt obligations that **Wells Fargo** and the Broker concealed, by doing the math, my income to debt ratio for **Wells Fargo's** illegally brokered loan exceeds 50% - This is according to ACORN. ACORN also did the math with Wells Fargo's falsified or misstated income and the income to debt ratio still exceeded 50% {See Filed Exhibit 66} Responsibility for a copy of my W-2 form being in the Broker's and Wells Fargo's file belongs to Thomas Jacobs. How did Golden Gate Mortgage/Goldengate Mortgage/David Terrell get it..if he has never contacted me in any way fashion or form?

Note: There are no supporting documents to verify David Terrell or any of his many company names actually brokered a loan. There is no documentation in the Court's Records that all these company names are licensed as a broker/s in South Carolina.

(12) **WF00063-64** – Supports my **Affirmative Defense** that Wells Fargo's loan was brokered illegally by Thomas Jacobs. This is a copy of the *Disclosure Notice and Credit Authorization* for a home loan from Goldengate Mortgage.... a/k/a **Golden Gate Mortgage, Inc.** Responsibility for this notice and authorization being in the Broker's and Wells Fargo's file belongs to Thomas Jacobs. However, this is not the original document I signed on 11/26/2007 or a certified copy of it. However, **WF00064 is a copy of the document that proves Thomas Jacobs led me to believe the paperwork I was signing was for a home loan from Golden Gate Mortgage, Inc., {See Section 40-58-70(1)-(2) – SC Code of Laws} a/k/a Goldengate Mortgage. {Review WF00001-26}**

(13) **WF00065** – Supports my **Counterclaim** that **Wells Fargo** used an Unauthorized Credit Report. This is a violation of *15 USC § 1681n(a)*. This report came from the illegal brokering activity of the Unlicensed Seller – Thomas Jacobs. The following background information is being included for the benefit of Rogers Townsend & Thomas, PC and the Honorable Special Circuit Court Judge James B. Jackson, Jr.. and now for the Appellate Court. For more details see pages 6-8 in *The Affidavit of George M. Sistrunk, Background and History, The Signed Broker's Agreement* that was filed on August 15, 2011 and pages 11-14 in my *Legal Memorandum in Support of Notice of Motion and Motion to Dismiss with Prejudice* that was also filed on August 15, 2011.

Background: – Also See Filed Exhibits 85 & 231

(A) On Monday, October 1, 2007, I had to rush my son to The Regional

Medical Center (hereafter also called TRMC) in Orangeburg, South Carolina because of a severe respiratory infection. Because of the nature of the infection, my son needed constant care. I took a leave of absence from work in order to stay with him at TRMC.

(B) On Monday night October 1, 2007, while at the TRMC, my husband told me Thomas Jacobs offered to sell us the house if I qualified for a loan. All I had to do was call Thomas Jacobs' office in Cayce, SC, speak with his assistant and Thomas Jacobs' assistant would complete the application over the phone. On 10/02/07, I called Thomas Jacobs' assistant and completed a loan application over the phone. Thomas Jacobs also obtained my SS# to verify employment at the Department of Mental Health.

**Wells Fargo Used An Unauthorized Credit
Report To Approve Loan 0174072777 That Was Prepared
For The Broker – Golden Gate Mortgage, Inc./ David Terrell**

(C) There is no signed document filed with Wells Fargo's Complaint authorizing a Credit Report for **Golden Gate Mortgage, Inc.**, and no other authorizing document exists in the Court's Records that can be designated and/or identified as belonging to or authorizing a credit report for Wells Fargo. There is no Credit Report that was done or prepared for Wells Fargo. There is no document authorizing a Credit Report for Thomas Jacobs. There is no Credit Report that was done or prepared for Thomas Jacobs. Therefore, Wells Fargo's used the Unauthorized Credit Report that was prepared for **Golden Gate Mortgage, Inc.**, on October 3, 2007. {See Wells Fargo's Filed Exhibit WF0066-73} My SS Number was given to Thomas Jacobs to verify my employment and no one else.

(14) **WF00066-WF00073** – Is the evidence that supports my **Counterclaim** that Wells Fargo and the Broker are joint tortfeasors in violating *15 USC § 1681n(a)*. There is no document in Wells Fargo's filed exhibits and no document in the Court's Records that authorized a Credit Report for **Golden Gate Mortgage, Inc.**, on or before October 3, 2007. **Golden Gate Mortgage, Inc.** had this report prepared without any signed authorization and without my knowledge or any verbal consent or permission.

(15) **WF00074** – Supports my **Affirmative Defense** that Wells Fargo's loan was brokered illegally by Thomas Jacobs. This is another document just like WF00064 that proves Thomas Jacobs led me to believe the paperwork I was signing was for a home loan from **Golden Gate Mortgage, Inc.** {See § 40-58-70(1)-(3) SC Code of Laws} a/k/a **Goldengate Mortgage**. {Review WF00001-26}

(16) **WF00075-76** – Supports my **Counterclaim** that Wells Fargo is involved in an Illegal Loan Transaction that violates *24 CFR Part 35 – Subpart A*. This is a copy of the *Truth in Lending Disclosure Statement* and the *Federal Truth-in-Lending Disclosure Statement*. These documents evidence a residential mortgage loan was closed on 12/21/2007. The loan was closed in violation of *Title X* - a federal law. **Responsibility** for this violation lies with the Player Law Firm & Wells Fargo deemed present. {See *24 CFR Part 35 – Subpart A - § 35.96(a)-(f)*}

(17) **WF00077** – Supports my **Affirmative Defense** that Wells Fargo's loan was brokered illegally by Thomas Jacobs. This is a copy of the Notice to *Applicant of Right to Receive Copy of Appraisal*. This document is additional evidence that I was led to believe the paperwork I was signing was for a home loan from **Golden Gate Mortgage, Inc.** {See Section 40-58-70(1) – SC Code of Laws} a/k/a Goldengate Mortgage. {Review WF00001-26}

(18) **WF00078-79** – Is the Evidence that the 7-59 Appraisals used to establish the value of Wells Fargo's mortgage and note were done by Jim H. Austin, III.

(19) **WF00080-82** – Supports my **Affirmative Defense** that loan 0174072777 was brokered by Thomas Jacobs not by Golden Gate Mortgage, Goldengate Mortgage, GoldenGate Mortgage, **Golden Gate Mortgage, Inc.**, or David Terrell. This is a copy of the *Broker's Agreement* that has kept this illegal loan from being cancelled by Janet Frotscher in February and May of 2008. The Broker Agreement is also the reason behind the Lies, Half Truths, Misrepresentation of Facts, Concealment of Material Facts and Intentional Misstatement of Facts by Wells Fargo's hired lawyers; most notably, James H. Burns, Brian A. Calub and Elizabeth Scott Moise.

Note: This **Statement of the Evidence** that is being prepared for the Appellate Court includes all the Golden Gate Mortgages my husband's research has uncovered over the past 6 years. The 4 different ways Golden Gate Mortgage is spelled as a company name really do exist. None of the individuals involved in the various Golden Gate Mortgage companies brokered Wells Fargo's 0174072777 loan, note and mortgage. If a real trial were held, this information, about the 4 different Golden Gate Mortgages and their spelling, is for presentation to the jury. Since no trial was held, it is being included in this **Statement of the Evidence**.

(A) The Broker Agreement is also partially responsible for the Denial of Due Process by Judge Diane Shafer Goodstein. Even though it was blank at the time, Thomas Jacobs told me if I did not sign all the paperwork Goldengate Mortgage would not fund the loan. Thomas Jacobs did not say **Golden Gate Mortgage, Inc.** This also turned out to be a LIE. According to Thomas Jacobs, David Terrell/Golden Gate Mortgage brokered the loan. There is no legitimate Broker Agreement. Therefore, there is no legitimately brokered loan

(B) The signed Broker's Agreement is a classic example of "Fraud in the Inducement". The Broker Agreement is also responsible for keeping Civil Action Case 2008-CP-38-1024 alive in the Courts. Even though there is absolutely no evidence **Golden Gate Mortgage, Inc.**/Golden Gate Mortgage/David Terrell actually brokered loan 0174072777, Wells Fargo and Wells Fargo's hired lawyers need to believe he did, whether he actually did or not.

(C) **This Is The Grand Delusion That Has Afflicted Wells Fargo & Wells Fargo's Hired Lawyers Since June Of 2008.** The Responsibility

for this Grand Delusion lies with Thomas Jacobs & David Terrell, both know it is a LIE. For 7 years these two men have concealed material facts and the truth from Wells Fargo and SCDCA.

(D) In addition to myself, George M. Sistrunk and April Primrose can also verify David Terrell, Janet Frotscher, Amanda Weatherly, Elizabeth S. Hodgson, Elizabeth Scott Moise, Brian A. Calub, James H. Burns, attorneys from Rogers Townsend & Thomas, PC, and Judge Diane Shafer Goodstein were not present at 423 Bayne Street on 11/26/2007.

(E) If a trial were held in December of 2008, Lee Orr would have also been able to verify these facts by his testimony. However, he is now deceased. There is no supporting evidence or documentation in the Court's Records to justify the belief David Terrell brokered loan 0174072777. There is no supporting evidence or documentation to support the belief that David Terrell, Jim H. Austin, III and Thomas Jacobs were not involved in an illegal **Conspiracy to Defraud** Wells Fargo out of \$75,000. Wells Fargo is perpetuating this fraud to its own detriment.

(F) Responsibility for this misinformation, misrepresentation of material facts, concealment of material facts and the unsubstantiated belief that maintains and sustains **THE GRAND DELUSION** that the Unlicensed Seller – Thomas Jacobs was a licensed loan originator pursuant to South Carolina law and David Terrell's signed Broker Agreement is enough evidence that he brokered Wells Fargo's mortgage loan... and/or.... Wells Fargo's loan Value is not based on falsified, forged and altered documents lies with Janet Frotscher, Amanda Weatherly, Wells Fargo's underwriters and Elizabeth S. Hodgson. None of these individuals have any personal knowledge of the events of 11/26/2007 or know anything about 423 Bayne Street and that includes James H. Burns and Elizabeth Scott Moise.

(20) **WF00083-85** – Supports my **Affirmative Defense** that loan 0174072777 was brokered illegally by Thomas Jacobs. The *Attorney/Insurance Preference Checklist*, *RESPA Servicing Disclosure* and the *Fair Lending Notice* are more documents that prove I was led to believe the paperwork I was signing was for a home loan from Goldengate Mortgage a/k/a **GoldenGate Mortgage**/Golden Gate Mortgage/**Golden Gate Mortgage, Inc.**,

(A) The necessary elements to verify ***Fraud in the Inducement*** by the Seller's representations are:

(1) A false statement concerning a material fact. 423 Bayne Street had no improvements, therefore, *["[t]he price will be lowered during the closing." – Thomas Jacobs 11/26/27]*

(2) Knowledge by the Seller making the statement that the representation is false, *[the price was not lowered during the closing.]*

(3) Intent by the Seller making the statement that the representation will induce me to act upon it, *[I went to the closing on 12/21/2007]* And.....

(4) My reliance on the representation to my personal detriment. Mettler, Inc. v. Ellen Tracy, Inc., 648 So.2d 253 (Fla. 2d DCA 1994). I have been falsely accused and lied on and about.

(B) Reliance was justified because the Seller had documents in his possession identifying Goldengate Mortgage as a Lender.

(1) The phone number 803-788-2880 – was to his friend and business associate – Golden Gate Mortgage / David Terrell.

(2) The public records proved he owned the property – 423 Bayne Street. And.....

(3) There is no federal or state law prohibiting an owner from financing his property with his friends and business associates and lowering the price at closing.

Note #A: For 7 years, we thought we were misspelling Golden Gate Mortgage. So we went back to spelling it as Goldengate Mortgage because David Terrell spelled it as GoldenGate Mortgage with a capital [G] and on his letter head stationery is **Golden Gate Mortgage, Inc.** {Exhibits 37 & 49}

Note #B: After we received WF00001-137 from Nelson Mullins Riley & Scarborough, LLP, we saw **Golden Gate Mortgage, Inc.**, was a Lender; as well as, Goldengate Mortgage. Based on the documents Thomas Jacobs had, Goldengate Mortgage and/or **Golden Gate Mortgage, Inc.**, was going to be our lender and not Golden Gate Mortgage. {WF00064 & 74}

(21) WF00086 – Supports my Counterclaim that Wells Fargo is party to a Loan Transaction that violated 24 CFR Part 35 – Subpart A. There is still no evidence in the Court's Records verifying 423 Bayne Street was built after 1978. This is a copy of the Private Mortgage Insurance Disclosure that evidences a loan was closed. Responsibility for this violation lies with the Player Law Firm & Wells Fargo deemed present. {See 24 CFR Part 35 – Subpart A - § 35.96(a)-(f)}

(22) WF00087 – Supports my Affirmative Defense that loan 0174072777 is an illegally brokered loan. This is a copy of a Good Faith Estimate. This document proves I was led to believe the paperwork I was signing was for a home loan from Goldengate Mortgage a/k/a GoldenGate Mortgage/Golden Gate Mortgage/**Golden Gate Mortgage, Inc.** Responsibility – for this Fraud in the Inducement lies with Thomas Jacobs. {See Section 40-58-70(1)-(3) – SC Code of Laws}

Note #1: Since we discovered all 4 of these company spellings actually exist in South Carolina; and according to Zillow.com, a real estate listing agency, all 4 of these companies; with the same name, but different spelling, are considered lenders in South Carolina. They all sound the same when articulated verbally.

Note #2: We have no idea to which Golden Gate Mortgage/Goldengate Mortgage/~~GoldenGate Mortgage~~/Golden Gate Mortgage, Inc., Thomas Jacobs was referring to as friends and business associates. The one we know for a fact, by his own admission, is Golden Gate Mortgage/David Terrell. However, According to Zillow.com, David Terrell is not listed as a lender or broker with any of these companies. He might have been 7 years ago.

Note #3: David Terrell is not listed as a broker with Golden Gate Mortgage, **Golden Gate Mortgage, Inc.**, or Goldengate Mortgage. David Terrell is listed as a lender with GOLDENGATE MORTGAGE all capital letters. However, this might not have been the case 7 years ago. In any event it is immaterial to my case. None of the Golden Gate Mortgages regardless of the spelling, brokered loan 0174072777.

Note #4: In 2014, None of the Golden Gate Mortgages; regardless of the spelling are listed as mortgage brokers in the Mortgage Broker Directory for South Carolina @ Brokeroutpost.com

(23) **WF00088-89** – Supports my Counterclaim that Wells Fargo's Mortgage loan is an illegal transaction and unenforceable in any action at law and supports my Affirmative Defense of "Unclean Hands" in any equity action because the loan violates 24 CFR Part 35 – Subpart A. This is a copy of the *U. S. Department of Housing & Urban Development Settlement Statement*. This document is evidence that a mortgage loan was closed on 12/21/2007. The closing violated a federal law. Responsibility for this violation lies with the Player Law Firm & Wells Fargo deemed present. {See 24 CFR Part 35 – Subpart A - § 35.96(a)-(f)}

(24) **WF00090-91** – Supports my Counterclaim that Wells Fargo's Mortgage loan is an illegal transaction and unenforceable in any action at law and supports my Affirmative Defense of "Unclean Hands" in action equity action because the loan violated 24 CFR Part 35 – Subpart A. These are copies of the *Acknowledgement of Receipt of Settlement Statement* and the *Buyer/Seller Certification* that verifies the Player Law Firm, LLC is the Settlement Agent. Therefore, this document proves; as the Settlement Agent, the Player Law Firm, LLC and Wells Fargo as ratifier, knowingly violated a federal law on 12/21/07. Responsibility for this violation lies with the Player Law Firm & Wells Fargo deemed present at the closing. {See 24 CFR Part 35 – Subpart A - § 35.96(a)-(f)}

(25) **WF00092-96** – Is the Evidence Verifying Thomas Jacobs Transferred the property to me on December 21, 2007. These documents also prove Jim H. Austin, III's 7-59 Appraisals are forgeries by substitution. I was not the property owner on October 8, 2007 [WF00014-26 & WF00001-13]. In addition, the documents support my Affirmative Defense that Wells Fargo and Thomas Jacobs can not sue to recover the property because of their participation in illegalities that cancel any obligations I might have had to them by operation of law..or otherwise. {e. g. 24 CFR Part 35 – Subpart A; 15 USC § 1681n(a); 18 USC § 1001(a); 18 USC § 1344; 18 USC § 1346; Sections 16-13-10; 34-3-110; 37-23-40(1)-(2); 40-58-30 (A); 40-58-30(B); 40-58-50(E)(1) & 40-58-70(1)-(3) – SC Code of Laws}

(A) 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."** Wells Fargo 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); 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.}

(B) 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.} The key words are: **"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."**

(C) South Carolina Courts that refuse 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.")

(D) ARTICLE III of the Uniform Commercial Code 305(ii)-(iii) and Section 36-3-305(ii)-(iii) - SC Code of Laws that 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...."

(26) **WF00097** – Supports my **Counterclaim** of False Certification by a notary. **Responsibility** - lies with Debra C. Galloway & Stephanie Hammond at the Player Law Firm. {See Section 26-1-95 – SC Code of Laws & My Objection to the Motion for Continuance That Was Filed on July 13, 2013.

(27) **WF00098-100** – Is a copy of the Property Insurance Requirements under the Mortgage. Since Wells Fargo's 0174072777 loan, note and mortgage are based on the falsified values of Jim H. Austin, III's 7-59 Appraisals, [WF00001-26] property insurance based on falsified values is **Insurance Fraud**. Responsibility for these falsified property values lies with the Appraiser – Jim H. Austin, III. **Responsibility for continued reliance on these falsified property values; after all the facts were known, lies with Wells Fargo.**

Regions Bank v. Schmuck, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct. App. 2003). "[T]he right to rely must be determined in light of the plaintiff's duty to use reasonable prudence and diligence under the circumstances in identifying the truth with respect to the representations made to him." Id. at 672, 582 S.E.2d at 445. "[A] party may not rely upon a misstatement of fact when the truth is easily within his reach." King v. Oxford, 282 S.C. 307, 312, 318 S.E.2d 125, 128 (Ct. App. 1984). "[I]t is the policy of the courts not only to discourage fraud, but also to discourage negligence and inattention to one's own interests." Id. "[H]owever, a party may rely on representations without making further inquiry when a fiduciary or confidential relationship exists between the parties." Epstein v. Howell, 308 S.C. 528, 530-31, 419 S.E.2d 379, 380-82 (Ct. App. 1992).

(28) **WF00101** – Is a copy of a Name Affidavit that is another neutral document. The signature on my Name Affidavit can be used to compare signatures for forgery; especially on WF00029. However if PhotoShop technology was used not even an expert can tell the difference.

(29) **WF00102** – Is a copy of the Correction Agreement – Limited Power of Attorney. This agreement verifies that on 12/21/2007, the Player Law Firm was the Settlement Agent for Wells Fargo Bank, N.A.. Closing agents are primarily the agents of the lender.

(A) Newman v. 1st 1440 Investment, Inc., No. 89 C 6708, 1993 U.S. Dist. LEXIS354, at n. 12 (N.D. Ill. Jan. 14, 1993). Cowen v. Bank United of Texas, FSB, 70 F.3d 937, 942 (7th Cir. 1995) ("The title company in this case was wearing two hats. Primarily it was an insurance company, with its own interest in removing the prior liens. In this respect it was a principal in the transaction. It was also the closing agent, which means that it was the agent of the bank. Sibley v. Fed. Land Bank, 597 F.2d 459, 462-63 (5th Cir. 1979)")

(B) Wells Fargo is deemed present at the closing through the Player Law Firm. Therefore, the knowledge of the Player Law Firm is attributable to Wells Fargo if the Player Law Firm had actual or constructive knowledge of fraudulent conduct. Triple A Mgmt. Co., Inc. v. Frisone, et al., 81 Cal. Rptr. 2d 669, 679 (Cal. Ct. App. 1999). Capitol Indem. Corp. v. Stewart Smith Intermediaries, Inc., 593 N.E.2d 872, 877 (Ill. App. Ct. 1992). Responsibility for violating a federal law at the closing on 12/21/2007, lies with Debra C. Galloway at the Player Law Firm and Wells Fargo deemed present. {See 24 CFR Part 35 – Subpart A - § 35.96(a)-(f)}

(30) **WF00103-104** – These are copies of the *Initial Escrow Account Disclosure Statement* that supports my **Counterclaim** that Wells Fargo's loan is an illegal transaction and unenforceable in any action at law and supports my **Affirmative Defense** of "Unclean Hands" in any equity action because the loan was closed in violation 24 CFR Part 35 – Subpart A. The Player Law Firm closed a residential mortgage loan without any verifiable evidence that 423 Bayne Street was built after 1978. Since 423 Bayne Street was built before 1978, this failure violates the *Residential Lead-Based Paint Hazard Reduction Act of 1992*, also known as *Title X* that mandates disclosure. Responsibility for this violation lies with the Player Law Firm...and... Wells Fargo deemed present. {See 24 CFR Part 35 – Subpart A - § 35.96(a)-(f)}

(31) **WF00105-112** – Supports my **Counterclaim** that Wells Fargo's loan is an illegal transaction and unenforceable in any action at law and supports my **Affirmative Defense** of "Unclean Hands" in any equity action because the loan was closed in violation 24 CFR Part 35 – Subpart A. Evidence of **Title Insurance Fraud @ WF00109** provides additional evidentiary support of an illegal transaction. These are copies of documents from *First American Title Insurance Company*.

(A) **WF00109** – Supports my **Counterclaim** of **Insurance Fraud**. The value of the Title Insurance by First American Title Insurance Company is based on the \$75,000.00 falsified value of Wells Fargo's Loan, Mortgage, and Note...that is base on the falsified values of Jim H. Austin, III's 7-59 Appraisals. Responsibility for this fraud lies with Jim H. Austin, III. The Responsibility for maintaining this fraud lies with Wells Fargo. {See WF00120 & 125}

(B) These documents also verify the Player Law Firm closed a residential mortgage loan without any verifiable evidence that 423 Bayne Street was built after 1978. Since 423 Bayne Street was built before 1978, this failure violates the *Residential Lead-Based Paint Hazard Reduction Act of 1992*, also known as *Title X* that mandates disclosure.

(32) **WF00113-114** – This a copy of a *Request for Taxpayer Identification Number and Certification*. This is another neutral document that has no implied and/or intended liability associated with it.

(33) **WF00115-116** – Are copies of the *Affiliated Business Arrangement Disclosure* and the *Rate Lock-in Expiration Amendment* that provides additional evidence that supports my **Counterclaim** that Wells Fargo's loan is an illegal transaction and unenforceable in any action at law and supports my **Affirmative Defense** of "Unclean Hands" in any equity action because the loan was closed in violation 24 CFR Part 35 – Subpart A. Wells Fargo is involved in a residential mortgage loan that was closed on 12/21/2007 that did not have any evidence of compliance with the *Residential Lead-Based Paint Hazard Reduction Act of 1992*, also known as *Title X* that mandates disclosure from the Seller that 423 Bayne Street was built after 1978. Since 423 Bayne Street was built before 1978, this failure violates 24 CFR Part 35 – Subpart A. Wells Fargo is deemed present at the closing. {See 24 CFR Part 35 – Subpart A - § 35.96 (a)-(f)}

(34) **WF00117** – Supports my **Affirmative Defense** that Wells Fargo's attorneys have violated the Agreement. Below is the Compliance Agreement that clearly states in pertinent parts;

Note: "[T]he undersigned Borrower(s), in consideration of the lender disbursing funds today for the closing of the property listed above agrees, if requested by the lender or someone acting on behalf of the lender, to fully cooperate and adjust all errors and omissions, any and all loan closing documentation deemed necessary or desirable in the reasonable discretion of the lender to sell, convey, seek guaranty or market said loan to any entity including but not limited to any investor, Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), Federal Home Loan Mortgage Corporation, Department of Housing and Urban Development, Veterans Administration or any Municipal Bonding Authority."

"The undersigned Borrower(s) do hereby so agree and covenant in order to assure that the loan documentation executed this date will conform and be acceptable in the marketplace in the instance of transfer, sale or conveyance by the Lender of its interest in and to said documentation. Date effective, this 21st day of December, 2007."

The Compliance Agreement exists to **assure (to put beyond doubt)** the loan documentation is acceptable to the marketplace. This responsibility lies with Wells Fargo and Wells Fargo's hired lawyers; Rogers Townsend & Thomas, PC., and Nelson Mullins Riley & Scarborough, LLP.

(35) **WF00118** – This is a copy of a my *South Carolina Department of Motor Vehicles Driver's License*. Responsibility for my driver's license being in the document file lies with Thomas Jacobs and his illegal brokering activity.

(36) **WF00119** – This *Applicable Law Disclosures* is a neutral document.

(37) **WF00120** – My *Exhibit 45*, is a copy of a letter from Janet Frotscher that is dated February 21, 2008. This letter supports my **Affirmative Defense of Concealment of Material Facts**. This letter also arrived after I called Wells Fargo Home Mortgage (WFHM) on 01/14/08. In the first paragraph, Janet Frotscher acknowledges receiving the documented evidence of fraud that was faxed to WFHM on February 7, 2008. {*Exhibits 8-14*} The reference to February 5, 2008 is my *Exhibit 4* and Wells Fargo's *Exhibit B* that was filed in October of 2008. Paragraph #5, indicates Wells Fargo did not realize Golden Gate Mortgage did not broker the loan. The loan was brokered by Thomas Jacobs. The letter arrived on 02/25/08. On the same day, I called Wells Fargo and put my husband on the phone with the representative. February 25, 2008 is the day Wells Fargo knew Thomas Jacobs brokered the loan.

Note: Since Wells Fargo cannot defraud itself, Wells Fargo can only defraud others with the falsified, forged, altered and unauthorized documents of the seller, the broker, the appraiser and the falsely certified mortgage from the Player Law Firm. These illegal activities may also be considered as Bank Fraud. Bank Fraud

is a criminal act, not a tort to be ignored in a foreclosure action.

(A) United States v. McCauley, 253 F.3d 815, 820 (5th Cir. 2001) at 820 (noting that government need not prove “substantial likelihood of risk of loss to support the convictions”; bank suffered potential risk of loss because it “lost its ability to earn interest” on funds transferred as a result of defendants’ scheme); United States v. Jacobs, 117 F.3d 82, 93 (2d Cir. 1997) (observing that, “under the case law, a mere possibility of detrimental reliance [by the bank on defendant’s fraudulent conduct] is enough”); United States v. Barakett, 994 F.2d 1107, 1111 (5th Cir. 1993), cert. denied, 510 U.S. 1049 (1994) at 1111 n.15 (“Even proof of an extremely remote risk will suffice.”).

(B) My Counterclaim that Wells Fargo’s loan is an illegal transaction and unenforceable in any action at law and supports my Affirmative Defense of “**Unclean Hands**” in any equity action because *Section 34-3-110 - SC Code of Laws* clearly states in pertinent parts... “(A) A person knowingly may not execute, or attempt to execute, a scheme or artifice to: defraud a federally chartered or insured financial institution; or obtain monies, funds, credits, assets, securities, or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretenses, representations, or promises. (B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than five years, or both.”

(C) My Counterclaim that Wells Fargo’s loan is an illegal transaction and unenforceable in any action at law and supports my Affirmative Defense of “**Unclean Hands**” in any equity action because *18 U.S.C. § 1344* clearly states in pertinent parts; “Whoever knowingly executes, or attempts to execute, a scheme or artifice to defraud a financial institution; or to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both”.

(D) *12 CFR § 1731.2(c)&(e) – Definitions* – clearly state in pertinent parts - For purposes of this part—(c) **Mortgage fraud** means a material misstatement, misrepresentation, or omission relied upon by an Enterprise to fund or purchase—or not to fund or purchase—a mortgage, including a mortgage associated with a mortgage-backed security or similar financial instrument issued or guaranteed by an Enterprise. Such mortgage fraud includes, but is not limited to, a material misstatement, misrepresentation, or omission in identification and employment documents, mortgagee or mortgagor identity, and appraisals that are fraudulent. (e) **Possible mortgage fraud** means that an Enterprise has a reasonable belief, based upon a review of information available to the Enterprise, that mortgage fraud may be occurring or has occurred. [**Boldness** added for emphasis]

(E) By using falsified documents to establish property value, Wells Fargo is **Complicit** in the illegal brokering activity of the Seller, Broker and Appraiser and the Mortgage Fraud of the Seller, Broker and Appraiser.. after all the facts were known. Wells Fargo's falsification of my income and forging my initials on a sales contract alteration is a scheme or artifice to Defraud. Therefore, my **Counterclaim** that Wells Fargo's loan is an illegal transaction and unenforceable in any action at law and supports my **Affirmative Defense** of "Unclean Hands" in any equity action because *Section 16-13-10(A)(1)-(4) – SC Code of Laws* clearly states in relevant parts.... "(A) It is unlawful for a person to: (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing; (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing; (4) willingly act or assist in any of the premises, with an intention to defraud any person. (B) A person who violates the provisions of this section is guilty of a: (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the amount of the forgery is ten thousand dollars or more;"

(F) By forging my initials on a sales contract alteration and falsifying my income to avoid compliance with South Carolina law, using an unauthorized credit report and being **Complicity** in...and concealing evidence of Mortgage Fraud, my **Counterclaim** that Wells Fargo's loan is an illegal transaction and unenforceable in any action at law and supports my **Affirmative Defense** of "Unclean Hands" in any equity action because *Section 16-17-410 – SC Code of Laws* – clearly defines a conspiracy as the following: "[a] combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means. A person who commits the crime of conspiracy is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years."

(38) **WF00121** – My *Exhibit 38*, is a copy of a letter from Janet Frotscher that is dated April 10, 2008. It is important to remember, this letter also arrived after my call of January 14, 2008 and after receiving the documented evidence of fraud in February of 2008. In the first paragraph, Janet Frotscher acknowledges receiving my *Exhibit 43* – the letter my husband completed relative to illegal loan transactions and my *Exhibit 51* – **This Could Be Construed As Insurance Fraud.**

(A) "[W]here a claim requires proof of intent to defraud, knowledge of the fraud can be shown where the defendant had information but "failed to inquire further because he was afraid of what the inquiry would yield. Willful blindness is knowledge enough." *Louis Vuitton S.A. v. Lee*, 875 F.2d 584, 590 (7th Cir. 1989) (trademark infringement by selling counterfeit goods); *United States v. Campbell*, 977 F.2d 854, 857 (4th Cir. 1992) ("A defendant is willfully blind when he 'purposefully and deliberately contrive[s] to avoid learning all the facts.'")

(B) *Childs, et al. v. Charske et al.*, 822 N.E.2d 853, 858 (Ohio Ct. Com. Pl. 2004) (“Willful blindness exists ‘only where it can almost be said that the defendant actually knew. He suspected the fact; he realised [sic] its probability; but he refrained from obtaining the final confirmation because he wanted in the event... to be able to deny knowledge.’”)

(39) **WF00122-123** – My *Exhibit 39*, is a copy of a letter that verifies I received a letter from *Wells Fargo’s Loss Mitigation Department* that is located in Fort Mill, South Carolina in May of 2008 with a request to call them at 1-800-416-1472. I did call. After informing a representative that my loan, note and mortgage were based on falsified documents, the representative chided me for allowing a foreclosure if my loan were suspected of being obtained by fraudulent means. After informing the representative I had already reported it to an Executive Resolution Team, and after a brief wait, a supervisor came on the line to make inquiries as to why nothing had happened. After the conversation, I was instructed to fax the information to Iowa again. I did... and was routed back to Janet Frotscher. {*Exhibit WF00130*}

(40) **WF00124** – My *Exhibit 46*, is a copy of a letter dated May 11, 2008 that supports my **Affirmative Defense** that Wells Fargo’s is attempting to collect and demanding payments on an illegally brokered loan, a home improvement & mortgage fraud that is supported by verifiable falsified documents with an inflated appraisal, a loan closed in violation of *24 CFR Part 35 – Subpart A*, a falsely certified mortgage and... an illegal predatory lending scheme based on the same falsified documents. This letter also verifies I had already contacted South Carolina’s Department of Consumer Affairs (SCDCA) and the Office of the Comptroller of the Currency (OCC) about Wells Fargo’s fraudulent, loan, note and mortgage and the fraudulent conduct of the Broker, Appraiser and the Seller. This truth is evidenced by the complaint number and case number on the letter.

Note: When Wells Fargo, Elizabeth Scott Moise & James H. Burns sent me WF00001-137, they did not realize these documents are the evidence of Mortgage Fraud..and..Wells Fargo’s own scheme or artifice to Defraud.

(41) **WF00125-126** – My *Exhibit 47*, is a copy of a letter that provided the **Evidence & Proof of Janet Frotscher’s False Accusations and Defamation**. No evidence exists anywhere that can verify any of Janet Frotscher’s accusations.

(A) There is no document in the Court’s Records or in Wells Fargo’s document file refuting my **Statement of Fact** that Golden Gate Mortgage regardless how the company’s name is spelled has never stated loan 0174072777 was brokered for Dorothy Sistrunk. Not even David Terrell and....Thomas Jacobs have admitted this in any of their letters to SCDCA. {*Review Exhibits 35-36 and 37 & 49*}

(B) WF00022, the Satisfaction Completion Certificate, does not state Dorothy Sistrunk submitted invoices to the appraiser, as Janet Frotscher claims in her letter @ paragraph #4.

(C) Janet Frotscher’s June 2, 2008 letter in paragraph #5 identifies the

co-conspirators in the **Conspiracy to Defraud**, the Broker - **Golden Gate Mortgage, Inc.**,/Golden Gate Mortgage and the Appraiser – Jim H. Austin, III. Janet Frotscher also identifies when the documents were received and processed by Wells Fargo – December 4, 2007. {WF00125 @ ¶ #4 & WF00030-32}

(D) Even the Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved by Judge Goodstein, did not refute “Austin authored an appraisal that listed the value of 423 Bayne Street at \$75,000.00” {Exhibit 329 page 3 @ paragraph #8... *verifies my Statement is a Fact. Jim H. Austin, III is the author of the forged and falsified 7-59 appraisals. Also see WF00078-79*}

(E) Even the Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved by Judge Goodstein, did not dispute the “various alterations to the sales contract after I signed it.” { Exhibit 329 Pg 3, @ ¶ #10, See WF00029 & Exhibit 141 that *Verify my Statement is a Fact*}

(F) The Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved by Judge Goodstein, proves with clear and convincing evidence that “At the closing, Defendant signed a Fixed-Rate (“Note”) in principal sum of \$75,000.00. In pertinent parts, the Note states as follows: In return for a loan that I received, I promise to pay U.S. \$75,000.00 (this amount is called “Principal”), plus interest, to the order of the Lender. The Lender is WELLS FARGO BANK, N.A.” { Exhibit 329, page 3 @ paragraph #13}

(G) The Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved by Judge Goodstein, verifies and does not dispute or refute my **Affirmative Defense** that Wells Fargo’s Fixed-Rate Note is based on the falsified and inflated value of Jim H. Austin, III’s 7-59 appraisals [WF00001-26 that were ordered for the Seller – WF00027] that federal law defines as **Mortgage Fraud**. {12 CFR § 1731.2(c)(e)} therefore, it is void and a nullity as a matter of law.

(1) 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.”)

(2) 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: 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.

(3) Section 36-3-305(a)(1)(ii)-(iii) - 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....”

(H) The Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved by Judge Goodstein did not deny or refute 423 Bayne is the **physical evidence** of the Seller’s, Broker’s and Appraiser’s **Conspiracy to Defraud**; Wells Fargo’s **Insurance Fraud**...and...Wells Fargo’s **Perpetuation of that Fraud** with the falsified, forged, altered and unauthorized documents of the Seller, the Broker, the Appraiser and Wells Fargo’s own employees; most notably, Janet Frotscher. “Defendant secured her payment obligations under the Note by executing a thirty-year Mortgage (“Mortgage”) that encumbers 423 Bayne Street.” {See Filed Exhibit 329, page 3 @ paragraph #14}

(I) The Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved by Judge Goodstein also did not deny or refute 423 Bayne is the **physical evidence** of Wells Fargo’s **Scheme or Artifice to Defraud or Swindle** me out of money and/or property with the falsified, forged, altered and unauthorized documents of the Seller, the Broker, the Appraiser and Wells Fargo’s own employees; most notably, Janet Frotscher. “Defendant secured her payment obligations under the Note by executing a thirty-year Mortgage (“Mortgage”) that encumbers 423 Bayne Street.” {Review Filed Exhibit 329, page 3 @ paragraph #14}

(42) **WF00127-128** – My *Exhibit 27*, is a copy of a letter verifying I was contacted by HOPENOW via ACORN [See Filed Exhibit 66]. ACORN’s loan modification documents were mailed to Wells Fargo’s Loss Mitigation Department located in Fort Mill, South Carolina by the Postal Service in July of 2008. These documents are neutral and have no liability associated with them.

(43) **WF00129** – My *Exhibit 48*, is a copy of a letter dated June 16, 2008 that supports my **Affirmative Defense** that Wells Fargo’s is attempting to collect and demanding payments on an illegally brokered loan, a home improvement & mortgage fraud that is supported by verifiable falsified documents with an inflated appraisal, a loan closed in violation of 24 CFR Part 35 – Subpart A, a falsely certified “Mortgage” and... an illegal predatory lending scheme based on the same falsified documents. This letter also verifies that I had already contacted South Carolina’s Department of Consumer Affairs (SCDCA) and the Office of the Comptroller of the Currency (OCC) about Wells Fargo’s fraudulent, loan, note and mortgage and the fraudulent conduct of the Broker, Appraiser and the Seller. This truth is evidenced..by the complaint number..and...case number on the letter.

(44) **WF00130** – My *Exhibit 40*, is a copy of another infamous letter that came

after Wells Fargo's Loss Mitigation Department in Fort Mill, South Carolina instructed me to resend the evidence of fraud [Exhibits 8-14] back to an Executive Resolution Team in Des Moines, Iowa for cancellation, I also requested that foreclosure proceedings be suspended. Unfortunately for me, I was routed back to Janet Frotscher. Her letter is dated June 17, 2008.

(A) In paragraph #1, Janet Frotscher references the letters I sent her on June 7th, [Exhibit 54] 9th, [Exhibit 57] and 10th, 2008 [Exhibit 58]. Instead of addressing the issue of falsified documentation in a **Conspiracy to Defraud**, she refers me back to her letters of February 21st April 10th and June 7th, 2008. This letter is the Evidence and Proof of Janet Frotscher's Concealment of Material Facts from SCDCA and later from Rogers Townsend & Thomas, PC and Nelson Mullins Riley & Scarborough, LLP.

(B) It is important to note, Janet Frotscher did not mention the letters I sent her on March 6, 2008, entitled; **I Will Not Perpetuate A Fraud By Continued Payments** [Exhibit 52], and the letter I sent her and OCC on May 15, 2008 [Exhibit 53] nor did attorney Brian A. Calub include them with the exhibits he filed to support his Motion to Compel and Motion for Continuance and Scheduling Order that was filed in December of 2011. Dated: December 5, 2011. Janet Frotscher deliberately concealed material facts from OCC and SCDCA after all the facts were known.

(C) The evidence is clear, preponderate and beyond any reasonable doubt that Wells Fargo was duly notified about the fraudulent representations of the Broker, Seller and Appraiser. Therefore, the statement in the Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved by Judge Goodstein, "Defendant admits that neither she nor her husband advised Wells Fargo of any of the fraudulent representations that Jacobs made to them" is a Gross Misrepresentation of Material Facts....or....in layman's language an ABSOLUTE LIE. {Review Filed Exhibit 329, page 2 @ paragraph #6}

Note: Janet Frotscher also received copies of Thomas Jacobs and David Terrell's letters that I received from SCDCA. These letters are not in Wells Fargo's filed documents. The Appellate Court can examine the letters the Circuit Court did not review and Janet Frotscher withheld.

(D) In Exhibit 329, @ paragraph #6, in sentence #2, in the Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved by Judge Goodstein, "Defendant has no evidence of Jacobs or Jim H. Austin, III ("Austin" or sometimes "appraiser") notifying Wells Fargo of Jacob's representations to Defendant and her husband", verifies my **Statement of Fact** that the Seller, the Broker and the Appraiser not only misrepresented the facts they also engaged in fraudulent concealment of material facts from Wells Fargo.

(1) In order to establish a conspiracy, evidence, either direct or

circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." Cowburn, 366 S.C. at 49, 619 S.E.2d at 453. "Conspiracy may be inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances." Moore v. Weinberg, 373 S.C. 209, 228, 644 S.E.2d 740, 750 (Ct. App. 2007). "Because civil conspiracy is 'by its very nature covert and clandestine,' it is usually not provable by direct evidence." Id. (quoting Island Car Wash, Inc. v. Norris, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987)).

(2) "The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). "[T]he gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design." Id. "Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." Pye v. Estate of Fox, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006).

(3) National Republic Bank v. National Homes Construction Corp. 63 Ill. App.3d 920, 925, 21 Ill.Dec. 80, 84, 381 N.E.2d 15, 19 (1978); (Central States Joint Board v. Continental Assurance Co. 117 Ill.App. 3d 600, 606, 73 Ill. Dec. 107, 111, 453 N.E.2d 932, 936 (1983) (holding that "[I]f ample opportunity existed to discover the truth, then reliance is not justified.)

(4) Smith v. Ethell, 144 Ill.App.3d 171, 98 Ill.Dec. 742, 494 N.E.2d 864 (1986) "[W]hen an individual of ordinary prudence is on notice of a possible problem and that further investigation may be required, it is only where under the circumstances the facts should be apparent to one of his knowledge and intelligence from a cursory glance where he has discovered something which serves as a warning that he is being deceived, that he is required to make an investigation of his own."

(5) See Jackson v. S. Holland Dodge, 755 N.E.2d 462, 466 (2001); Cumis Ins. Soc'y, Inc. v. Peters et al., 983 F. Supp. 787, 794 (N.D. Ill. 1997) (holding under Illinois law defendant is liable if he "either knowingly participated in the fraud or knowingly accepted the fruits of the fraudulent conduct"); Hearthside Baking Co., Inc. v. Maurice Lenell Cookie Co., 402 B.R. 233, 251 (Feb. 27, 2009).

(6) State v. Hightower, 221 S.C. 91, 69 S.E.2d 363 (1952) ("The generally recognized rule is that the fact of a conspiracy may be proved by any relevant competent evidence, having a legitimate tendency to support the accusation. The conspiracy may be shown, of

course, not only by direct evidence, but by circumstantial evidence, or by both. And in a case of this kind, in the reception of circumstantial evidence, great latitude must be allowed.”) *State v. Shipman*, 202 N.C. 518, 163 S.E. 657; 15 C.J.S., *Conspiracy*, § 92b, p. 1141.”

(7) *State v. Anderson*, 208 N.C. 771, 182 S.E. 643, 652: (“When resorted to by adroit and crafty persons, the presence of a common design often becomes exceedingly difficult to detect. Indeed, the more skillful and cunning the accused, the less plainly defined are the badges which usually denote their real purpose.” *And see Annotation*, Vol. 3 Am. St. Rep., Page 482.”)

(45) **WF00131** – My *Exhibit 25*, is a copy of a letter notifying me of foreclosure proceedings and default. The letter is dated June 18, 2008. However, I did not receive it until July 11, 2008...after Rogers Townsend & Thomas, PC had already filed Wells Fargo’s Complaint. This letter also supports my **Affirmative Defense** that Wells Fargo’s is attempting to collect and demanding payments on an illegally brokered loan, a home improvement and mortgage fraud that is supported by verifiable falsified documents with an inflated appraisal, a loan closed in violation of *24 CFR Part 35 – Subpart A*, a falsely certified “Mortgage” and... an illegal predatory lending scheme based on the same falsified documents.

(46) **WF00132-133** – My *Exhibit 41*, is a copy of Janet Frotscher’s response to SCDCA that is dated July 15, 2008. According to the date stamp, SCDCA received it on July 18, 2008.

Note: #1: In Janet Frotscher’s letter, there is no reference to my accusations and ***Statements of Fact*** that the Seller, Broker and Appraiser fraudulently concealed..and...misrepresented material facts to Wells Fargo.

Note: #2: There is no reference in Janet Frotscher’s response to SCDCA about any statements I made in any of my letters to her that Golden Gate Mortgage did not broker loan 0174072777 or that the loan was brokered illegally by Thomas Jacobs. This letter also supports my ***Statement of Fact*** that Wells Fargo’s personnel concealed material facts from OCC and SCDCA.

(47) **WF00134** – Is a copy of Wells Fargo’s *Loan Payment Information* that supports my **Counterclaim** that Wells Fargo is party to a **Loan Transaction that still violates 24 CFR Part 35 – Subpart A**. There is still no evidence in the Court’s Records verifying 423 Bayne Street was built after 1978. This document evinces a loan was closed on 12/21/2007.

“[A]t 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); *Restatement (Second) of Agency* § 261, comment a (1958)}

VI. THE STATEMENT OF THE EVIDENCE REVEALS WELLS FARGO'S TRUE CAUSE OF ACTION IS NOT WITH ME, IT IS WITH THE FOLLOWING ENTITIES AND/OR INDIVIDUALS

13. Wells Fargo can VOLUNTARILY cancel its illegally brokered loan, its home improvement and mortgage fraud, its loan that was closed in violation of federal and state laws, its loan that was approved with an unauthorized credit report and its falsely certified illegal predatory lending scheme; instead of waiting for a Court's Order because Wells Fargo has legitimate

Causes of Action against the following individuals and/or entities; individually...or..collectively:

(a) The Seller – Thomas Jacobs – for LYING, fraudulent concealment of material facts, misrepresentation of material facts and participation in a **Conspiracy to Defraud a Bank, Mortgage Fraud and/or Bank Fraud.**

(b) The Broker – David Terrell/Golden Gate Mortgage/Goldengate Mortgage/Golden Gate Mortgage Inc./GoldenGate Mortgage for LYING, fraudulent concealment of material facts and supporting and participating in a **Conspiracy to Defraud a bank, Mortgage Fraud and/or Bank Fraud.**

(c) The Appraiser – Jim H. Austin, III - for LYING, fraudulent concealment of material facts, forgery by substitution, fabricating appraisals and participating in a **Conspiracy to Defraud** to a bank, Mortgage Fraud and/or Bank Fraud.

United States v. Celestia, 945 F.2d 756, 758 (4th Cir. 1991) ("[O]ne may commit a bank fraud under Section 1344(1) by defrauding a financial institution, without making the false or fraudulent promises required by Section 1344(2)."). *United States v. Brandon* 298 F.3d 307 (4th Cir. 2002) "[S]ection 1344(1) prohibits the use of a scheme or artifice to defraud a bank. In order to prove a violation of section 1344(1), the government must demonstrate that the accused executed a scheme to defraud a federally insured or chartered bank and that the accused did so knowingly. See *United States v. Akers*, 215 F.3d 1089, 1100 (10th Cir.), cert. denied, 531 U.S. 1023, 121 S.Ct. 591, 148 L.Ed.2d 506 (2000) ("[T]he elements of bank fraud are: (1) that the defendant knowingly executed or attempted to execute a scheme (i) to defraud . . .; (2) that the defendant did so with the intent to defraud; and (3) that the financial institution was then insured by the Federal Deposit Insurance Corporation." (internal quotation marks omitted)); *United States v. Yoon*, 128 F.3d 515, 522 (7th Cir. 1997) ("[T]he indictment . . . must allege (1) that [the defendant] (2) *knowingly* (3) engaged in a *scheme to defraud* the banks.").

(d) Wells Fargo's Underwriting Department at Wells Fargo Home Mortgage for incompetence, negligence, altering documents, forging signatures and **Ignoring the Evidence of Fraud.**

(e) The Player Law Firm., i.e., Debra C. Galloway, for violating a federal mandate, 24 CFR Part 35-Subpart A, and along with Stephanie Hammond at The Player Law Firm

for fraudulent concealment of material facts, **Constructive Fraud for Falsely Certifying** Wells Fargo's Mortgage and failing to notify Wells Fargo to cancel all checks or funds relative to loan 0174072777 after being duly notified of the Seller's misrepresentations, deceit and deception on December 24, 2007.

(f) Kathryn R. Perkinson for non-disclosure and concealing material facts relative to the Seller's fraudulent representations after being duly notified on December 22, 2007 by a taped message and on December 24, 2007 by phone.

(g) Janet Frotscher and her Executive Resolution Team for concealing and misrepresenting material facts, defaming a customer, falsely accusing a customer and failing to cancel the loan in February and May of 2008 after the facts were known.

(h) The Law Firm of Rogers Townsend & Thomas, PC for concealing material facts from Wells Fargo after discovering information relative to a **Conspiracy to Defraud** a bank, Mortgage Fraud and Bank Fraud with falsified documents and not reporting it to Wells Fargo in accordance with Wells Fargo's Compliance Agreement to assure loan 0174072777's documentation conformed to and is acceptable to the market place for transfer, sale or conveyance to any entity.

(i) The Law Firm of Nelson Mullins Riley & Scarborough, LLP for the same reason as Rogers Townsend & Thomas, PC.

(1) "[F]or a case of fraud based on suppression of a fact, a plaintiff must establish that the defendant had a duty to disclose a material fact." Smith v. General Motors Corp., 979 S.W.2d 127, 129 (Ky.Ct. App.1998); Osterberger v. Hites Construction Co., 599 S.W.2d 221, 227 (Mo.App. 1980). "It is, of course, well established that mere silence is not fraudulent absent a duty to disclose. A duty to disclose may arise from a fiduciary relationship" Smith, 979 S.W.2d at 129.

(2) *Section 551 of the Restatement (Second) Torts*, makes it clear that under some circumstances a person's failure to disclose information constitutes a positive misrepresentation. Kesselring v. St. Louis Group, Inc., 74 S.W.3d 809, 814 (Mo. App. E.D., 2002).

(3) "[S]ilence can be an act of fraud where matters are not what they appear to be and the true state of affairs is not discoverable by ordinary diligence." Bayne v. Jenkins, 593 S.W.2d 519, 529 (Mo. banc 1980). See Groothand v. Schlueter, 949 S.W.2d 923, 930 (Mo.App. W.D.1997) (buyer may rely on seller where the facts are 'peculiarly within the knowledge' of seller and 'the truth is difficult for the buyer to ascertain') "[I]n nondisclosure cases, a party's silence amounts to a representation where the law imposes a duty to speak." Andes v. Albano, 853 S.W. 2d 936, 943 (Mo. banc 1993) at 943.

(4) "[O]ne who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability as for an affirmative misrepresentation if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter." Arctic Tug & Barge, Inc. v. Raleigh, Schwarz & Powell, 956 P.2d 1199, 1202 (Alaska 1998).

(5) "[T]he test of whether a plaintiff relied upon a misrepresentation is simply whether the representation was a material factor influencing final action." Grossoehme v. Cordell, 904 S.W.2d 392, 397 (Mo.App. W.D.1995)

(6) "[A] corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all, through licensed attorneys." State v. Wells, 191 S.C. at 480, 5 S.E.2d at 186 (citation omitted).

VII. THE STATEMENT OF THE EVIDENCE RELATIVE TO WELLS FARGO'S FAILURE TO PROVE I HARMED WELLS FARGO

14. I have spent 7 years trying to cancel Wells Fargo's fraudulent loan, note and mortgage.

Wells Fargo's attorneys cannot prove...I...harmed Wells Fargo.

(1) I did not broker the loan. Thomas Jacobs did that and Golden Gate Mortgage /David Terrell concealed it and LIED about it. I have been notifying Wells Fargo for 6 years since 2008 and for 7 years since 2007. {Exhibits 4-64}

(2) I did not appraise the property. According to Janet Frotscher in her letters, Jim H. Austin, III did that for **Golden Gate Mortgage, Inc.** {WF00001-27}

(3) I did not send Wells Fargo any documents with fraudulent representations. **Golden Gate Mortgage, Inc.**, the Seller, Appraiser and Debra C. Galloway did that. {WF00001-97}

(4) Wells Fargo paid the Seller - \$75,000.00 for his fraudulent representations about 423 Bayne Street....not me....nor did Wells Fargo rely on any authorized information from me. Wells Fargo relied on someone else's representations. {WF00001-27, 28-29, 32-38, 58, 60, 66-73, 78-89, 97}

(5) Golden Gate Mortgage/David Terrell did not and Wells Fargo did not call me or communicate with me at any time prior to 12/21/2007 to inquire about a residential mortgage loan. {The Court's Records of C.A. Case 2008-CP-38-1024}

(6) Wells Fargo has presented no evidence to refute or deny my statement of fact that David Terrell has never seen me, know me, or corresponded with me either in person, by mail or by any authorized representative. Then how did he obtain the loan paperwork, if Thomas Jacobs – the unlicensed Seller and property owner did not give it to him or submitted it himself as **Golden Gate Mortgage, Inc.**? {The Court's Records of C.A. Case 2008-CP-38-1024}

(7) Janet Frotscher has presented no evidence that she knows me, has seen me or was physically present at 423 Bayne Street in Orangeburg, South Carolina on September 14, 2007. {The Court's Records of C.A. Case 2008-CP-38-1024}

(8) Wells Fargo relied exclusively on the representations of Golden Gate Mortgage/**Golden Gate Mortgage, Inc.**, and the documents or representations of the

Unlicensed Seller, the Appraiser, the Player Law Firm, its hired lawyers, its Executive Resolution Team and its Underwriters. {WF00001-137}

(9) Wells Fargo and Janet Frotscher's Executive Resolution Team have not provided any evidence that the documents supporting its loan, mortgage and note are not falsified and forgeries by substitution or forgeries by any other means.. {WF0001-38}

(10) After February 21, 2008 and prior to June 26, 2008, Wells Fargo has not provided any evidence that appropriate actions were taken to investigate allegations of suspected "Fraud" or initiated an onsite investigation to determine the extent of the Seller's, Golden Gate Mortgage's and Appraiser's misrepresentations. No 7-59 document belongs to me.. or...was ordered for me. Janet Frotscher knew this by 02/29/2008. {The Court's Records of C.A. Case 2008-CP-38-1024}

(11) Janet Frotscher has already admitted in her February 21, 2008 letter, the "Value" of the Note and Mortgage were taken from the appraisal ordered by the Broker. {WF00120 @ ¶ #5} If the value is falsified, the mortgage value is falsified and the note is unenforceable because it is based on Jim H. Austin, III's falsified value.

(12) If documents Wells Fargo relied upon to make decisions cannot be verified, validated or substantiated and are filled with lies, half truths, misrepresentations of fact, omissions and/or misleading information, Wells Fargo's acceptance and reliance upon falsified documents is to Wells Fargo's detriment after being duly notified and after all the facts were known. **I have no liability.**

(13) As codified in the statutory laws of 13 states, Wells Fargo is justified in seeking restitution from the individual(s) that sent them false and misleading documents and/or misrepresented material matters or material facts upon which Wells Fargo justifiably relied, i.e., the Appraiser, **Golden Gate Mortgage, Inc.**, the Seller, the Player Law Firm, Wells Fargo's Executive Resolution Team...and... Underwriters... not me.

(14) Based on Wells Fargo's filed documents, Wells Fargo's loan, note and mortgage were an illegal transaction when it was received on December 04, 2007.

(15) I am not responsible for Wells Fargo's errors in judgment or bad decisions. Wells Fargo should have filed lawsuits against Golden Gate Mortgage/David Terrell, **Golden Gate Mortgage, Inc.**, the Seller, the Appraiser, the Player Law Firm and Janet Frotscher rather than persecute me. Wells Fargo did not base its loan, note and mortgage on any supporting documents or information from me.

(16) If Wells Fargo knowingly accepted a lie, rather than truth; or knowingly accepted a falsified document to substantiate value, rather than one that can be verified, then Wells Fargo does so to its detriment. {WF00001-27} Wells Fargo is barred from receiving any relief in any court of competent jurisdiction due to its own contributory or comparative negligence and reckless and/or corrupt banking practices. {WF00029, WF00034 & WF00065-73}

(17) I have presented the Court sufficient credible evidence to show Wells Fargo

knowingly ignored evidence of fraud and used a falsified appraisal #7-59 to establish the "Value" of its note, loan and mortgage. {Exhibits 8-14 & WF00001-27} It is immaterial that Wells Fargo claims it did not know it was falsified, the fact remains that they are falsified {Exhibits 8-14, WF00030-32} and I did not send them to Wells Fargo. {WF00120 @ ¶ #5} After January 14, 2008, Wells Fargo knew they were falsified and had all the evidence of falsification by the end of February 2008. {Exhibits 4-64}

(18) Should Wells Fargo defend the practice of accepting and using falsified documents to support its mortgage backed securities, Wells Fargo (being a bank) has the potential to defraud millions of people. It is the duty of the Courts to prevent, not aid and abet fraudulent conduct or criminal acts by any litigant.

(19) My signature does not make Wells Fargo's fraudulent note and mortgage any less fraudulent or exempt it from the FBI's designation that mortgage fraud is illegal 12 CFR § 1731.2(c)&(e) and using falsified documents and inflated appraisals to defraud banks is an illegal act. 18 USC § 1344 & § 34-3-110}

(20) I did not falsely certify Wells Fargo mortgage. Debra C. Galloway and Stephanie Hammond did that at the Player Law Firm. {WF00058, 60 & 97}

(21) I did not conceal any material facts. The Seller, Golden Gate Mortgage, **Golden Gate Mortgage, Inc.**, the Appraiser and the Closing Attorney did that. Janet Frotscher also did that after being duly notified and after all the facts were known; especially, knowing the Seller brokered the loan. {WF00130 & 132}

(22) I did not falsify my income. **Golden Gate Mortgage, Inc.**, and Wells Fargo's employees did that in order to avoid complying with the statutory requirements of § 37-23-40(1)-(2). {WF00031 & 34}

(23) I did not engage in forgery. **Golden Gate Mortgage, Inc.**, {WF00030-32} the Appraiser {WF00001-26} and Wells Fargo's employees did that. I was not in Columbia, SC on 11/26/2007.. ..and.. I was not in Raleigh, NC on 12/20/2007 to sign any documents. {WF00029 & 33-38}

(24) The Seller, Broker, Appraiser and the Player Law Firm's violations exposed Wells Fargo to civil litigation. United States v. Young, 952 F.2d 1252, 1257 (10th Cir. 1991) (noting that a bank is exposed to a risk of loss when the defendant's conduct exposes the bank to civil litigation). "[t]he bank need not be the immediate victim of the fraudulent scheme," United States v. Crisci, 273 F.3d 235, 240 (2nd Cir. 2001) United States v. Jacobs, 117 F.3d 82, 92-93 (2nd Cir. 1997) (explaining that "for the bank fraud statute to apply, the fraud must be against the bank" but noting that "a scheme can be primarily directed at a third party and still give rise to bank fraud").

(25) "[T]he "scheme to defraud" clause of Section 1344(1) is to be interpreted broadly, United States v. Colton, 231 F.3d 890, 897 (4th Cir. 2000) at 897-98, and requires that the defendant act with the "specific intent to deceive or cheat, . . . for the purpose of getting financial gain for one's self or causing financial loss to another," United States v. Moede, 48 F.3d 238, 241 (7th Cir. 1995).

VIII. MORE EVIDENCE OF FRAUD UPON THE COURT BY ATTORNEYS JAMES H. BURNS AND/OR ELIZABETH SCOTT MOISE... MY DEFENSE PLEADING WAS CHANGED FROM...DEFRAUDING...OR...SWINDLING....TO....FRAUD

- A. **I am requesting a Certified Copy of the Partial Summary Judgment Court Order and Order of Reference that was drafted by Nelson Mullins Riley & Scarborough, LLP for Judge Diane Shafer Goodstein to sign to prove this Fraud upon the Court.**

14. I am requesting a certified copy of Judge Goodstein's March 27, 2014 signed Court Order be included in the Record on Appeal for the Appellate Court as proof in order to verify by clear and convincing evidence the *Fraud upon the Court* by Officers of the Court.

(a) Judges cannot change a defense pleading without consent. Attorneys cannot change a defense pleading to expedite a Judgment or obtain a favorable Court Order or Ruling.

(b) Changing a defense pleading is *Fraud upon the Court*. Contrary to the Commission on Lawyer Conduct and the Commission on Judicial Conduct...changing a defense pleading is not something Wells Fargo did..or..can do..and...the offence is an egregious affront to justice.

(c) This offence was done by Officers of the Court. My defense pleading was never fraud. {Review Judge Goodstein's Partial Summary Judgment Order and Order of Reference That was Drafted by Nelson Mullins Riley & Scarborough, LLP That Was Signed by Judge Goodstein on March 27, 2014 – My Exhibit 329}

15. The Appellate Court is free to search every **Verified Pleading** filed from 2008 to this Appellate Review for any statement, allusion, hint or reference to me accusing Wells Fargo of "fraud". Fraud was never my defensive pleading.

(a) My primary defensive pleading in this case has been, is... and always will be Wells Fargo is perpetuating a Fraud that is based on Wells Fargo's acceptance, approval, funding, use and defending the use of falsified, forged, altered, and unauthorized documents from the Seller, Broker, the Appraiser, the Player Law Firm and Wells Fargo's own employees to Defraud or Swindle me out of property and/or money one month at a time and one payment at a time.

(b) Therefore, Wells Fargo is perpetuating an illegally brokered loan, a home improvement and mortgage fraud, a loan that was closed in violation of federal and state laws, a loan that was approved with an unauthorized credit report, a falsely certified "Mortgage", and an illegal predatory lending scheme based on the same falsified, forged, altered and unauthorized documents of 2nd and/or 3rd parties. My objectives have been and still are:

- (1) Cancellation of Wells Fargo's Fraudulent, Loan, Note and Mortgage.
- (2) Dismissal of Wells Fargo's Complaint with Prejudice.
- (3) Removal of Wells Fargo's Fraudulent Loan, Note and/or Mortgage from the Records of Orangeburg County.
- (4) Removal of Any Derogatory Information Wells Fargo May Have Sent to Crediting Reporting Agencies.
- (5) Re-imbursement for the Cost of my Defense.
- (6) Awarding Any and All Statutory Fines and/or Penalties.
- (7) Awarding Any Punitive and/or Compensatory Damages that the Court Deems as Proper Based on Ability to Pay.
- (8) No set-offs for Wells Fargo's Tax Payments and Insurance Payments, Because Those Payments Were Based on Falsified Value Wells Fargo Had Every Opportunity to Change.
- (9) Court Orders to Take to Orangeburg County's Tax Assessor's Office and Office of the Register of Deeds.
- (10) Compensation for Unnecessary Stress, Aggravation and Defamation by Wells Fargo's Attorneys and Personnel. Especially, Brian A. Calub for harassing me and my husband for documents Wells Fargo and Nelson Mullins Riley & Scarborough, LLP, already had – WF00001-137, Elizabeth Scott Moise for LYING on me (I refused to speak with Wells Fargo) and Janet Frotscher for falsely accusing me.

B. My Defense Pleading was changed by Officers of the Court, [Fraud upon the Court]. I studiously avoided a direct accusation of fraud against Wells Fargo.

16. My Defense Pleading was changed by Officers of the Court because I studiously avoided a direct accusation of fraud against Wells Fargo. Wells Fargo could not and did not make any false representations to me. **The Reason:** Wells Fargo never contacted me....prior to....or...after December 21, 2007. I have always had to contact Wells Fargo. In addition, the online legal service told us...proving fraud in Court is virtually impossible with the 9-step procedure used by Judges. Any missing step is fatal to the claim. South Carolina's own procedures verify this fact.

17. To sustain a claim of fraud in South Carolina's 9-step procedure, all of the following elements must be proven: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Wells Fargo can sustain a case for fraud against the Broker, the Appraiser, the Seller, the Player Law Firm, Wells Fargo Home Mortgage, Rogers Townsend and Thomas, PC for non-disclosure of material facts and Nelson Mullins Riley & Scarborough, LLP for non-disclosure of material facts relative to Case #2008-CP-38-1024.

18. My defense pleading of Defrauding...or..Swindling does not require me to prove Wells Fargo actually succeeded in Defrauding or Swindling me or was successful in obtaining money or property by means of false or fraudulent pretenses, representations, or promises. [*Wells Fargo's use of the fraudulent representations of Janet Frotscher, the Broker, the Appraiser, the Seller, and the Falsified Mortgage from the Player Law Firm is Swindling by definition.*]

(a) It is not necessary to prove that I lost any money or property as a result of Wells Fargo's scheme or plan to Defraud or Swindle [*with the falsified documents of the Seller, Appraiser and the Broker and the Falsely Certified Mortgage from the Player Law Firm*]; or by Wells Fargo's scheme or plan to obtain money or property by means of false or fraudulent pretenses, representations, [*the Absolute Lies of Janet Frotscher and/or False Accusations of Janet Frotscher and Elizabeth Scott Moise/Wells Fargo – "I refused to speak with Wells Fargo and Wells Fargo is making an attempt to contact me"*] or promises.

(b) An unsuccessful [scheme to defraud or swindle] [scheme or plan to obtain money by means of false...or...fraudulent pretenses, representations or promises] is as just as illegal as a scheme or plan that is ultimately successful.

(1) *USLegal* defines **Defraud** in pertinent parts.. as an “[I]ntention to deceive others. It involves a specific intention to cheat others, for causing financial loss to others or bringing financial gain to one’s self. Intend to defraud can also include an intention to deceive others, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter, or terminate a right, obligation, or power of a property.”

(2) *Black’s Law Dictionary* (2nd ed. 1910), page 346, defines **Defraud** in pertinent parts as.. “[T]o practice fraud; to cheat or trick; to deprive a person of property or any interest, estate, or right by fraud, deceit, or artifice. *People v. Wiman*, 148 N. Y. 29, 42 N. E. 408; *Alderman v. People*, 4 Mich. 424, 09 Am. Dec. 321; *U. S. v. Curley* (C.C.) 122 Fed. 740; *Weber v. Mick*, 131 111. 520, 23 N. El 640; *Edgell v. Smith*, 50 W.Va. 349, 40 S. B. 402; *Curley v. U. S.* 130 Fed. 1, 04 C. C. A. 309.”

(3) *Hammerschmidt v. United States*, 265 U.S. 182, 188, 44 S.Ct. 511, 512, 68 L.Ed. 968 (1924). “[I]t is true that the words “to defraud” as used in some statutes have been given a wide meaning, wider than their ordinary scope. They usually signify the deprivation of something of value by trick, deceit, chicanery or over-reaching. They do not extend to theft by violence. They refer rather to wronging one in his property rights by dishonest methods or schemes.” The Supreme Court has made it clear that “defraud” is limited only to wrongs done “by deceit, craft or trickery, or at least by means that are dishonest.” *Hammerschmidt*, 265 U.S. at 188, 44 S.Ct. at 512.

(4) *Black’s Law Dictionary* (2nd ed. 1910), pg 1130 defines **Swindling** – in pertinent parts.. as the following... “[C]heating and defrauding grossly with deliberate artifice.. By the statute, “swindling” is defined to be the acquisition of personal or movable property, money, or instrument of writing conveying or securing a valuable right, by means of some false or deceitful pretense or device, or fraudulent representations, with intent to appropriate the same to the use of the party so acquiring, or of destroying or impairing the rights of the party justly entitled to the same. Pen. Code Tex. art. 790; Cheating and defrauding grossly with deliberate artifice. *Wyatt v. Ayres*, 2 Port. (Ala.) 157; *Forrest v. Hanson*, 9 Fed. Cas. 456; *Thorpe v. State*, 40 Tex. Cr. R. 346, 50 S. W. 383 ; *Chase v. Whitlock*, 3 Hill (N. Y.) 140; *Stevenson v. Hayden*, 2 Mass. 408. By the statute, “swindling” is defined to be the acquisition of personal or movable property, money, or instrument of writing conveying or securing a valuable right, by means of some false or deceitful pretense or device, or fraudulent representations, with intent to appropriate the same to the use of the party so acquiring, or of destroying or impairing the rights of the party justly entitled to the same....”

Arizona Statute A.R.S. 13-2310: in pertinent parts.. “[A.] Any person who, pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of a class 2 felony. B. Reliance on the part of any person shall not be a necessary element of the offense described in subsection A of this section... E. As used in this section, “scheme or artifice to defraud” includes a scheme or artifice to deprive a person of the intangible right of honest services.”

(c) Since South Carolina; and so many other states, do not have specific statutory language relative to swindling and defrauding (other than insurance companies), and based on Arizona's statute ("[R]eliance on the part of any person shall not be a necessary element of the offense described in subsection A of this section."), *Hammerschmidt*, 265 U.S. at 188, 44 S.Ct. at 512 ("[a]t least by means that are dishonest"), we choose to make our primary defense **Defrauding** or **Swindling** in my *Answer* that was filed on July 18, 2008. {See Also Exhibit 297}

(d) Fraud requires justifiable reliance and proximate injury as a direct result of justifiable reliance. There is absolutely no reason for me or anyone else to rely on Wells Fargo's supporting documents. I know for a fact.....the vast majority of Wells Fargo's supporting documents are falsifications, forgeries, alterations and unauthorized by me and since Wells Fargo was duly notified, Wells Fargo knew or should have known this also. Whether Wells Fargo accepted the truth or not is immaterial. My defense plea was changed by Nelson Mullins Riley & Scarborough, LLP and due to Judge Goodstein biasness, this change was approved and a Court Order was written relative to it. This is an egregious ***Fraud upon the Court***.

C. **Wells Fargo's attorneys James H. Burns & Elizabeth Scott Moise changing my Defense Pleading from Defraud or Swindling to "Fraud" is in addition to their Massive Filing Fraud during the Stay/TRO that is also [Fraud upon the Court].**

19. It is not within a Trial Judge's "sound discretion" to: **Condone and support Fraud upon the Court by attorneys**; especially the **Massive Filing Fraud** of Elizabeth Scott Moise and James H. Burns during the *TRO/Stay*. From June of 2009 until the TRO/Stay ended, to characterize what these two attorneys did as misrepresentations, false statements, intentional misstatements of facts or perjury are understatements.

(a) I prefer layman's language. These two attorneys filed nothing but ABSOLUTE LIES. The panel of judges that reviews this **Verified Pleading** for ***Fraud upon the Court*** can access the records of the Court of Common Pleas during the TRO/Stay and prove to yourselves

how massive it is..and..Judge Goodstein simply ignored it. This case of *Fraud upon the Court*, takes South Carolina all the way back to the 16th Century when people of African descent had no rights in “All White Courts” or any legal protection from “All White Juries”.

(b) I would go into an historical perspective, but it is not necessary, Burns and Moise’s actual Case Status Updates and my **Verified Replies** and/or **Responses** from after June of 2009 to the present that I incorporate by reference as though I have fully written them herein verbatim are more than adequate and provides all the evidence a reviewing panel of Judges and legal professionals will need.

(c) The proof of Burns and Moise’s **Massive Filing Fraud** is the absence of the evidence..and/or...documentation that is necessary to verify the representations in their so-called Case Status Updates; such as:,

(1) Pg 1, ¶ 2, in Elizabeth Scott Moise’s *Case Status Update Pursuant to May 22, 2009 Supreme Court Order for Foreclosure Cases*, dated, June 15, 2009. “Wells Fargo attempted to contact Defendant Dorothy Sistrunk to speak with her about her eligibility pursuant to HMP requirements. However Defendant has refused to speak with Wells Fargo, but Wells Fargo currently is attempting to communicate with her again. Once an eligibility and/or loan modification determination is made, Wells Fargo will notify this Court.” {*Exhibit 334*}

(A) **I have never refused to speak with Wells Fargo. Elizabeth Scott Moise filed an ABSOLUTE LIE OR GROSS MISREPRESENTATION OF FACT that Wells Fargo could not contact me.** I Demand she produce the phone records and the name of the individual/s that I refused to speak to, the date/s and time/s of the call/s. Email records, or anything she can find. Elizabeth Scott Moise deliberately lied on me and about me.

(B) **Wells Fargo never attempted to communicate with me.** I have two phones, two fax machines and an answering machine on each phone. In addition, my husband was home recovering from a severe groin injury. {*Exhibit 230*} Wells Fargo and Nelson Mullins Riley & Scarborough, LLP have my home phone number that has not changed in 14 years. I have documented this **Massive Filing Fraud** for over 18 months in my **Verified Pleadings** from July 2009 to the Present and I incorporate all my **Verified Pleadings** by reference as though fully set forth herein verbatim as the clear and convincing evidence and proof.

(C) The most outrageous ABSOLUTE LIE is **Wells Fargo was making an eligibility determination.** {*Exhibit 335*} I demand strict proof that a

determination was being made, methods, procedures, qualification requirements and the personnel responsible for the decision.

Note: Since these Updates were not filed by me, I must request the Clerk of Court to send them.

(2) The proof that Judge Goodstein ignored this **Massive Fraud upon the Court** of misrepresented material facts and outright lies is the absence of documentation or notification in the Court's records. *{See Burns & Moise's Case Status Updates from June of 2009 to August of 2011}*

(A) Two common misrepresentation of material facts and/or OUTRIGHT LIES in Burns and Moise's **Massive Filing Fraud** are: (1) "[W]ells Fargo has attempted to contact the Defendant regarding her eligibility for a loan modification under the HMP, but has been unsuccessful in those attempts" and (2) "[W]ells Fargo stated that the Defendant's loan is currently under review for possible modification consistent with the requirements of the HMP.." *{ Exhibits 335-340}*

(B) Burns and Moise were exposed as LIARS by Ben Windust on August 6, 2010. *{Exhibit 198}*.

(C) Ben Windust was exposed as a LIAR on October 7, 2010. *{Exhibit 209}*

(D) Moise and Burns, Windust and the others were all exposed as LIARS by GreenPath on 10/26/2009, who tried to work with Wells Fargo to reduce the loan to the unfinished price of 423 Bayne Street, but Wells Fargo refused to cooperate and told more LIES instead. *{Exhibits 166-173, 198, 209 & Burns and Moise's Case Status Updates}*

(c) Even if South Carolina's Commission on Lawyer Conduct excuses these attorneys by claiming their filed statements came from Wells Fargo and not them; there is still no hard evidence or documentation in the Court's Records to exonerate them or support that claim. The proof that Judge Goodstein ignored this **Massive Filing Fraud** of misrepresented and distorted facts is the absence of documentation, notification or Orders in the Court's Records.

Misrepresentation #1: "[W]ells Fargo attempted to contact Defendant Dorothy Sistrunk to speak with her about her eligibility pursuant to HMP requirements. However Defendant has refused to speak with Wells Fargo, but Wells Fargo currently is attempting to communicate with her again. Once an eligibility and/or loan modification determination is made, Wells Fargo will notify this Court."

Note #1: Wells Fargo never attempted to communicate with me. I have two phones, two fax machines and an answering machine on each phone. In addition, my husband is home still recovering from a severe groin

injury. Wells Fargo and Nelson Mullins Riley & Scarborough, LLP have my home phone number that has not changed in 14 years.

Note #2: I have documented this **Massive Filing Fraud** for over 18 months in my **Verified Pleadings** from July 2009 to the Present and I incorporate all my **Verified Pleadings** by reference as though fully set forth herein verbatim as the clear and convincing evidence and proof.

Misrepresentation #2: Wells Fargo was making an eligibility determination. I have demanded strict proof that a determination was being made, methods, procedures, qualification requirements and the personnel responsible for the decision; to date, no documentation has been provided. #1 and/or #2 lasted for 2 years.

(d) Brian A. Calub's filed misrepresentation – Pg 1, under **INTRODUCTION**, ¶ 1, in his *Plaintiff's Memorandum in Support of Motion for Continuance and Scheduling Order* that is dated December 5, 2011.

“[D]efendant answered complaint and asserted numerous affirmative defenses. The defenses have primarily centered on what she alleges are “falsified appraisals” given to her by the seller of the property.” {Exhibit 330}

Attorney Calub repeated the same intentional misstatement of fact in his *Plaintiff's Motion for Sanctions*, on pg. 1, in ¶ 1, under **INTRODUCTION**, in a filed argument dated, May 15, 2012. {Exhibit 331} [Note: All Exhibits only have the necessary pages for evidence and proof.]

(1) Attorney Calub's statement is a misrepresentation of a material fact and a fact. My affirmative defenses are not centered on any appraisals that were given to me by the seller of the property. **The seller never gave me any appraisals.** You will not find this statement anywhere because it never happened and it is patently false and an intentional misstatement of fact. **Proof:** Wells Fargo's attorneys receive an **Attested True Copy** of every **Verified Pleading**, Notice and any other material and/or information I have file in Court. My filed court papers and/or pleadings are stamped and dated by the Clerk of Court.

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

(B) “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) *Blacks Law Dictionary* (Rev. 4th ed. 1968), on pg 1071, defines **LIE** in pertinent parts as..”[A]n untruth deliberately told; the uttering or acting of that which is false for the purpose of deceiving; [an] intentional misstatement....”

(2) Attorney Calub’s statement is patently false because in addition to Wells Fargo’s fraudulently misrepresented 7-59 appraisals, there is Wells Fargo’s forged an altered Contract of Sale, the falsified Satisfaction Completion Certificate, the Unauthorized use of my credit report, the **Fraudulent Representations** of Janet Frotscher and many others.

(3) The Appellate Court can review and examine my **Verified Pleadings** line by line from 2008 to the present. Find any statement resembling attorney Calub’s filed misrepresentation that the seller gave me an appraisal.

(e) James H. Burns’ filed misrepresentation #1 – Pgs 1-2, under **BACKGROUND**, starting @ ¶ 2 on pg 1, and continuing to the last ¶ on pg 2, in his *Well’s Fargo’s Motion for Protective Order* that is dated October 31, 2008. {*Exhibit 228*} **Proof:** Wells Fargo’s attorneys receive an **Attested True Copy** of every **Verified Pleading**, Notice and any other material and/or information I have file in Court. My filed court papers and/or pleadings are stamped and dated by the Clerk of Court that keeps the original written and sworn pleading.

(1) At the time attorney Burns filed his **Protective Order**, he did not realize Wells Fargo has known since February 25, 2008 that Golden Gate Mortgage did not broker any loan for me. Wells Fargo already knew the loan was an unlawful transaction brokered by the Unlicensed Seller – Thomas Jacobs. Therefore, I will not call his first sentence a filed lie, just a gross misstatement of fact.

(2) However, his second sentence is an absolute lie. **I could not have had a dispute with the seller after the closing.** Thomas Jacobs, the Seller, left the closing shortly after introducing me to Debra C. Galloway. I have not seen or heard from Thomas Jacobs – the Unlicensed Seller - since December 21, 2007.

(3) Attorney Burns grossly misrepresented my answer or created his own. The reference that the price will be lowered during the closing occurred on 11/26/07. This fact has never been refuted, denied, controverted or contested by Thomas Jacobs or anyone else. If Thomas Jacobs says otherwise, he would be telling an absolute lie because of witnesses. {*Exhibit 245*}

(4) My letter to David Terrell was not to him as any broker of mine. The letter was to a friend and business associate of Thomas Jacobs. Thomas Jacobs gave my husband a number to a friend of his that he (Thomas Jacobs) said could reach him at any time. If you look at the number to Thomas Jacobs' friend and business associate; 803-788-2880, you can plainly see it is the number to **Golden Gate Mortgage Inc.** [WF00080 & 83]

(5) In addition, the first appraisal with the 7-59 file [#] that was received from Golden Gate Mortgage on January 12, 2008 and the second appraisal that was received from Wells Fargo on February 5, 2008 with the same 7-59 file number... were done for Thomas Jacobs. [WF00014-26] Also see [WF00027 for Proof].

(6) Both 7-59 appraisals are scams and forgeries by substitution [WF00014-26]. Both clearly listed [Sistrunk] as being the property owner on October 8, 2007. I had nothing to do with 423 Bayne Street in October of 2007 nor did my husband. We were still at Coburn Lane waiting for Tommy Mitchell's real estate agent to show up so we could give her the keys. My husband began cleaning up 423 Bayne Street as part of a rental agreement [My Filed Exhibit 30]. Buying the property was Thomas Jacobs' suggestion. {Refer to My Filed Exhibit 245}

(7) The Appellate court can search my **Verified Pleadings** line by line from 2008 to the present. Find any statement resembling attorney Burns' misrepresentation that I had a dispute with the seller after the closing.

(f) James H. Burns' filed misrepresentation #2 – Pg 1, under **INTRODUCTION**,

last sentence ¶ 1, and first sentence in ¶ 2, in his ***Plaintiff Wells Fargo Bank, N.A.'s Motion for Summary Judgment*** that is dated June 27, 2013.

“[C]ritically, Defendant admits that she has no evidence showing that Wells Fargo knew or participated in the alleged misrepresentations that were made by the seller and appraiser as alleged in her counterclaims. Defendant believes that the seller and the appraiser conspired to mislead her to believe that (a) certain repairs and other improvements would be made to her home before closing and (b) if such repairs were not completed then sale price for the home would be reduced at closing.”
{Exhibit 332}

(1) **I never ever said the Seller and Appraiser conspired to mislead me.** I will restate, repeat and emphasize for the umpteenth time, on December 22, 2007 my husband left a message on the answering machine at the Plaintiff's office in Raleigh, North Carolina notifying WFHM / Kathryn R. Perkinson that my loan is mired in fraud, deceit and deception. Wells Fargo knew from that moment loan #0174072777 was mired in fraud, deceit and deception.

(2) On December 24, 2007, I told Kathryn R. Perkinson about the Seller's misrepresentations. According to Debra C. Galloway [Filed Exhibit 70], she also notified Wells Fargo the loan was in dispute on December 27, 2007.

(3) On January 14, 2008, I told Wells Fargo's personnel in Des Moines, Iowa about the misrepresentations of the Seller, the Broker and the Appraiser.

(4) The Appellate Court can search my **Verified Pleadings** line by line from 2008 to the present. Find any statement that even remotely resembles attorney Burns' statement that I admitted; in Court, that I have no evidence showing Wells Fargo "[k]new or participated....."

(5) The lie the attorneys and Judge Goodstein repeats is a deliberate misrepresentation of "I have no personal evidence." My evidence comes from Wells Fargo. [WF00001-137] The earliest hard evidence Wells Fargo knew is Exhibit 70. In Debra C. Galloway's letter to the Commission on Lawyer Conduct, she claims she notified Wells Fargo that the loan was in dispute. {Pg 2, @ ¶ 1, Sentence #5}

(g) Elizabeth Scott Moise's filed misrepresentation #1 – Pg 3, in her *Wells Fargo Bank, N.A.'s Responses to Request for Discovery*, under #10. (A) in her **RESPONSE**, that is dated October 15, 2008. Cis Ferguson, verified service .

"[W]ells Fargo does not currently have in its possession any documents other than the Satisfactory Completion Certificate, dated September 14, 2007, which was provided to Wells Fargo by you or your mortgage broker in support of your loan application." {Exhibit 226, Pg. 3}

Proof: Wells Fargo's attorneys receive an **Attested True Copy** of every **Verified Pleading**, Notice and any other material and/or information I have file in Court. My filed court papers and/or pleadings are stamped and dated by the Clerk of Court that keeps the original copy.

(1) **I never sent any documents to Wells Fargo.** Janet Frotscher clearly states the documents were submitted by Golden Gate Mortgage. This proves Wells Fargo's loan is brokered illegally. I am not a broker and I am not an appraiser. Therefore, I could not have possibly sent Wells Fargo any documents without a request from Wells Fargo and there is no evidence of such a request in the Court's records. Whatever documents Wells Fargo has and used.....came from the Seller.

(2) Attorney Moise has also repeated the **ULTIMATE LIES** that were told by Janet Frotscher [WF00120 & 125]. And those lies are: Golden Gate Mortgage is my broker and I met with the Appraiser and showed him invoices. Golden Gate Mortgage brokered a loan for the Seller. All of Wells Fargo's supporting documents belong to the Seller, came from the Seller and were ordered for the Seller.

(3) The Seller - Thomas Jacobs – is the Borrower - that purportedly met the Appraiser on 9/14/2007.... not me. This is proven by the Appraiser's invoice [WF00027] that identifies Thomas Jacobs as the borrower. I don't have a file number. No file number was assigned to me by the Broker, Appraiser or the Seller and neither Burns, Moise or Calub has filed one identifying me.

(4) Janet Frotscher's ULTIMATE LIE came into existence after WFHM received the documented evidence that the appraisal and satisfaction completion certificate were falsified. {Exhibits 8-14}

(5) Janet Frotscher acknowledged receiving the evidence in her letter dated February 21, 2008 [WF00120, Pg 1, ¶ 1] The letter came to 423 Bayne Street on February 25, 2008. I called WFHM and gave the phone to my husband on the same day. {See Affidavits}

(6) On February 25, 2008, my husband told WFHM's representatives that Golden Gate Mortgage did not broker any loan. All the loan paperwork came from the Seller -Thomas Jacobs..and if any brokering were done....it was done by Thomas Jacobs..... not Golden Gate Mortgage. {Exhibit 245}

(7) After the letters I sent Janet Frotscher on February 25th, 29th, March 6th, and May 15th, 2008 [Filed Exhibits 43 & 51-53], Janet Frotscher told the ULTIMATE LIES that are the foundation of this case. [WF00125 Pg 1, ¶ 4]

(8) The Appellate Court can search my **Verified Pleadings** line by line from 2008 to the present and find any statement where I ever stated, hinted or even alluded to Golden Gate Mortgage being my broker.

(h) Elizabeth Scott Moise's filed misrepresentation #2 is on Pg 15, in her *Wells Fargo's Reply to Defendant's First Amendment to Answer to Complaint with Counterclaims*, reply to my ¶ #119-XIII, that is dated October 15, 2008 with service verified by Cis Ferguson.

"[W]ells Fargo further admits the Satisfaction Completion Certificate, dated September 14, 2007, and an Appraisal dated October 7, 2007, were sent to Wells Fargo by Defendant." {Exhibit 229}

Wells Fargo fraudulently concealed the truth from the Court and from its own attorneys.. unless they also knew the truth and also concealed it.... since June of 2008.

(1) The effective dates and signed dates of; October 8th, 2007 and October 9th, 2007 are the only appraisals Wells Fargo and Golden Gate Mortgage sent me. I have never seen the appraisal that is dated October 7, 2007. This could be a bona fide error. If such an appraisal does exist with a 7-59 file number, it is additional verification, evidence and proof that any appraisal with my name on it..... is a forgery by substitution..... just like [WF00001-13]. #7-59 identifies the Seller.

(2) As already stated, I don't have a file number, because no file number was assigned to me by the Broker, the Appraiser or the Seller and none.... can be filed.

(3) Attorney Moise cannot be excused for these misrepresentations. As I have already stated, Wells Fargo's loan is an illegally brokered loan by an Unlicensed Seller. I did not broker it or appraise it. Therefore, I could not have possibly sent Wells Fargo any documents without a request from Wells Fargo and there is no request in the Court's records. Wells Fargo paid the Seller - \$75,000.00...not me.

(4) As already stated, Janet Frotscher clearly states the documents came from the Broker that she misstates as “your” broker. [WF00120, ¶ #5] Neither Wells Fargo nor any attorney from Nelson Mullins Riley & Scarborough, LLP has filed any statements from Golden Gate Mortgage that an appraisal was ordered for me or a loan was brokered for me. What David Terrell does clearly state is; “[I] am the person that put you with Wells Fargo.” {Exhibit 37, ¶ #2}

(5) The Appellate Court can search my **Verified Pleadings** line by line from 2008 to the present to find any statement where I ever stated, hinted or even alluded to Golden Gate Mortgage being my broker. The Appellate Court can also search the Court’s Records for any document..and/or.. evidence, proving I sent a Satisfaction Completion Certificate and an Appraisal to Wells Fargo.

(A) Simply ask the Broker....how did he get loan submission paperwork if he never knew of..., met..., contacted..., or interviewed... Dorothy Sistrunk?

(B) Find any document filed by Wells Fargo, Elizabeth Scott Moise, James H. Burns or Brian A. Calub; in which, Janet Frotscher specifically states..... she was present at 423 Bayne Street on September 14, 2007.

(C) Find any document filed by Wells Fargo, Elizabeth Scott Moise, James H. Burns or Brian A. Calub; in which, Janet Frotscher specifically states.... she knows me personally and can identify me as the person showing invoices to the appraiser. [WF00125, ¶ #4]

(D) Find any document filed by Wells Fargo or an attorney, that evidences Golden Gate Mortgage met the requirements of brokering a loan besides the agreement that might be a cut & paste forgery. The Broker has no evidence of contact, no visitation records and no phone records of contact to refute my admissions that the Broker Agreement was part of the lending package for Golden Gate Mortgage provided by the Seller. [WF00064 & 74]

20. *Rule 3.3, RPC, Rule 407, SCACR: Candor Toward The Tribunal*, clearly states the following in pertinent parts:

(a) A lawyer shall not knowingly:

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

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

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

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

21. *Rule 3.4, RPC, Rule 407, SCACR: Fairness To Opposing Party And Counsel - A*

lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

- (1) the person is a relative or an employee or other agent of a client; and
- (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information

22. *In Coulson v. Coulson (1983), 5 Ohio St.3d 12, 15, 5 OBR 73, 76, 448 N.E.2d 809, 811-*

812, the Supreme Court of Ohio acknowledged that “[a]ny fraud connected with the presentation of a case to a court is a fraud upon the court, in a broad sense,” quoting 11 Wright & Miller, Federal Practice and Procedure (1973) 253, Section 2870.

(1) “[t]he acts of an attorney are directly attributable to and binding on the client.” *Greenville Income Partners v. Holman*, 308 S.C. 105, 107, 417 S.E.2d 107, 108 (Ct. App. 1992); *Mitchell Supply Co. Inc. v. Gaffney*, 297 S.C. 160, 375 S.E. (2d) 321 (Ct. App. 1988); *Arnold v. Yarborough*, 281 S.C. 570, 316 S.E. (2d) 416 (Ct. App. 1984)

(2) “[F]ederal Rule 60(b)(3), by its express terms, permits judgments to be set

aside for fraud, whether the fraud is intrinsic or extrinsic." Mr. G. v. Mrs. G., 320 S.C. 305, 465 S.E.2d 101 (Ct. App. 1995) "[F]raud upon the court includes fraud by bribing a judge, or tampering with a jury, or fraud by an officer of the court, including an attorney." Cleveland Demolition Co. v. Azcon Scrap Corp., 827 F.2d 984, 986 (4th Cir. 1987)

(3) "[a] party may be held liable for misrepresentation where he communicates misinformation to his agent, intending or having reason to believe that the agent would communicate the misinformation to a third party." W. Prosser, § 107 at 703; Restatement (Second) of Torts, § 533 (1977); Epperson v. Roloff, 102 Nev. 206, 212, 719 P.2d 799, 803 (1986)

(4) "[N]otice to an attorney is notice to the client. Faulkner v. Millar, 319 S.C. 216, 221, 460 S.E.2d 378, 381 (1995) (discussing principles of agency).

(5) "[N]o mistake attributable to an attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client. Simon v. Flowers, 231 S.C. 545, 551, 99 S.E.2d 391, 394 (1957).

(6) 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23 defines this crime as "[o]ne that prevents the court from working in an impartial manner." A similar case, Bullock v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985) held that "[t]his kind of fraud is aimed at how the justice system works and is not a fraud between parties, etc. It is deliberately intended to influence the system and the judge and the impartial rendering of a judgment. In other words, the just functioning of the court has been corrupted by fraud upon the court."

(7) "[B]ecause fraud upon the court is an affront to the administration of justice, a litigant who has been defrauded need not establish prejudice." Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944); Dixon v. Comm'n of Internal Revenue, 2003 WL 1216290 (9th Cir. 2003) (" . . . the perpetrator of the fraud [upon the court] should not be allowed to dispute the effectiveness of the fraud after the fact.")

(8) "[i]t is immaterial whether the fraud be extrinsic or intrinsic." (In re Johnson, 7 Cal.App. 436 [94 P. 592].) (See also Rice v. Rice, 93 Cal. App. 2d 646, 651 [209 P.2d 662].)

(9) Hartford v. Hartford (1977), 53 Ohio App.2d 79, 83-84, 7 O.O.3d 53, 55-56, 371 N.E.2d 591, 595-596, the court stated: "'[F]raud upon the court,' as used in regard to obtaining relief from judgment must be narrowly construed to embrace only that type of conduct which defiles court itself, or fraud which is perpetrated by officers of the court so as to prevent the judicial system from functioning in the customary manner of deciding the cases presented in an impartial manner," such as bribery of a judge or jury, fabrication of evidence by counsel, or prevention of an opposing party from fairly presenting his case."

(10) "[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)

(11) "[p]erjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings.", *United States v. Mandujano*, 425 U.S. 564, 576 (1976)

(12) "[F]alse testimony threatens the fair and effective administration of justice and the integrity of the courts. Trials are ideally a search for the truth." *Nix v. Whiteside*, 475 U.S. 157 (1986) (holding that a criminal defendant's constitutional right to effective assistance of counsel was not violated when his attorney refused to help him give perjured testimony)

(13) "[T]his truth-determining process depends upon the partisan, but accurate, presentation of truthful evidence by the parties." *Clark v. United States*, 289 U.S. 1 (1933) "[T]hus, the United States Supreme Court has aptly observed that all perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. Therefore, it cannot be denied that it tends to defeat the sole ultimate objective of a trial." *In re Michael*, 326 U.S. 224, 227 (1945)

(14) *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."); *Dixon v. Comm'n of Internal Revenue*, 2003 WL 1216290 (9th Cir.2003) (fraud on the court occurred where attorneys entered into secret settlement agreements with taxpayers in exchange for false testimony)

(15) *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)

(16) *Porcelli v. Joseph Schlitz Brewing Co.*, 78 F.R.D. 499 (E.D.Wis.1978) (noting distinction between perjury involving officers of the court and witness or party); *Moore's Federal Practice* ¶ 60-21[4][b] (3d ed.2002).

IX. JUDGE GOODSTEIN COMMITTED HER OWN FRAUD UPON THE COURT BY IGNORING A SOUTH CAROLINA SUPREME COURT MANDATE 2009-05-22-01, IGNORING THE MASSIVE FILING FRAUD OF ATTORNEYS JAMES H. BURNS AND ELIZABETH SCOTT MOISE, DENIAL OF DUE PROCESS BY IGNORING MY DEMAND FOR A JURY TRIAL, FAILURE TO GIVE ADEQUATE NOTICE, REFUSING TO LET MY WITNESS GIVE TESTIMONY, VIOLATING THE RULES OF CIVIL PROCEDURE, LYING ON COURT ORDERS, AND SIGNING COURT ORDERS WITH MISREPRESENTED FACTS

A. Judge Goodstein's ignored South Carolina's Supreme Court Mandate relative to Administrative Order #2009-05-22-01.

23. It is not within a Trial Judge's "sound discretion" or....any....Officer of the Court to:
Ignore South Carolina's Supreme Court Administrative Orders, i.e., #2009-05-22-01 that clearly stated in pertinent parts... **Note:** The word "shall" (imperative when rights are concerned)

Black's Law Dictionary (4th ed. 1968), page 1541, Defines **Shall**, in pertinent parts, as the

following. “[A]s used in statutes, contracts, or the like, this word is generally imperative or mandatory. McDunn v. Roundy, 191 Iowa, 976, 181 N. W. 453, 454; Bay State St. Ry. Co. v. City of Woburn, 232 Mass. 201, 122 N.E. 268; U. S. v. Two Hundred and Sixty-Seven Twenty-Dollar Gold Pieces, D.C. Wash., 255 F. 217, 218; Baer v. Gore, 79 W.Va. 50, 90 S.E. 530, 531, L.R.A.1917B, 723. In common or ordinary parlance, and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning, and it is generally imperative or mandatory. It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears. People v. O'Rourke, 124 Cal. App. 752, 13 P.2d 989, 992. “

(1) “[T]he judge **shall** consider the affidavit and any counter affidavit that may be filed to determine if there is any contested issue that must be resolved regarding the eligibility of the loan for modification under the HMP or satisfaction of the requirements of the HMP if it applies. If so as to either, the judge **shall** resolve this issue like any other contested issue in a mortgage foreclosure action.”

(2) The Judge failed to act when Wells Fargo’s attorney; Elizabeth S. Hodgson, filed a *False/Scam Affidavit* that was a misrepresentation of material facts. Attorneys filing misleading statements, false statements and/or concealing information from the Court that is material is **Fraud upon the Court**. Elizabeth S. Hodgson’s filed Affidavit allowed an illegal loan transaction supported by fraudulent misrepresentations into the *TRO/Stay*. If she were indeed familiar with my case, she would have known and should have known about the fraudulent misrepresentations of the Broker, Seller and the Appraiser. My complaint against Wells Fargo then and now is Wells Fargo’s perpetuation of an Illegally Brokered Loan, an Illegal Predatory Lending and a Home Improvement and Mortgage Fraud based upon the acceptance and use of falsified documents.

(3) Attorney Hodgson’s *False/Scam Affidavit* has misled and deceived the Court for over 4 years. I challenged the legitimacy of attorney Hodgson’s Affidavit and the Judge failed to act. This *False/Scam Affidavit* has already been addressed in previous Pleadings filed after July of 2009 and those **Verified Pleadings** are incorporated by reference as though fully set forth herein verbatim. {Refer to Filed Exhibit 235 & My Filed & Verified Response Dated May 26, 2009} If Wells Fargo’s attorney, Elizabeth S. Hodgson, filed a *False/Scam Affidavit*, Wells Fargo failed to meet the requirements for the *Stay/TRO* and this case should have been dismissed due to Wells Fargo’s failure to “Substantially Comply” and **Fraud upon the Court** by Elizabeth S. Hodgson’s misrepresentation of material facts in an affidavit, in layman’s language...Lying.

Black’s Law Dictionary (2nd ed. 1910) defines a known false assertion in an affidavit as **Perjury** on page 893. “[I]n criminal law. The willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such

evidence is given in open court, or in an affidavit, or otherwise, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury, or person holding the proceeding.”

(4) Based upon *Black's Law* definition, Brain A. Calub, Elizabeth Scott Moise, James H. Burns and Judge Diane Shafer Goodstein's information and belief is in adequate to controvert my sworn statements of fact. Any attempt to controvert my statements of fact are automatically impeached and will be perjured testimony, false information, fraudulent misrepresentations and/or representations and/or OUTRIGHT LIES because Wells Fargo's own document file and affidavits that have been filed in this proceeding verify my statements are true.

(5) In addition, on June 29, 2011, Elizabeth Scott Moise verified my statements of fact in my **Verified Pleadings** that Wells Fargo did not have a policy, process or procedure than can modify a fraudulent loan, note and mortgage. Elizabeth S. Hodgson's *False / Scam Affidavit* that is defined by *Black's Law Dictionary* as **Perjury** was verified as **Perjury** by Elizabeth Scott Moise's own letter. {*Exhibit 218*} My loan had no legal right or authority to be included in the *Stay/TRO*. The inclusion of loan #0174072777 violated the terms of the HMP.

B. Judge Goodstein's ignored James H. Burns and/or Elizabeth Scott Moise's and/or Wells Fargo's Massive Filing Fraud.

24. It is not within a Trial Judge's "sound discretion" to: **Condone and support Fraud upon the Court by attorneys or litigants**; especially the **Massive Filing Fraud** of Elizabeth Scott Moise and James H. Burns or Wells Fargo during the *TRO/Stay*. {*Review pages 71-80*}

(a) South Carolina's Commission on Lawyer Conduct was quick to point out Burns and Moise did not actually lie. Instead, they were merely representing their client Wells Fargo. Therefore, the statements made during the *Stay/TRO* are attributable to Wells Fargo and not to attorneys James H. Burns or Elizabeth Scott Moise. Therefore, my husband's complaint against them was dismissed.

(b) If I accept the Commission's reasoning as true and justifiably or not rely upon it, the culprit is still Wells Fargo. Based upon the Commission's explanation that Burns and Moise were simply representing their client – Wells Fargo,...then it is...Wells Fargo that has committed this ***Fraud upon the Court*** for over 2 years by a repeated pattern of misinformation, misstatement of facts, false accusations and misrepresentations of material facts that are intended to in-

fluence the trier of the facts...Judge Diane Shafer Goodstein. Judge Goodstein cannot be excused for a number of reasons. I have already addressed her failure to follow Chief Justice Jean Hoefer Toal's instructions in Administrative Order #2009-05-22-01.

(1) Tri Star Investments, Inc. v. Miele, 407 So. 2d 292 (Fla. Dist. Ct. App. 1981) “[T]he law is clear that a trial court has the inherent authority to dismiss an action when fraud has been perpetrated on the court. Such power is indispensable to the proper administration of justice, because no litigant has a right to trifle with the courts. It is a power, however, which should be exercised cautiously and sparingly, and only upon a clear showing of fraud, pretense, collusion, or similar wrongdoing. Young v. Curgil, 358 So.2d 58 (Fla. 3d DCA 1978). The court, however, should carefully adhere to established due process, adversarial practice, and evidentiary rules in conducting an inquiry into such charges.”

(2) State and federal courts have “[t]he inherent power to regulate litigation and to sanction litigants for abusive practices.” Vargas v. Peltz, 901 F. Supp. 1572, 1579 (S.D. Fla. 1995). See also Malautea v. Suzuki Motor Co., 987 F.2d 1536, 1545 (11th Cir.), cert. denied, 510 U.S. 863 (1993) (recognizing that federal courts have the inherent power to impose reasonable and appropriate sanctions on those appearing before them); Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989) (“[A] federal district court possesses the inherent power to deny the court’s processes to one who defiles the judicial system by committing a fraud on the court”); 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); Telectron, Inc. v. Overhead Door Corp., 116 F.R.D. 107, 126 (S.D. Fla. 1987) (stating the general rule).

(3) A litigant is deemed to have perpetrated a fraud on the court when “it can be demonstrated, clearly and convincingly, that a party has “sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the [trier of fact] or unfairly hampering the presentation of the opposing party’s claim or defense.” Cox, 706 So. 2d at 46 (quoting Aoude, 892 F. 2d at 1118). The “clear and convincing” standard is an intermediate standard of proof between a “preponderance of the evidence” and “beyond a reasonable doubt.” Smith v. Department of HRS, 522 So. 2d 956 (Fla. 1st DCA 1988). For evidence to be “clear and convincing” “[it] must be of such weight that it produces in the mind of the trier of a fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.” Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). See also Small Business Admin. v. Echevarria, 864 F. Supp. 1254 (S.D. Fla. 1994).

(4) The Circuit Court had the authority to dismiss Wells Fargo’s Complaint for engaging in dishonest conduct, abusing the judicial process, or otherwise perpetrating a **Fraud on the Court** by a consistent pattern of dishonesty during the

Stay/TRO. *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*, 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)); *Amway Corp. v. Shapiro Express Co.*, 102 F.R.D. 564, 569–70 (S.D.N.Y. 1984); *Cox v. Burke*, 706 So. 2d 43 (Fla. 5th DCA 1998)

(c) Attributing the false statements to Wells Fargo might account for some of the pattern of misinformation, misstatement of facts, false accusations and misrepresentation of material facts..but not all. My husband did not file an appeal to the dismissal of his complaint because it is not his desire to hurt these attorneys or damage whatever record they might have established for themselves. However, the Commission cannot excuse Burns and/or Moise for changing my plea.

C. **Background to James H. Burns’ Fraud upon the Court that occurred on or shortly after August 1, 2011 in his Certification of Compliance with Administrative Order 2011-05-02-01 {Exhibit 342}.**

25. Attorney Burns’ *Certification of Compliance with Administrative Order 2011-05-02-01* is dated August 1, 2011. {See Attached Exhibit 342}

Background:

(1) During May of 2008 {My Filed Exhibit 39 and Wells Fargo’s Filed Exhibits WF00122-123}, I contacted Wells Fargo’s Loss Mitigation Department in Fort Mill, South Carolina. The representatives that answered the phone told me Wells Fargo did not have a policy, process or procedure to modify a fraudulent, loan, note and/or mortgage. Based on our conversation, the supervisor concluded loan #0174072777 was procured either as a direct result of fraud or suspected fraud. I was instructed to resend or fax my request to cancel the loan along with any evidence of fraud or suspected fraud to an Executive Resolution Team in Des Moines, Iowa. I followed her instructions and was routed back to Janet Frotscher who told the **Ultimate Lies** on June 2, 2008 [WF00125-126] that are now the foundation of this foreclosure proceeding.

(2) When Moise and Burns began sending me documents for foreclosure participation, I relied on the information I received from Loss Mitigation in 2008. However, there was a possibility that Wells Fargo might have changed its policies since 2008, so I made this a condition to participate in any existing program or any program that might be established in the future for foreclosure intervention that would end the fraud associated with loan #0174072777. On July 29, 2011, Elizabeth Scott Moise verified the information that I had received in May of 2008 was accurate, reliable and..... had not changed in 3 years.

26. With the aforestated background, the reviewing Judges will know on pages 1-2..., attorney Burns is telling the truth and has accurately described the events. However, when he gets to page 3, paragraph 1, sentence #2, the old habits of misrepresenting the truth and/or material facts, [**Committing Fraud upon the Court**] either from Wells Fargo's or his own hidden **Dishonesty**.... re-emerges. Attorney Burns' statement;

“[M]ortgagor has failed to provide Wells Fargo with any documents or records for to evaluate eligibility for foreclosure intervention”

is...in Layman's language... an ABSOLUTE LIE.

(a) Attorney Burns statement is a verifiable misrepresentation of material facts because ACORN sent Wells Fargo documents for loan modification during July of 2008. The documents are dated and signed July 24, 2008. { *Exhibit 66* }

(b) GreenPath sent me documents.... from Wells Fargo...to send back... to... Wells Fargo for..... loan modification.... during November of 2009.... and..... I sent the documents back to Wells Fargo in a prepaid UPS package. The Documents are dated 11/20/2009. { *Exhibits 167-171, 175 & 176* } Wells Fargo already has the documents and I have no more documents to send. Wells Fargo has not sent me any more documents to participate in loan modification and I cannot create my own.

(c) In addition, I will not participate in Wells Fargo's unconscionable scheme to perpetuate the Seller's, Broker's and Appraiser's fraudulent misrepresentations in order to help Wells Fargo conceal the Unlicensed Seller's illegal loan transaction.... that Wells Fargo knowingly participated in by ignoring the misrepresentations that were in its possession since 12/04/2007. { *Exhibits WF00015-16, WF00021-22, WF00027, WF00029-32 & WF00066-73* }

(d) Perhaps the reviewing panel of Judges can discover why are these people, Judge Goodstein, attorneys, Burns, Moise, Calub and Janet Frotscher compelled to tell lies on me, persecute me and maliciously abuse me, violate the Constitutions of a Nation and State and the

Rules of Civil Procedure of a Nation and a State to foreclose on an old run down house that was obtained by violating the laws of a Nation and a State by an unlicensed Seller?

(e) I have done nothing to deserve Motions for Sanctions to produce documents Wells Fargo's law firm already has. Threatened with contempt of Court for not wanting to participate in a deposition that cannot be used against me by rule. {See Rule 30(b)(2), SCRPC} Especially, when nothing I can say in a deposition can change any judicial admission in a **Verified Pleading**. Judge Goodstein violated Rule 30(b)(2) and used it anyway without even entering it into the record as evidence or conducting a hearing to discuss it.

(f) I have been hounded for documents Nelson Mullins Riley & Scarborough, LLP, already have [WF00001-137], I have been LIED on and LIED about by attorneys and bank employees that I have done nothing to. Is it because I am African American / Black and the unlicensed Seller and his associates that Defrauded Wells Fargo out of \$75,000.00 are of European descent / "White"? Judge Goodstein did nothing about this abuse and even supported it.

D. Judge Goodstein's denial of Due Process by ignoring my demand for a jury trial since August of 2008 and ignoring my Rule 41(b) Motion to Dismiss since August of 2011, other injustices and evidence of biasness.

27. It is not within in a Trial Judge's "sound discretion" to ignore or violate Rule 38 (a)-(c), SCRPC – Jury Trial of Right.

(a) I filed a *Demand for Trial by Jury* on August 12, 2008 and again on July 17, 2013 in my *Opposition to Plaintiff's Wells Fargo Bank, N.A.'s Motion for Summary Judgment and Demand for Jury Trial* that is incorporated by reference as though fully set forth herein verbatim. My demands have been ignored. This is a clear Constitutional and Statutory violation in addition to being a violation of South Carolina's and the Federal Rules of Civil Procedure.

(1) Rule 38(a)-(c), SCRPC clearly states the following in pertinent parts.

“(a) Right Preserved. The 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.

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

(c) Same: Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action."

(d) A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a)."

(2) The Federal Rule 38 - Right to a Jury Trial; Demand clearly states...

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

(b) Demand. On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d).

(c) Specifying Issues. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable....."

(b) Judge Goodstein consistently failed to conduct a hearing and/or rule upon my demand for a Jury Trial. *{There is No Evidence in the Court's Records of a Trial for Me}*

(1) "[T]he right to trial by jury preserved by the Seventh Amendment is the right which existed under the English common law when the Amendment was adopted.. The Amendment not only preserves that right, but exhibits a studied purpose to protect it from indirect impairment through possible enlargements of the power of reexamination existing under the common law, and, to that end, declares that "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." Baltimore & Carolina Line, Inc. v. Redman, 295 U.S. 654 (1935)

(2) The aim of the Amendment is to preserve the substance of the common law right of trial by jury, as distinguished from mere matters of form or procedure, and particularly to retain the common law distinction between the province of the court and that of the jury, whereby, in the absence of express or implied consent to the contrary, issues of law are to be resolved by the court, and issues of fact are to be determined by the jury under appropriate instructions by the court. *Id.* 295 U.S., at 657.

(3) “[W]hether the facts are difficult or easy of ascertainment is immaterial, the guaranty of the Seventh Amendment operates to require the issues to be settled by the verdict of a jury unless the right thereto be waived.” *Slocum v. New York Life Ins. Co.*, 228 U.S. 364 (1913)

(c) 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).

E. **Just because I am a pro se/pro per litigant does not give Judge Goodstein the right to abuse me by fabricating testimony for summary judgment purposes or withhold information and explanations relative to my case.**

28. Courts across America have recognized that the “[p]roper scope of the court’s responsibility to *pro se* litigants is necessarily an expression of careful exercise of judicial discretion’ Each case presents a wholly different set of circumstances which require careful attention so as to preserve the rights of all parties.” {quoting *ABA Commission on Standards of Judicial Administration, Standards Relating to Trial Courts*, § 2.23 *Conduct of Cases Where Litigants Appear Without Counsel (Commentary)* (1976). According to *Austin v. Ellis*, 408 A.2d 784, 785 (New Hampshire 1979).}

(a) Thus, while stating that “rules apply to uncounseled litigants and must be enforced,” the *United States Court of Appeals for the 7th Circuit* also recognized that “[i]mplementation of many procedural rules entails exercise of discretion.” *Members v. Paige*, 140 F.3d 699, 703 (7th Circuit 1998). In the same case, *Members v. Paige*, the Court stated, “[T]wo problems require a remand for further proceedings. First, the disposition violates Circuit Rule 50....Rule 50 requires a statement of reasons for the decision that ends the case. A generic expla-

nation that could apply to every suit is the equivalent of no explanation. To satisfy Rule 50 the court must analyze the facts in relation to the law; neither the magistrate judge nor the district judge did that.” **Judge Goodstein did not analyze any facts in relationship to law or relevant case law.**

(b) The Court concluded, “discretion implies the power to say no, but when deciding whether to grant or deny . . . a motion a judge is entitled to consider all circumstances, including lack of counsel, that may have contributed” to a self-represented litigant’s error.” In Traguth v. Zuck, 710 F.2d 90, 95 (2nd Circuit 1983), the United States Appeals Court, 2nd Circuit, stated, “[A] judge may abuse his or her discretion if he or she fails to take into account a litigant’s self-represented status...” The U.S. Appeals Court added, “the district court also abused its discretion in failing to take into account Zuck’s pro se status.

(c) Implicit 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.

(d) While the right “[d]oes 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), trial 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 (2d Cir.1980).”

29. In Gamet v. Blanchard, the California Appeals Court stated the following: “[W]e further note that pro per litigants are not entitled to special exemptions from the California Rules of Court or Code of Civil Procedure. (Rappleveya v. Campbell (1994) 8 Cal.4th 975, 35 Cal. Rptr.2d 669, 884 P.2d 126.)” “[T]hey are, however, entitled to treatment equal to that of a represented party. Trial judges must acknowledge that pro per litigants often do not have an attorney’s level of knowledge about the legal system and are more prone to misunderstanding the

court's requirements. When all parties are represented, the judge can depend on the adversary system to keep everyone on the straight and narrow. When one party is represented and the other is not, the lawyer, in his or her own client's interests, does not wish to educate the pro per. The judge should monitor to ensure the pro per is not inadvertently misled, either by the represented party or by the court. While attorneys and judges commonly speak (and often write) in legal shorthand, when a pro per is involved, special care should be used to make sure that verbal instructions given in court and written notices are clear and understandable by a layperson."

30. Like my *Rule 41(b) Motion to Dismiss with Prejudice*, Judge Goodstein never scheduled a hearing to rule on any of my Counterclaims or Affirmative Defenses.

F. Facts and Procedural History relative to Judge Goodstein's striking my Counterclaims and Affirmative Defenses without notice and/or a hearing.

31. Judge Goodstein did not notify me or explained her reason/s and/or identified any deficiencies in my *Answer* before striking my Counterclaims and Affirmative Defenses from the record. Excluding Conclusions of Law, in other courts, **Verified Pleadings** are deemed to be admissions of fact when submitted to the Court and therefore.....remain a permanent part of the the record. Judicial admissions in **Verified Pleadings** must be ruled upon.

"[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). "[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.3d 205, 209, 196 Ill.Dec. 567, 630 N.E.2d 502 (1994). "[O]nce 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.*" *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),

32. In *Bolling v. Sharpe*, 347 U.S. 497 (1954), the Supreme Court of the United States held that: "[T]he concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive." . South Carolina's Supreme Court has written:

“[T]he constitutional guaranty of equal protection of the laws requires that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.... The equal protection guaranty is intended to secure equality of protection not only for all, but against all similarly situated.” Thompson v. South Carolina Comm'n on Alcohol and Drug Abuse, 267 S.C. 463, 472, 229 S.E.2d 718, 722 (1976).

33. By striking my counterclaims without notice and without giving me an opportunity to be heard, object or given an explanation as to why this was done, Judge Goodstein failed to “Substantially Comply” with *Subdivision (A) of CANON 2: Of the Code of Judicial Conduct (Rule 501 SCACR "South Carolina Appellate Court Rules")* that clearly state:

“[A] judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

34. Judge Goodstein’s actions also indicates a failure to “Substantially Comply” with *Subdivision (B)(5) of CANON 3: Of the Code of Judicial Conduct (Rule 501 SCACR "South Carolina Appellate Court Rules")*, that clearly states:

(1) “[A] judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability or age, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.”

(2) “[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). “[W]hen 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).

(3) “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” 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). “[P]rocedural due process mandates that a litigant be placed on notice of the issues which the court is to consider.” Murdock v. Murdock, 338 S.C. 322, 526 S.E.2d 241 (Ct. App. 1999). “[T]he Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

(4) “[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 Procedural due process requires notice, the opportunity to be heard in a meaningful way, and judicial review.” *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); *South Carolina Dep’t of Health and Env’tl. Control v. Armstrong*, 293 S.C. 209, 359 S.E.2d 302 (Ct. App. 1987). “[w]ithout 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 if 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.” *Murdock v. Murdock*, 338 S.C. 322, 526 S.E.2d 241 (Ct. App. 1999).

G. Judge Goodstein has denied me “Due Process of Law” by refusing to let my witness speak on my behalf and giving me 5 minutes to present a motion is unreasonable...and...I told her that in Court on September 6, 2012.

35. It is not within a Trial Judge’s “sound discretion” to: **Deny me “due process of law” by refusing to let my witness speak on my behalf and giving me 5 minutes to present a motion is unreasonable and I told her that in Court on 09/06/2012.** Judge Goodstein has not allowed my witness to speak since 2008 when he told her a statement she made was not entirely true. Judge Goodstein was limiting admissions for Wells Fargo to twenty and said that was all the rule allowed. The witness told her..there are many cases that require more than 20 admissions and he presented a case to her that had over 100. He also had a case file that had over 1,000. Judge Goodstein took the case file that had over 100 and never gave it back. Attorney Burns knows this is true because he was in court when it happened. Judge Goodstein then said, “In my court there is only going to be twenty.”

36. On September 6, 2012, at the hearing for attorney Calub’s Motion, my witness was not only..... not allowed to speak....., he was ushered out of the Courtroom by the Security Guard for trying to assist me.... and not allowed back in. Attorney Brian A. Calub knows this is true... because he was there. This is the same date of his deposition. I was nervous because Judge Goodstein gave me 5 minutes; in a crowded Courtroom, to find my *Rule 41(b) Motion* and pre-

sent it and threaten me with contempt of Court, if I did not agree to the deposition. *{I was so upset over the incident, I don't even remember what I said or answered during the deposition. Attorney Calub took advantage of me & the incident.}*

37. On September 6, 2012, I was totally unprepared to present my Motion. I had forgotten the Caption I had filed it under and its place in my notebook. The witness came forward to help me find it and reminded me of the Caption title, for this he was ushered out of Court. I came to the hearing to object to a motion and subpoenas for documents Nelson Mullins Riley & Scarborough, LLP already had [WF00001-137], not to discuss my *Rule 41(b) Motion to Dismiss*. *{The Transcripts might not be too helpful....unless..... the Court Recorder, actually described the incident in writing.}*

38. On September 3, 2013, at attorney Burns' hearing for Summary Judgment, Judge Goodstein silenced my witness again and would not allow him to speak. Attorney Burns knows this is true. To me...this is egregious judicial misconduct...and the conduct is inexcusable; especially, when considering violations of my constitutional right to a fair and impartial hearing and/or trial is inviolate.

(a) "Due process of law" is guaranteed in the 5th and 14th Amendments and by Article I, § 3 in South Carolina's Constitution. The 7th Amendment guarantees a trial in a Civil Case unless waived....and...Article I, § 14 in South Carolina's Constitution, guarantees me the right to have witnesses speak on my behalf. No court has the legal authority to deny a citizen of the United States a fair hearing and a fair trial based on the truth, the evidence and the facts.

(b) In addition, when I come to Court, I rely upon the following:

(1) *Rule 13(a), SCRMC* that 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." This did not happen in Judge Goodstein's Court.

(2) *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."

(3) "[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.")

(4) 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.")

H. Judge Goodstein has actually LIED on a Court Order.

39. Since Judges are human beings, partiality, biasness, prejudice and indifference are actualities an individual can expect from a sitting Judge. However, LYING is something entirely different and totally unexpected; especially, since a Judge, as an Officer of the Court, does not have to LIE. Judge Goodstein's first misrepresentation or OUTRIGHT LIE is on Pg 1, in ¶ 2, sentence #1, in her ***Order Granting Plaintiff's Motion to Compel Discovery, Issuing Stay, and Granting Motion for Continuance*** that is dated March 7, 2012.

"[T]he Court conducted a hearing on December 6, 2011 to address and consider Wells Fargo's motions and the objections filed by the Defendant and Witness. Counsel for Wells Fargo and the pro se Defendant appeared. "After hearing the arguments and considering the filings and arguments made by the parties, the Court hereby grants Wells Fargo's motion to compel discovery and motion for continuance, for good cause shown."

The evidence of this misrepresentation or OUTRIGHT LIE can be found in the Transcript of the Hearings, if still available. The witness is not even mentioned, though present. {*Exhibit 255, ¶ 2, Sentence #2*}

(1) Judge Goodstein did not consider any arguments I filed. The witness was not even allowed to speak and attorney Calub knows this is true. In addition, Judge Diane Goodstein signed an Order to Compel Discovery for documents Nelson Mullins Riley & Scarborough already had [WF00001-137].

(2) Attorney Calub did not show any Good Cause and even admitted Wells Fargo did not substantially comply with Administrative Order #2009-05-22-01 in her Courtroom. Thus...verifying my statement of fact relative to Wells Fargo's failure to substantially comply with the Administrative Order. {See the Transcript of the Hearing Held on 12/6/2011 & *Verified Pleadings* from 2009-2012}

40. It is not within a trial Judge's "sound discretion" to base Court Orders on ABSOLUTE LIES. Judge Goodstein's misrepresentations were so brazen until I filed a Petition for her recusal on March 23, 2012 . {Exhibit 333 & § 16-9-10(2)- SC Code of Laws}

"[j]udicial independence is predicated on "good faith" decision-making. It was never intended to include "bad-faith" decision-making, where a judge knowingly and deliberately disregards the facts and law of a case. This is properly the subject of disciplinary review, irrespective of whether it is correctable on appeal." {*The Long Term View, Massachusetts School of Law, Vol. 4, No. 1, 1997, pp. 90-97*}

41. On 09/03/2013, at attorney Burns' hearing for Summary Judgment, Judge Goodstein silenced my witness again and would not allow him to speak. Attorney Burns knows this is true.

42. In 6 years, Judge Diane Shafer Goodstein never reviewed the evidence relative to Case 2008-CP-38-1024.... or.. considered or referred to any of my objections, testimony or affidavits.

(a) You will not find any reference to evidence or genuine facts in any Court Order or transcript other than attorneys stating what I am suppose to believe about Wells Fargo's note's falsified value. After the initial hearing in 2008, no witness has been allowed to speak or present any evidence.

(b) After 6 years, there is still no reference or ruling on my demand for a jury trial that was filed in August of 2008. There has been no ruling or reference to my *Rule 41(b) Motion to Dismiss* that was filed in August of 2011. This motion was filed due to Wells Fargo's attorney, Brian A. Calub's admitting in Judge Goodstein's Courtroom that Wells Fargo had not "Substantially Complied" with *Supreme Court Order #2009-05-22-01*.

(c) After 6 years, you will not find any affidavits, interrogatories, testimony, admis-

sions, depositions, certified documents or any other supporting documentation that disputed, refuted, denied, contested, controverted or disproved any *Sworn Statement of Fact* that I have filed in **Verified Pleadings**, **Notarized Pleadings** or in any **Affidavit** filed by myself or any witness.

(d) For 6 years, Wells Fargo has failed to prove loan #0174072777 supporting documents are not falsifications, fraudulent misrepresentations of material facts, fraudulent concealment of material facts, forgeries, alterations and do not violate Federal and State Laws. Wells Fargo has failed to prove its loan is not being maintained by false accusations, concealment of material facts from government agencies; e.g., SCDCA and the OCC, the perjured testimony of Senior Counsel Elizabeth S. Hodgson and... this does not include the **Massive Filing Fraud** of Burns and Moise.

I. **In addition to lying on Court Orders, Judge Goodstein has signed Court Orders that misrepresents the facts.**

43. Judge Goodstein's latest series of misrepresentations and/or distortions or total disregard for the evidence, the truth and the facts; can be found in Judge Goodstein's Partial Summary Judgment Order dated March 27, 2014. I have no idea where Judge Goodstein found yard work as the reason for leaving Coburg Lane. This is a complete fabrication or misunderstanding that comes from somewhere. {*Exhibit 329, pg 2, ¶ 1*}

(a) Contrary to Judge Goodstein's misrepresentations...and...fabrications that are primarily based on Wells Fargo's misrepresentations and distortions of fact, my defense has never been based on the malfeasance of the Seller, Appraiser...and...the Broker. { *Exhibit 329, Pg 1, footnote 1 & Pg 6, @ ¶ 26*}

(b) My repeated reference to the Broker, Appraiser and the Seller is based on common sense reasoning. Documents do not create themselves and Wells Fargo's document file clearly identifies the source/s. [WF00001-38] **Proof:** Judge Goodstein can consult my

original **Verified Pleadings** at anytime.

(c) The misrepresentations or distortion of the facts in Court Order that was drafted by Nelson Mullins Riley and Scarborough for Judge Goodstein to sign on March 27, 2014

(1) "The loan closed on December 21, 2007, and the Defendant and her lawyer attended the closing." {Pg 3 @ ¶ #12} In my family, any statement that is not true is a LIE. Elizabeth Scott Moise and/or James H. Burns simply LIED. No lawyer attended the closing with me.

(2) "The cost of yard work is the reason the Defendant needed new housing." {Pg 2 @ ¶ #1} This is an ABSOLUTE LIE. The cost of yard work had nothing to do us not wanting to buy Tommy Mitchell's 14 ft x 66 ft, 2 bedroom, singlewide, 1984 mobile home for \$40,000.00.

(3) "The Defendant admits she has no evidence linking Wells Fargo to the actions of the seller or appraiser." (Moise left out the broker.) Wells Fargo is the only entity that has ever sent me WF00001-13 and this is after I called WFHM on January 14, 2008. This appraisal is a forgery by substitution. I have never admitted having no evidence linking Wells Fargo to the actions of the Seller and Appraiser in any **Verified Pleading** or at any hearing.

(4) "After Defendant's husband looked at several homes with Jacobs, her husband decided to purchase a home located at 423 Bayne Street." {Pg 2 @ ¶ #3} My husband did not look at any homes and decided to purchase 423 Bayne Street. This is a misstatement of fact that is not supported by the evidence, Pleadings or the Court's Records. His interest was lease or rent. {See Exhibit 30 for Additional Evidence and Proof}

(5) "Defendant's husband contacted Thomas Jacobs to inquire about various properties he had for sale." {Pg 2 @ ¶ #2} My husband never contacted Thomas Jacobs about any houses he had for sale. This is a misstatement of fact that is not supported by the evidence, Pleadings or the Court's Records. His interest was lease or rent. {See Exhibit 30 for Additional Evidence and Proof}

(6) "In the month prior to closing, Defendant and family did not move into 423 Bayne Street and started cleaning." {Pg 2 @ ¶ #4} My husband began cleaning up 423 Bayne Street at the end of September and real work did not start until October 12, 2007. Lee Orr, our neighbor and witness to these events (now deceased) supplied the power for vacuum cleaners, power tools and lights. Even after my husband began cleaning up 423 Bayne Street, we were still looking for a home to rent. {Exhibit 4, Pg #8}

(7) "The Defendant alleges that during negotiations for purchasing 423 Bayne Street..." {Page 2 @ ¶ #5} There were never any negotiations to purchase 423 Bayne Street. The \$75,000.00 price was for a renovated house that never happened. My husband came up with \$30,000.00 for the unfinished house and Thomas Jacobs agreed it was a fair price.

(8) **“Defendant admits that neither she nor her husband advised Wells Fargo of any of the representations that Jacobs made to them.”** This statement is another ABSOLUTE LIE. (Moise left out the broker & appraiser.) Wells Fargo has been notified since 12/22/2007. {Pg 2 @ ¶ #6}

(9) **“...because she trusted the seller.”** {Pg 3, @ ¶ #15} This is a misstatement of fact. I had no reason not to believe the seller, since he owned the property.

(10) **“Defendant received the appraisal on January 12, 2008 and she believed it was incorrect.”** {Pg 4 @ ¶ #17} This statement is a misrepresentation of a material fact. I have never ever said I believed anything. I know for a fact Wells Fargo 7-59 appraisal is falsified because I live at 423 Bayne Street and I know for a fact the true condition of the property.

(11) **“Defendant admits she has no evidence linking Wells Fargo to the actions of the seller or appraiser...”** {Pg 4 @ ¶ #21} I have never admitted in any **Verified Pleading** or at any hearing that I have no evidence linking Wells Fargo to the actions of the seller or appraiser. (She forgot the broker.)

(12) On Pg 5 @ ¶ #24 is the evidence my plea was changed to fraud. My defense plea has always been and always will be **Defrauding** or **Swindling**.

(13) On Pg 6 @ ¶ #26 is the evidence of the violation of *Rule 30(b)(2), SCRPC*. Not only was the deposition not reviewed and could not be used against me, it was not even signed.

J. In addition to lying on Court Orders and signing Court Orders that misrepresented the facts, Judge Goodstein has also violated the Rules of Civil Procedure.

44. It is not within a Trial Judge’s “sound discretion” or any Officer of the Court to: **Violate...or...Ignore South Carolina’s Rules of Civil Procedure.** Under depositions upon oral examination, *Rule 30(b)(2), SCRPC* clearly states the following in pertinent parts...

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

(1) Judge Goodstein knows, I am a Pro Se / Pro Per litigant. Judge Goodstein violated the rule without giving me an opportunity to clarify any statement/s before she misquoted them and turned them into misstatements of fact and/or misrepresentations on signed Court Orders.

(2) *Rule 32(a)(4), SCRPC*, clearly states in pertinent parts.. “[I]f only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.” **Judge Goodstein quoted from excerpts from Attorney Calub’s deposition that I never received and to date...still have not received.**

(3) *Rule 32(a)(5), SCRCF*, states the following in pertinent parts.... "[A] t least 1 day prior to offering excerpts from a deposition in the case in chief counsel, unless otherwise ordered by the trial judge, shall furnish to the trial judge and, at the same time and by the same means, furnish to all opposing counsel the excerpts from depositions (by page and line number) and a list of deposition exhibits which counsel expects to introduce in the case in chief at trial. When the deposition excerpt is offered at trial counsel for the adverse party shall furnish to the trial judge and, at the same time and by the same means, furnish to all opposing counsel any objections (by page and line number) to opposing counsel's deposition excerpts and any additional excerpts from the depositions (by page and line number) which counsel expects to be read pursuant to SCRCF (a)(4), as well as a list of deposition exhibits to be used. With reasonable notice to the trial judge and all counsel, other excerpts may be read." **Judge Goodstein violated this rule as well. Rule 32(a)(5) requires that excerpts of depositions and deposition exhibits that are to be used in the party's case in chief are to be provided to the judge and counsel 1 day before use. This was not done before or after Judge Goodstein's Order.**

45. Judge Goodstein also violated *Rule 43(a), SCRCF* that clearly states in pertinent parts.....

"[I]n all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes or rules of evidence heretofore applied in the courts of this State. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.."

46. Judge Goodstein violated *Rule 56(c), (d) and (e), SCRCF* that clearly states the following in pertinent parts....

(1) *Rule 56(c), SCRCF* – "[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." **Judge Goodstein did not consider or refer to any of my affidavits, pleadings, answers to interrogatories and/or admissions.**

(2) *Rule 56(d), SCRCF* – "[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.” **Judge Goodstein did not examine any of my evidence or exhibits. Material facts were not even discussed and she has never directed any further proceedings into the action as just. She has simply agreed to or followed everything Wells Fargo suggests or wants by way of Court Orders. This is the classic definition of a Kangaroo Court or a Jim Crow Court in the South before the Civil Rights Act. {Review American History 16th – 20th Century}**

(3) Rule 56(e), SCRPC – “[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. 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.” My affidavit refuting Amanda Weatherly’s claims was not even discussed..an...attorney Burns did not offer any other affidavits based on personal knowledge or certified copies.

(A) Black’s Law Dictionary (2nd ed. 1910), pg 1172, defines Trial in pertinent parts as the following; “[T]he examination before a competent tribunal, according to the law of the land, of the facts or law put in issue in a cause, for the purpose of determining such issue. A trial is the judicial examination of the Issues between the parties, whether they be issues of law or of fact.” This never happened for me in Judge Goodstein’s Court.

(B) Black’s Law Dictionary (5th ed. 1979) on pg 780, defines a Kangaroo Court as the following: “[T]erm descriptive of a sham legal proceeding in which a person’s rights are totally disregarded and in which the result is a foregone conclusion because of the bias of the court or other tribunal.” This is what I have been experiencing in Judge Goodstein’s Court room for over 6 years and Wells Fargo’s attorneys Burns and Calub knows what I am saying is true.

(C) Blacks Law Dictionary (Rev. 4th ed. 1968), pg 287, defines Certified Copy as the following: “[A] copy of a document or record, signed and certified as a true copy by the officer to whose custody the original is intrusted. People v. Foster, 27 Misc. 576, 58 N.Y.Supp. 574; Ehrlich v. Mulligan, 104 N.J.Law, 375, 140 A. 463, 465, 57 A.L.R. 596.

47. If the court is going to pass judgment, I have a legal right to demand Judge Goodstein follow South Carolina’s Rules of Civil Procedure or recuse herself from this case pursuant to 28

U.S.C. 455(a). Judge Goodstein should have recused herself if she had personal issues or bias.

"[A] judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including instances where he has a personal bias or prejudice against a party."

Koon v. Fares, 379 S.C. 150, 156, 666 S.E.2d 230, 234 (2008). "[I]t is not sufficient for a party seeking disqualification to simply allege bias; rather, the party must show some evidence of bias or prejudice. If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal." *Id.*

(1) In 1994, the U.S. Supreme Court held that "[D]isqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994).

(2) "[p]ositive proof of the partiality of a judge is not a requirement, only the appearance of partiality." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); United States v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985) ("[S]ection 455(a) is directed against the appearance of partiality, whether or not the judge is actually biased." "Section 455(a) of the Judicial Code, 28 U.S.C. 455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

(3) "[S]ection 455(a) 'requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned.'" Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). In Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972), the Court stated that "[I]t is important that the litigant not only actually receive justice, but that he believes that he has received justice."

(4) "[j]ustice must satisfy the appearance of justice", Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice. "[R]ecusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989).

(5) "[F]urther, the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification." The *Seventh Circuit Court of Appeals* further stated that "[W]e think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed." Balistrieri, at 1202.

(6) “[S]hould a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution.” *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) (“The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.”).

K. Judge Goodstein’s actions also violated provisions for a fair and impartial trial as outlined in South Carolina’s Rules of Evidence.

48. By not allowing me to present evidence, Judge Goodstein violated South Carolina’s evidentiary procedures. “[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.” *Armstrong v. Collins*, 366 S.C. 204, 223, 621 S.E.2d 368, 377 (Ct. App. 2005)

(a) “[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*

(b) “[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*

(c) “[E]very person is competent to be a witness except as otherwise provided by statute or these rules.” *Rule 601(a), SCRE*

(d) “[I]f the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.” *Rule 701, SCRE*

(e) “[T]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” *Rule 704, SCRE*

X. WHEN VIEWED IN THE LIGHT OF THE EVIDENCE, THE COURT ORDER NELSON MULLINS RILEY & SCARBOROUGH, LLP, DRAFTED FOR JUDGE GOODSTEIN TO SIGN, VERIFIED MY STATEMENTS OF FACT

49. The Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved and signed by Judge Goodstein, verified my *Statement of Fact* that Wells Fargo's filed documents showed.. **"Austin authored an appraisal that listed the value of 423 Bayne Street at \$75,000.00."** {Exhibit 329 Pg 3 @ ¶ #8} According to Wells Fargo's documents, Jim H. Austin, III {WF00078} is the author of the forged and falsified 7-59 appraisals. {WF00001-27}

50. The Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved and signed by Judge Goodstein, verified my *Statement of Fact* that there are... **"various alterations to the sales contract after I signed it."** {Exhibit 329 Pg 3 @ ¶ #10; WF00029 & Exhibit 141}

51. The Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved and signed by Judge Goodstein, proves with clear and convincing evidence that **"At the closing, Defendant signed a Fixed-Rate ("Note") in principal sum of \$75,000.00."** In pertinent parts, the Note states as follows:

"In return for a loan that I received, I promise to pay U.S. \$75,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is WELLS FARGO BANK, N.A." {Exhibit 329, Pg 3 @ ¶ #13}

52. The Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved and signed by Judge Goodstein, verifies my *Affirmative Defense* that **Wells Fargo's Fixed-Rate Note is based on the falsified and inflated value of Jim H. Austin, III's 7-59 appraisals** [WF00001-26 that were ordered for the Seller – WF00027] **that federal law defines as Mortgage Fraud.** {12 CFR § 1731.2(c)(e)} therefore, it is void and a nullity as a matter of law; due to misrepresentations of material facts.

(a) This fact is also verified by Janet Frotscher in her letter, dated, February 21, 2008 where she clearly states, in pertinent parts @ ¶ #5, **the appraisal was reviewed “and found... acceptable for our lending purposes.”** {Exhibit WF00120} In her letter dated, June 2, 2008, Janet Frotscher identifies the appraiser as Jim H. Austin, III @ ¶ #4. {Exhibit WF00125} Wells Fargo’s document file firmly establishes the appraiser as Jim H. Austin, III. {Exhibit WF00078}

(b) David Terrell in his letter to SCDCA, never states he brokered a loan, but he does state, **“We ordered the appraisal...”** {Exhibit 49 @ Sentence #2} Thomas Jacobs never states David Terrell brokered a loan either, but he does state that he sold the property. {Exhibits 35 & 36} Based on the document file...“the ‘WE’”...includes Thomas Jacobs and Jim H. Austin, III.

53. The Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved and signed by Judge Goodstein did not deny or refute **423 Bayne is the physical evidence of the Seller’s, Broker’s and Appraiser’s Conspiracy to Defraud...Wells Fargo’s Insurance Fraud...and...Wells Fargo’s Perpetuation of that Fraud** with the falsified, forged, altered and unauthorized documents of the Seller, the Broker, the Appraiser and Wells Fargo’s own employees; most notably, Janet Frotscher.

“Defendant secured her payment obligations under the Note by executing a thirty-year Mortgage (“Mortgage”) that encumbers 423 Bayne Street.” {Exhibit 329, Pg 3 @ ¶ #14}

54. The Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved and signed by Judge Goodstein also did not deny or refute **423 Bayne is the physical evidence of Wells Fargo’s Scheme or Artifice to Defraud or Swindle** me out of money and/or property with the falsified, forged, altered and unauthorized documents of the Seller, the Broker, the Appraiser and Wells Fargo’s own employees; most notably, Janet Frotscher who concealed and misrepresented material facts after they were known.

“Defendant secured her payment obligations under the Note by executing a thirty-year Mortgage (“Mortgage”) that encumbers 423 Bayne Street.” {Exhibit 329, Pg 3 @ ¶ #14}

XI. WHEN VIEWED IN THE LIGHT OF THE EVIDENCE, THE FACTS AND THE TRUTH, THE COURT ORDER NELSON MULLINS RILEY & SCARBOROUGH, LLP, DRAFTED FOR JUDGE GOODSTEIN TO SIGN, VERIFIES I AM AN INNOCENT VICTIM OF A WELL EXECUTED CONSPIRACY TO DEFRAUD

55. The Partial Summary Judgment Order that was drafted by Nelson Mullins Riley & Scarborough, LLP, that was approved and signed by Judge Goodstein, verifies I am an innocent victim of a well executed Conspiracy to Defraud. Thomas Jacobs and David Terrell's letters to SCDCa verifies this fact as well. In no letter do any one of them state, what was done for me. All of their statements hide the fact what they did to me. Once Burns and/or Moise's misrepresentation of facts are removed, the truth can be clearly seen and stated.

(a) **"The loan closed on December 21, 2007, and no lawyer attended the closing with the Defendant."** {Pg 3 @ ¶ #12}

(b) **"The cost of yard work had nothing to do with the Defendant needing new housing."** {Pg 2 @ ¶ #1}

(c) **"The Defendant's husband contacted Thomas Jacobs to inquire about various properties he had for rent."** {Pg 2 @ ¶ #2} {See Exhibit 30 for Additional Evidence and Proof}

(d) **"After Defendant's husband looked at several homes with Jacobs, her husband decided to rent a home located at 423 Bayne Street."** {Pg 2 @ ¶ #3} {See Exhibit 30 for Additional Evidence and Proof}

(e) **"In the month prior to closing, Defendant and family did not move into 423 Bayne Street and started cleaning."** {Pg 2 @ ¶ #4} They were still at 5074 Coburn Lane.

(f) **"There were never any negotiations about purchasing 423 Bayne Street..."** {Pg 2 @ ¶ #5} The renovated house was \$75,000. Without renovations, it was less.

(g) **"Defendant admits that she and her husband advised Wells Fargo of the re-**

presentations that Jacobs made to them.” {Pg 2 @ ¶ #6} (In a taped message on December 22, 2007, telephone calls on December 24, 2007, January 14, 2008, February 25, 2008 and in written correspondence for over 6 years.. Exhibits 1-297)

(h) The original Contract of Sale has never been produced by Wells Fargo. The original Contract of Sale does not have an “AS IS” clause. In addition, the Contract of Sale Wells Fargo does have is forged and altered, even if an “AS IS” clause was not added later.

(i) The Defendant received the appraisal on January 12, 2008 {Pg 4 @ ¶ #16} and realized not only was it not corrected.... it was falsified. {WF000014-26}

(j) Plaintiff alleges default on her payments {Pg 4 @ ¶ #16} However, the real truth is the Defendant informed Wells Fargo on March 6, 2008, she was not going to **Perpetuate a Fraud**. On March 6, 2008, the Defendant did not even realize she had signed a sales contract. What she remembered was a Contract of Sale. {Pg 3 @ ¶ #7}

(k) Defendant admits she does have evidence Wells Fargo played a role in creating the appraisal authored by Austin. {Pg 3 @ ¶ #9}

(l) Defendant does not know who altered the sales contract. {Pg 3 @ ¶ #11} However, she does accuse Wells Fargo’s personnel because Wells Fargo sent her 2 different sales contracts. Both changed, but one is altered and her initials are forged.

(m) “The Defendant admits she has evidence linking Wells Fargo to the actions of the seller or appraiser.” {Pg 4 @ ¶ #21} Wells Fargo is the only entity that sent her WF00001-13 and this is after she called WFHM on January 14, 2008. This appraisal is a forgery by substitution. **She has never admitted having no evidence linking Wells Fargo to the actions of the Seller and Appraiser in any Verified Pleading or at any hearing.**

(n) “...because she had no reason not to believe the seller.” {Pg 3, @ ¶ #15} The seller owned the property and she knew of no law that prevented him from lowering the price.

XII. EXHIBITS, STATUTORY LAW, ADMINISTRATIVE LAW AND CASE LAW THAT SUPPORT MY COUNTERCLAIMS AND AFFIRMATIVE DEFENSES THAT ARE IN VERIFIED PLEADINGS THAT WERE NEVER REVIEWED, RULED UPON, DISCUSSED OR STRICKEN BY JUDGE GOODSTEIN

A. Wells Fargo's fraudulent loan, note and mortgage is Unconscionable.

56. My Counterclaim & Affirmative Defense that Wells Fargo's loan, mortgage and note constitute an **Unconscionable** loan transaction is supported by *Section 37-5-108(1)-(4)(a)(1)(ii) – SC Code of Law* that required Judge Goodstein to determine whether or not this statute applied to Wells Fargo's illegal loan transaction under South Carolina law if I believed the transaction gave rise to, or led me to believe it will give rise to a credit transaction or agreement that was unconscionable at the time it was made. **Unconscionable** is also supported by Wells Fargo's [Exhibits WF00001-38, 66-73, 58, 60, 64, 74 & 97]

57. "[S]outh Carolina courts must examine two factors to determine whether an agreement is unconscionable: (1) whether the party opposing the agreement lacked a meaningful choice in entering into the agreement and (2) whether the agreement's terms are "so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007) No fair and honest person will knowingly participate in a **Conspiracy to Defraud**.

B. Wells Fargo's & Wells Fargo's hired lawyers have violated the Compliance Agreement and are therefore have "Failed to Perform".

58. My Affirmative Defense that Wells Fargo and/or Wells Fargo's attorneys have violated its own Compliance Agreement; [WF00117] is supported by the lack of evidence in the Courts Records relative to **Performance**. Wells Fargo's hired lawyers have failed to perform by concealing the material fact that no supporting documentation exists that can prove Golden Gate Mortgage/David Terrell/GoldenGate Mortgage/Goldengate Mortgage/Golden Gate Mortgage, Inc., actually brokered a loan. Such documentation does not exist in reality, actuali-

ty or fact and they do not exist in the Court's Record of my case. *{Examine the Court's Records for More Evidence and Proof This is True}* Not even the so-called broker admits loan 0174072777 was brokered pursuant to South Carolina law. *{Exhibits 35-37 & 49}*

59. Because loan #0174072777 was brokered illegally by the Unlicensed Seller – Thomas Jacobs and all Wells Fargo's supporting documents that were used to approve the loan belong to the Seller, or were obtained by the fraudulent inducements of the Seller, [WF00064 & 74], Golden Gate Mortgage/David Terrell is an agent of and acted on behalf of the Seller. [WF00-027] Neither David Terrell nor Thomas Jacobs stated in their letters to SCDCA a loan was brokered for Dorothy Sistrunk. *{Exhibits 35-37 & 49}*

60 There is no document in the Court of Common Pleas Records; relative to Case 2008-CP-38-1024, evidencing Wells Fargo's hired lawyers have **Performed** and reported these facts to Wells Fargo. *{Review the Records of Case 2008-CP-38-1024}*

61. Under Wells Fargo's Compliance Agreement, Wells Fargo has a [D]uty to adjust any all closing documents to conform and be acceptable to the marketplace in the instance of transfer, sale or conveyance to any entity. "[D]uty' is a question of whether the Plaintiff is under any obligation for the benefit of the Defendant; and in negligence cases, the [D]uty is always the same--to conform to the legal standard of reasonable conduct in the light of the apparent risk." Huggins v. Citibank, N.A., 355 S.C. 329, 333, 585 S.E.2d 275, 277 (2003). "What the Plaintiff must do, or must not do, is a question of the standard of conduct required to satisfy the [D]uty." *Id.* " An affirmative legal [D]uty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Carson v. Adgar, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1997) **Assure** means "[t]o make certain and put beyond doubt." *{BLD}*

62. Under the terms of Wells Fargo's Compliance Agreement, [WF00117] I must cooperate with anyone acting on behalf of Wells Fargo in order to **assure** the loan documentation that was

executed conforms and is acceptable to the marketplace in the instance of transfer, sale or conveyance to any entity including but not limited to any investor, Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) Federal Home Loan Mortgage Corporation, Department of Housing and Urban Development, Veterans Administration or any Municipal Bonding Authority. The Burden of Proof and adjustments for errors and omissions is on Wells Fargo and anyone representing Wells Fargo or acting on behalf of Wells Fargo must notify Wells Fargo if the loan's documentation does not conform.

(1) "[T]he passive nondisclosure of information, one party has an affirmative duty to disclose information, and that party's failure to disclose the information serves as a substitute for the false representation element required in fraud." *Triggs v. Risinger*, 772 S.W.2d 381, 382 (Mo.App.1989); see, also, *Scott v. Hill*, 330 Mo. 490, 50 S.W.2d 110, 111 (1932)

(2) *Smith v. General Motors Corp.*, 979 S.W.2d 127, 129 (Ky.Ct. App.1998); *Osterberger v. Hites Construction Co.*, 599 S.W.2d 221, 227 (Mo.App. 1980). "[I]t is, of course, well established that mere silence is not fraudulent absent a duty to disclose." *Smith*, 979 S.W.2d at 129. "[A] duty to disclose may arise from a fiduciary relationship, from a partial disclosure of information, or from particular circumstances such as where one party to a contract has superior knowledge and is relied upon to disclose this knowledge." *Id*

(3) "[W]hether a legal duty exists is a question of law." *Hallquist v. Midden*, 196 S.W.3d 601, 604 (Mo.App. E.D.2006). "[A] legal duty owed by one party to another may arise under at least three sources: (1) the legislature; (2) the law; or (3) a contract." *Cupp v. National Railroad Passenger Corp.*, 138 S.W.3d 766, 771 (Mo.App. E.D.2004). "[I]n nondisclosure cases, a party's silence amounts to representation where the law imposes a duty to speak." *Andes*, 853 S.W.2d at 943.

C. **Wells Fargo's is engaged in a scheme or artifice to Defraud or Swindle me out of property and/ or money with falsified, forged, altered, and unauthorized documents of 2nd and/or 3rd parties.**

63. My **Counterclaim** that Wells Fargo is engaged in scheme or artifice to **Defraud** or **Swindle** me out of property and/or money with the falsified, forged, altered and/or unauthorized documents of the Seller, the Broker, the Appraiser and/or Wells Fargo's own employees. The relevant documents have been identified and explained with specificity..and...particularity in this

pleading and every Verified Pleading filed in the Court of Common Pleas for almost 7 years.

D. Wells Fargo's has demonstrated "Willful Blindness".

64. My Affirmative Defense of "Willful Blindness" after being duly notified and after all the facts were known is supported by Janet Frotscher's relevant letters that have been identified and explained with specificity and particularity in this pleading and others. Under the willful blindness doctrine, I must prove (1) Wells Fargo believed that there is a high probability that a fact exists and (2) Wells Fargo took deliberate actions to avoid learning of that fact. Using this standard, the United States Supreme Court defined a willfully blind defendant as "[o]ne who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts." "Knowledge of the fact is sufficient."

E. Wells Fargo's Comparative Negligence & Failure to Mitigate Losses.

65. My Affirmative Defense of "Comparative Negligence" is base upon the fact Contributory Negligence has been replaced with Comparative Negligence in South Carolina. Wells Fargo's losses are completely self inflicted after being duly notified and after all the facts were known. Janet Frotscher has severely limited Wells Fargo's legitimate causes of action by stating Jim H. Austin, III's completely fabricated appraisals were reviewed and found acceptable for lending purposes. The failure of her Executive Resolution Team to investigate these allegations thoroughly and calling letters and faxes about **Mortgage Fraud** correspondence after all the facts were known, is unprecedented and inexcusable.

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." (Comparative Negligence in South Carolina law)

66. Wells Fargo failed to mitigate damages and losses by not accepting my generous offer to reduce the price to the unfinished property and recover the remaining damages from the Seller,

the Broker, the Appraiser and the Player Law Firm. Wells Fargo could have saved thousands of dollars in legal fees. GreenPath recommended the exact same course of action...{*Exhibit 166*}...reduce the price of 423 Bayne Street to the unfinished house. Wells Fargo could have received thousands in mortgage payments over the past 6 years and without paying any property taxes on its fraudulent mortgage.

E. **Wells Fargo's loan, note and mortgage constitutes an illegal contract that is unenforceable and the performance of such an illegal contract is violative of public policy, statutory law, legal precedent and administrative law or federal regulations.**

67. My **Affirmative Defense** that Wells Fargo's loan, note and mortgage is an **Illegal Contract** is supported by the undeniable facts that the loan was procured by violating South Carolina law and Federal regulations.

§§ 16-13-10; 34-3-110; 40-58-20; subsections (2), (23), (36) & (40); 40-58-30 subsections (A) & (B); 40-58-50(E)(1); 40-58-70-subsections (1)-(3) – SC Code of Laws; 18 USC § 1001(a); 18 USC § 1014; 18 USC § 1344; 18 USC § 1346; 12 CFR § 1731.2(c) & (e); 15 USC § 1681n(a); 24 CFR Part 35-Subpart A

In addition to being falsely certified {*WF00058, 60 & 97*}, The loan, note and mortgage are based on falsified documents, forgeries, alterations and unauthorized use. {*WF00001-38 58, 60, 65-73, 78-87*} My **Affirmative Defense of an Illegal Contract** is not only supported by § 36-3-305(a)(1)(ii)-(iii) - *SC Code of Laws*, it is also supported by legal precedent.

(1) “[N]o person is permitted to acquire a right of action from an unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act. This rule applies at both law and in equity and whether the cause of action is in contract or in tort.” *Jackson, 313 S.C. at 276, 437 S.E.2d at 170.*

(2) The Supreme Court of Minnesota has held “[a]nyone who engages in a fraudulent scheme forfeits all right to protection, either at law or in equity.” *State by Head v. AAMCO Automatic Transmissions, Inc., 293 Minn. 342, 347 (1972)*

(3) *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”)

(1) 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) & 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)}

(2) 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, nor will they enforce any alleged rights directly springing from such contract. *Id.* at 654, 19 S.Ct. at 845.

(3) South Carolina Courts have refused 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.g. 12 CFR § 1731.2(c)(e); 15 USC § 1681n(a); 24 CFR Part 35-Subpart A

(4) 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.").

(5) 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."

(6) In 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc. (2001) 85 Cal.App.4th 1279 at 1286 where the Court stated: "[I]t is the general rule that courts have power to vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure decree or where the sale has been improperly, unfairly or unlawfully conducted, or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be inequitable to purchaser and parties."

(7) In, Menominee River Co. v. Augustus Spies L & C Co., the court decided; "[I]f 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.

F. Wells Fargo is perpetuating a Home Improvement & Mortgage Fraud.

68. It is immaterial that you did not know the car was stolen. The fact of the matter is.. the vehicle is stolen and you are driving a stolen vehicle. It is immaterial that you made a bona fide purchase from Johnny Car Thief. It does not change the facts.

(a) It is immaterial that Wells Fargo claims it did know. It does not change the facts.

My Counterclaim that Wells Fargo is perpetuating a Home Improvement and Mortgage Fraud is based on Wells Fargo's deliberate and continued reliance, use and defense of falsified Appraisals ordered for 2nd or 3rd parties after due notification and verifiable misrepresentations of material facts. {Review Pgs 5-7 in this *Verified Pleading* @ ¶ 4(e) and subparts (1)-(6)}

(b) Wells Fargo's continued reliance and defense after all the facts were known is deliberate. My Counterclaim of Perpetuating a Home Improvement & Mortgage Fraud is supported by Wells Fargo's [Exhibits WF00001-27]; My [Exhibits 4-64]; as well as, § 40-58-70 (6)(a)-(c) – SC Code of Laws and [Exhibit 113 – the Property].

G. Wells Fargo's loan, note and mortgage were closed and obtained in violation of Federal laws and regulations.

69. My Counterclaim that Wells Fargo's Mortgage, Loan & Note were closed in violation of federal laws and/or regulations e.g., 24 CFR Part 35- Subpart A; is supported by Wells Fargo's filed [Wells Fargo's Exhibits WF00030-38 & My Exhibits 68-69] Wells Fargo's loan, note and mortgage is a violation of 18 U.S.C. § 1346. (I have an intangible right to honest services.) There is no evidence in the Court's Records verifying 423 Bayne Street was built after 1978. This offence..and..my Counterclaim support my Affirmative Defense of Unclean Hands in any action in an Equity Court.

H. According to Wells Fargo's documents, Wells Fargo's loan, note and mortgage were obtained with an Unauthorized Credit Report on December 4, 2007.

70. My Counterclaim that Wells Fargo's employees used an unauthorized Credit Report to

approve loan 0174072777 is supported is supported by Wells Fargo's filed [*Exhibits WF00065-73*] and *15 USC § 1681n(a)*. There is no authorization from **Golden Gate Mortgage, Inc.**, for an October 3, 2007 credit report and there is no signed authorization for Wells Fargo.

I. Wells Fargo's "Mortgage" was Falsely Certified by Debra C. Galloway and an individual that claims to be Stephanie Hammond at the Player Law Firm on December 21, 2007.

71. My *Counterclaim and Affirmative Defense* (in action in an Equity Court) *that Wells Fargo's Mortgage is Falsely Certified* in violation of South Carolina's Uniform Recognition of Acknowledgements Act; specifically; §§ 26-3-50(1)&(3); 26-3-60(1)-(3)(a); and 30-5-30(B)-(C) – *SC Code of Laws* is supported by Wells Fargo's filed [*Exhibits WF00058, 60 & 97*] South Carolina's Notary Publics are prohibited from falsely certifying documents by.....§ 26-1-95 – *SC Code of Laws*.

J. Wells Fargo's "Mortgage", loan and note were obtained by violating South Carolina's High Cost and Consumer Home Loan Act and is indicative of Wells Fargo's Unclean Hands.

72. My *Counterclaim and Affirmative Defense* (in action in an Equity Court) *that Wells Fargo's Mortgage Loan was obtained and closed in violation of South Carolina's High Cost and Consumer Home Loan Act*; specially, §§ 37-23-40(1) -(2) and 37-23-60 – *SC Code of Laws* is supported by Wells Fargo's filed [*Exhibits WF00030-38 & 61-62*] and my filed [*Exhibits 65, 66, 72 & 166*].

(a) Wells Fargo and Golden Gate Mortgage, Inc., falsified my income and failed to disclose debts in order to avoid complying with South Carolina's High Cost And Consumer Home Loan Act.

(b) There is no evidence of counseling as required by the act. This violation also supports my *Affirmative Defense* of *Unclean Hands* in any equity action. Wells Fargo and Golden Gate Mortgage, Inc., had a copy of my W-2 form and a Year-To-Date check stub.

K. Because Wells Fargo's actions and collection activity are based on falsified documents, this violates South Carolina's Unfair Trade Practices Act.

73. My Counterclaim that Wells Fargo's Mortgage Loan violates South Carolina's Unfair Trade Practices Act is based on the undeniable fact that Wells Fargo; after all the facts were known and after being duly notified, still tried to collect money and initiated a foreclosure proceeding in order to extract money by a Court Order and/or Ruling to get paid on an illegally brokered loan, a home improvement and mortgage fraud, a loan closed in violation of South Carolina and Federal laws, a loan approved with an unauthorized Credit Report, a falsely certified mortgage and an illegal predatory lending scheme that are supported by falsified, forged and altered documents belonging to second and/or third parties, is an unfair trade practice that is a matter of public interest. South Carolina law does not require pleading of SCUTPA violations with specificity.

(a) My Counterclaim of an Unfair Trade Practice is supported by Wells Fargo's filed [Exhibits WF00001-137]; my filed [Exhibits 1-297] that includes [Exhibit 113 – the Property]; and §§ 39-5-20(a)-(b) and 39-5-50(a)-(b) – SC Code of Laws.

(b) My Counterclaim is also supported by the following:

(1) SCUTPA states “[u]nfair 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). “[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).

(2) Since the SCUTPA is modeled after § 5(a)(1) of the *Federal Trade Commission Act (the FTC Act)*, South Carolina Courts are to be guided by Federal Trade Commission and federal judicial interpretations of the FTC Act. Code § 39-5-20(b). “[A] poor business decision does not necessarily constitute an unfair trade practice. There is no support in South Carolina law for the proposition that a service person violates the unfair trade practice statute if he performs his job poorly or overlooks something which should have attracted his attention. An explicit or implicit representation that he performed his job properly, if the fault is negligence or inattention, is simply not the kind of deceptive practice the statute was intended to reach.” Clarkson v. Orkin Exterminating Co., Inc., 761 F.2d 189, 191 (C.A.4 (S.C.) 1985).

(3) North Carolina courts construe their FTC Act to require the jury to determine the facts and the trial court to determine whether proven facts constitute an unfair or deceptive act or practice. Hardy v. Toler, 218 S.E.2d 342 (N.C. 1975); accord, Boyd v. Drum, 501 S.E.2d 91 (N.C. App. 1998). The Third District Court of Appeals took a similar approach in Suris v. Gilmore, 651 So. 2d 1282 (stating legislature's intent was for court to construe what constitutes unfair or deceptive act, and reversing directed verdict and remanding for jury trial on act's deceptive nature).

(4) To be actionable under the UTPA, the unfair or deceptive act or practice must have an impact upon the public interest. Haley Nursery Co. v. Forrest, 298 S.C. 520, 381 S.E.2d 906 (1989). "[A]n unfair or deceptive act or practice has an impact upon the public interest if the act or practice has the potential for repetition." Id. at 524, 381 S.E.2d at 908. "[T]here are two general ways to demonstrate the potential for repetition: (1) by showing the same kind of actions occurred in the past, thus making it likely the actions will continue absent some deterrence, or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts." Crory v. Djebelli, 329 S.C. 385, 496 S.E.2d 21 (1998). "[T]hese are not the only means of showing the potential for repetition, however, and each case must be evaluated on its own merits." Daisy Outdoor Adver. Co. v. Abbott, 322 S.C. 489, 497, 473 S.E.2d 47, 51 (1996).

(5) Federal courts have held that "[u]nfair 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). "[U]nder 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.

(6) "[U]nder Section 39-5-20(a) and (b), Code of Laws of South Carolina (1976, as amended), a plaintiff 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 CORP. INC., 313 SE 2d 334 - SC: Court of Appeals 1984

(7) I am not rich and do not have deep pockets. Every dollar spent on this litigation is an ascertainable loss because it hurts me and my family financially. This does not include the hours spent on research, writing and editing, filing and mailing. Wells Fargo has already been fined millions for past indiscretions that are in the public record. The Fladell Settlement is another indication of Wells Fargo's internal policies and procedures relative to Lender Placed Insurance.

(8) Using falsified appraisals to establish value and maintaining the value after all the facts are known is a matter of public interest. Janet Frotscher's reliance on the broker's representations and Judge Goodstein's reliance on the misrepresentations of Wells Fargo's attorneys was misplaced...and...not justifiable based on the facts and the evidence.

L. Many of Wells Fargo's documents are forgeries.

74. My **Affirmative Defense of Forgery** is supported by Wells Fargo's [*Exhibits WF00001-26; 29-38; 63-64 and 81-87*] I was not in Columbia, SC on 11/26/2007 and David Terrell was not in Orangeburg. Therefore, I could not have signed any documents for him on 11/26/2007. David did not participate in the process of offering and accepting a loan application. According to forgery experts, waviness is indicative of tracing. Approved based on forgeries by substitution or forgery by any other means and document alteration.

M. Wells Fargo's "Unclean Hands" relative to loan 0174072777 .

75. Wells Fargo's unlawful conduct and violations would be considered as **Unclean Hands**. Wells Fargo would be barred from receiving any Court ordered recovery in addition to fines, penalties and/or punitive damages at law..... if proven.

(a) My **Affirmative Defense of "Unclean Hands"** is supported by Wells Fargo's violations of state and federal laws, the **Massive Filing Fraud** of Burns and Moise, Wells Fargo's forgery and document fraud by falsifying my income, misrepresenting material facts, concealing material facts; after the true state of all affairs were known, vicarious liabilities, false accusations. ...and... Wells Fargo's participation in a scheme or artifice to Defraud after the facts were known. The documents relative to my defense have been identified with specificity.

"[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 inequitableness 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.")

(b) My **Affirmative Defense of "Unclean Hands"** effectively bars Wells Fargo from foreclosing and Thomas Jacobs from recovering 423 Bayne Street.

76. My *Affirmative Defense of No Obligation under Wells Fargo's Note and Mortgage* is based upon the undeniable fact that Wells Fargo's fixed-rate note and security instrument, the "Mortgage" fail to address the realities of the transaction.

(a) There are no provisions in the security instrument, the "Mortgage", or on the fixed-rate note for falsified value. {WF00001-26}

(b) There are no provisions in the security instrument, the "Mortgage", or on the fixed-rate note for misrepresentations of material facts by second and/or third parties. {WF00001-38}

(c) There are no provisions in the security instrument, the "Mortgage", or on the fixed-rate note for "Fraud in the Inducement or Fraud in Factum. {WF00064 & 74}

(d) There are no provisions in the security instrument, the "Mortgage", or on the fixed-rate note for supporting documents that are forgeries. {WF00001-38}

(e) There are no provisions in the security instrument, the "Mortgage", or on the fixed-rate note to address fraudulent concealment of material facts by the Broker, the Seller or the Appraiser. {Exhibit 113 – the Property}

(f) The failure of Wells Fargo's fixed-rate note and security instrument to address these key issues and realities renders the "Mortgage" and note unenforceable. These transaction realities are supported by Wells Fargo's filed [Exhibits WF00039-60]. There is no language in Wells Fargo's mortgage or note that specifically states: "I promise to pay the lender even if:

- (1) The supporting documents are falsified, forgeries or altered,
- (2) The note's and mortgage's value are falsified and/or inflated,
- (3) Obtained in violation of a state law/s,
- (4) Obtained in violation of a federal and/or international law/s,
- (5) Obtained by fraudulent concealment or non-disclosure of material facts,
- (6) Obtained by fraudulent misrepresentation or distorting material facts."

Such language is not written into Wells Fargo's mortgage or note, because it would be an illegal contract under state, federal and international law...deeming illegal contracts are not enforceable.

N. **I have no liability for the value of Wells Fargo's fraudulent note and mortgage.**

77. My **Affirmative Defense**, that I have no liability for the value of Wells Fargo's fraudulent note and mortgage is based on Janet Frotscher's letter that is dated February 21, 2008, @ ¶ 5; {Review Exhibit 45} the appraisal was reviewed "and found... acceptable for our lending purposes." and David Terrell's statement @ Sentence #2 & #5 in his letter to SCDCA that "We ordered the appraisal and then submitted it to an underwriter, who then reviewed the appraisal and made an underwriting decision on whether to accept the value...". "The 'WE'" included David Terrell, Thomas Jacobs and Jim H. Austin, III. The 7-59 Appraisals and Satisfaction Completion Certificate Janet Frotscher reviewed are complete fabrications from beginning to end. David Terrell's statement @ Sentence #5, supports Janet Frotscher's statement that the appraisal was reviewed and found acceptable for lending purposes. No appraisal was ordered for me..or..by me, therefore, Wells Fargo has an issue with the broker and the appraiser not me. {Exhibit 49 & WF00120}

O. **I am an innocent victim of the Seller's, Broker's and Appraiser's Conspiracy to Defraud.**

78. My **Affirmative Defense that I am an innocent victim of the Seller's, Broker's and Appraiser's Conspiracy to Defraud and Wells Fargo's own scheme and/or artifice to perpetuate Mortgage Fraud to Defraud or Swindle** me out of \$75,000.00 with the falsified, forged, altered and unauthorized documents that belong to the Seller, Broker, Appraiser, the Player Law Firm and Wells Fargo's own employees is supported by Thomas Jacob's letters to SCDCA {Exhibits 35-36}, David Terrell's letters to SCDCA {Exhibits 37 & 49} and Wells Fargo's Exhibits [WF00029, 33-38 & 65-73]. Neither David Terrell nor Thomas Jacobs has admitted brokering a loan. Wells Fargo has presented no evidence to support a cause of action for a legally brokered loan. No genuine evidence exists in reality, actuality or fact.

P. Janet Frotscher firmly established the value of Wells Fargo's loan, note and mortgage is based on Jim H. Austin, III's Appraisals.

79. My **Affirmative Defense of Appraisal Fraud** is based on Janet Frotscher's admissions that Jim H. Austin, III authored the appraisals. {WF00125 @ ¶ #4} The 7-59 Appraisals are not just falsified forgeries, they are complete fabrications. The only accurate information is the address and the city support services. {WF00001-27} My defense is supported by David Terrell's and Thomas Jacob's letters to SCDCA. {Exhibits 35-37 & 49} The FBI defines Appraisal Fraud as misrepresenting material facts and inflating the value.

Q. David Terrell LIED to Wells Fargo. He never brokered loan 0174072777.

80. My **Affirmative Defense of an Illegally Brokered Mortgage Loan** is based on the fact that Thomas Jacobs brokered the loan and David Terrell..LIED. He never brokered loan 0174072777. David Terrell never interviewed me on 11/26/2007. {WF00030-32} David Terrell knowingly misrepresented material facts and fraudulently concealed the illegal brokering activity of Thomas Jacobs from Wells Fargo and SCDCA – a South Carolina government agency.

R. Wells Fargo is involved in a scheme or artifice to Defraud and in an Illegal Loan Transaction that involves the acceptance, approval, funding, use and reliance on falsified documents that also violated 24 CFR Part 35 – Subpart A.

81. My **Counterclaim that Wells Fargo is involved in a scheme or artifice to Defraud and in an Illegal Loan Transaction that violated 24 CFR Part 35 – Subpart A** is based on the undeniable fact that Wells Fargo and **Golden Gate Mortgage, Inc.**, falsified my income and both engaged in forgery {WF00029-32} and falsifying documents. {WF00031 & 33} The income (\$2,038.31) on Wells Fargo's Uniform Residential Loan Application is also falsified. {WF00-033} {See WF00061-62 for Proof & compare falsifications & alterations with WF00031 from David Terrell} There is no evidence in Wells Fargo's document file that verifies 423 Bayne Street was built after 1978. Violating the Lead-Based Paint Hazard Act is additional support and evidence for my **Affirmative Defense** of **Unclean Hands** in any action in an Equity Court.

S. Wells Fargo's loan, note and mortgage is a collection of misrepresented material facts, concealment of material facts, intentional misstatement of material facts and/or non disclosure of material facts by the Seller, the Broker, the Appraiser, the Player Law Firm and Wells Fargo's own employees; most notably, Janet Frotscher.

82. My Affirmative Defense of misrepresentation of material facts, concealment of material facts, intentional misstatements of material facts and/or non-disclosure of material facts by the Seller, the Broker, the Appraiser, the Player Law Firm and Wells Fargo's own employees; most notably, Janet Frotscher is based on the falsified documents in Wells Fargo's document file that have already been identified..and..discussed with specificity and particularity.

I have identified.....

(1) Precisely what statements were made in what documents or oral representations or what omissions were made,

(2) The time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) same,

(3) The content of such statements and the manner in which they misled Wells Fargo, Judge Diane Goodstein and myself, and...

(4) The cost in time, money as a direct result of the Seller's, Broker's and Appraiser's Conspiracy to Defraud and Wells Fargo's own scheme or artifice to Defraud or Swindle me out of \$75,000.00 with falsified, forged, altered and unauthorized documents of second and/or third parties.

T. Wells Fargo is also involved in Insurance Fraud.

83. My Counterclaim of Insurance Fraud is only actionable if I had to pay the premiums or if Wells Fargo hold me responsible for paying premiums. Since Wells Fargo's 0174072777 loan, note and mortgage are based on the falsified values of Jim H. Austin, III's 7-59 fabricated Appraisals, [WF00001-26]...property insurance that is based on misrepresented material facts and falsified values is **Insurance Fraud** by definition.

84. Because Wells Fargo's loan, note and mortgage is based on a falsified value that is based on misrepresented material facts and concealment of material facts, Wells Fargo's filed exhibits also prove Securities Fraud, Mortgage Insurance Fraud and Title Insurance Fraud.

XIII. COUNTERCLAIMS THAT SUPPORT MY AFFIRMATIVE DEFENSE OF UN-CLEAN HANDS AND DISMISSAL OF WELLS FARGO'S COMPLAINT WITH PREJUDICE THAT WERE NOT STRICKEN BY JUDGE GOODSTEIN

A. Counterclaim VI - Concealment of Material Facts & Cover-up.

85. Wells Fargo accepted, approved, funded and is actively defending a mortgage loan that was obtained from an unlicensed loan broker and/or unlicensed loan originator in violation of South Carolina law, Federal law and the UC Code. By concealment, the Plaintiff is an active participant in Mortgage Fraud. {WF00042-60}

(a) Wells Fargo Bank has concealed from the Security and Exchange Commission that any mortgage backed security with loan #708-0174072777 is supported by documents that can be verified as "Falsified", "Forged" and "Altered". By concealment, the Plaintiff is an active participant in Securities Fraud. {WF00039-60}

(b) The bank has concealed from its property and casualty insurers the value of 423 Bayne is inflated and based on "Falsified" & "Forged" Appraisals and meets the FBI's definition of an illegal Predatory Lending Scheme. By concealment, the Plaintiff is an active participant in Insurance Fraud. {Exhibit 42}

(c) By concealment of material facts, the Plaintiff is actively engaged in Fraudulent Conduct. *Leonard v. Springer*, 197 Ill 532. 64 NE 299 (1902 (Holding that, "Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." [The seller or lender] "He is liable, not upon any idea of benefit to himself, but because of his wrongful act and the consequent injury to the other party.")

(d) Wells Fargo personnel misstated, misrepresented, omitted and concealed material facts and covered up the truth from OCC, after the facts were known. Wells Fargo has known since February of 2008 that Thomas Jacobs brokered the loan. {Exhibits 162 & 163}

(e) Wells Fargo personnel misstated, misrepresented, omitted and concealed material facts and covered up the truth to SCDCA, after the facts were known. {WF00132}

B. Counterclaim XII – Violation of 15 USC Section 1692f.

86. 15 USC § 1692f (FDCPA) clearly states in pertinent parts, “A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: “(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. (6) Taking or threatening to take any nonjudicial action to effect dispossession possession or disablement of property if— (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest....,” **Wells Fargo has no legitimate enforceable right. Loan #0174072777 was obtained by an unlicensed broker or loan originator – Thomas Jacobs with an unauthorized credit report.** {WF00063-74}

C. Counterclaim XV - Violation of Section 30-9-40 – SC Code of Laws.

87. Wells Fargo’s fraudulent mortgage that is based on misrepresentations of material facts, misstatements of material facts, omissions, falsity and OUTRIGHT LIES, fails to provide constructive notice to subsequent creditors or the general public pursuant to the laws of the State of South Carolina. Judges are employees of the State and Officer’s of the Court sworn by oath to uphold the law and the Constitution. Therefore, the Court has a duty and legal responsibility to void or cancel Wells Fargo’s fraudulent mortgage in order to defend, protect and preserve the integrity of the mortgage filing and indexing system currently operating in the State of South Carolina.”

(a) Wells Fargo Bank is perpetrating and perpetuating a fraud upon me by filing and maintaining an inflated mortgage on the books in Orangeburg County’s Office of the Register of

Deeds in violation of *South Carolina Code Annotated Section 30-9-40 (Supp. 2001)*, that governs the indexing of instruments filed for recording, *Section 30-9-40* provides: “The register of deeds . . . shall immediately upon the filing for record of any deed, mortgage, or other written instrument of the character mentioned in *Section 30-7-10* or *Chapter 9 of Title 36* enter it upon the proper indexes in his office, which constitute an integral, necessary, and inseparable part of the recordation of the deed, mortgage, or other written instrument for any and all purposes whatsoever”

(b) The importance of proper recording practices as an integral part of providing notice to subsequent creditors has been previously addressed by South Carolina’s Supreme Court. In *National Bank of Newberry v. Livingston*, 155 S.C. 264, 284, 152 S.E. 410, 417-19 (1930) (citations omitted). (Holding that, “The rule supported by the best authority is that the record [of a mortgage] is constructive notice to creditors . . . [as to] such facts as they would have learned from the record, if examined. A mortgage duly recorded is notice not only of the existence of the mortgage, but of all its contents It is notice not only to purchasers but to the subsequent creditors as well The record imparts notice of all the facts which could have been ascertained by an actual examination thereof, including not only those recited in the record, but also material matters suggested thereby, which might be disclosed by reasonable inquiry.”)

D. Counterclaim XVIII - Violation of Section 16-3-10 – SC Code of Laws.

88. Wells Fargo personnel’s forging my initials on the Seller’s sales contract is a violation of *Section 16-13-10 – SC Code of Laws* states in relevant parts.... “(A) It is unlawful for a person to: (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing; (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing; (3) falsely make, forge, counterfeit, alter, change, deface, or

erase; or cause or procure to be falsely made, forged, counterfeited, altered, changed, defaced, or erased any record or plat of land; or (4) willingly act or assist in any of the premises, with an intention to defraud any person. (B) A person who violates the provisions of this section is guilty of a: (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the amount of the forgery is ten thousand dollars or more;” {WF00001-38}

E. Counterclaim XXIII - Complicity In Violating 18 USC Section 1001 et seq.

89. Wells Fargo’s personnel falsifying my income is a violation of 18 USC § 1001(a) clearly states in pertinent parts, “Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both. If the matter relates to an offense under 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall not be more than 8 years.” {WF00033-38}

F. Counterclaim XXX - Defamation of Character.

90. Even though Defamation of Character has been Pleaded throughout the Pleadings and all relevant Pleadings are incorporated by reference as though fully set forth herein verbatim, it has never been specifically stated as a Counterclaim. The law of defamation protects me against untrue statements that could damage what little reputation I have. false accusations by Wells Fargo’s personnel {WF00125} and the OUTRIGHT LIES filed in court by attorneys Burns and/or Moise relative to the HMP that South Carolina’s Commission on Lawyer Conduct says

are attributable to Wells Fargo {*Case Status Updates 2009 – 2011*} have all served to defame my character.

(a) These misstatements and misrepresentations even found their way to the Office of the Comptroller of the Currency (OCC) {*Filed Exhibits 162 & 163*} and South Carolina's Department of Consumer Affairs (SCDCA). Damages in defamation cases are decided by juries. To succeed in an action for defamation, I must prove three things: (1) the statement was not true; (2) the statement referred to me and (3) the statement is in writing. I can prove all 3 elements with verifiable documentation.

(b) McBride and Bagshaw in their textbook *Tort Law, 3rd Edition, (Longman, 2008)*, defines a statement that is defamatory, as.... "if reading it or hearing it would make an ordinary, reasonable person tend to think less of the person being referred to"; to this can also be added "has committed an act the person referred to did not commit." This has happen in this case.

(c) I do not have to prove that the words actually had any of these effects on any particular people or the public in general, only that the statement could *tend* to have that effect on an ordinary, reasonable listener or reader. Nor does the Defendant need to prove that I lost money, or suffered any other kind of loss or damage.

(d) The evidence should be sufficient to "enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). "Proof with mathematical certainty of the amount of loss or damage is not required."

XIV. AFFIRMATIVE DEFENSES THAT SUPPORT MY DEFENSE OF UNCLEAN HANDS AND DISMISSAL OF WELLS FARGO'S COMPLAINT WITH PREJUDICE THAT WERE NOT STRICKEN BY JUDGE GOODSTEIN

A. Sixth Affirmative Defense - "In Pari Delicto".

91. The doctrine of in pari delicto is "[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing." *Black's Law Dictionary*

794 (7th ed. 1999). " *Myatt v. RHBT Fin. Corp.*, 370 S.C. 391, 395, 635 S.E.2d 545, 547 (Ct. App. 2006) (quoting *Black's Law Dictionary* 794 (7th ed. 1999)). consistent with South Carolina precedent asserting that "no person be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act." This rule applies at both law and in equity and whether the cause of action is in contract or in tort." *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993)

B. Seventh Affirmative Defense - "Unlawful Conduct".

92. Wells Fargo used an unauthorized credit report to fund an illegal Predatory Lending Scheme and a Home Improvement and Mortgage Fraud {WF00065-73} on 12/04/2007, falsified income statements {WF00033-38} on 12/20/2007 and forged my initials onto a contract of sale {WF00029} and Wells Fargo is actively involved in Insurance Fraud {Exhibit 113 – the Property and WF00001-27}

C. Eighth Affirmative Defense - "Failure to Substantially Comply with Lawful Statutes".

93. Wells Fargo has failed to "Substantially Comply" with lawful Statutes and Federal Regulations. Sections 16-13-10, 37-23-40(1)-(2) – SC Code of Laws, 15 USC § 1681n(a), 24 CFR Part 35. Subpart A; and 18 USC § 1001(a).

D. Tenth Affirmative Defense - "Malicious Prosecution".

94. Wells Fargo had every intention to file this Summons and Complaint without adequate reason or substance, with the sole intention of seizing the property to sell at auction. To me...this is Malicious Prosecution.

E. Fifteenth Affirmative Defense - "Violation of FDIC Policy Statement 5000".

95. The FDIC's Policy Statement 5000 states in pertinent parts... "[T]he Uniform Retail Credit Classification and Account Management Policy establishes standards for the classification

and treatment of retail credit in financial institutions. ---- For purposes of this policy, retail credit also includes loans to individuals secured by their personal residence, including first mortgage, home equity, and home improvement loans. ----- Actual credit losses on individual retail credits should be recorded when the institution becomes aware of the loss, but in no case should the charge-off exceed the time frames stated in this policy. This policy does not preclude an institution from adopting a more conservative internal policy.”

“Loans in bankruptcy should be classified Loss and charged off within 60 days of receipt of notification of filing from the bankruptcy court or within the time frames specified in this classification policy, whichever is shorter, unless the institution can clearly demonstrate and document that repayment is likely to occur. ----- **Fraudulent loans should be classified Loss and charged off no later than 90 days of discovery or within the time frames adopted in this classification policy, whichever is shorter.**” [Boldness and underlining added for emphasis]

XV. PUNITIVE DAMAGES MUST BE AWARDED TO DETER FUTURE PRACTICES

96. 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).

(a) 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.

(b) Due Wells Fargo’s pattern of consistent violations of federal and state law, rules and/or regulations, I am seeking Punitive Damages and all relevant Statutory Penalties. In addition to Dismissing this case with Prejudice...and..awarding all Statutory damages, the Trial Court

MUST consider “Punitive Damages” to deter the Plaintiff in the future from repeating being **complicit** with illegality.

(c) South Carolina’s Appeals Court and Supreme Court have determine the following, “[T]he 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).

(d) “[R]ecklessness 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)).

(e) “[I]f a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning—the conscious failure to exercise due care.” Id. “[I]t 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)).”

(f) “[I]n 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. QHG of Lake City, Inc., 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005). “[I]n 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).”

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

(h) What the Plaintiff has done to the Sistrunk family should never happen again. I have proven with clear and convincing documentation, Affidavits and over 100 Exhibits, the Plaintiff’s **complicity** in the Seller’s illegal brokering activity, with help from the Broker and Appraiser. In 6 years no one has come forward to refute or deny any **Sworn Statement of Fact** I have made or the Witness. After this Pleading is filed... if statements start appearing literally out of nowhere, the Court must assume collusion to enter false testimony to discredit me and the Witness to protect the illegal brokering activity of the Seller, with help from the Broker and Appraiser and Wells Fargo’s personnel from being held accountable for their unconscionable acts.

XVI. CITATIONS TO AUTHORITIES AND PRECEDENT THAT SUPPORT VACATING THE PARTIAL SUMMARY JUDGMENT ORDER & ORDER OF REFERENCE AND CANCELLING WELLS FARGO’S FRAUDULENT, LOAN, NOTE AND MORTGAGE..AND..DISMISSING THE COMPLAINT WITH PREJUDICE

A. Citations that support vacating the Partial Summary Judgment Order due to Constitutional and Statutory violations and Fraud upon the Court.

97. Citations to authorities that support vacating Judge Goodstein’s Partial Summary Judgment Order and Order of Reference due to Fraud upon the Court.

(1) “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.}

(2) The U. S. Supreme Court made it clear that deliberate 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). In *Napue v. Illinois*, 360 U.S. 264 (1959), the Supreme Court reiterated that a conviction obtained through use of false testimony, known to be such by representatives of the State, is a denial of due process. The Court further ruled that there is also a denial of due process when the State, though not soliciting false evidence, allows it to go uncorrected when it appears. In cases involving false or misleading testimony, a new trial is required if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . ." *Napue*, 360 U.S. at 271.

(3) **UNITED STATES CONSTITUTION - AMENDMENT V:** states in pertinent parts.. "[N]o person shall be deprived of life, liberty, or property, without due process of law...;"

(4) **UNITED STATES CONSTITUTION - AMENDMENT 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."

(5) **UNITED STATES CONSTITUTION – AMENDMENT XIV:** states in pertinent parts.. "[A]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(6) **STATE OF SOUTH CAROLINA CONSTITUTION – ARTICLE 1 - § 3:** states in pertinent parts.. "[T]he 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."

(7) **STATE OF SOUTH CAROLINA CONSTITUTION - ARTICLE 1 - § 14:** states in pertinent parts.. "[T]he right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both." [*My Verified Pleading for a Jury Trial was filed on August 12, 2008.*]

(8) **The Civil Rights Act. 42 U.S.C.A. § 1983:** "[E]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected.....any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

(9) *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."

(10) Specifically, the United States Supreme Court stated that "[t]he most common formulation of that understanding is that a concealment or misrepresentation is material if it has a natural tendency to influence, or was capable of influencing, the decision of the decision-making body to which it was addressed." *Kungys v. United States*, 485 U.S. 759 at 770. (citations and internal quotation marks omitted). *United States v. Weinstock*, 231 F.2d 699, 701 (D.C. Cir. 1956): held that "[t]he issue to which the false statement is material need not be the main issue; it may be a collateral issue. And it need not bear directly upon the issue but may merely augment or diminish the evidence upon some point. But it must have some weight in the process of reaching a decision." 231 F.2d at 703.

(11) *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 per-jury or if he commits perjury by his own act, consent, or agreement.”

(12) “[T]he cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.” *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998). “[W]here a statute is complete, plain, and unambiguous, legislative intent must be determined from the language of the statute itself.” *South Carolina Dep't of Soc. Servs. v. Smith*, 343 S.C. 129, 136, 538 S.E.2d 285, 288-89 (Ct. App. 2000).

(13) “[I]n interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.” *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (2003); *Green v. Lewis Truck*

Lines, Inc., 314 S.C. 303, 443 S.E.2d 906 (1994). “[I]f a rule’s language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.” See Maxwell, 356 S.C. at 617, 591 S.E.2d at 26.

(14) “[j]urisdiction” is to be broadly construed to effectuate the purposes of judicial immunity. Stump, 435 U.S. at 356, 98 S.Ct. at 1104-05. “[A]cts done “in the clear absence of jurisdiction,” for which no immunity is afforded, should be distinguished from actions in “excess of jurisdiction,” which fall within the ambit of immunity protection.” *Id.* at 357 n. 7, 98 S.Ct. at 1105 n. 7 (quoting Bradley, 80 U.S. (13 Wall.) at 351-52).

(15) “[W]hether the facts are difficult or easy of ascertainment is immaterial, the guaranty of the Seventh Amendment operates to require the issues to be settled by the verdict of a jury unless the right thereto be waived.” Slocum v. New York Life Ins. Co., 228 U.S. 364 (1913)

(16) [T]he threshold inquiry in a qualified immunity analysis is whether a constitutional violation occurred at all. Purisch v. Tennessee Tech. Univ., 76 F.3d 1414, 1423 (6th Cir. 1996); Centanni v. Eight Unknown Officers, 15 F.3d 587, 589 (6th Cir.), cert. denied, 512 U.S. 1236 (1994). “[O]nly if the court can find a constitutional violation does it examine whether it involved a “clearly established constitutional right of which a reasonable person would have known.” Christophel v. Kukulinsky, 61 F. 3d 479 (6th Cir. 1995) at 484-85.

(17) “[I]f the complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim.” C&S Real Estate Servs., Inc. v. Massengale, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986). A counterclaim is compulsory “[i]f it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim.” *Rule 13(a), SCRPC.*

(18) “[F]raud is cognizable at law as well as in equity.” Kiriakides v. Atlas Food Sys. & Serv., Inc., 338 S.C. 572, 580, 527 S.E.2d 371, 375 (Ct. App. 2000)

(19) “[A]ctionable fraud is an action at law unless an equitable remedy is sought.” “[W]here legal and equitable issues or rights are raised in the same complaint, the legal issues are for determination by a jury and the equitable issues are for determination by the court.” Floyd v. Floyd, 306 S.C. 376, 379, 412 S.E.2d 397, 398-99 (1991) at 380, 412 S.E.2d at 399.

(20) “[i]f disclosure of the evidence creates a reasonable probability of a different result. As the Supreme Court explained in Kyles, “the adjective is important,” and “[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” Kyles, 514 U.S. at 434.

(21) “[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); ("[t]he maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions.")

(22) In Perry v. Heirs at Law of Gadsden, 590 S.E.2d 502 (S.C. Ct. App. 2003) South Carolina's Appeals Court stated the following, "[F]raud upon the court is a narrow and invidious species of fraud that "subvert[s] the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." citing Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003). The Appeals continued by stating, "[L]ike all other types of fraud, proving fraud upon the court requires showing that the perpetrator acted with the intent to defraud, for there is no such thing as accidental fraud." Citing Chewning, 354 S.C. at 78, 579 S.E.2d at 608 ("'Fraud upon the court,' whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court.") and..... Black's Law Dictionary 660 (6th ed. 1990) ("As distinguished from negligence, [fraud] is always positive, intentional."). "[F]raud upon the court by an attorney, whether or not intrinsic or extrinsic, can be used to set aside a prior judgment" Chewning v. Ford Motor Co., 354 S.C. 72, 79 S.E.2d 605 (2003)

(23) The 7th Circuit Court of Appeals clearly stated: "[W]hen any officer of the court that has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect." The 7th Circuit further stated: "[A] decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

(24) "[W]hether the deprivation of a party's rights by actions of the court are attributable to a willful intent to defraud or a reckless disregard of rules or statutory provisions, the court has the same duty to rectify the wrong. The mechanism for protecting and maintaining the decisional integrity of our judicial system is found in the statutes and rules which govern the procedures to be followed by parties, attorneys and judges. The adjudicative integrity of a court may be defiled by the behavior of parties or attorneys which results in depriving adverse parties of substantive rights." Mallonee v. Grow, 502 P.2d 432 (Alaska 1972)

(25) "[T]he purposeful or reckless disregard of those procedural safeguards which results in the deprivation of substantive rights constitutes an impermissible corruption of court process." 2 F. Pollock & F. Maitland, The History of English Law 535 (2d ed. 1968).

(26) "[T]ampering with the administration of justice ... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the

diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250, 1256 (1944)

(27) "[A] conviction obtained through use of false testimony known to be such by representatives of the State, is a denial of due process. there is also a denial of due process when the State, though not soliciting false evidence, allows it to go uncorrected when it appears. In cases involving false or misleading testimony, a new trial is required if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . ." Napue, 360 U.S. at 271."

(28) "[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)

(29) "[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. It is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud." Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)

(30) "[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).

(31) "[p]erjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings.", United States v. Mandujano, 425 U.S. 564, 576 (1976)

(32) "[F]alse testimony threatens the fair and effective administration of justice and the integrity of the courts. Trials are ideally a search for the truth." Nix v. Whiteside, 475 U.S. 157 (1986) (holding that a criminal defendant's constitutional right to effective assistance of counsel was not violated when his attorney refused to help him give perjured testimony)

(33) "[T]his truth-determining process depends upon the partisan, but accurate, presentation of truthful evidence by the parties." Clark v. United States, 289 U.S. 1 (1933) "[T]hus, the United States Supreme Court has aptly observed that all perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. Therefore, it cannot be denied that it tends to defeat the sole ultimate objective of a trial." In re Michael, 326 U.S. 224, 227 (1945)

(34) United States v. Agurs, 427 U.S. 97, 103 (1976) (holding that "the Court has consistently held that a conviction obtained by the knowing use of perjured testi-

mony is fundamentally unfair, Pyle v. Kansas, 317 U.S. 213; Alcorta v. Texas, 355 U.S. 28; Miller v. Pate, 386 U.S. 1; Donnelly v. DeChristoforo, 416 U.S. 637....and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.”) Giglio v. United States, 405 U.S. 150; at 154, quoting from Napue v. Illinois, at 271”)

(35) “[T]here is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court. Rule 60(b), SCRCP; Hagy v. Pruitt, (court has the inherent authority to set aside a judgment on the ground of extrinsic fraud in spite of any facially applicable statute of limitations). “[I]n order to secure equitable relief on the basis of fraud, the fraud must be extrinsic.” Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951) (extrinsic fraud is necessary in order to secure equitable relief vacating a prior judgment).

(36) “[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).

(37) “[A]n issue is 'material' if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action.” PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc., 297 S.C. 176, 179, 375 S.E.2d 331, 332 (Ct. App. 1988).

(38) Black's Law Dictionary (9th ed. 2009), pg. 1323 – “[P]robative means tending to prove or disprove.” “Probative value is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues. The more essential the evidence, the greater its probative value.” United States v. Stout, 509 F.3d 796, 804 (6th Cir. 2007).

(39) In 1994, the U.S. Supreme Court held that “[D]isqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified.” [Emphasis added]. Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994).

(40) “[p]ositive proof of the partiality of a judge is not a requirement, only the appearance of partiality.” Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); United States v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985) (“[S]ection 455(a) is directed against the appearance of partiality, whether or not the judge is actually biased.” “Section 455(a) of the Judicial Code, 28 U.S.C. 455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.”).

(41) “[S]ection 455(a) ‘requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned.’” *Taylor v. O’Grady*, 888 F.2d 1189 (7th Cir. 1989). In *Pfizer Inc. v. Lord*, 456 F.2d 532 (8th Cir. 1972), the Court stated that “[I]t is important that the litigant not only actually receive justice, but that he believes that he has received justice.”

(42) “[F]urther, the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification.” The *Seventh Circuit Court of Appeals* further stated that “[W]e think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed.” *Balistrieri*, at 1202.

B. Citations to authorities and precedents that support my Affirmative Defense of Fraud in Factum and Fraud in the Inducement.

98. My Affirmative Defenses of Fraud in Factum & Fraud in the Inducement is based on the undeniable fact that I was deceived and misled. If I had known on December 21, 2007, what I know today, there never would have been a closing. I would have moved out of this run down house. All I know for fact is the Seller told us the price would be lowered during the closing. I am not ashamed to admit I was tricked and scammed. Everything was a LIE. For 7 years, I have been filing pages and pages of Pleadings to end this LIE and the Fraud associated with loan 0174072777. This loan is a blight on my life.

(a) If the “Fraud” is in the factum, done during the execution of the contract, then the contract is void *ab initio*. The signatory is not bound, because the contract or agreement would not have been entered into if all the facts were known. If the “Fraud” is in the inducement, then the contract is not void, but is voidable by the innocent party (the Defendant), because what was intended to be executed was not in fact executed. Restatement, Second of Contracts § 167 (“[a] misrepresentation induces a party’s manifestation of assent if it substantially contributes to his decision to manifest assent.”)

(1) “[a] misrepresentation may make a contract voidable if it is either fraudulent or material.” *Restatement (Second) Contracts ch. 7, Introductory Note (1981)* “[T]he question of whether a party was fraudulently induced into a contract may go to the formation of the contract. A party that is misled as to the essential terms of a contract does not technically agree to the contract, as no assent to its terms

has been formulated due to the misrepresentation. In this situation, it is irrelevant whether the misrepresentation was made by the other party to the contract or a third person. See *Restatement (Second) Contracts § 163 (1981)* (“It is immaterial under the rule stated in this Section whether the misrepresentation is made by a party to the transaction or by a third person.”).

(2) “[C]ontracts may be rescinded based upon mutual mistake of fact upon which the contract is based.” *Truck South, Inc. v. Patel*, 339 S.C. 40, 50, 528 S.E.2d 424, 429 (2000). “[T]he mistake must be common to both parties and cause each to do what neither intended.” *Id.* “[A]n agreement that omits material terms may be determined to be unenforceable for indefiniteness.” *Lindsay v. Lindsay*, 328 S.C. 329, 337, 491 S.E.2d 583, 587-88 (Ct. App. 1997) at 337-38, 491 S.E.2d at 588.

(3) “[F]raud in the inducement requires one party to a contract to make some sort of statement or active nondisclosure which has induced the aggrieved party’s actions.” *Restatement, Second of Contracts § 167*. If fraud in the inducement is proven, the contract becomes voidable. A voidable contract (also known as an “avoidable contract”) is a contract in which the aggrieved party has the option to either enforce the contract or cancel the contract. The Restatement further defines fraud in the inducement as “[a] misrepresentation induces a party’s manifestation of assent if it substantially contributes to his decision to manifest assent.” *Id.*

(4) “[F]raud in the factum requires one party to a contract misrepresenting the terms of the contract to the aggrieved party.” *Restatement, Second of Contracts § 163*. If fraud in the factum is proven, the contract becomes void. A contract that is deemed void becomes null and inoperative, even if the aggrieved party wishes to enforce the terms of the contract. The Restatement further defines fraud in the factum as “[i]f a misrepresentation as to the character or essential terms of a proposed contract induces conduct that appears to be a manifestation of assent by one who neither knows nor has a reasonable opportunity to know of the character or essential terms of the proposed contract, his conduct is not effective as a manifestation of assent.” *Id.*

(A) The necessary elements to verify ***Fraud in the Inducement*** by the Seller’s representations are:

(1) A false statement concerning a material fact, [“[t]he price will be lowered during the closing.” – *Thomas Jacobs 11/26/27*]

(2) Knowledge by the Seller making the statement that the representation is false, [*the price was not lowered during the closing.*]

(B) Intent by the Seller making the statement that the representation will induce me to act upon it, [*I went to the closing on 12/21/2007*] And.....

(C) My reliance on the representation to my personal detriment. *Mettler, Inc. v. Ellen Tracy, Inc.*, 648 So.2d 253 (Fla. 2d DCA 1994). Reliance was justified because the Seller had documents in his possession identifying **Golden Gate Mortgage, Inc.**, as a Lender – [WF00064 & 74].

(1) The phone number 803-788-2880 – was to his friend and business associate – Goldengate Mortgage / David Terrell.

(2) The public records proved he owned the property – 423 Bayne Street. And.....

(3) There is no federal or state law prohibiting an owner from financing his property with his friends and business associates and lowering the price at closing.

(6) "[W]hen a contract is void, it is as if it never existed. See Operating Eng'rs Pension Trust v. Gilliam 737 F.2d 1501, 1505 (9th Cir.1984) (where employer's signature on CBA is procured by fraud in the execution, it is as though "no collective bargaining agreement exists").

(7) "[W]here a person is fraudulently induced to sign or endorse a bill or note in the reasonable belief that he is signing something else, he cannot really be said to have made or indorsed the bill or note; hence the ancient plea of *non est factum* is applicable. He is in effect stating that this is not his contract; in fact, it is not a contract at all." 12 Williston on Contracts § 1488, at 333.

(8) "[A] promisor's signature procured by fraud in the execution gives no more effect to a contract than a promisor's signature that has been forged. In either case the contract is void; it has never had any legal effect. Andrews v. Tallman, 47 R.I. 111, 131 A. 50, 51 (R.I.1925) "[U]nder the plea of non est factum [a defendant] may be entitled to prove fraud in the execution of the bond whereby the instrument never had a legal existence as in cases of forgery...."; Crocker v. Bellangee, 6 Wis. 645, 1858 WL 2281, at 11 (Wis.1858)

(9) "[A] void contract is null *ab initio*, and the subject of it may be bought, sold, or otherwise dealt with, in all respects precisely as though it had never been — for it never hath been of any force. Instance, a forged or stolen deed, or a deed obtained by fraud in the execution....." Laborers' Pension Fund v. A & C Envtl., Inc., 301 F.3d 768, 780 (7th Cir 2002).

(b) As stated in Herrod v. First Republic Mortg. Corp., 625 S.E.2d 373 (W. Va.2005), this "[s]ecuritization model _ a system wherein parties that provide the money for loans and drive the entire origination process from afar and behind the scenes _ does nothing to abolish the basic right of a borrower to assert a defense to the enforcement of a fraudulent loan, regardless of whether it was induced by another party involved in the origination of the loan transaction, be it a broker, appraiser, closing agent, or another." "[B]anking transactions -- cannot be permitted to avoid liability by those who are actually providing the funding and often controlling the transaction." See Kurt Eggert, Held up in Due Course: Predatory Lending, Securitization, and the Holder in Due Course Doctrine, 35 Creighton L. Rev. 503 (2002)."

C. Citations to precedents that supported my objections to Partial Summary Judgment and the Order of Reference.

99. Wells Fargo's Partial Summary Judgment should have been denied and this case placed on the Jury Roster pursuant rule and my demand for a Jury Trial. {Exhibit 316, 317 & 341}

(1) Friedel v. City of Madison, 832 F.2d 965, 970 (7th Cir. 1987) "[S]upporting materials designed to establish issues of fact in a summary judgment proceeding "must be established through one of the vehicles designed to ensure reliability and veracity — depositions, answers to interrogatories, admissions and affidavits. When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence." Martz v. Union Labor Life Insurance Co., 757 F.2d 135, 138 (7th Cir. 1985)

(2) Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Hembree, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005); Miller, 365 S.C. at 220, 616 S.E.2d at 729; Montgomery v. CSX Transp., Inc., 362 S.C. 529, 608 S.E.2d 440 (Ct. App. 2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct.App.2004).

(3) "[A] fact is 'material' if a dispute over it might affect the outcome of a suit under the governing law; factual disputes that are 'irrelevant or unnecessary' do not affect the summary judgment determination." Holcomb v. Powell, 433 F.3d at 895 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. at 248). "[A]n issue is "genuine" if the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party." See Anderson v. Liberty Lobby, Inc., 477 U.S. at 248; Holcomb v. Powell, 433 F.3d at 895. "[W]hen a motion for summary judgment is under consideration, 'the evidence of the non-movant[s] is to be believed,' and all justifiable inferences are to be drawn in [their] favor." Anderson v. Liberty Lobby, Inc., 477 U.S. at 255

(4) "[T]o determine whether a genuine issue of material fact exists, the court must view every possible inference in favor of the non-moving party." Maynard v. Household Finance Corp. III, 861 So.2d 1204 (Fla. 2d DCA 2003). The non-moving party is generally the homeowner or defendant. The moving party, who is generally the lender or plaintiff, bears the burden of proving the non-existence of genuine issues of material fact. "[F]urthermore, the burden of proving that such issues exist does not shift to the non-moving party until the movant has successfully met his burden." Nard, Inc. v. DeVito Contracting & Supply, Inc., 769 So.2d 1138 (Fla. 2d DCA 2000).

(5) "[I]n a mortgage foreclosure action, if the record reflects the existence of any issue of material fact, or the possibility of an issue of material fact, or if the record raises even the slightest doubt that an issue of material fact might exist, summary judgment is improper." Pennco, Inc. v. Meritor Savings F.A., 617 So.2d 739 (Fla. 2nd DCA 1993).

D. Citations to precedents that support my averments that statements in my Verified Pleadings should have been entered into the Circuit Court's Records as statements of fact or evidence when received.

100. Statements in my **Verified Pleadings** should have been reviewed by the Court and ruled upon as either evidentiary admissions..and/or..judicial admissions. Excluding conclusions of law, my averments should have been entered into the Court's records as *Statements of Facts* and/or Evidence.

(1) Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991) (allegations in an unverified counterclaim were not evidence); Arnold v. Arnold, 285 S.C. 296, 328 S.E.2d 924 (Ct. App. 1985) (wherein the court of appeals accepted verified pleadings as evidence).

(2) "[A]ll pleadings shall be so construed as to do substantial justice to all parties." *Rule 8(f), SCRCP*; *see also Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 340 (1991) (holding to ensure substantial justice to the parties, the pleadings must be liberally construed). "[T]echnical, restrictive or outmoded requirements of Code Pleading are not necessarily required [under the SCRCP]." Gaskins v. S. Farm Bureau Cas. Ins. Co., 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000) (quoting *Harry M. Lightsey, Jr. & James F. Flanagan, South Carolina Civil Procedure* 93-94 (2nd ed. 1996)).

(3) "[A]llegations 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) "[O]nce 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. Pinnacle Corp., 258 Ill.App.3d at 209, 196 Ill.Dec. 567, 630 N.E.2d 502. Fidelity Financial Services, Inc. v. Hicks, 214 Ill.App.3d 398, 574 N.E.2d 15, 158 Ill.Dec. 221 (1st Dist. 1991) ("[a]dmissions in verified pleading that are not product of mistake or inadvertence become binding judicial admissions.")

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

(6) *See State v. Colf*, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998) "[F]ederal courts addressing the issue have held that for the purposes of summary judgment, a verified complaint is the equivalent of an affidavit, provided that the verified complaint meets the requirements of Rule 56(e)."

E. Citations to precedents that support my averments that False Certification or improper mortgage recordings by a notary voids the mortgage.

101. False Certification by Debra C. Galloway & Stephanie Hammonds voids the mortgage.

Without the mortgage, Wells Fargo has no security interest for foreclosure in an Equity Court.

(1) Ehlers v. United States Fid. & Guar. Co., 87 Wn. 662, 152 P. 518 (1915) (holding that “the notary must exercise reasonable care in ascertaining the identity of the parties described in and who execute the instrument, and the question of whether or not reasonable care has been exercised is usually a question of fact.”); United States Fidelity & Guaranty Co. v. State, 211 Miss. 864 (Miss. 1951); James, Inc. v. Carr, 170 Wn. 29, 14 P.2d 1113 (1932); Christensen v. Arant, 358 N.W.2d 200 (Neb. 1984) (holding that “the contract is unenforceable, since the wife had not actually been in the notary’s presence.”); See also McWilliams v. Clem, 743 P.2d 577 (Mont. 1987); Iselin-Jefferson Financial v. United California Bank, 549 P.2d 142 (Cal. 1976) & Iowa State Bar Association v. West, 387 N.W.2d 338 (Iowa 1986)}

(2) Stubbs v. Chase Manhattan Mortgage Corp. (In re Stubbs), 330 B.R. 717, 726-30 (Bankr. N.D. Ind. 2005), *aff’d*, No. 2:05-CV-439, 2006 WL 2361814 (N.D. Ind. August 2006) (Ruling that the mortgage was defective because the mortgage did not include in the acknowledgment the name of the mortgagor as the person who personally appeared before the notary public..”); Rogan v. America’s Wholesale Lender (In re Vance), 99 Fed. Appx. 25, 27-28 (6th Cir. 2004); Simon v. Chase Manhattan Bank (In re Zaptocky), 250 F.3d 1020, 1027-28 (6th Cir. 2001) (holding that, “the trustee may avoid mortgage that was improperly recorded under Ohio law.”)

(3) In re Vance, 99 F. App’x at 27; (the Sixth Circuit quoted the language of Kentucky’s Revised Statute § 423.130 which is titled, “Certificate of person taking acknowledgment”: The person taking an acknowledgment shall certify that: (1) The person acknowledging appeared before him and acknowledged he executed the instrument; and (2) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument. The Sixth Circuit then stated, “[t]he notary failed to include this [§ 423.130] information in the certification.)

(4) Gardner v. Chase Home Fin. (In re Patton), 2006 WL 3877755, 2 (Bankr. E.D. Ky. 2006); Miller v. Raisor (In re Raisor), 2006 WL 3885132, 2 (Bankr. E.D. Ky.2006); Schlarman v. Suntrust Mortgage, Inc. (In re Helvey), 2006 WL 3877754, 2 (Bankr. E.D. Ky.2006) & Baker v. CIT Group/Consumer Fin., Inc. (In re Hastings), 353 B.R. 513, 516-17 (Bankr. E.D.Ky. 2006) (the information required by Kentucky Revised Statute § 423.130 includes identifying the debtors)

(5) Section 26-3-40(1) – SC Code of Laws states the following in pertinent parts.. “The person taking an acknowledgment shall certify that: (1) The person acknowledging appeared before him and acknowledged he executed the instrument”; (Stephanie Hammond did not appear with Dorothy Sistrunk on 12/21/2007)

F. Citations to precedents that support my averments that Wells Fargo must disprove my Affirmative Defenses and/or Counterclaims or show they are legally insufficient.

102. Wells Fargo failed to disprove Affirmative Defenses and/or Counterclaims that are in my **Verified Pleadings**. Since I do not have money to waste.....I did not want to waste money on a motion to amend or supplement that Judge Goodstein would never approve or hear.

(1) “[O]nce 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.” 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).

(2) My **Verified Pleadings** have thoroughly identified;.. and with the supporting evidence..., that Wells Fargo’s mortgage and note constitute an illegal contract. The Minnesota Court of Appeals addressed illegal contracts by stating, “[t]he application of the doctrine of *in pari delicto* is appropriate for (1) preventing enforcement of a contract the performance of which is illegal.” Brubaker v. Hi-Banks Resort Corp., 415 N.W.2d 680, 684 (Minn. App. 1987). The Supreme Court of Minnesota has held, “[a]nyone who engages in a fraudulent scheme forfeits all right to protection, either at law or in equity.” State by Head v. AAMCO Automatic Transmissions, Inc., 293 Minn. 342, 347 (1972).

(3) “[T]he movant must disprove the affirmative defenses or show they are legally insufficient. When a party raises affirmative defenses, ‘a summary judgment should not be granted where there are issues of fact raised by the affirmative 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)).

(4) “[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)

(5) “[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.*

(6) 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.)

(7) "[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)

(8) "[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)

(9) "[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 genuine 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)

(10) 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).

CONCLUSION

103. It is difficult to condense 6 years of pleadings and hundreds of pages into one concise **Statement of the Evidence**. In the interest of justice, I will send any additional exhibits, and/or affidavits the Appellate Court might need. I have set forth precisely what statements were made in what documents or oral representations or what omissions were made. I have identified specific misrepresentations, omissions, or actions and stated clearly how they are attributable, on which occasions.... or...in...which documents....and/or....to...the specific individual/s involved.

Respectfully Submitted as a Verified Pleading.

Dorothy Sistrunk • 423 Bayne Street • Orangeburg, SC 29115
Ph: 803-268-0716 • Fx: 803-534-6727

NOTIFICATIONS

104. A copy of the Defendant's *Statement of the Evidence to be Included in the Record on Appeal* that has been filed with the Clerk of Court will be mailed to the following:

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

James H. Burns & Michael J. Anzelmo
SC Bar No. 70313
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly *SWORN*, and under the *PENALTY OF PERJURY* declares the afore stated facts 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 14 day of August in the year 2014 in City and County of Orangeburg, in the State of South Carolina.

Affiant Signature: Dorothy Sistrunk

Notary's Signature as Witness (1): Lucy E. Allen

Signed, sealed and delivered in the presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On 8-14-2014 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 that by her signature on this Verified Pleading (Statement of the Evidence to be Included in the Record on Appeal) presents this document to the Court. WITNESS my hand and official seal.

Notary's Signature Lucy E. Allen

Commission Expires _____ MY COMMISSION EXPIRES
APRIL 13TH, 2015

(Seal)