

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

SC Court of Appeals

22717

James B. Jackson, Jr., Master in Equity

Case No. 2015-001112

South Carolina Federal Credit Union,

Respondent

v.

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

Appellant.

**RECORD ON APPEAL
VOLUME III**

December 2, 2015

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

South Carolina Federal Credit Union

Plaintiff,

vs.

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

Defendant,

COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2011-CP-38-1392

**DOROTHY HARLEY SISTRUNK'S
OBJECTIONS TO JUDICIAL ERRORS;
RE: A JUDGMENT ON A COMPLAINT—
THAT WAS NEVER FILED; A DENIAL OF
A MOTION NEVER FILED, AND
ADDITIONAL ERRORS OF FACT OR LAW
THAT ARE NOT IN ACCORDANCE WITH
SOUTH CAROLINA'S RULES OF CIVIL
PROCEDURE, RULES OF EVIDENCE,
PRECEDENT AND AMENDMENT VII TO
THE CONSTITUTION OF THE UNITED
STATES OF AMERICA.**

April 30, 2015

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

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

verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

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

III. Rule 11(c), SCRCP clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

- (1) United States v. Bueno-Vargas, 383 F.3d 1104, 1111 (9th Cir. 2004). ("true test" for whether a declaration is made under oath or affirmation "is whether the procedures followed were such that perjury could be charged therein if any material allegation contained therein is false.").
- (2) Jones v. Blanas, 393 F.3d 918 (9th Cir. 2004) "[U]nder 28 U.S.C. § 1746, a matter may be proved by a signed statement, executed within the United States, that reads: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date)."
- (3) Schroeder v. McDonald, 55 F.3d 454, 460 n. 10 (9th Cir.1995) (pleading counts as "verified" if the drafter states under penalty of perjury that the contents are true and correct).

IV. Based on the above Laws, Rule and Precedents; as the Defendant in this case, I, Dorothy Harley Sistrunk, declare; under the PENALTY of PERJURY, under the laws of the United States of America and in compliance with Rule 11(c), SCRCP, that the following stated facts are true and correct. Executed on April 30, 2015.


Dorothy Harley Sistrunk

As the Defendant in this case, I, Dorothy Harley Sistrunk, under the Penalty of Perjury, will state my *Objections to Judicial Errors; Re: A Judgment on a Complaint That Was Never Filed; a Denial of a Motion Never Filed, and Additional Errors of Fact or Law That Are Not in Accordance with South Carolina's Rules of Civil Procedure, Rules of Evidence, Precedent and Amendment VII to the Constitution of the United States of America*. The reference documents in which these errors occurred were retrieved from the mailbox at 423 Bayne Street in Orangeburg, South Carolina on March 28, 2015 {*Order of Judgment – See Exhibit 41*} and April 23, 2015 {*Denial of a Motion that was never filed by the Defendant – See Exhibit 46*}

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

1. **YOU WILL PLEASE TAKE NOTICE** that the above named Defendant has filed her Objections to Judicial Errors based on procedures in Federal Courts that will be identified in this Verified Pleading that are relevant to these proceedings and this action. [Note: **Boldness** and Underling will be for emphasis throughout.]

(1) Rule 7(b)(1), SCRCP, clearly states in pertinent parts; “[A]n application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.”

(2) There is no Motion to Reconsider in the Federal Rules of Civil Procedure..or in South Carolina’s Rules of Civil Procedure and the Motion I filed stated with specificity and particularity the grounds therefor.

VI. GROUNDS FOR OBJECTING TO JUDICIAL ERRORS OF FACT OR LAW

2. My Objections are being filed so that the court can correct its own Errors of Fact or Law. Egregious Judicial Errors have been made; i.e., the entering of a Judgment Order into the record for a Complaint that was never filed {*Exhibit 41*} and Denial of a Motion I never filed. {*Exhibit 46*} These errors have been compounded by additional Errors of Fact or Law that are not in accordance with South Carolina’s Rules of Civil Procedure, Rules of Evidence, Precedent and Amendment VII to the Constitution of the United States of America.

3. There is no Rule of Civil Procedure in South Carolina that allows a litigant to

address a Judge's error during a proceeding. The procedure being followed to object comes from rulings in federal courts relative to a Judge's mistake/s during a federal judicial proceeding.

According to the rulings or decisions I have read, the following (4) elements must be present:

- (a) There is an "error";
- (b) The error is "clear or obvious, rather than subject to reasonable dispute";
- (c) The error "affected the appellant's substantial rights, which in the ordinary case means" it "affected the outcome of the district court proceedings"; and
- (d) The error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.

(1) Puckett v. US, 129 S. Ct. 1423 (2009) "[I]f a litigant believes that an error has occurred (to his detriment) during a federal judicial proceeding, he must object in order to preserve the issue. If he fails to do so in a timely manner, his claim for relief from the error is forfeited. "No procedural principle is more familiar to this Court than that a ... right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." Yakus v. United States, 321 U.S. 414, 444, 64 S.Ct. 660, 88 L.Ed. 834 (1944). If an error is not properly preserved, appellate-court authority to remedy the error (by reversing the judgment, for example, or ordering a new trial) is strictly circumscribed. There is good reason for this; "anyone familiar with the work of courts understands that errors are a constant in the trial process, that most do not much matter, and that a reflexive inclination by appellate courts to reverse because of unpreserved error would be fatal." United States v. Padilla, 415 F.3d 211, 224 (C.A.1 2005) (en banc) (Boudin, C. J., concurring)."

(2) US v. Marcus, 130 S. Ct. 2159 (2010) "[R]ule 52(b) permits an appellate court to recognize a "plain error that affects substantial rights," even if the claim of error was "not brought" to the district court's "attention." Lower courts, of course, must apply the Rule as this Court has interpreted it. And the cases that set forth our interpretation hold that an appellate court may, in its discretion, correct an error not raised at trial only where the appellant demonstrates that (1) there is an "error"; (2) the error is "clear or obvious, rather than subject to reasonable dispute"; (3) the error "affected the appellant's substantial rights, which in the ordinary case means" it "affected the outcome of the district court proceedings"; and (4) "the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." Puckett v. United States, 556 U.S. ___, ___, 129 S.Ct. 1423, 1429, 173 L.Ed.2d 266 (2009) (internal quotation marks omitted); see also United States v. Olano, 507 U.S. 725, 731-737, 113 S. Ct. 1770, 123 L.Ed.2d 508 (1993); Johnson v. United States, 520

U.S. 461, 466-467, 117 S.Ct. 1544, 137 L.Ed.2d 718 (1997); United States v. Cotton, 535 U.S. 625, 631-632, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002).

(3) Fisher v. Bybee, 2004 UT 92 (Utah: S. Ct. 2004) "...[t]he term 'mistake,' as used in rule 60(b)(1), has general application to the activities of counsel and parties, but seldom extends to judicial decisions, we bring logical harmony to this component of the rule. The other forms of unintentional conduct that rule 60(b)(1) deems eligible to be considered as grounds to set aside a judgment—inadvertence, surprise, and excusable neglect—are aptly suited to describe circumstances which might befall counsel or parties. Those afflicted by these circumstances are also best suited to explain them to a court in a motion for relief under rule 60(b)(1). The same is not true of the inadvertence, surprise, or neglect, which might influence the decision of judges. It would be far-fetched, indeed, for a party to bring a rule 60(b)(1) motion based on the claim that a judge's unfavorable ruling could be traced to one or more of these untoward circumstances."

(4) Grice v. J. Ray McDermott and Company, Inc., 465 F. 2d 486 (5th Cir. 1972) "[W]e recognize that '[i]t is the general rule that the appellate court will not consider trial errors to which no timely objection has been made. [But the] rule is not inexorable and is subject to exception. [Citations omitted]. Where it is apparent on the face of the record that a miscarriage of justice may have resulted from counsel's failure to properly protect the interest of his client by timely objection, the error must be noticed and rectified.'"

4. **Objection to Judicial Error #1:** I did not file a Motion to Reconsider on April 6, 2015, the Motion that is filed is to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRCP.
{Refer to Clerk of Court's Record/s and/or Calendar/s}

(1) Rule 78(c), SCRCP, clearly states in pertinent parts; "[T]he clerk shall also keep such other books and records as may be required, and shall produce the Code of Laws, the rules, the calendars and the file book upon request of the court."

(2) Rule 79(e), SCRCP, clearly states in pertinent parts; "[I]n addition to the file book, each clerk of court shall maintain a motion calendar in such form as prescribed by the Office of South Carolina Court Administration. The clerk of court shall place on the motion calendar all pending motions and other matters requiring a summary hearing before the judge. The motion calendar shall contain the case number, date of request, name of the action, attorneys involved and the nature of the motion to be presented." {See Attached Exhibits 42-45}

5. **Objection to Judicial Error #2:** I did not file a *Motion for a New Trial* in conjunction with a Motion to Reconsider. On April 8, 2015, my New Trial Motion was filed pursuant to Rule 52(b), SCRCP and as stated with specificity, in conjunction with my Motion to Alter or Amend that was filed on April 6, 2014. In conjunction with... because of the language of Rule 52(b), SCRCP. {See Exhibit 44, Pg 1 & Exhibit 45}

6. **Objection to Judicial Error #3:** There is no filed Complaint or an Amended filed Complaint or Debt Collection for a LOANLINER® loan dated February 28, 2003. {Review Adjudicative Fact #49, on pg 25, in my Memorandum Supporting Motion to Alter or Amend the Judgment & the Court's Records}

7. **Objection to Judicial Error #4:** My Recoupment Defense; regardless of how it was stated survives TILA's 1-year limit. {See my Legal Memorandum Supporting Motion to Alter or Amend, pgs 11-13 & 18}

8. I did not mislabel my post judgment motion and I did not file a Motion to Reconsider under Rule 59(e), SCRCP. The language of my filed motion is clear and unambiguous and the Motion, to Alter or Amend I filed requires a ruling from the Court relative to the Motion I filed. {See Exhibits 42-45}

Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 (2004) "[R]ule 59(e) in the South Carolina and federal rules of civil procedure is practically identical. Neither contains any provision for a motion for "reconsideration." However, federal courts consider it appropriate for a party to make a "motion for reconsideration" under Rule 59(e) even though the rule mentions only a "motion to alter or amend a judgment." This view holds true even when a party mislabels a post-trial motion. See *Blair v. Equifax Check Services, Inc.*, 181 F.3d 832, 837 (7th Cir.1999) (Rule 4(a)(4), FRAP, restates long-accepted practice of considering motions for reconsideration, a practice independent of any appellate rule); 12 *Moore's Federal Practice* § 59.30[2][a] and [7]; 11 Wright, Miller & Kane § 2810.1; 20 *Moore's Federal Practice* §§ 304.13[2] and 304.13[4][b] (3d ed. 2003). "[T]he wisdom of giving district courts the opportunity promptly to correct their own alleged errors is all the justifica-

tion needed" for the practice of freely allowing a motion for reconsideration. *Blair*, 181 F.3d at 837. In fact, the United States Supreme Court explicitly has described a motion under federal Rule 59(e) as one which "involves *reconsideration* of matters properly encompassed in a decision on the merits." *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174, 109 S.Ct. 987, 990, 103 L.Ed.2d 146, 154 (1989)"

A. Ending this case without a ruling on the issues raised would be a violation of South Carolina's Rules of Evidence.

9. In addition to ruling on and entering a Judgment Order for a Complaint that was never filed by the Plaintiff, SCFCU {*Exhibit 41*} and denying a Motion that I never filed according to the specific language of the motion – to....Alter or Amend; {*Exhibits 42-43*}, **Objection to Judicial Error #5**, The Court failed to acknowledge the **Offers of Proof** in my **Adjudicative Facts** that should have been apparent from the context.

10. I specifically requested **Judicial Notice of Adjudicative Facts** in my *Legal Memorandum Supporting Motion to Alter or Amend the Order of Judgment*. **Judicial Notice** is mandatory when requested and my **Adjudicative Facts** should have been considered by the Court. Therefore, the current order to end this case was also entered in violation of Rules 103(a)(2), and 201(d), SCRE. { *State v. Foster*, 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981)}

B. Ending this case without a ruling on the issues raised would also be a violation of a federal mandate and long standing legal precedents.

11. **Objection to Judicial Error #6**: The Court ignored SCFCU's TILA violations and liability. Once a violation of TILA is discovered, the Court has no discretion with respect to liability. {See *Johnson v. McCrackin-Sturman Ford, Inc.*, 527 F.2d 257, 262 (3d Cir.1975) pg 12, *Legal Memorandum Supporting Motion to Alter or Amend*}

12. **Objection to Judicial Error #7**: The Court's acceptance of false evidence is not only a violation of South Carolina's and the Federal Rules of Evidence, it is also a violation of Rule 60(b)(3), SCRPC, that specifically allows for judgments to be set aside for **Misrepresenta-**

tion or Misconduct by an Adverse Party. SCFCU's presenting an Addendum to the Court as though one were given to me on September 5, 2002; by definition; is either, "**Fraud**" - a deliberated deception; a "**Misrepresentation**" - false evidence; or "**Misconduct by an Adverse Party**" that can also be defined as...and/or....described as....Improper Conduct or Dishonest Conduct during a legal proceeding. The Court must also decide this issue.

(1) *Pope v. Federal Express Corp.*, 138 F.R.D. 675, 683 (W.D. Mo. 1990), *aff'd in part, vacated in part on other grounds*, 974 F.2d 982, 984 (8th Cir. 1992) (court has inherent power to sanction litigants for improper conduct) *Pope*, 138 F.R.D. at 682 (dishonest conduct by a party or conduct that "threatens the integrity of the judicial process" is grounds for dismissal with prejudice under Rule 41(b)).

(2) *Black's Law Dictionary* (rev. 4th ed. 1968) pg 1150, defines **Misconduct** in pertinent parts as; "[A] transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness."

C. **Ending this case without a ruling on my counterclaims would be another error of law.**

13. **Objection to Judicial Error #8:** Ending this case without a ruling on my counterclaims is a Manifest Injustice, an egregious Error of Law and an Abuse of Discretion.

(1) *Johnson v. SC National Bank*, 354 SE 2d 895 (1987) "[w]here a complaint is equitable and the counterclaim is legal and compulsory, the trial judge has two options. He may either order separate trials pursuant to Rule 42(b) or may order the claims tried in a single proceeding. In making this determination, caution should be taken to assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues ---- Moreover, when issues common to both legal and equitable claims are to be tried in a single proceeding, legal issues are to be determined first, and the findings of the jury are binding on the sitting judge, as trier of the equitable claims...." (Citations omitted)

(2) *Rule 42(b), SCRCF*, clearly states in pertinent parts; "[T]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims,

third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.”

D. **Ending this case without a ruling on my affirmative defenses of Recoupment and Unjust Enrichment would also be an Error of Law and an Abuse of Discretion.**

14. **Objection to Judicial Error #9:** Ending this case without a ruling on my Affirmative Defenses of Recoupment and Unjust Enrichment is another Manifest Injustice, another egregious Error of Law and another Abuse of Discretion. As stated in my filed Pleadings, my loan was handled by telephone and not in person. Therefore, it was impossible for SCFCU’s personnel to give me an Addendum over the telephone. This statement has been **Sworn to**, **Notarized** and **Verified** and has never been denied or refuted by anyone from SCFCU that was alive or employed by SCFCU in 2002 or 2003. Any such attempt by SCFCU’s personnel would be **Perjury** and **Dishonest Conduct**.

15. If the Court is deceived by false testimony or the presentation of false evidence by an adverse party and enters a judgment based on the presentation of false testimony and/or false evidence, such reliance voids the Judgment of the Court. However, the evidence must be clear and convincing. Therefore, see Exhibit 3 in SCFCU’s Presentation Notebook that was used at the hearing on February 15, 2015.

(1) “[A]ccordingly, cases require a party seeking to show fraud on the court to present clear and convincing evidence of the following elements: “1) [conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court.” *Johnson v. Bell*, 605 F.3d 333, 339 (6th Cir. 2010); (quoting *Carter v. Anderson*, 585 F.3d 1007, 1011–12 (6th Cir. 2009)).”

(2) *Giglio v. United States*, 405 US 150 (1972) “[A]s long ago as *Mooney v. Holohan*, 294 U. S. 103, 112 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with “rudimentary demands of justice.” This was reaffirmed in *Pyle v. Kansas*, 317 U. S. 213 (1942). In *Napue v. Illinois*, 360 U. S. 264 (1959), we said, “[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.” *Id.*, at 269.”

(3) *Nix v. Whiteside*, 475 US 157 (1986) “[I]n *Strickland*, we recognized counsel’s duty of loyalty and his “overarching duty to advocate the

defendant's cause." *Ibid.* Plainly, that duty is limited to legitimate, lawful conduct compatible with the very nature of a trial as a search for truth. Although counsel must take all reasonable lawful means to attain the objectives of the client, counsel is precluded from taking steps or in any way assisting the client in presenting false evidence or otherwise violating the law. This principle has consistently been recognized in most unequivocal terms by expositors of the norms of professional conduct since the first Canons of Professional Ethics were adopted by the American Bar Association in 1908."

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

E. **Ending this case without a jury trial would be a violation of Amendment VII to the Constitution of the United States of America and another Abuse of Discretion.**

16. **Objection to Judicial Error #10:** Ending this case without a jury trial would be a violation of Amendment VII to the Constitution of the United States of America. Amendment VII preserves "the right of trial by jury" in civil cases.

(1) *Amendment VII* clearly states; "[I]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

(2) *Landgraf v. Ellsworth*, 126 NW 2d 766 (Minn. S. Ct. 1964) "[I]t has been held that Amendment VII of the United States Constitution applies only to Federal and not to state action. However, determination of the right to a jury trial under the facts of this case would be much the same under either the Federal or state constitution. One of the best discussions of this question may be found in *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477, 82 S. Ct. 894, 899, 8 L. ed. (2d) 44, 51, where the court said: "[W]e think it plain that their claim for a money judgment is a claim wholly legal in its nature however the complaint is construed. As an action on a debt allegedly due under a contract, it would be difficult to conceive of an action of a more traditionally legal character ---- Where a party has a constitutional right to a jury trial, denial of the right is reversible error.""

VII. SUMMARY, CONCLUSION & RELIEF SOUGHT

17. **Summary & Conclusion:** Additional Judicial Errors of Fact or Law and Misrepresentation, or other Misconduct of an Adverse Party can be found in my *Legal Memorandum Supporting Motion to Alter or Amend the Order of Judgment*. My objections to the aforementioned Judicial Errors are based on federal case law, relevant case law, South Carolina's case law where applicable, the 7th Amendment to the Constitution and my Legal Memorandum Supporting Motion to Alter or Amend the Order of Judgment that was filed on April 6, 2015.

18. **Relief Sought:** I pray that this Honorable Court will vacate or rescind its Order of Judgment, *Remand* this case to the Circuit Court for a Jury Trial or *Dismiss it with Prejudice* that includes the return of all monies paid in interest from 2002, the return of all the premiums I paid in credit life insurance and disability insurance, late fees charged, compensatory damages with cost of suit included, punitive damages, if any, and all lawful statutory damages.

VIII. NOTIFICATION

A copy of my *Objections to Judicial Errors; Re: A Judgment on a Complaint That Was Never Filed; a Denial of a Motion Never Filed, and Additional Errors of Fact or Law That Are Not in Accordance with South Carolina's Rules of Civil Procedure, Rules of Evidence, Precedent and Amendment VII to the Constitution of the United States of America* that has been filed with the Clerk of Court will be mailed to SCFCU's Attorney/s of Record:

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

Respectfully Submitted;


Dorothy Harley Sistrunk
423 Bayne Street
Orangeburg, SC 29115
Ph: 803-268-0716
Fx: 803-534-6727

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly **SWORN**, and under the **PENALTY OF PERJURY** declares the facts in her "Objections to Judicial Errors; Re: A Judgment on a Complaint That Was Never Filed; a Denial of a Motion Never Filed, and Additional Errors of Fact or Law That Are Not in Accordance with South Carolina's Rules of Civil Procedure, Rules of Evidence, Precedent and Amendment VII to the Constitution of the United States of America" are true and correct as of her own knowledge. When it comes to matters stated therein that are based upon information and belief; as to those matters, she believes them to be true. Accordingly, based on the stated facts; Re: C. A. Case #2011-CP-38-1392, has signed, sealed, attested and executed this 30 day of April in the year 2015 in the City and County of Orangeburg, in the State of South Carolina.

Rule 11(c), SCRCP clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

Affiant's Signature: Dorothy Harley Sistrunk

Notary's Signature as Witness (1): Lisa Schuler

Signed, sealed and delivered in the presence of:

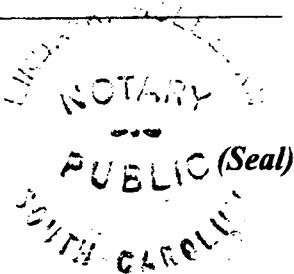
**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On 4-30-2015 before me appeared Dorothy H. Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and by her signature on her "Objections to Judicial Errors; Re: A Judgment on a Complaint That Was Never Filed; a Denial of a Motion Never Filed, and Additional Errors of Fact or Law That Are Not in Accordance with South Carolina's Rules of Civil Procedure, Rules of Evidence, Precedent and Amendment VII to the Constitution of the United States of America" and this Notary Certification presents this document to the Court. WITNESS my hand and official seal.

Notary's Signature: Lisa Schuler

Commission Expires 01-21-2015

Wingy B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC



STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

South Carolina Federal Credit Union,

Plaintiff,

Vs.

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

Defendant,

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT

) Civil Action Case No. **2011-CP-38-1392**

) **DEFENDANT DOROTHY SISTRUNK'S**
) **STATEMENT OF THE EVIDENCE**
) **TO BE INCLUDED IN THE RECORD**
) **ON APPEAL**

) Appeal Case No. **2015-001112**

) **Date Filed: June 15, 2015**

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

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

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

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

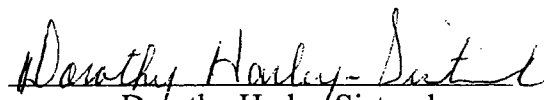
III. Rule 11(c), SCRPC clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

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

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

(c) York v. Cate, Dist. Court, N.D. CAL. 2015, "[B]ecause Plaintiff is representing himself pro se and has signed his pleadings under penalty of perjury, the Court treats them as evidence for the purpose of summary judgment. See Jones v. Blanas, 393 F.3d 918, 923 (9th Cir. 2004); see also Johnson v. Meltzer, 134 F.3d 1393, 1399-1400 (9th Cir. 1998) (verified motions function as affidavits and are admissible to oppose summary judgment); Schroeder v. McDonald, 55 F.3d 454, 460 n.10 (9th Cir. 1995) (pleading counts as "verified" if the drafter states under penalty of perjury that the contents are true and correct)."

IV. Based on the above federal laws, Rule 11(c) of South Carolina's Rules of Civil Procedure and established Precedents, as the Defendant in this case, I, Dorothy Sistrunk, declare; under the PENALTY of PERJURY, under the laws of the United States of America and in compliance with Rule 11(c), SCRPC, that the following stated facts are true and correct. Executed on June 12, 2015.


Dorothy Harley Sistrunk

Comes now the Defendant, Dorothy Harley Sistrunk, to file her *Statement of the Evidence for the Appeal in a Civil Case*, i.e., South Carolina Federal Credit Union, Respondent v. Dorothy Harley Sistrunk, Appellant - Case 2015-001112, 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), SCRCF (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). “[A]n 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.

(e) York v. Cate, Dist. Court, N.D. CAL. 2015 “[F]or purposes of summary judgment, the court must view the evidence in the light most favorable to the nonmoving party; if the evidence produced by the moving party conflicts with evidence produced by the nonmoving party, the court must assume the truth of the evidence submitted by the nonmoving party. See Leslie v. Grupo ICA, 198 F.3d 1152, 1158 (9th Cir. 1999). The court's function on a summary judgment motion is not to make credibility determinations or weigh conflicting evidence with respect to a disputed material fact. See T.W. Elec. Serv., Inc., v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987)

(f) Celotex Corp. v. Catrett, 477 US 317 (1986) “[I]f the moving party has not fully discharged this initial burden of production, its motion for summary judgment must be denied, and the court need not consider whether the moving party has met its ultimate burden of persuasion. Accordingly, the nonmoving party may defeat a motion for summary judgment that asserts that the nonmoving party has no evidence by calling the court's attention to supporting evidence already in the record that was overlooked or ignored by the moving party.”

V. REASONS FOR THE DECLARATION ON PAGES 1 & 2

A. Judicial Admissions in Verified Pleadings are binding on the Court.

1. Like in my Memorandum of Law and Authorities supporting my Motion to Alter or Amend the Judgment that was filed on 4/6/2015 that is incorporated by reference as though I have written it herein verbatim, rather than write as the Defendant, I will plead in the first person.

2. The reasons why I included the declarations on pages 1 and 2 in my **Statement of the Evidence** is to remove any doubt that my **Statement of the Evidence** is Verified. As before, by including 18 U.S. Code § 1621, I am sending a clear signal to the Court that I understand what the penalty is for lying. By doing so in my **Statement of the Evidence**, I am once again effectively addressing and settling the issue raised in Tishcon Corp. v. Soundview Communications, Inc., 2005 WL 6038743, at n. 4 (N.D. Ga. 2005) and United States v. Bueno-Vargas, 383 F.3d 1104, 1111 (9th Cir. 2004). ("true test" for whether a declaration is made under oath or affirmation "is whether the procedures followed were such that perjury could be charged therein if any material allegation contained therein is false.").

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

4. Rule 8(d), SCRCF clearly states in pertinent parts; "[A]verments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." No verified statements were ever entered into the Court's Records for 4 years to disprove, refute, deny or contest any one of my factual statements. This was overlooked by Judge Goodstein and by Judge Jackson. **ON FEBRUARY 24, 2003, THERE WAS NO LOAN; ONLY AN APPROVAL FOR A LOAN. {Exhibit 11}**

5. In addition, exhibits attached to Verified Pleadings are also Verified. Rule 10(c), SCRCP clearly states in pertinent parts; "[A] copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading." **Therefore, my filed exhibits that proved there was no loan on February 24, 2003 were not considered by the Court. {My Exhibit 11 & SCFCU Exhibit 6}**

6. Never refuted, contested or denied Judicial and/or Evidentiary Admissions are binding on the Trial Court and should have been dealt with accordingly. This was not done.

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

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

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

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

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

(f) Black's Law Dictionary 54 (10th ed. 2014) (defining a judicial admission

as "[a] formal waiver of proof that relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing it")

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

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

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

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

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

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

(m) *State v. Harrington*, 627 S.W.2d 345 (Tenn. 1981), "[W]hen no objection to testimony is interposed, it may properly be considered and given its natural probative effect as if it were in law admissible."

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

7. **Offer of Proof:** There is no documentation, objection or motion filed that challenged my testimony and **Statements of Fact** in my early Notarized Pleadings. It is well settled law among federal and state courts that testimony to which no objection is made, refuted or contested may be and/or must be considered by the Trier of Facts. This was not done.

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

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

B. SCFCU's Dishonest Conduct and/or Fraud upon the Court.

8. My loan was handled by telephone and not in SCFCU's Charleston office or in its Columbia office; Therefore, SCFCU and/or SCFCU's attorney's inclusion of an Addendum at the hearing on February 18, 2015 that was never given to me must be construed as Dishonest Conduct and/or False Testimony and/or "Fraud upon the Court" be it Intrinsic or Extrinsic.

(a) "[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.")

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

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

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

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

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

9. **Offer of Proof:** At the February 18, 2015 hearing, SCFCU, did not present any eyewitness/es at the trial, and/or a verified and/or certified and/or sworn to depositions, interrogatories, admissions, sworn testimony or an affidavit from an official or any authorized employee at SCFCU in Charleston, South Carolina that stated under the **Penalty of Perjury** that he/she/they witnessed my receiving an Addendum; either on, or prior to September 5, 2002. This cannot be done and any such statement would have been **Perjured Testimony**.

10. **Offer of Proof:** There is no evidence in the Court’s Records from any employee from SCFCU’s office in Charleston, South Carolina or from Columbia, South Carolina verifying or testifying that I was given an Addendum to consummate a LOANLINER® loan or an SCFCU Membership and Account Agreement.

VI. THE EVIDENCE ON FILE SUPPORTS THE ORIGINAL REMEDY SOUGHT

A. No viable transcript or Court Order referencing my evidence, exhibits or affidavits currently exists.

11. During a 4 year period, neither Judge Goodstein, nor Judge Jackson considered any of my evidence, that **there is no February 24, 2003 loan; only a loan approval and there is no evidence in the Court's record that can prove an Addendum was given to me on or before September 5, 2002.** None of my Notarized and/or Verified Pleadings, Affidavits or Exhibits were discussed at any hearing. Therefore, there is no viable transcript of the evidence for an Appellate review. Hence...a **Statement of the Evidence** is needed. If...SCFCU, orders transcripts, they can be used to verify my **Sworn Statements of Fact** relative to the Court's failure to review my Evidence, Affidavits, Pleadings and Exhibits as required by Rule 56(c).

B. The Statement of the Evidence supports the original remedy that was sought; and is still being sought in C. A. Case No. 2011-CP-38-1392.

12. My **Statement of the Evidence** supports the legal remedy that was sought in Civil Action Case No. 2011-CP-38-1392 since December of 2011 and....is still being sought.....4 years later. The legal remedies are...

(a) Return my over payment of \$4, 660.89. My monthly payments for a fixed interest rate mobile home loan were misapplied to an open-end loan I never approved.

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

(c) Reasonably compensate me for my defense cost and I will sign the necessary documents to assure SCFCU no further lawsuits will be filed against SCFCU relative to this matter.

(d) Based on new revelations; that were not known until recently, SCFCU must return all interest earnings, credit life and disability premiums from 9/5/2002.

C. SCFCU's failed to give me an Addendum in 2002.

13. In 2002, SCFCU's failed to give me an Addendum. This failure violated the mandatory disclosure requirements of 15 U.S.C. § 1601 et seq., and this violation has been ongoing for more than 12 years. SCFCU's Membership and Account Agreement was never valid under existing law or under CUNA Mutual Group's LOANLINER®'s mandatory lending guidelines for compliance with federal law. {Review Filed Exhibits D & K-M}

VII. STATEMENT OF THE EVIDENCE: SCFCU'S TILA VIOLATIONS

14. SCFCU's failure to give me an Addendum before and after money was disbursed is not only a **Material Fact and an additional Gravamen of this case**, it is a severe violation of 15 U.S.C. § 1601 et seq., that cannot be overlooked or dismissed by the court.

(a) Rudisell v. Fifth Third Bank, 622 F. 2d 243 (6th Cir. 1980) "[T]ILA requires that disclosures be made "before the credit is extended". See 15 U.S.C. § 1639(b). Regulation Z, 12 C.F.R. § 226.1, et seq., promulgated by the Federal Reserve Board under the authority granted in 15 U.S.C. § 1604, gives further guidance. Section 226.8(a) provides that the disclosures "shall be made before the transaction is consummated," which occurs "at the time a contractual relationship is created between a creditor and a customer or a lessor and lessee irrespective of the time of performance of either party," 12 C.F.R. § 226.2(kk). Since the "purpose of disclosure is clearly to give the borrower an opportunity to do some comparative shopping for credit terms", 476 F.2d at 1064, this Court held: a credit transaction which requires disclosures under the Act [TILA] is completed when the lender and borrower contract for the extension of credit. The disclosures must be made sometime before this event occurs. **If the disclosures are not made, this violation of the Act occurs, at the latest, when the parties perform their contract.** 476 F.2d at 1065." (Citations Wachtel v. West, 476 F. 2d 1062 (6th Cir. 1973)) [Note: Boldness & Underlining are added for emphasis.]

(b) Smith v. Fidelity Consumer Discount Co., 898 F. 2d 896 (3rd Cir. 1990) "[T]hrough TILA, Congress sought to remedy the "divergent and often fraudulent practices by which credit customers were apprised of the terms of the credit extended to them." Johnson v. McCrackin-Sturman Ford, Inc., 527 F.2d 257, 262 (3d Cir.1975). Indeed, the congressionally stated purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him." **15 U.S.C. § 1601(a). TILA, as a remedial statute which is designed to balance the scales "thought to be weighed in favor of lenders," is to be liberally construed in favor of borrowers.** Bizier v. Globe Financial Services, 654 F.2d 1, 3 (1st Cir.

1981). See *Johnson*, 527 F.2d at 262. TILA achieves its remedial goals by a system of strict liability in favor of the consumers when mandated disclosures have not been made. 15 U.S.C. § 1640(a). A creditor who fails to comply with TILA in any respect is liable to the consumer under the statute regardless of the nature of the violation or the creditor's intent. *Thomka v. A.Z. Chevrolet Inc.*, 619 F.2d 246, 249-50 (3d Cir.1980). **"[O]nce the court finds a violation, no matter how technical, it has no discretion with respect to liability."** *Grant v. Imperial Motors*, 539 F.2d 506, 510 (5th Cir. 1976). **A single violation of TILA gives rise to full liability for statutory damages.** Damages include actual damages incurred by the debtor plus a civil penalty equal to double the finance charge up to a maximum of \$1,000. 15 U.S.C. § 1640(a)(1)(2)(A)(i). Multiple violations of TILA in the course of a single loan transaction do not yield multiple civil penalties but result in only a single penalty. 15 U.S.C. § 1640(g)" Also See *Rubio v. Capital One Bank*, 613 F. 3d 1195 (9th Circuit 2010); *Barnes v. Fleet Nat. Bank, NA*, 370 F. 3d 164 (1st Cir. 2004) [Note: Boldness and Underlining added for emphasis]

(c) *Bizier v. Globe Financial Services, Inc.*, 654 F. 2d 1 (1st Cir. 1981) "[N]or do we think that any good faith defense excuses this violation under either state or federal law, whose standards differ in a manner not material to our conclusion. Compare 15 U.S.C. § 1640(c) with Mass.Gen.L. ch. 140C, § 10(b). Each requires affirmative proof by a creditor that a violation was unintentional and "resulted from a bona fide error" under specified circumstances. While appellees have argued that the mistake is insignificant, they have not offered any evidence which even tends to prove that it resulted from a bona fide effort at precision. Federal courts have strictly limited this defense to purely and literally "clerical" errors, see, e. g., *Ives v. W.T. Grant Co.*, 522 F.2d 749 (2d Cir. 1975); *Haynes v. Logan Furniture Mart*, 503 F.2d 1161 (7th Cir. 1974); *Gillard v. Aetna Finance Co.*, 414 F.Supp. 737, 748 (D.La.1976)."

(d) *Rubio v. Capital One Bank*, 613 F. 3d 1195 (9th Cir. 2010) "[I]n applying TILA and its implementing regulations, we "require absolute compliance by creditors," *Hauk v. JP Morgan Chase Bank USA*, 552 F.3d 1114, 1118 (9th Cir. 2009), and "[e]ven technical or minor violations of the TILA impose liability on the creditor," *Jackson v. Grant*, 890 F.2d 118, 120 (9th Cir. 1989)..... The form of Regulation Z that governs this case, however, does prohibit disclosures that a reasonable consumer will not understand. 12 C.F.R. pt. 226 supp. I, para. 5a(a)(2), cmt. 1. **The new regulation was adopted because the agency that implements TILA, relying on empirical evidence, concluded that describing an APR as "fixed" is misleading to reasonable consumers.** What was misleading in 2006 and 2007, when the consumer studies were conducted, was also misleading in 2004, when Rubio received Capital One's solicitation. The new regulation and the empirical studies it relies on are therefore relevant and informative for this case. For "even where not binding," an agency's interpretation of a statute "certainly may influence courts facing questions the agenc[y] ha[s] already answered." *Tualatin Valley Builders Supply, Inc. v. United States*, 522 F.3d 937, 941 (9th Cir. 2008) (citation and quotation marks omitted). Here, the Board has concluded that "fixed" is "generally" interpreted to mean that the rate

will not be changed and that the creditor has not reserved the right to change it at a later date. 74 Fed.Reg. at 5373. We need not go so far as to decide how "fixed" is *generally* interpreted. But the Board's conclusion and the study on which it relies certainly persuade us that "fixed" can *reasonably* be interpreted to mean "unchangeable." For that reason, **it is not "clear and conspicuous" to describe an APR as "fixed" when the creditor has reserved the right to change the APR for any reason.**" [Boldness added for emphasis]

15. All rulings in Courts of competent jurisdiction must be based on mandatory elements that include; [1] The Pleadings, [2] Depositions, [3] Answers to Interrogatories, [4] Admissions on File, [5] Exhibits and [6] Affidavits, if any. To be more precise, **THE EVIDENCE**...and when and/or if available, eyewitness and/or expert testimony.

(a) "[I]f the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to the jury." Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 716 (2003); Easler v. Pappas, 252 S.C. 398, 166 S.E. (2d) 808 (1969); Crossley v. State Farm Mutual Auto. Ins., 307 S.C. 354, 415 S.E.2d 393 (1992); see also Weir v. Citicorp Nat'l Services, Inc., 312 S.C. 511, 435 S.E.2d 864 (1993)

(b) Black's Law Dictionary (rev. 4th ed. 1968) on pg 882, defines **ILLEGALITY** in pertinent parts as; "[T]hat which is contrary to the principles of law, as contra distinguished from mere rules of procedure. It denotes a complete defect in the proceedings."

(c) United States v. Neder, 527 U.S. 1 (1999), In Neder, the Supreme Court defined a matter as "material" if "[a] reasonable man would attach importance to its existence or non- existence in determining his choice of action in the transaction in question." Neder, 527 U.S. at 22, n. 5. "[T]he issue of materiality is a question for the jury, not the judge."

(d) The United States Supreme Court in McMullen v. Hoffman, 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899), holds "[i]llegality is a defense to a contract action: The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it., Id. at 654, 19 S.Ct. at 845."

(e) In Nelson v. Production Credit Ass'n of the Midlands, 930 F.2d 599, 605 (8th Cir. 1991) the Court held the following, ("Court would not impose a duty on a lender to use reasonable care in making a loan.")

(f) Berkebile v. Outen, S.C. 426 S.E.2d 760, 762 (1993) (holding that "[a]n illegal contract has always been unenforceable --- South Carolina courts will not

enforce a contract which is violative of public policy, statutory law or provisions of the Constitution.").

(g) 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."

16. Since I never went to Charleston, South Carolina to receive an Addendum that is a mandatory requirement for any LOANLINER® Credit Union loan, and since SCFCU did not and cannot produce any witness testimony or documentation that can or will verify, I was at their office in Charleston, South Carolina, by all prevailing judicial standards, SCFCU's loan cannot be legalized by the Circuit Court or the Equity Court as an authorized LOANLINER® loan or a legitimate SCFCU Membership and Account Agreement. This could not be done in 2002 or from 2003-2014, and it still cannot be done by the Circuit Court or the Equity Court in 2015.

(a) Miles v. Perpetual Savings & Loan, 58 Ohio St. 2d 97 (1979) "[M]oreover, it should be axiomatic that parties who directly benefit from and knowingly participate in a transaction tainted with fraud or deceit, who are under a duty to disclose their knowledge and fail to do so, are liable for damages directly and proximately resulting from their silence." See 37 American Jurisprudence 2d 571, § 421; Saporta v. Barbagelata (1963), 220 Cal. App. 2d 463, 33 Cal.Rptr. 661."

(b) Mlynarik v. Bergantzel, 675 N.W.2d 584, 587 (Iowa 2004) ("[W]e have noted the purpose of [the non-enforcement rule] 'is to deter future misconduct by denying relief to one whose losses were substantially caused by his own fraud or illegal conduct.'" (quoting Gen. Car & Truck Leasing Sys., Inc. v. Lane & Waterman, 557 N.W.2d 274, 279 (Iowa 1996))).

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

(d) It is South Carolina's well founded policy of law.... "[t]hat no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act." 86 C.J.S. Torts § 12 (1954) [T]his rule applies at both law and in equity and whether the cause of action is in contract or in tort." {See 1A C.J.S. Actions § 29 (1985); Restatement (Second) of Torts § 774 (1977)}

(e) Black's Law Dictionary (9th ed. 2009), pg. 1323 – “[P]robative means tending to prove or disprove.” “[P]robative value is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues. The more essential the evidence, the greater its probative value.” United States v. Stout, 509 F.3d 796, 804 (6th Cir. 2007). **(Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates.)** [Boldness and Underlining added for emphasis.]

(f) “[R]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Rule 401, SCRE*.

(g) “[A]ll relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible.” *Rule 402, SCRE*

(h) Black's Law Dictionary (9th Ed. 2009) pg 1134, states in pertinent parts; “**Contributory Negligence** is a claim by a defendant that the *plaintiff's* own negligence played a part in causing the plaintiff's injury and that it is significant enough to bar the *plaintiff* from recovering damages.” [Note: Comparative Negligence in South Carolina law]

17. On September 5, 2002 whatever mistake I made...was made...in ignorance of CUNA Mutual Group's LOANLINER® guidelines and 15 U.S.C. § 1601 et seq.. The same cannot be said for SCFCU. Therefore, no valid lending agreement ever existed between me and SCFCU. After 7 years, it is evident that SCFCU relied on my ignorance of CUNA's guidelines.

18. CUNA Mutual Group's governing guidelines were written for Credit Unions and/or lenders and 15 U.S.C. § 1601 et seq., was written for regulated firms and courts. SCFCU is a regulated lending firm or enterprise and the facts were presented in Court. Therefore, I cannot be held responsible for SCFCU's violations, judgment errors and failure to “Substantially Comply” with CUNA's guidelines and Federal law and the Court must follow the law as written.

Rubio v. Capital One Bank, 613 F. 3d 1195 (9th Cir. 2010) “[A]s a final argument that the term “fixed” cannot be misleading, Capital One also relies on the official staff commentary to Regulation Z, which appears to use “fixed” to mean “not tied to an index” rather than “unchangeable.” See 12 C.F.R. pt. 226 supp. I, para. 5a(b) (1), cmt. 5. We find this contention unpersuasive. **The staff commentary to**

Regulation Z is intended to guide regulated firms and the courts. See id. pt. 226 supp. I, intro. cmt. 1. There is nothing in the staff commentary to indicate that its *internal* use of "variable" and "fixed" defines how a reasonable consumer would interpret the words. As the Board has concluded, the best evidence on that question comes from the consumer studies indicating that many reasonable consumers do interpret the term "fixed" as "unchangeable." [Boldness added for emphasis.]

19. Based upon SCFCU's compliance failures, and because no legitimate LOANLINER® credit account ever existed, SCFCU must return all the interest payments, credit life and credit disability premiums they charged me since 2002. Legally this is considered as a **Recoupment**. My mobile home purchase of February 28, 2003 is not in SCFCU's records.

VIII. STATEMENT OF THE EVIDENCE: UNJUST ENRICHMENT - RECOUPMENT

A. The Law of Natural Immutable Justice and Equity.

20. SCFCU's TILA violation effectively voided any legitimate LOANLINER® credit agreement. Therefore, SCFCU is only entitled to keep the money loaned and is effectively barred from earning any interest on a violated credit agreement that violated federal law. Since credit life and disability premiums are only applicable to a legitimate and lawful LOANLINER® Membership and Account Agreement and credit plan, this money must also be returned. This is an appropriate and fair restitution under the Law of Natural Immutable Justice and Equity.

(a) Ellis v. Smith Grading & Paving, Inc., 366 SE 2d 13 (Ct. App. 1988) "[A]n action for an accounting is equitable. Byrd v. King, 245 S.C. 247, 140 S.E. (2d) 158 (1965). "Restitution is a remedy designed to prevent unjust enrichment." Stanley Smith and Sons v. Limestone College, 283 S.C. 430, 434, 322 S.E. (2d) 474, 478 (Ct. App. 1984). Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. Barrett v. Miller, 283 S.C. 262, 264, 321 S.E. (2d) 198, 199 (Ct. App. 1984). The master concluded Smith owed Ellis an obligation "arising out of quasi-contract, that is, a contract arising out of the 'law of natural immutable justice and equity.'" See 66 Am. Jur. (2d) *Restitution and Implied Contracts* Section 2 (1973). The terms "restitution" and "unjust enrichment" are modern designations for the older doctrine of quasi-contracts. Martin v. Bozeman, 173 So. (3d) 382 (La. Ct. App. 1965). Unjust enrichment is usually a prerequisite for enforcement of the doctrine of restitution;

if there is no basis for unjust enrichment, there is no basis for restitution. 66 Am. Jur. (2d) *Restitution and Implied Contracts* Section 4 (1973). The essential elements of a quasi-contract are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by defendant of the benefit under conditions that make it inequitable for him to retain it without paying its value. 66 Am. Jur. (2d) *Restitution and Implied Contracts* Section 4 (1973); *Anno.* 62 A.L.R. (3d) 288, 294 (1975). "The law will never impute a promise to pay for a benefit conferred, where it would be unjust to the party to whom it would be imputed and contrary to equity. The law never implies a promise to pay, unless duty creates the obligation to pay; and more especially, it never implies a promise to do an act contrary to duty or contrary to law." 66 Am. Jur. (2d) *Restitution and Implied Contracts* Section 2 (1973)."

(b) Dema v. TENET PHYSICIAN SERVICES-HILTON, 678 SE 2d 430 (SC. S. Ct. 2009) "[A] party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another. Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct.App.1988)."

B. Recoupment is a Defense for SCFCU's verifiable TILA violations.

21. Under the Discovery Rule, the statute of limitations begins to run from the date I knew or should have known, by the exercise of reasonable diligence that a cause of action existed for the wrongful conduct of the SCFCU. *S.C. Code Ann. § 15-3-535 (2005)*; Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). "[T]he statute of limitations begins to run from the point of discovery and not when advice of counsel is sought or a full-blown theory of recovery developed." Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 328-29, 534 S.E.2d 672, 676 (2000) (citations omitted).

22. **All that existed on February 24, 2003 was a loan approval.** No Addendum was given to me on or before 9/5/02 to consummate SCFCU's Membership & Account Agreement pursuant to law and CUNA's procedures and there is no mobile home purchase in SCFCU's account records. Therefore, recoupment is justifiable and statutorily enforceable. The Court failed to enforce statutory law. Furthermore, all courts uphold recoupment claims against lenders that are attempting to enforce contractual obligations after TILA's 1-year limitation has passed.

(a) Matter of Coxson, 43 F. 3d 189 (5th Cir. 1995) "[F]urthermore, Texas state courts have held that a TILA claim may be asserted defensively as a recoupment action against a lender attempting to enforce contractual obligations. Garza v. Allied Finance Co., 566 S.W.2d 57, 62-63 (Tex.Civ. App.—Corpus Christi 1978); Cooper v. Republic Bank Garland, 696 S.W.2d 629, 634 (Tex.Civ.App.—Dallas 1985) (holding that recoupment claim was raised defensively in response to creditor's foreclosure efforts). We find that the TILA claim was not barred by the statute of limitations, and therefore remand the issue for consideration of the merits of the claim." See also *In re Jones*, 122 B.R. 246 (plaintiff permitted to raise TILA recoupment claim defensively)."

(b) In re Bender, 86 BR 809 (Bankr. E.D.Pa. 1988) "[T]his civil penalty must be asserted within one year of the occurrence of the statutory violation. "Recoupment" by contrast is "in the nature of a defense arising out of some feature of the transaction upon which the plaintiffs action is grounded." In re Monongahela Rye Liquors, 141 F.2d 864, 869 (3d Cir.1944) (quoting Bull v. United States, 295 U.S. 247, 55 S.Ct. 695, 79 L.Ed. 1421 (1935)). As applied to TILA, recoupment is purely defensive and can be raised only if the creditor seeks payment from the borrower. The filing of a proof of claim by the creditor is an action to collect a debt which then permits the debtor to raise TILA recoupment, even beyond the one year statute of limitations posed. Werts v. Federal National Mortgage Ass'n, 48 B.R. 980, 983-84 (E.D.Pa. 1985); In re DiCianno, 58 B.R. 810, 813 (Bankr.E.D.Pa. 1986). In re Hanna, 31 B.R. 424 (Bankr. E.D.Pa.1983). Although the recoupment defense can be raised more than one year after the federal statute was violated, it cannot produce an affirmative recovery; it can only abate or reduce the debt. See Stulz v. Boswell, 307 Pa.Super. 515, 453 A.2d 1006 (1982); 4 Collier on Bankruptcy, ¶ 503.03 (15th ed. 1987). And while the addition of a statutory recovery in TILA was designed, in part, as a penalty, the concept of recoupment is derived from equitable concerns which also must be considered."

(c) Tuloka Affiliates, Inc. v. Moore, 268 SE 2d 293 (S.C. S. Ct. 1980) "[A] recoupment, unlike a counterclaim, only reduces the plaintiff's claim; it does not allow recovery of an affirmative money judgment for any excess over that claim. Unlike set-off, it must grow out of the identical transaction that gave rise to the plaintiff's claim. Mullins Hospital v. Squires, 233 S.C. 186, 104 S.E. (2d) 161 (1958). "Recoupment, therefore, is the right of the defendant to cut down or diminish the claim of the plaintiff in consequence of his failure to comply with some provision of the contract sought to be enforced, or because he has violated some duty imposed upon him by law in the making or performance of that contract. The delinquency or deficiency which will justify the reduction of the plaintiff's claim must arise out of the same transaction, and not out of a different transaction." Mullins Hospital v. Squires, supra, 104 S.E. (2d) at page 166, citing Burks' Pleading and Practice, 4th Ed., Section 247, page 438. (Emphasis added). Respondent's argument that the contract executed by the appellants and duties of disclosure imposed by TILA do not form part of the same transaction are unpersuasive. The duties imposed on the lender arise out of the loan transaction itself and effectively become a part of the contract. **While the limitation of Section 1640(e) may be interposed to bar an affirmative counterclaim or set-**

off, it may not be used to defeat the equitable defense of recoupment. This Court has long held the view that: "[Recoupment] grows out of the contract itself which is the cause of action, and is not barred by the statute of limitations. It would be manifestly unjust to permit the vender to enforce a subsisting contract, and deny to the purchaser, from lapse of time, a defense involving the validity of it at its inception. *Evans' Executors v. Yongue*, 42 S.C.L. (8 Rich.) 113, 115 (1854). See also, *Bull v. United States*, 295 U.S. 247, 55 S.Ct. 695, 79 L.Ed. 1421 (1935); *Earle v. Owings*, 72 S.C. 362, 51 S.E. 980 (1905). **The purpose of the TILA is "to assure meaningful disclosure of credit terms" so that the consumer can shop for credit on an informed basis.** 15 U.S.C. § 1601. The provisions for remedies at Section 1640(a) place enforcement of the TILA in the hands of the consumer. If recoupment claims were barred by the limitation in Section 1640(e), lenders could avoid the consequences of non-compliance simply by waiting a year to bring suit on a default, thereby defeating the purpose of the TILA." [Boldness added for emphasis.]

(d) *US Life Credit Corp. v. James*, 279 SE 2d 367 (S.C. S. Ct. 1981) "[T]he trial judge ruled that the one-year statute of limitations under the Truth in Lending Act, 15 U.S.C.A. § 1640(a), barred Debtor from pleading this alleged violation by answer almost five years later. We disagree. In *Tuloka Affiliates v. Moore*, S.C. 268 S. E. (2d) 293 (1980) filed approximately one month after the order in this action), we held that **a debtor can allege these violations as an affirmative defense by recoupment even after the one-year limitation period for bringing an action under the Truth in Lending Act has lapsed.**"

(e) *Beach v. Ocwen Fed. Bank*, 523 US 410 (1998) "[A]ccordingly, the Act requires creditors to provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights. See §§ 1631, 1632, 1635, 1638. Failure to satisfy the Act subjects a lender to criminal penalties for noncompliance, see § 1611, as well as to statutory and actual damages traceable to a lender's failure to make the requisite disclosures, see § 1640. Section 1640(e) provides that an action for such damages "may be brought" within one year after a violation of the Act, but that **a borrower may assert the right to damages "as a matter of defense by recoupment or set-off" in a collection action brought by the lender even after the one year is up.**" [Boldness added for emphasis.]

(f) *Wallace v. Owens-Illinois, Inc.*, 389 SE 2d 155 (Ct. App. 1989) "[t]he general rule is that one who does a wrongful act is answerable for all consequences that may ensue in the normal course of events. Any number of causes and effects may intervene between the original wrongful act and the final injurious consequence. **If the intervening acts are (1) set in motion by the original wrongful act and (2) are the normal and foreseeable result of the original act, the final result, as well as every intermediate cause, is considered in law to be the proximate result of the first wrongful cause.**"

(g) *Jones v. TransOhio Sav. Ass'n*, 747 F. 2d 1037 (6th Cir. 1984) "[T]he equitable maxim that "no man may take advantage of his own wrong," [is] older than the country itself, [and] is deeply rooted in our federal jurisprudence. As

stated by Mr. Justice Miller in *Insurance Co. v. Wilkinson*, 80 U.S. (13 Wall.) 222, 233, 20 L.Ed. 617 (1871) The principle is that where one party has by his representations or his conduct induced the other party to a transaction to give him an advantage which it would be against equity and good conscience for him to assert, he would not in a court of justice be permitted to avail himself of that advantage ... where the technical advantage thus obtained is set up and relied on to defeat the ends of justice or establish a dishonest claim. Repeatedly throughout our judicial history, the Supreme Court has approved the application of equitable tolling to statutes of limitations to prevent unjust results in cases arising at law as well as at equity.” [Boldness added for emphasis.]

(g) *Ortiz v. Accredited Home Lenders, Inc.*, 639 F. Supp. 2d 1159 - Dist. Court, SD California 2009) “[G]enerally, ‘a defendant’s right to plead ‘recoupment,’ a ‘defense arising out of some feature of the transaction upon which the plaintiff’s action is grounded,’... survives the expiration” of the limitations period. *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 415, 118 S.Ct. 1408, 140 L.Ed.2d 566 (1998) (quoting *Rothensies v. Elec. Storage Battery Co.*, 329 U.S. 296, 299, 67 S.Ct. 271, 91 L.Ed. 296 (1946) (internal citation omitted)). Plaintiffs also correctly observe the Supreme Court has confirmed recoupment claims survive TILA’s statute of limitations. *Id.* at 418, 118 S.Ct. 1408. To avoid dismissal at this stage, Plaintiffs must show that “(1) the TILA violation and the debt are products of the same transaction, (2) the debtor asserts the claim *as a defense*, and (3) the main action is timely.” *Moor v. Travelers Ins. Co.*, 784 F.2d 632, 634 (5th Cir. 1986) (citing *In re Smith*, 737 F.2d 1549, 1553 (11th Cir.1984)).”

C. Unjust Enrichment - Paid interest and premiums must be returned.

23. **Offer of Proof:** Unlike 99.99% of LOANLINER® credit cases, I never received an Addendum and still do not have one. Nor can one be given at this point in time. Therefore, I do not have a debt. The car is paid out. {My **Exhibit 15**} Only the interest payments and credit and disability life premiums must be returned. There is no debt on the mobile home. It is also paid out. SCFCU has received every penny borrowed. {See SCFCU’s **Exhibit 3 of 5/10/2012**}

24. As with the car, since there is no consummated credit agreement pursuant to CUNA Mutual Group’s LOANLINER® requirements, the credit life, credit disability life and interest payments must be returned to avoid **Unjust Enrichment**. SCFCU’s charges, interest, penalties and late fees were never a part of a valid LOANLINER® agreement.

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

(b) Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (Holding that “illegal contracts are void and unenforceable, such that actions for its breach may not be maintained”)

(c) Jones v. TransOhio Sav. Ass’n, 747 F. 2d 1037 (6th Cir. 1984) “[T]he equitable maxim that “no man may take advantage of his own wrong,” older than the country itself, is deeply rooted in our federal jurisprudence.”

(d) Jackson v. Bi-Lo Stores, Inc., 437 SE 2d 168 (Ct. App. 1993) “[I]t is a well founded policy of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act. 86 C.J.S. *Torts* § 12 (1954). This rule applies at both law and in equity and whether the cause of action is in contract or in tort. 1A C.J.S. *Actions* § 29 (1985). See also Graham v. Graham, 276 S.C. 341, 278 S.E.2d 345 (1981); Nelson v. Bryant, 265 S.C. 558, 220 S.E.2d 647 (1975); Roundtree v. Ingle, 94 S.C. 231, 77 S.E. 931 (1913).” Also see, RCDI CONST. v. Spaceplan/Architecture, 148 F. Supp. 2d 607 (Dist. Ct. W.D. NC. 2001); W & N CONSTRUCTION COMPANY v. Williams, 472 SE 2d 622 (SC. S. Ct. 1996)

25. Section 36-3-305(a)(1)(ii) - SC Code of Laws clearly states the following in pertinent parts:

“[(a)] Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (1) a defense of the obligor based on..... (ii) illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms....”

IX. STATEMENT OF THE EVIDENCE: SCFCU’S SCUTPA VIOLATIONS

A. SCFCU’s Fixed Interest Rate Agreement is not Fixed and Misleading.

26. **Offer of Proof:** SCFCU’s filed Complaint clearly states (Fixed Interest Rate Agreement). Yet when the Court examined SCFCU’s filed **Exhibit 3**, the rate is not fixed, it is open-end. Since the Federal Reserve Board of Governors categorized the term “fixed” as “[m]isleading” in 2010, If the term fixed interest rate was misleading in 2010, it was misleading in 2003. Therefore, it is a material fact that SCFCU’s Account Statements do not represent a fixed interest rate. {See Rubio v. Capital One Bank, 613 F. 3d 1195 (9th Cir. 2010)}

27. SCUPTA states “unfair methods of competition and unfair or deceptive acts or

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

28. To be actionable under SCUTPA, the alleged unfair or deceptive act or practice must have an impact upon the public interest. *Noack Enterprises, Inc. v. Country Corner Interiors*, 351 S.E.2d 347 (S.C.Ct.App. 1986). The Federal Reserve Board states the term “fixed interest rate” is misleading to reasonable consumers. *Black’s Law Dictionary* (rev. 4th ed. 1968) on pg 1151, in pertinent parts, defines **MISLEADING** as; “[D]elusive; calculated to lead astray or to lead into error.”

Joe Conte Toyota, Inc. v. LA. MOTOR VEH. COM’N, 24 F. 3d 754 (5th Cir.1994) *Peel v. Attorney Disciplinary Commission*, 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed.2d 83 (1990). “[A]lthough there was no majority opinion in *Peel*, the opinions of several justices shed some light on the hierarchy of misleading commercial speech. Furthermore, the Court identified a third category of misleading commercial speech, “actually misleading.” *Id.* (Stevens, J.). Justice Stevens, in an opinion joined by Justice Brennan, Justice Blackmun and Justice Kennedy, suggested that commercial speech is “actually” misleading when there is evidence of deception. *Id.* at 106, 110 S.Ct. at 1694. Justice Marshall agreed that a statement is “actually” misleading when the record contains evidence that recipients of commercial speech “actually ha[ve] been misled by the statement.” *Id.* at 112, 110 S.Ct. at 1697 (Marshall, J. and Brennan, J., concurring). A statement is “inherently” misleading when, notwithstanding a lack of evidence of actual deception in the record, “the particular method by which the information is imparted to consumers is inherently conducive to deception and coercion.” *Id.* (Marshall, J. and Brennan, J., concurring). Included is “commercial speech that is devoid of intrinsic meaning.” *Id.* (Marshall, J. and Brennan, J., concurring). **In her dissent, Justice O’Connor added that “inherently misleading” means “inherently likely to deceive the public.”** *Id.* at 121, 110 S.Ct. at 1702 (O’Connor, J., Rehnquist, C.J. and Scalia, J., dissenting). Citing *In re R.M.J.*, Justice Marshall noted that states may prohibit actually or inherently misleading commercial speech entirely. *Id.* at 111, 110 S.Ct. at 1697 (Marshall, J. and Brennan, J., concurring). From all of this we conclude that a statement is actually or inherently misleading when it deceives or is inherently likely to deceive.” [Boldness and Underlining for emphasis.]

29. Section 39-5-140 – SC Code of Laws states: “[A]ny person who suffers any ascer-

tainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by *Section 39-5-20* may bring an action individually, but not in a representative capacity, to recover actual damages. *Section 39-5-140* only protects a “person who suffers any ascertainable loss of money or property, real or personal.” **SCFCU interest rate for my mobile home is not fixed.**

30. Federal courts have held that unfair or deceptive acts as defined in the FTC Act need not constitute ordinary fraud. *Federal Trade Commission v. Algoma Lumber Co.*, 291 U.S. 67, 54 S.Ct. 315, 78 L.Ed. 655 (1934); *D.D.D. Corp. v. Federal Trade Commission*, 125 F. (2d) 679 (7th Cir.1942). Under the statute there is no need to show that a claim or representation was intended to deceive, but only that it had the capacity or effect or tendency to deceive. *Id.* See also *Hardy v. Toler*, 288 N.C. 303, 218 S.E. (2d) 342 (1975); *Heller v. Silverbranch Construction Corp.*, 376 Mass. 621, 382 N.E. (2d) 1065 (1978)

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

32. **Offer of Proof:** Under Section 39-5-20(a) and (b), SC Code of Laws, I need not prove the elements of common law deceit in order to establish a violation of the South Carolina’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. *State ex rel. McLeod v. C & L Corporation.*

Rubio v. Capital One Bank, 613 F. 3d 1195 (9th Cir. 2010) “[T]he Federal Reserve Board of Governors, the very agency tasked with implementing TILA. The Board has relied on that evidence in promulgating a new regulation that gen-

erally prohibits creditors from using the term "fixed." See *United States v. Woods*, 335 F.3d 993, 1001 (9th Cir. 2003) (noting that under 44 U.S.C. § 1507, the Federal Register must be judicially noticed)---- the Federal Reserve Board promulgated revisions to Regulation Z that became effective July 1, 2010. See Truth in Lending, 74 Fed.Reg. 5244, 5246-48 (Jan. 29, 2009). Based on the research, the revisions specify that in the Schumer Box's APR disclosure, the term *fixed*, or a similar term, may not be used to describe [the annual percentage] rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open. *Id.* at 5401 (to be codified at 12 C.F.R. § 226.5(a)(2)(iii) In explaining the regulation, and stated that it had "found through consumer testing ... that consumers generally believe a 'fixed' rate does not change...."

B. SCFCU misapplied my mobile home payments for a fixed interest rate loan to an 02/24/2003 open-end loan that I never approved.

33. **My 02/28/2003 loan application and loan are for a mobile home with a fixed interest rate.** My monthly payments were not used to pay off my mobile home loan. My monthly payments were applied to an 02/24/2003 open-end account. This is the same account that is the subject of SCFCU's Complaint. Federal guidelines and CUNA Mutual Group's guidelines prohibit using open-ended credit plans for home loans, site built or mobile homes.

34. SCFCU's personnel, Angel Rabon, was told the loan was for a mobile home, it is written on the 02/28/03 application and SCFCU's personnel did not send any Addendum or any other document/s for me to sign relative to the mobile home purchase as required by CUNA's own guidelines. As stated, **my mobile home purchase is not in SCFCU's account records.**

X. STATEMENT OF THE EVIDENCE: SCFCU'S UNCLEAN HANDS

A. There is no evidence or testimony in the Court's Record's.

35. Any person of reasonable intelligence will agree with the following undeniable and irrefutable facts that are either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability. The Court's records verify no Addendum could have been given to me by SCFCU's personnel.

36. **Offer of Proof:** In 2002, there was no known method to physically give someone a document over a telephone line. Faxing is sending and receiving, not giving. Mailing is sending and receiving not giving. **Even SCFCU's attorneys and the Court can agree with this undeniable and irrefutable fact**, it was not physically possible to give me an Addendum over the telephone. Documents can only be physically given to another person when they are in each other's physical and immediate presence or in close proximity to each other.

37. **Offer of Proof:** There is no evidence or testimony in the Court's Records that can or will verify SCFCU's personnel witnessed someone or anyone from their Charleston office giving me an Addendum to consummate SCFCU's LOANLINER® credit plan or Membership and Account Agreement. There is no evidence or testimony in the Court's Records that can or will verify SCFCU's personnel from their Columbia office gave me an Addendum when I picked up the check for the car on September 5, 2002. "[a] credit transaction which requires disclosures under the Act [TILA] is completed when the lender and borrower contract for the extension of credit. The disclosures must be made sometime before this event occurs. **"If the disclosures are not made, this violation of the Act occurs, at the latest, when the parties perform their contract.** 476 F.2d at 1065." {Citation *Wachtel v. West*, 476 F. 2d 1062 (6th Cir. 1973)}

B. SCFCU's Unclean Hands & Unjust Enrichment.

38. Therefore, by SCFCU's undeniable TILA violations in 2002 and 2003, SCFCU has **Unclean Hands** that effectively bar any judicial relief. SCFCU's personnel and/or law firm also tried to deceive the court by including an Addendum in documents presented to the Court as though I had received one. This is a "Fraud upon the Court". This deception may have been done in ignorance (Negligent Misrepresentation) or with willful intent to deceive ("Fraud").

39. SCFCU's attorneys knew, as a direct result of this lawsuit, that my loan was done by phone and not in person. SCFCU's personnel knew in 2002 that my loan was handled by tele-

phone and not in person. Therefore, it was impossible for SCFCU to meet the disclosure requirements of CUNA Mutual Group's LOANLINER® credit plan and Membership and Account Agreement. This is additional evidence of SCFCU's Unclean Hands that effectively bar any judicial relief.

(a) "[O]ne who comes to the court seeking equity must come with clean hands." See Precision Instrument Mfg. Co. v. Automotive Co., 324 U.S. 806, 814 (1945) ("He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief."); Wilson v. Landstrom, 281 S.C. 260, 315 S.E.2d 130 (Ct. App. 1984) ("The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.")

(b) Wachovia Bank, NA v. Coffey, 698 SE 2d 244 (Ct. App. 2010) "[H]owever, Mrs. Coffey asserts that the doctrine of unclean hands bars Wachovia from seeking equitable relief from our courts. She argues that Wachovia committed the unauthorized practice of law, and, therefore, Wachovia came into court with unclean hands. We agree." "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct.App.1998).

(c) "[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). The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity. *Id.*"

(d) Stauffer v. Stauffer, 351 A.2d 236, 244 (Pa.1976) ("The bar of unclean hands is applicable ... only where the wrongdoing of the plaintiff directly affects the equitable relationship subsisting between the parties and is directly connected with the matter in controversy.").

40. The Plaintiff's hands are not clean relative to this matter before the Court and South Carolina Courts have consistently held, "[n]o person can be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act." Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and

maintained by bribery). South Carolina Courts apply this rule for “Unclean Hands” in law and in equity and whether the cause of action is in contract or in tort. Jackson, 313 S.C. at 276, 437 S.E.2d at 170.”

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

42. In 1879, South Carolina’s Supreme Court held, “[T]here can be no doubt of the correctness of the legal proposition that, where money is paid under a mistake of fact, to a person who has no ground in conscience to claim it, the person paying it may recover it back.” Glenn v. Shannon, 12 S.C. 570, 570 (1879); see also Pilot Life Ins. Co. v. Cudd, 208 S.C. 6, 36 S.E.2d 860 (1945) (holding the general rule is that money paid to another under a mistake of fact may be recovered because the money belongs, in equity and good conscience, to the person who paid it). See Castock Corp. v. Bailey, 492 N.Y.S.2d 921 (Sup. Ct. 1985) (the fact that recipient has parted with the money is an insufficient excuse to forgive repayment); 70 Am. Jur. 2d Payment § 114(c) (1987) (no defense where money has been paid to another or spent).

C. SCFCU’S “Willful Blindness” – Knew no Addendum was given to me.

43. SCFCU’s personnel engaged in “Willful Blindness” in 2002. It is inconceivable that someone in SCFCU’s Charleston office did not know or realize that it is impossible to give an Addendum over the telephone. It is also inconceivable that SCFCU’s personnel did not know Federal law and CUNA Mutual Group’s LOANLINER® loans and Membership and Account Agreements required disclosures before credit is actually extended, or at the very least, at the time and before the check was actually given.

44. Therefore, this situation could have been easily resolved by a timely phone call to their Columbia office to make sure an Addendum was given to me. There is no evidence in the Court's Records that can or will verify a call was made to SCFCU's Columbia office to give me an Addendum to consummate SCFCU's LOANLINER® car loan or Membership and Account Agreement. The Court cannot ignore SCFCU's disclosure and compliance failures.

(a) ".....[w]here 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 realized [sic] its probability; but he refrained from obtaining the final confirmation because he wanted in the event... to be able to deny knowledge.'")

(c) "[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)

(d) 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

(e) "[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.

(f) "[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); "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.

(g) *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.

(h) “[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.

(i) “[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).

(j) “[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)

(k) *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.”

(l) “[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.”

(m) “[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.

XI. STATEMENT OF THE EVIDENCE: SCFCU IS BARRED FROM CHANGING ITS COMPLAINT BY THE DOCTRINE OF JUDICIAL ESTOPPEL

A. The Court cannot condone or ignore SCFCU’s changing its Complaint.

45. The Court cannot ignore or condone SCFCU’s changing its Complaint. **Offer of Proof:** There is no amended Complaint in the Court’s Records for an Open-end Disbursement Receipt Plus LOANLINER® Credit and Security Agreement (“Open-end Agreement”) that was executed and delivered on February 28, 2003 that called for the payment of \$5,500.

46. **Offer of Proof:** There is no amended Complaint in the Court’s Record for an Open-End Disbursement Receipt Plus LOANLINER® Credit and Security Agreement (“Fixed Interest Rate Agreement”) that was executed and delivered on or about February 28, 2003 that called for the payment of the sum of \$5,500.00.

B. SCFCU’s filed Complaint is for a February 24, 2003 loan approval.

47. SCFCU’s filed Complaint is for a loan approval and not for any Open-End Disbursement Receipt Plus LOANLINER® Credit and Security Agreement (“Fixed Interest Rate Agreement”) that was executed and delivered on or about February 24, 2003 that called for the payment of the sum \$5,556.44. **Offer of Proof:** This is no application of any kind for this loan.

48. SCFCU, Amy Rogers and SCFCU’s law firm are effectively barred from changing their Complaint by the legal Doctrine of **Judicial Estoppel**. Therefore, the Equity Court is judicially estopped from ruling on assertions gleaned from the February 18, 2015 hearing that cannot be supported by the evidence and the facts in the Court’s Records.

(a) Quinn v. Sharon Corp., 540 SE 2d 474 (Ct. App. 2000) “[T]he supreme

court expressly adopted the doctrine of judicial estoppel, as it relates to matters of fact, in the case of *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E. 2d 472 (1997). The doctrine precludes a party from adopting a position in conflict with one previously taken in the same or related litigation. *Id.* The purpose of the doctrine is not to protect litigants from allegedly improper or deceitful conduct by their adversaries, but to protect the integrity of the judicial process and the courts. *Id.* The supreme court explained, In order for the judicial process to function properly, litigants must approach it in a truthful manner. Although parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process. The doctrine thus punishes those who take the truth-seeking function of the system lightly. **When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him.** *Id.* at 251-52, 489 S.E.2d at 477. [Boldness added for emphasis]

(b) *Wright v. Craft*, 640 SE 2d 486 (Ct. App. 2006) "[J]udicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted *in the same or related proceeding.*" *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004) (emphasis added). The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary. *Id.* (citing *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003)). Five elements are required for the application of judicial estoppel: (1) two inconsistent positions must be taken by the same party or parties in privity with each other; (2) the two inconsistent positions were both made pursuant to sworn statements; (3) the positions must be taken in the *same or related* proceedings involving the same parties in privity with each other; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent-that is, the truth of one position must necessarily preclude the veracity of the other position."

49. Someone at SCFCU turned an approval date into a loan date. **Offer of Proof:**

SCFCU's Law Firm of Moore & Van Allen, PLLC, was duly notified in my **Answer to Complaint** filed on 12/21/2011, that I never had a loan of any kind with SCFCU that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of \$5,556.44.

50. **Offer of Proof:** Amy Rogers verified SCFCU's Complaint and Debt Collection are based on an Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars (\$5,556.44) that is now in default with an amount due and payable of \$5,274.84.

XII. STATEMENT OF THE EVIDENCE: SCFCU'S EXHIBITS AND DOCUMENTS THAT PROVE SCFCU'S COMPLAINT & DEBT COLLECTION ARE FOR A NON-EXISTENT OPEN-END LOAN DATED FEBRUARY 24, 2003 AND NOT FOR MY 02/28/2003 FIXED RATE CLOSE-END MOBILE HOME LOAN.

A. There is no filed Complaint or Debt Collection for a fixed interest rate mobile home loan dated February 24, 2003 or February 28, 2003.

51. **Offer of Proof:** Based on SCFCU's filed Complaint, documents and Amy Rogers' default loan statement that is attached to her Corporate Verification of Account, SCFCU's filed Complaint and Debt Collection are based on a loan that was never executed and delivered on or about February 24, 2003 that called for the payment of the sum of \$5,556.44 that is now in default. **There is no loan application or paperwork for a loan dated February 24, 2003.** SCFCU's filed Exhibits prove no application was ever executed and delivered for a February 24, 2003 loan. My 02/28/2003 mobile home loan is not in SCFCU's Account Records.

2011-2012 (a) SCFCU's filed Exhibit B: On November 23, 2011, SCFCU filed an Exhibit that is identified as Exhibit B. SCFCU's Exhibit B, is a copy of the Member 1 Plan Application for my automobile that was signed on September 5, 2002. {This is my Exhibit A}

(b) SCFCU's filed Exhibit C – Offer of Evidence & Proof of SCFCU's TILA, CUNA & SCUTPA Violations: On November 23, 2011, SCFCU filed an Exhibit that is identified as Exhibit C. SCFCU's filed Exhibit C, is a copy of SCFCU's Statement of Account. SCFCU's Account Statement marked as Exhibit C, proves clearly and convincingly the interest rate is not fixed.

(c) SCFCU's 2nd Account Verification – Offer of Evidence & Proof of SCFCU's Misrepresentation of a Material Fact: On November 23, 2011, SCFCU via Amy Rogers, filed its second Account Verification that is dated; October 26, 2011. Amy Rogers' Account Verification is for an open-end account that was never entered into on February 24, 2003 for \$5,556.44. **Amy Rogers verified SCFCU's Complaint & Debt Collection is for a open-end loan and not for a fixed interest rate 02/28/2003 mobile home loan.** No loan documents were executed and delivered on February 24, 2003. {See my Exhibit 37}

(d) SCFCU's 1st Account Verification – Offer of Evidence & Proof of SCFCU's Misrepresentation of a Material Fact: On May 11, 2011, SCFCU; via Amy L. Hewitt, filed its first Account Verification in Magistrate Court. Amy L. Hewitt's Account Verification is dated; May 11, 2011. **Amy L. Hewitt's so-called [note] is for an open-end 02/24/03 loan and not for a fixed rate 02/28/2003 mobile home loan.** No loan documents were executed and delivered to SCFCU on February 24, 2003. { See my Exhibit II, ¶ 2, pg 1 }

(e) **Amy L. Hewitt's Affidavit – Offer of Evidence & Proof of SCFCU's Misrepresentation of a Material Fact:** On May 11, 2011, Amy L. Hewitt's Affidavit and Itemization of Accounts that was filed on May 11, 2011 in Magistrate Court did not reference any mobile home purchase. SCFCU's Complaint & Debt Collection is for an 02/24/03 loan that does not exist. {See my **Exhibit 6**}

(f) **Offer of Evidence & Proof of SCFCU's TILA & CUNA Violations:** NO ADDENDUM WAS FILED IN 2011: On November 23, 2011, no Addendum was filed with SCFCU's documents and/or Complaint. **No Addendum can be filed because I never received one.**

(g) **SCFCU's Exhibit 1 – Offer of Evidence & Proof of SCFCU's TILA, CUNA & SCUTPA Violations:** On May 10, 2012, SCFCU filed an Exhibit that is identified as Exhibit 1. SCFCU's Exhibit 1 is a copy of my LOANLINER® application for a mobile home that is dated 02/28/03. **There is no mobile home purchase in SCFCU's Account Records.** My mobile home payments were misapplied to a non-existent February 24, 2003 account for which there is no paperwork or voucher and no documents were executed and delivered to SCFCU on February 24, 2003. Even though this document is not the original, on the original application [**House**] is handwritten on the application, it clearly identifies the following undeniable facts: {See my **Exhibit 27**}

(1) The date of the application and voucher is February 28, 2003 and not February 24, 2003. {See My **Exhibits 9 & 10**}

(2) The interest rate is fixed at an annual percentage rate of 15% and not open-end. {See My **Exhibit 9**}

(3) Mobile home or house is not typed on the application, it is hand written on the original application. {**See my Exhibit 9 for verification**} Since [**House**] is handwritten, removing it or whiting it out might create confusion for SCFCU's accounting department. There should be no confusion however, because fixed interest rate is clearly written on the application ; as well as, the annual percentage rate of 15%.

(4) The loan amount is for \$5,500.00 dated February 28, 2003 and not for \$5,556.44 that is dated February 24, 2003. {See My **Exhibit 9**}

(5) **Offer of Evidence & Proof of SCFCU's CUNA & TILA Violations:** NO ADDENDUM or an updated Addendum came with the application that is dated February 28, 2003 and NO ADDENDUM came on February 24, 2003.

(6) The monthly payment is \$110.00. {See My **Exhibit 9**}

(7) **Offer of Evidence & Proof of SCFCU's CUNA Violations:** The application is not signed as required by CUNA's guidelines.

2012-2013

(h) **SCFCU's Exhibit 2 – Offer of Evidence & Proof of SCFCU's CUNA Violations & Offer of Evidence & Proof of SCFCU's TILA Violations:** On

May 10, 2012, SCFCU filed an Exhibit that is identified as Exhibit 2. SCFCU's Exhibit 2 is SCFCU's third Statement of Account. **This Statement also proves beyond any reasonable doubt and clearly and convincingly that my 02/28/03 mobile home closed-end fix interest rate loan is not in SCFCU's account records and my monthly payments were misapplied to an 02/24/2003 open-end loan for which there is no paperwork or voucher.** February 24, 2003 is the loan approval date, not the loan date. {See my Exhibit 28}

(i) **SCFCU's Exhibit 3 – Offer of Evidence & Proof of SCFCU's CUNA Violations & Offer of Evidence & Proof of SCFCU's TILA Violations:** On May 10, 2012, SCFCU filed an Exhibit that is identified as Exhibit 3. SCFCU's Exhibit 3 is a Payment Summary. SCFCU's Exhibit C of 11/23/11 & Exhibit 3 prove beyond any reasonable doubt and clearly and convincingly that SCFCU's interest payments are not fixed. **Federal law requires more documentation and under CUNA's guidelines, houses and/or mobile homes mandate closed-end loans.** {See my Exhibit 29}

(j) **SCFCU's Exhibit 4 – Offer of Evidence & Proof of SCFCU's SCUTPA Violations:** On May 10, 2012, SCFCU filed an Exhibit that is identified as Exhibit 4. SCFCU's Exhibit 4 are copies of Monthly Statements. **These filed Monthly Statements prove conclusively that my mobile home payments were misapplied to a non-existent 02/24/2003 loan for which there is no voucher or paperwork like my car loan. My 02/28/2003 mobile home closed-end fix rate loan is not in SCFCU's account records.** {See my Exhibit 30.

(k) **Affidavit of Amy Rogers in Support of Summary Judgment – Offer of Evidence & Proof of SCFCU's Misrepresentation of a Material Fact:** On May 10, 2012, Amy Rogers, filed an Affidavit supporting Summary Judgment in which she misrepresented a material fact. On page 2, in ¶ 5, Amy Rogers identifies an “**Open-end Fixed Rate of Interest Agreement**”. **No such agreement is recognized by federal law.** The Complaint clearly states on page 2, in ¶ 7, “Fixed Interest Agreement” In addition, on SCFCU's LOANLINER® application the interest rate is “Fixed” not open. Closed-end loans are defined by Regulation Z as “[c]onsumer credit other than open-end credit.” {See 12 C.F.R. § 226.2(a)(10)}.

(1) *Roybal v. Equifax*, 405 F. Supp. 2d 1177 n. 3 (Dist. Court, E.D. Cal.2005) “[A]n open end credit plan is one where the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. 15 U.S.C. 1602(I). All credit that is not characterized as open end is considered closed end. See 12 C.F.R. 226.2(a)(10).”

(2) *Premier Federal Credit Union v. Douglas*, 465 SE 2d 338 (NC Ct. App. 1996) “[P]laintiff maintains that defendant's signature on the Loanliner Advance (which constituted the car loan) settles the factual issue regarding whether repeated transactions were contemplated by the parties. Plaintiff characterizes the Advance as evidence that a subaccount of Defendant's preexisting open-ended account was being used for the car pur-

chase by defendant. Plaintiff is mistaken. In *Maes*, the Court stated that more is required to establish that a purchase is made under an 'open-end' credit arrangement than the recitations in the agreement.... If it were otherwise, a creditor could easily exempt what is in reality a single credit sale from the disclosures required under [Regulation Z] and thereby frustrate the Congressional purpose of providing meaningful disclosure of credit terms to the consumer merely by including such language in the agreement of sale—when in fact no continuing or revolving credit was contemplated by the parties. 356 F.Supp. at 50 Plaintiff's motion for summary judgment is premised on the loan made to defendant operating as an open-ended credit transaction. Plaintiff states that it made all disclosures required for open-ended loans under Regulation Z. Defendant has presented evidence, which, if true, would tend to define the loan transaction between the parties as closed-ended. Further, plaintiff admits that the disclosures made were only those necessary for an open-ended account. It is thus axiomatic that plaintiff has not made the type of disclosures required for provision of closed-end credit. As a result, genuine issues of material fact exist as to whether repeated credit transactions were contemplated by the parties. Equally in question is the type of credit provided defendant, closed-end or open-end; this question can only be decided by the factual "context of the [Credit Union's] business and relationship with defendant." *Frost*, 1993 WL 335796 at *1. These questions raise multiple factual issues as to whether the Truth in Lending Act was violated. Therefore, we find that the trial court improvidently granted summary judgment to plaintiff, and we Reverse and remand.

(3) *In re Mourer*, 287 BR 889 (Bankr. Ct. W.D. Mich. 2003) "[C]onsumer lending transactions under TILA are divided into "open end credit plans" under 15 U.S.C. § 1602(i) and "closed end credit." Reg. Z, 12 C.F.R. § 226.2(a)(10). **Closed end transactions are one time credit loans and many consumer loans such as car or home loans.** Chapter 2 of TILA focuses on consumer credit transactions and contains civil liability provisions, See 15 U.S.C. §§ 1635 and 1640, that allow consumers to recover damages against creditors who do not comply with TILA's requirements. The Act is implemented by Regulation Z. Whether Regulation Z is applicable is determined by the occurrence of certain triggers in specific consumer credit activities." [Boldness is added for emphasis.] As stated there is no such loan designation as SCFCU's and/or Amy Rogers' **"Open-end Fixed Rate of Interest Agreement."**

(4) *Maes v. Motivation for Tomorrow, Inc.*, 356 F. Supp. 47 (Dist. Ct. N.D. Cal. 1973) "[I]t is evident, therefore, that the term "open end credit," as it is used in these regulations, is intended to distinguish single purchase credit transactions, which are subjected to more stringent disclosure requirements, from transactions made under a revolving or continuing credit arrangement, such as under credit card or charge accounts ---- where such extensive disclosures are not practicable --- If plaintiffs can show that

the sales in question were *not* made under an open end credit plan, and, that the disclosures required under 15 U.S.C. § 1638 were not made, then they will be entitled to the relief sought.”

(5) *Shepard v. Quality Siding & Window Factory, Inc.*, 730 F. Supp. 1295 (Dist. Ct. D. Del. 1990) “[T]he TILA requires that disclosures be made before “credit is extended” to the consumer. 15 U.S.C. § 1638(b)(1). The regulations define “credit” as “the right to defer payment of debt or to incur debt and defer its payment.” 12 C.F.R. § 226.2(a)(14). The regulations also give meaning to the phrase when “credit is extended.” That is, the required disclosures must be made “*before consummation* of the transaction.” 12 C.F.R. § 226.17(b) (emphasis added). A transaction is consummated at “the time the consumer becomes contractually obligated on a credit transaction.” 12 C.F.R. § 226.2(a)(13). Disclosures must be made in writing, and the consumer must receive a copy of the written disclosures. 12 C.F.R. § 226.17(a)(1).”

(l) **Offer of Proof That SCFCU Has Presented No Evidence To Support its Filed Complaint:** NO APPLICATION FILED. Since 2011, no application or voucher of any kind has been filed for a loan dated 02/24/2003 that will support SCFCU’s Complaint.

2013-2015

(m) **Offer of Proof That SCFCU Has Presented No Evidence:** From 2011 to 2014, SCFCU has presented no Testimony, Affidavits, Admissions, Answer to Interrogatories, Depositions and/or Exhibits, by SCFCU or SCFCU’s attorneys that can verify an application was sent to me dated February 24, 2003 for SCFCU’s and/or Amy Rogers “**Open-end Fixed Rate of Interest Agreement**”.

(o) **SCFCU’s 2nd Exhibit 1 – Offer of Evidence & Proof of SCFCU’s CUNA Violation and Offer of Evidence & Proof of SCFCU’s TILA Violations:** At the hearing on February 18, 2015, SCFCU’s attorneys filed a second Exhibit that is identified as Exhibit 1: This is not the same LOANLINER® application that SCFCU filed on November 23, 2011 that is marked as Exhibit B. This Exhibit 1 is a copy of SCFCU’s Member 1 Plan Application that is dated September 5, 2002. As stated, **this is my Exhibit A.**

(1) On September 5, 2002, because my car loan was done by telephone, **NO ADDENDUM WAS GIVEN TO ME BY SCFCU’S PERSONNEL** as required by CUNA Mutual Group and the TILA (15 U.S.C. § 1601 et seq.) {See excerpts *Rudisell v. Fifth Third Bank*, 622 F. 2d 243 (6th Cir. 1980), pg 11, ¶ 16(a); *Smith v. Fidelity Consumer Discount Co.*, 898 F. 2d 896 (3rd Cir. 1990), pgs 11-12, ¶ 16(b); *Bizier v. Globe Financial Services, Inc.*, 654 F. 2d 1 (1st Cir. 1981), pg 12, ¶ 16(c) and *Rubio v. Capital One Bank*, 613 F. 3d 1195 (9th Cir. 2010), pgs 12-13, ¶ 16(d) in my *Memorandum of Law & Authorities Supporting my Motion to Alter or Amend the Judgment* that was filed on April 6, 2015 and is incorporated by reference as though I have written it herein verbatim}

(2) CUNA Mutual Group clearly states in **Exhibit K** that.. “[A] copy of the Credit Agreement and an Addendum must be given to the borrower before the first transaction under the plan.” [Boldness for emphasis.]

(3) In Exhibit M, CUNA Mutual Group clearly states; “[A]t the time the plan is opened, the member must receive an Addendum which discloses the current rates.” [Boldness added for emphasis.]

(p) SCFCU’s 2nd Exhibit 2: At the hearing on February 18, 2015, SCFCU’s attorneys filed a second Exhibit that is identified as Exhibit 2: This is not the same Exhibit 2 that SCFCU filed on May 10, 2012. The Exhibit 2 of 05/10/2012 is a copy of my LOANLINER® application for a mobile home loan that is dated 2/28/03. **This application proves beyond any reasonable doubt and clearly and convincingly that my mobile home purchase is not in SCFCU’s account records and is not the open-end loan of February 24 2003; for which, there is no application, signed or not signed. As stated, this is my Exhibit 28.**

(1) Offer of Evidence & Proof of SCFCU’s CUNA Violations and Offer of Evidence & Proof of SCFCU’s TILA Violations: SCFCU’s second Exhibit 2 of 02/18/2015 is a copy of CUNA Mutual Group’s Membership and Account Agreement. On pg 21, in ¶ 1, it clearly states in pertinent parts that “[t]he plan documents include this agreement and an Addendum.” **This also my Exhibit 17 & 40.**

(2) In Exhibit D, CUNA Mutual Group clearly explains the requirements of a fixed interest rate closed-end loan that includes “(A) [F]ixed amount borrowed with no anticipation of future amounts, (B) Agreed upon interest rate, (C) Set repayment schedule and maturity date, (D) **Must provide TILA disclosures to members before consummation of the loan**, (E) A full credit application is required for each closed-end loan transaction, and (F) Signatures are required for each transaction.” {Review Premier Federal Credit Union v. Douglas, 465 SE 2d 338 (NC Ct. App. 1996) in this pleading on pg 33, ¶ 51, subpart (k)(2); In re Mourer, 287 BR 889 (Bankr. Ct. W.D. Mich. 2003) pg 34, in subpart (k)(3) and Shepard v. Quality Siding & Window Factory, Inc., 730 F. Supp. 1295 (Dist. Ct. D. Del. 1990) in subpart (k)(5).} [Boldness for emphasis.]

(q) SCFCU’s 2nd Exhibit 3 – Dishonest Conduct, False Testimony and/or Fraud upon the Court: At the hearing on February 18, 2015, SCFCU’s attorneys filed a second Exhibit that is identified as Exhibit 3: This is not the same Exhibit 3 that SCFCU filed on May 10, 2012. The Exhibit 3 of 05/10/2012 is an Itemized Payment Record. SCFCU’s Itemized Payment Record proves beyond any reasonable doubt and clearly and convincingly that SCFCU’s interest payments are not fixed and there is no set payment schedule and maturity date. Every financial and lending definition for a fixed interest rate loan clearly states, “[a] fixed interest rate means the rate does not change for the life of the loan.” **CUNA’s guidelines, prohibits using open-end financing for houses and/or mobile homes. {See my Exhibit 29}**

(1) In Exhibit L, CUNA Mutual Group, clearly states in relevant parts; “[t]he following types of subaccounts should not be part of the plan, mobile homes, home equity, real estate and home purchase.” [Boldness added for emphasis.]

(2) **Offer of Evidence & Proof of SCFCU's Dishonest Conduct, False Testimony and/or Fraud upon the Court:** SCFCU's second Exhibit 3 is an Addendum. By definition, this Addendum can only be construed as Dishonest Conduct or False Testimony by SCFCU. By definition, if it is done by SCFCU's attorney/s, it is also Dishonest Conduct, False Testimony or Fraud upon the Court. **NO ADDENDUM WAS EVER GIVEN TO ME BY SCFCU'S PERSONNEL. MY CAR LOAN WAS HANDLED BY TELEPHONE AND NOT IN PERSON AT ANY OF SCFCU'S OFFICES IN AMERICA.**

(A) "[W]henver an officer of the court commits fraud during a procedure in the court, he is engaged in fraud upon the court. Bulloch v. United States 763 F 2d 1115, 1121 (10th Cir. 1985). "[F]raud upon the court makes void the orders and judgments of that court. It is well settled law that any attempt to commit "fraud upon the court" vitiates the entire proceeding." People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354, 192, NE 229 (1934); ("[t]he maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions.")

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

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

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

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

(F) Sun World, Inc. v. Lizarazu Olivarría, 144 F.R.D. 384, 389 (E.D. Cal. 1992) (holding that, when a litigant commits a fraud upon the court, "the inherent powers of the court support the sanction of dismissal and entry of default judgment"); Pope v. Fed-

eral Express Corp., 138 F.R.D. 675, 683 (W.D. Mo. 1990), aff'd in part, vacated in part on other grounds, 974 F.2d 982, 984 (8th Cir. 1992) (court has inherent power to sanction litigants for improper conduct) Pope, 138 F.R.D. at 682 (dishonest conduct by a party or conduct that "threatens the integrity of the judicial process" is grounds for dismissal with prejudice under Rule 41(b)).

(G) "[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)

(H) 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.

(I) "[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)

(J) "[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)

(K) 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23 defines this crime [Fraud upon the Court] 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."

(L) "[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.”).

(M) “[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].)

(N) *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.”

(O) “[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)

(P) “[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)

(Q) “[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)

(R) “[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.”

(S) *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)

(T) 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)

(U) 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).

(V) Rozier v. Ford Motor Co., 573 F. 2d 1332 (5th Cir. 1978), "[O]ne who asserts that an adverse party has obtained a verdict through fraud, misrepresentation or other misconduct has the burden of proving the assertion by clear and convincing evidence." Saenz v. Kennedy, 178 F.2d 417, 419 (5th Cir. 1949); Gilmore v. Strescon Industries, Inc., 66 F.R.D. 146, 153 (E.D. Pa. 1975), *aff'd* without opinion, Bucks County Const. Co. v. P. Agnes, Inc., 521 F.2d 1398 (3d Cir.).

(W) Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996) "[O]ur Court has previously held that when the trial judge first charges preponderance of the evidence, the jury can only be given the impression that "clear and convincing" means a higher degree of proof. A trial judge's failure to elaborate on "clear and convincing" is not error." Deloach v. Beaufort Gazette, 281 S.C. 474, 316 S.E.2d 139 (1984) cert. denied, 469 U.S. 981, 105, S.Ct. 384, 83 L.Ed.2d 319 (1984).

(X) "[A]ccordingly, cases require a party seeking to show fraud on the court to present clear and convincing evidence of the following elements: "1) [conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court." Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010); (quoting Carter v. Anderson, 585 F.3d 1007, 1011-12 (6th Cir. 2009)).

(Y) From Lectlaw.com - <http://www.lectlaw.com/def/e045.htm> defines clear and convincing evidence as follows; "[T]he level of proof sometimes required in a civil case for the plaintiff to prevail. It means the trier of fact must be persuaded by the evidence that it is highly probable that the claim or affirmative defense is true. The clear and convincing evidence standard is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt."

(Z) From USLegal.com - <http://definitions.uslegal.com/c/clear-and-convincing-evidence/> that clearly states in pertinent parts; "[C]lear and convincing evidence refers to the standard of proof

commonly used in civil lawsuits and in regulatory agency cases. It governs the amount of proof that must be offered in order for the plaintiff to win the case. It is also defined as the evidence that proves a matter by preponderance of the evidence that is required in civil cases and beyond the reasonable doubt needed to convict in a criminal case." {See SCFCU's Exhibit 3 of 02/18/15}

(r) **SCFCU's 2nd Exhibit 4:** At the hearing on February 18, 2015, SCFCU's attorneys filed a second Exhibit that is identified as Exhibit 4: This is not the same Exhibit 4 that SCFCU filed on May 10, 2012. The Exhibit 4 of 05/10/2012 are copies of Bank Statements. **These filed Bank Statements prove conclusively my mobile home purchase is not in SCFCU's account records.** Neither SCFCU's Bank Statements nor Account Payment Record reflects or references a closed-end fixed interest rate loan that meets the requirements of CUNA Mutual Group's or Regulation Z's mandatory requirements for a closed-end mobile home loan that is dated February 28, 2003. {See my Exhibit 30} **Under Regulation Z, this another SCFCU TILA violation.**

(1) SCFCU's second Exhibit 4 is a copy of my Credit Insurance Enrollment Form and Schedule for the car I purchased on September 5, 2002. However, under CUNA's Mutual Group's LOANLINER® guidelines, for closed-end fixed interest loans, each loan is treated as a separate transaction and not a continuation of an existing closed-end transaction. Therefore, my September 5, 2002 Credit Insurance authorization is not relevant to my mobile home purchase that is dated February 28, 2003.

(2) As already stated, in Exhibit D, CUNA Mutual Group clearly explains the requirements of a fixed interest rate closed-end loan that includes "(A) [F]ixed amount borrowed with no anticipation of future amounts, (B) Agreed upon interest rate, (C) Set repayment schedule and maturity date, (D) **Must provide TILA disclosures to members before consummation of the loan**, (E) A full credit application is required for each closed-end loan transaction, and (F) Signatures are required for each transaction." {Review Premier Federal Credit Union v. Douglas, 465 SE 2d 338 (NC Ct. App. 1996) in this pleading on pg 33, ¶ 51, subpart (k)(2); In re Mourer, 287 BR 889 (Bankr. Ct. W.D. Mich. 2003) pg 34, in subpart (k)(3) and Shepard v. Quality Siding & Window Factory, Inc., 730 F. Supp. 1295 (Dist. Ct. D. Del. 1990) in subpart (k)(5).} [Boldness for emphasis.]

(3) In Exhibit L, CUNA Mutual Group's lending guidelines for its LOANLINER® credit plans clearly state in relevant parts; "[t]he following types of subaccounts should not be part of the plan, mobile homes, home equity, real estate and home purchase." [Boldness added for emphasis.]

(s) **SCFCU's Exhibit 5:** At the hearing on February 18, 2015, SCFCU's attorneys filed an Exhibit that is identified as Exhibit 5: SCFCU's Exhibit 5 is a copy of a Credit Insurance Certificate. SCFCU's Credit Insurance Certificate and

my Credit Enrollment Form and Schedule serve as evidence and proof; along with SCFCU's Payment History as to the amount of premiums and cash that must be returned to me because of SCFCU's violation of the TILA and CUNA Mutual Group's LOANLINER® guidelines for mobile home purchases and closed-end fix interest rate loans.

(t) **SCFCU's Exhibit 6:** At the hearing on February 18, 2015, SCFCU's attorneys filed an Exhibit that is identified as Exhibit 6: SCFCU's Exhibit 6 is a copy of an Email from Angel Rabon. Angel Rabon's email is a document that verifies I was notified by Angel Rabon that I was approved for a loan on February 24, 2003. On February 24, 2003, I had not committed to accepting responsibility to pay back any loan to SCFCU. **February 24, 2003 is an approval date, not a loan date. This is also my Exhibit 11.**

(1) **Offer of Evidence & Proof that SCFCU Has Misrepresented Material Facts: ON FEBRUARY 24, 2003, THERE WAS NO LOAN, ONLY AN APPROVAL FOR A LOAN.** On or about February 25, 2003 and before February 28, 2003, I called and spoke to Angel Rabon. Angel Rabon asked me what was the loan for? I told Angel Rabon I wanted a loan to purchase a mobile home. It was at this time that Angel Rabon told me that my mobile home loan would be essentially the same as my car loan. Therefore, the loan was closed after February 24, 2003 and before March 3, 2003 and not on or before February 24, 2003.

(2) For over 4 years, Amy Rogers and SCFCU have consistently misstated and misrepresented material facts. As already stated, someone at SCFCU turned an approval date into a loan date, and as already stated, this is why there is no application or paperwork for a loan of any kind dated February 24, 2003. **Therefore, it is a misrepresentation of a material fact to state on a Complaint that loan documents were executed and delivered on February 24, 2003, when no documents were actually executed and delivered until after February 28, 2003.** There can be no interest or credit life insurance on a loan that does not exist.

(u) **SCFCU's Exhibit 7:** At the hearing on February 18, 2015, SCFCU's attorneys filed an Exhibit that is identified as Exhibit 7: SCFCU's Exhibit 7 is a copy of my LOANLINER® Application for my mobile home purchase that is dated February 28, 2003. As already stated and restated for over 4 years, my mobile home purchase is not in SCFCU's account records. My monthly payments were misapplied to a non-existent loan that is dated February 24, 2003. SCFCU's loan was not even closed until after the date and time in question and no loan paperwork or documents were executed and delivered on February 24, 2003.

(1) In Exhibit L, CUNA Mutual Group's lending guidelines for its LOANLINER® credit plans clearly state in relevant parts; "[t]he following types of subaccounts should not be part of the plan, mobile homes, home equity, real estate and home purchase." [Boldness added for emphasis.]

(2) As already stated, in **Exhibit D**, CUNA Mutual Group clearly explains the requirements of a fixed interest rate closed-end loan that includes “(A) [F]ixed amount borrowed with no anticipation of future amounts, (B) Agreed upon interest rate, (C) Set repayment schedule and maturity date, (D) **Must provide TILA disclosures to members before consummation of the loan**, (E) A full credit application is required for each closed-end loan transaction, and (F) Signatures are required for each transaction.” {Review *Premier Federal Credit Union v. Douglas*, 465 SE 2d 338 (NC Ct. App. 1996) in this pleading on pg 33, ¶ 51, subpart (k)(2); *In re Mourer*, 287 BR 889 (Bankr. Ct. W.D. Mich. 2003) pg 34, in subpart (k)(3) and *Shepard v. Quality Siding & Window Factory, Inc.*, 730 F. Supp. 1295 (Dist. Ct. D. Del. 1990) in subpart (k)(5).} [Boldness for emphasis.]

(v) **SCFCU’s Exhibit 8 - Offer of Evidence & Proof That SCFCU Has Misrepresented Material Facts:** At the hearing on February 18, 2015, SCFCU’s attorneys filed an Exhibit that is identified as Exhibit 8: SCFCU’s Exhibit 8 is a copy of a Payment Summary that proves beyond any reasonable doubt and clearly and convincingly, the monthly payments for my mobile home loan were misapplied to a February 24, 2003 loan that does not exist. **Therefore, it is a misrepresentation of a material fact to state on a Complaint that loan documents were executed and delivered on February 24, 2003, when no documents were actually executed and delivered until after February 28, 2003.**

(w) **SCFCU’s Exhibit 9 - Offer of Evidence & Proof of SCFCU’s CUNA Violations and Offer of Evidence & Proof of SCFCU’s TILA Violations::** At the hearing on February 18, 2015, SCFCU’s attorneys filed an Exhibit that is identified as Exhibit 9: SCFCU’s Exhibit 9 is a copy of a Monthly Statement that proves; as already stated and restated, for over 7 years, my mobile home purchase is not in SCFCU’s account records.

(1) My monthly payments were misapplied to a non-existent loan that is dated February 24, 2003. SCFCU’s loan was not closed until after 02/24/03 and no loan paperwork was executed and delivered on February 24, 2003.

(2) In **Exhibit L**, CUNA Mutual Group’s lending guidelines for its LOAN-LINER® credit plans clearly state in relevant parts; “[t]he following types of subaccounts should not be part of the plan, mobile homes, home equity, real estate and home purchase.” [Boldness added for emphasis.] {Review SCFCU’s **Exhibit 6** or my **Exhibits 9 & 11**}

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

(b) *Rule 201(c), SCRE*, states; “[A] court may take judicial notice, whether requested or not.

B. A restatement of SCFCU's Errors in Judgment.

52. As stated in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend Judgment*, that is incorporated by reference as though I have written it herein verbatim, SCFCU's personnel have made significant errors in judgment starting in September of 2002 that the Lower Court and the Appellate cannot ignore.

(a) **First Error in Judgment:** SCFCU's first judgment error was not giving me an Addendum to consummate the first LOANLINER® loan and SCFCU's Membership and Account Agreement. This violated a Federal law and CUNA Mutual Group's mandatory requirements and procedures for compliance with a Federal mandate. {Review Filed Exhibits D, K-M & *Smith v. Fidelity Consumer Discount Co.*, 898 F. 2d 896 (3rd Cir. 1990) ¶ 16(b), pgs 11-12, in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend Judgment* that is incorporated by reference as though I have written it herein verbatim.}

(b) **Second Error in Judgment:** SCFCU's second judgment error also occurred in 2002. It is inconceivable that someone in SCFCU's Charleston office did not know or realize that it is impossible to give an Addendum over the telephone. It is also inconceivable that SCFCU's personnel did not know Federal law and CUNA Mutual Group's LOANLINER® loans and Membership and Account Agreements required disclosures before credit is actually extended...or at the very least, at the time and before the check was actually given. Therefore, this situation could have been easily resolved by a timely phone call to their Columbia office to make sure an Addendum was given to me.

(c) **Offer of Proof That SCFCU Has Presented No Evidence That Its Membership & Account Agreement Was Consummated Pursuant to Law & CUNA Guidelines:** There is no evidence in the Court's Records that can or will verify a call

was made to SCFCU's Columbia office to give me an Addendum to consummate SCFCU's LOANLINER® car loan or Membership and Account Agreement. {Also re-review Rudisell v. Fifth Third Bank, 622 F. 2d 243 (6th Cir. 1980), pgs 11, 12 & 17 and Smith v. Fidelity Consumer Discount Co., 898 F. 2d 896 (3rd Cir. 1990), pgs 11-12, in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend Judgment* that is incorporated by reference as though I have written it herein verbatim.}

(d) **Third Error in Judgment:** SCFCU's third judgment error occurred as a direct result of this litigation. In 2002 and 2003, I did not know anything about Addendums or State and Federal laws governing lending. When SCFCU discovered I did not receive an Addendum to validate the Membership & Account Agreement of its LOANLINER® loans, action should have been taken to rectify the manner.

(e) **Offer of Proof That SCFCU Has Presented No Evidence in The Court's Records That SCFCU Made An Attempt To Give Me An Addendum:** There is **no evidence** in the Court's Records that can or will verify SCFCU made an attempt to give me an Addendum that would update the Membership & Account Agreement in order to comply with the disclosure requirements of Federal law. {Also review Bizier v. Globe Financial Services, Inc., 654 F. 2d 1 (1st Cir. 1981) ¶ 16(c), on pg 12, in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend Judgment* that is incorporated by reference as though I have written it herein verbatim.}

(f) **Fourth Error in Judgment:** SCFCU's fourth judgment error occurred when they failed to send an Addendum with the check for my mobile home purchase in 2003. SCFCU mistakenly relied on CUNA Mutual's policy that only one Addendum has to be given before the first transaction. Since no Addendum was given to me in 2002, because my loan was done by telephone and not in person, an **Addendum** should have been sent with the check in 2003.

(g) **Offer of Proof That SCFCU Has Presented No Evidence That Can Verify An Addendum Was Sent To Me In 2003:** There is no evidence in the Court's Records that can verify SCFCU sent an Addendum with the voucher for my mobile home purchase in order to comply with the disclosure requirements of 15 U.S.C. § 1601 et seq. {Review *Berkebile v. Outen*, S.C. 426 S.E.2d 760, 762 (1993) ¶ 18(f), on pg 14, in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend Judgment* that is incorporated by reference as though I have written it herein verbatim.}

(h) **Fifth Error in Judgment:** SCFCU's fifth judgment error also occurred in this litigation. Instead of acknowledging their mistake in 2002, Amy Rogers & SCFCU's law firm continuously filed Affidavits verifying an account that has no basis as a legitimate LOANLINER® credit transaction under a legitimate Membership & Account Agreement and clearly proves beyond any reasonable doubt and by clear and convincing evidence **the interest rate is not fixed**

(i) **Offer of Proof That SCFCU Has Presented No Evidence to Support A Fixed Unchanging Interest Rate for A Mobile Home Loan:** There is no evidence in SCFCU's account records of a mobile home purchase. There is no evidence in the Court's Records that can or will verify a fixed (unchanging) interest rate for a mobile home purchase. {Review Amy Rogers filed Affidavits, SCFCU's filed Complaint ¶¶ 7-10, on pg 2, SCFCU's Filed Exhibit 3 & *Beach v. Ocwen Fed. Bank*, 523 US 410 (1998) ¶ 23(c), pgs 18-19, in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend Judgment* that is incorporated by reference as though I have written it herein verbatim.}

(h) **Sixth Error in Judgment:** SCFCU's sixth judgment error also occurred in this litigation. SCFCU's **Exhibit 6**; and my **Exhibit 11**, prove beyond any reasonable

reasonable doubt and clearly and convincingly that the February 24, 2003 loan date in SCFCU's filed Complaint is the date a loan was approved. No loan was agreed to until after I had discussed the loan with Angel Rabon on or about February 25, 2003 and before February 28, 2003.

(i) The LOANLINER® credit application and the voucher are dated February 28, 2003. The voucher and the credit application are for a mobile home loan. The interest rate is fixed at 15% and the monthly payment is \$110.00. {See my **Exhibits 9, 10 & 11**}

C. There is no law, code, regulation or evidence in the Court's Records.

53. There is no law, code or regulation that prevented SCFCU from accepting my inexpensive mobile home purchase and no evidence exist in the Court's Records that prohibits it.

(a) There is no law in South Carolina that prohibits purchasing a mobile home for \$5,500.00. **Offer of Proof That There Is No Evidence In The Court's Records:** SCFCU has presented no evidence that prohibited my mobile home purchase and there is no evidence in the Court's Records that prevented SCFCU from accepting the purchase.

(b) There is no Federal Code or Regulation that prohibits purchasing a mobile home for \$5,500.00. **Offer of Proof That There Is No Evidence In The Court's Records:** SCFCU has presented no evidence of a Federal Code and/or Regulation that prohibits purchasing a mobile home for \$5,500.00 and there is no evidence in the Court's Records that prevented SCFCU from accepting the purchase.

(c) There is no CUNA Mutual Group LOANLINER® statement or directive that prohibits purchasing a mobile home for \$5,500.00. **Offer of Proof That There Is No Evidence In The Court's Records:** SCFCU has presented no evidence of any such statement or directive and there is no evidence the Court's Records of any such statement or directive during 4 years of litigation.

(d) There is no law in South Carolina or any Federal Code or Regulation and/or Federal Reserve Banking Regulation and/or Uniform Commercial Code that will allow SCFCU to charge me interest on a loan approval. **Offer of Proof That There Is No Evidence In The Court's Records:** SCFCU has presented no evidence of any such law, code or regulation and there is no evidence of any such code, law or regulation in the Court's Records or written on any Court Order. {See My **Exhibits 41, 46 & 47**}

(e) There is no law in South Carolina or any Federal Code or Regulation and/or Federal Reserve Banking Regulation and/or Uniform Commercial Code that will allow SCFCU to misapply my loan payments to a loan I never agreed to or approved. **Offer of Proof That There Is No Evidence In The Court's Records:** SCFCU has presented no evidence of any such law, code or regulation and there is no evidence of any such code, law or regulation in the Court's Records or written on any Court Order.

(1) *Celotex Corp. v. Catrett*, 477 US 317 (1986) - JUSTICE WHITE, concurring. "[I] agree that the Court of Appeals was wrong in holding that the moving defendant must always support his motion with evidence or affidavits showing the absence of a genuine dispute about a material fact. I also agree that the movant may rely on depositions, answers to interrogatories, and the like, to demonstrate that the plaintiff has no evidence to prove his case and hence that there can be no factual dispute."

(2) *Quick v. Donaldson Co., Inc.*, 90 F. 3d 1372 (8th Cir. 1996) "[A]t the summary judgment stage, the court should not weigh the evidence, make credibility determinations, or attempt to determine the truth of the matter. Rather, the court's function is to determine whether a dispute about a material fact is genuine, that is, whether a reasonable jury could return a verdict for the nonmoving party based on the evidence. The evidence of the non-movant is to be believed..." (Internal Citations Omitted)

(f) **SCFCU has presented no evidence of a loan that was executed and delivered on February 24, 2003.** There is no law in South Carolina or any Federal Code or Regulation and/or Federal Reserve Banking Regulation and/or Uniform Commercial Code that will allow SCFCU to place credit life insurance and charge me credit life insurance premiums for a loan that does not exist in reality, actuality or fact.

XIII. STATEMENT OF THE EVIDENCE: MY EXHIBITS THAT VERIFY I PURCHASED A MOBILE HOME, SCFCU'S TILA VIOLATIONS, CUNA MUTUAL GROUP VIOLATIONS, NO LOAN DOCUMENTS WERE EXECUTED AND DELIVERED ON FEBRUARY 24, 2003 & MY MOBILE HOME PURCHASE OF FEBRUARY 28, 2003 IS NOT IN SCFCU'S ACCOUNT RECORDS

A. There is no filed Complaint or Debt Collection for a fixed interest rate mobile home loan dated February 24, 2003 or February 28, 2003.

54. As previously stated in this pleading, based on SCFCU's filed Complaint of November 23, 2011, SCFCU's supporting documentation and Amy Rogers' default loan statement that is attached to her Corporate Verification of Account that is dated November 23, 2011, SCFCU's filed Complaint and Debt Collection are based on a loan that was never executed and delivered on or about February 24, 2003 that called for the payment of the sum of \$5,556.44 that is now in default. **Offer of Proof:** There is no loan application or paperwork for a loan of any kind dated February 24, 2003.

55. **Review the Proof:** SCFCU's filed Exhibits prove no documents were executed and delivered to SCFCU for a February 24, 2003 loan. My 02/28/2003 mobile home purchase is not in SCFCU's account records. **Offer of Proof:** My Exhibits; along with SCFCU's filed Exhibits, will also prove and verify I purchased a mobile home and my loan was for a mobile home. My Exhibits will also prove SCFCU's TILA violations, CUNA Mutual Group LOANLINER® violations and the Court's Judgment in favor of SCFCU is an egregious error of law.

2011-2015 (a) Exhibit A & SCFCU's Exhibit 1 of 02/18/2015: On September 5, 2002, I signed SCFCU's Member 1 Plan Application, and a LOANLINER® Credit Insurance Enrollment Form And Schedule {My Exhibit B & SCFCU's Exhibit 4 of 02/18/2015}. After signing these, I was given a Membership and Account Agreement, {my Exhibit 40 & SCFCU's Exhibit 2 of 02/18/2015} (hereafter also called MAAA), a CUNA Mutual Group LOANLINER® Credit Application {my Exhibit 12} and a check for \$5,845.00. {my Exhibit 13}

(1) Since I did not know what an Addendum was in 2002, I assumed it was in the MAAA. On page 2 of the Member 1 Plan Application, or the signature page, under *Your pledge to us @ #1*, it clearly states in pertinent parts, "[Y]ou received and read the Member 1 Plan Application and Credit and Security Agreement, including the Addendum and Credit In-

surance Certificate. By signing below you agree to be bound by the terms of the Agreement.”

(2) **Offer of Proof, There Is No Plan Without An Addendum:** On page 21 in the MAAA, it clearly states in pertinent parts; “[T]his LOANLINER® Credit and Security Agreement, which includes Truth in Lending Disclosures, will be referred to as **the Plan**. The Plan documents include this agreement and an Addendum.”

(3) This is no indication from what is written on page 2, on the Member 1 Plan Application or on page 21, in the MAAA, that would lead me to believe the Addendum is a separate document that was not included in the MAAA, and no one at SCFCU’s Columbia office or from SCFCU’s Charleston office told me anything different from what I believed.

(4) It was only after this litigation, that I discovered the Addendum is a separate document that is not included in the MAAA. That’s when I realized and SCFCU should have known, I never received an Addendum. For over 7 years, SCFCU’s Charleston personnel, relied on my ignorance of CUNA Mutual Group’s guidelines and 15 U.S.C. § 1601 et seq.

(A) “[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).”

(B) 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.”

(C) “[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.”

(D) *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)

(E) “[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.

(F) “[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).”

(G) “[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).”

(H) *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.”

(I) “[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.”

(J) “[M]oreover, it should be axiomatic that parties who directly benefit from and knowingly participate in a transaction tainted with fraud or deceit, who are under a duty to disclose their knowledge and fail to do so, are liable for damages directly and proximately resulting from their silence.” See 37 *American Jurisprudence* 2d 571, Section 421; Saporta v. Barbagelata (1963), 220 Cal.App.2d 463, 33 Cal.Rptr. 661.

(b) **Exhibit B & SCFCU's Exhibit 4 of 02/18/2015:** As stated, on September 5, 2002, I signed a LOANLINER® Credit Insurance Enrollment Form And Schedule for my car loan. **Offer of Proof:** Under CUNA's Mutual Group's LOANLINER® guidelines, for closed-end fixed interest loans, each loan is treated as a separate transaction and not a continuation of an existing closed-end transaction. There-fore, my September 5, 2002 Credit Insurance authorization is not relevant to my mobile home purchase that is dated February 28, 2003.

(c) **Exhibit C:** On March 3, 2003, I received another Credit Insurance Enrollment Form and Schedule with the Voucher for \$5,500.00 {My **Exhibit 10**} and the LOANLINER® Credit Application. {My **Exhibit 9 & SCFCU's Exhibit 7 of 02/18/2015**} **Offer of Proof:** There is no paperwork, application and/or voucher for a loan dated February 24, 2003. **Therefore, no loan was executed and delivered to SCFCU as stated in SCFCU's Complaint in ¶¶ 7-10 on page 2.** {My **Exhibit 30**}

(d) **Exhibit D – Offer of Proof:** In Exhibit D, CUNA Mutual Group clearly explains the requirements of a fixed interest rate closed-end loan that includes...

- “(1) [F]ixed amount borrowed with no anticipation of future amounts,
- (2) Agreed upon interest rate,
- (3) Repayment schedule and maturity date,
- (4) **Must provide TILA disclosures to members before consummation of the loan,**
- (5) A full credit application is required for each closed-end loan transaction, and...
- (6) Signatures are required for each transaction.” {Review *Premier Federal Credit Union v. Douglas*, 465 SE 2d 338 (NC Ct. App. 1996) in this pleading on pg 33, ¶ 51, subpart (k)(2); *In re Mourer*, 287 BR 889 (Bankr. Ct. W.D. Mich. 2003) pg 34, in subpart (k)(3) and *Shepard v. Quality Siding & Window Factory, Inc.*, 730 F. Supp. 1295 (Dist. Ct. D. Del. 1990) in subpart (k)(5).} [Boldness for emphasis.]

(e) **Exhibit E - Offer of Proof & Evidence:** I told Angel Rabon that I wanted the loan to purchase a mobile home. [**House**] is hand written on the LOANLINER® Credit Application. {My **Exhibit 9** & SCFCU's **Exhibit 7 of 02/18/2015**} Exhibit E is my 1st offer of proof and evidence that verifies I purchased a mobile home. Exhibit E is a copy of the Certified Check, I sent to Bombardier Capital to purchase a Redman mobile home. The check is dated, March 10, 2003.

(f) **Exhibit F – Offer of Proof & Evidence:** Exhibit F is my 2nd offer of proof and evidence that verifies I purchased a mobile home. Exhibit F is a copy of the Affidavit for Repossessed Motor Vehicle. Even though the Affidavit states motor vehicle, this is the form I received from Bombardier Capital for a repossessed mobile home.

(g) **Exhibit G – Offer of Proof & Evidence:** Exhibit G is my 3rd offer of proof and evidence that verifies I purchased a mobile home. Exhibit G is a copy of the Bill of Sale. I sold the home to Lillie Council on March 10, 2003 for \$9,500.00.

(h) **Exhibit H – Offer of Proof & Evidence:** Exhibit H is my 4th offer of proof and evidence that verifies not only did I purchase a mobile home, I sold the home to Lillie Council for \$9,500.00. Exhibit H is a copy of the Application for Certificate of Title/Registration from South Carolina's Department of Public Safety – DMV.

(1) Rule 103(a)(1)-(2), SCRE, clearly states in pertinent parts; “[a)] Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and (1) In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or (2) In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.”

(2) 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.”

(3) Rule 402, SCRE, clearly states 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.”

(i) **Exhibit I or Roman Numeral 1:** Exhibit I is a copy of SCFCU's Summons for my appearance in Magistrate Court. As stated, SCFCU's Complaint was originally filed in Magistrate Court on May 18, 2011.

(j) **Exhibit J – Offer of Proof & Evidence of SCFCU's CUNA & TILA Violations:** Exhibit J is a copy of CUNA Mutual Group's commentary on 12 CFR § 226.2(a)(20)-3 and my 1st offer of proof and evidence of SCFCU's TILA violations. Exhibit J clearly states in pertinent parts; “[t]he credit plan must legitimately expect that there will be repeat business rather than a one-time credit extension.” I know SCFCU could not reasonably expect me to purchase a car every year or a mobile home. In addition, neither Congress nor the Federal Reserve Board of Governors had cars and homes in mind for open-ended credit plans.

(1) It clearly states on my 02/28/2003 credit application the loan is for a [House] and I have proven by Exhibits E-H, a mobile home was purchased. In addition, the application has the following information:

(A) The date of the application is February 28, 2003 and not February 24, 2003. {See My Exhibit 9}

(B) The interest rate is fixed at an annual percentage rate of 15% and not open-end. {See My Exhibit 9}

(C) Mobile home or house is not typed on the application, it is handwritten on the original application and on SCFCU's Exhibit 7 of 02/18/2015. {See my Exhibit 9} Since [House] is handwritten, removing it or whiting it out might create confusion for SCFCU's accounting department. There should be no confusion because fixed interest rate is clearly written; as well as, the annual percentage rate of 15%. {For Comparison, See My Exhibit 12}

(D) The loan amount is for \$5,500.00 dated 02/28/2003. It is not for \$5,556.44 and dated February 24, 2003. {My Exhibit 9}

(E) Offer of Proof: NO ADDENDUM or an updated Addendum came with the application that is dated February 28, 2003 and NO ADDENDUM came on February 24, 2003.

(F) The monthly payment is \$110.00. {My Exhibit 9}

(G) The application is not signed as required by CUNA's guidelines. See my Exhibit 9 & SCFCU's Exhibit 7 of 02/18/15 }

(2) *In re Mourer*, 287 BR 889 (Bankr. Ct. W.D. Mich. 2003) "[C]onsumer lending transactions under TILA are divided into "open end credit plans" under 15 U.S.C. § 1602(i) and "closed end credit." Reg. Z, 12 C.F.R. § 226.2(a)(10). **Closed end transactions are one time credit loans and many consumer loans such as car or home loans.** Chapter 2 of TILA focuses on consumer credit transactions and contains civil liability provisions, See 15 U.S.C. §§ 1635 and 1640, that allow consumers to recover damages against creditors who do not comply with TILA's requirements. The Act is implemented by Regulation Z. Whether Regulation Z is applicable is determined by the occurrence of certain triggers in specific consumer credit activities." [Boldness is added for emphasis.]

(3) *Maes v. Motivation for Tomorrow, Inc.*, 356 F. Supp. 47 (Dist. Ct. N.D. Cal. 1973) "[I]t is evident, therefore, that the term "open end credit," as it is used in these regulations, is intended to distinguish single purchase credit transactions, which are subjected to more stringent disclosure requirements, from transactions made under a revolving or continuing credit arrangement, such as under credit card or charge accounts -- where such extensive disclosures are not practicable --- If plaintiffs can show that the sales in question were *not* made under an open end credit plan, and, that the disclosures required under 15 U.S.C. § 1638 were not made, then they will be entitled to the relief sought."

(k) **Exhibit K – Offer of Proof & Evidence of SCFCU’s CUNA & TILA Violations:** Exhibit K is my 2nd offer of proof and evidence of SCFCU’s TILA violations. Exhibit K is a copy of CUNA Mutual Group’s compliance requirement for its LOANLINER® Addendum and Credit Agreement (MAAA) **Exhibit K** clearly states; “[A] copy of the Credit Agreement and an Addendum must be given to the borrower before the first transaction under the plan.” [Boldness for emphasis.]

(1) As stated, on September 5, 2002, because my car loan was done by telephone, **NO ADDENDUM WAS GIVEN TO ME BY SCFCU’S PERSONNEL** as required by CUNA Mutual Group and the TILA (15 U.S.C. § 1601 et seq.) {See excerpts *Rudisell v. Fifth Third Bank*, 622 F. 2d 243 (6th Cir. 1980), pg 11, ¶ 16(a); *Smith v. Fidelity Consumer Discount Co.*, 898 F. 2d 896 (3rd Cir. 1990), pgs 11-12, ¶ 16(b); *Bizier v. Globe Financial Services, Inc.*, 654 F. 2d 1 (1st Cir. 1981), pg 12, ¶ 16(c) and *Rubio v. Capital One Bank*, 613 F. 3d 1195 (9th Cir. 2010), pgs 12-13, ¶ 16(d) in my *Memorandum of Law & Authorities Supporting my Motion to Alter or Amend the Judgment* that was filed on April 6, 2015 and is incorporated by reference as though I have written it herein verbatim.}

(2) *Ortiz v. Accredited Home Lenders, Inc.*, 639 F. Supp. 2d 1159 (Dist. Ct. S.D. Cal. 2009) “[S]ection 1640(e) of TILA makes recoupment available only as a “defense” in an “action to collect a debt.” ---- “[G]enerally, “a defendant’s right to plead ‘recoupment,’ a ‘defense arising out of some feature of the transaction upon which the plaintiff’s action is grounded,’... survives the expiration” of the limitations period. *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 415, 118 S.Ct. 1408, 140 L.Ed.2d 566 (1998) (quoting *Rothensies v. Elec. Storage Battery Co.*, 329 U.S. 296, 299, 67 S.Ct. 271, 91 L.Ed. 296 (1946) (internal citation omitted)). Plaintiffs also correctly observe the Supreme Court has confirmed recoupment claims survive TILA’s statute of limitations. *Id.* at 418, 118 S.Ct. 1408.”

(l) **Exhibit L – Offer of Proof & Evidence of SCFCU’s CUNA & TILA Violations:** Exhibit L is my 3rd offer of proof and evidence of SCFCU’s TILA violations. Exhibit L is a copy of CUNA Mutual Group’s compliance requirement for its LOANLINER® credit plan and subaccounts. Exhibit L clearly states in relevant parts; “[t]he following types of subaccounts should not be part of the plan, mobile homes, home equity, real estate and home purchase.” [Boldness added for emphasis.] {Review **Exhibits E-H**}

In re Hanna, 31 BR 424 (Bankr. Ct. E.D. Pa. 1983) “[I]n *Household Consumer Discount Co. v. Vespaziani*, 490 Pa. 209, 415 A.2d 689 (1980), the Supreme Court of Pennsylvania explained the doctrine of recoupment: The doctrine of recoupment was derived from the civil law, and was adopted as a part of the common law. Under it a defendant is entitled to claim, by way of deduction, all just allowances or demands, accruing to him in respect of the same transaction that forms the ground of the action.

This is not a set-off ... in the strict sense, because it is not in the nature of a cross demand, *but rather it lessens or defeats any recovery by the plaintiff. It goes to the existence of plaintiff's claim, and is limited to the amount thereof*.... Recoupment goes to the foundation of the plaintiff's claim; it is available as a defense, although as an affirmative cause of action it may be barred by limitation. **The defense of recoupment, which arises out of the same transaction as plaintiff's claim, survives as long as the cause of action upon the claim exists.** *It is a doctrine of an intrinsically defensive nature founded upon an equitable reason, inhering in the same transaction, why the plaintiff's claim in equity and good conscience should be reduced* (emphasis added).490 Pa. at 219, 415 A.2d at 694 (quoting *Pennsylvania R.R. Co. v. Miller*, 124 F.2d 160 (5th Cir.1942) cert. denied, 316 U.S. 676, 62 S.Ct. 1047, 86 L.Ed. 1750.” [Boldness for emphasis.]

(m) Exhibit M – Offer of Proof & Evidence of SCFCU’s CUNA & TILA Violations: Exhibit M is my 4th offer of proof and evidence of SCFCU’s TILA violations. Exhibit M is a copy of CUNA Mutual Group’s compliance requirement for its LOANLINER® Addendum and Credit Agreement (MAAA) Exhibit M clearly states; “[A]t the time the plan is opened, the member must receive an Addendum which discloses the current rates.” [Boldness for emphasis.]

(1) Offer of Proof: As stated and restated ad nauseum, on September 5, 2002, because my car loan was done by telephone, **No Addendum was given to me by SCFCU’S personnel** as required by CUNA Mutual Group and the TILA (15 U.S.C. § 1601 et seq.) {See excerpts *Rudisell v. Fifth Third Bank*, 622 F. 2d 243 (6th Cir. 1980), pg 11, ¶ 16(a); *Smith v. Fidelity Consumer Discount Co.*, 898 F. 2d 896 (3rd Cir. 1990), pgs 11-12, ¶ 16(b); *Bizier v. Globe Financial Services, Inc.*, 654 F. 2d 1 (1st Cir. 1981), pg 12, ¶ 16(c) and *Rubio v. Capital One Bank*, 613 F. 3d 1195 (9th Cir. 2010), pgs 12-13, ¶ 16(d) in my *Memorandum of Law & Authorities Supporting my Motion to Alter or Amend the Judgment* that was filed on April 6, 2015 and is incorporated by reference as though I have written it herein verbatim.}

(2) Seidner v. Citibank (S.D.), NA, 201 SW 3d 332 (Tex. Ct. App. 2006) “[U]nder the recoupment and set-off defenses expressly mentioned in section 1640(e), if a defendant proves the lender violated the Truth in Lending Act, the lender's recovery would be reduced by the amount of the defendant's damages.”

“[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).

(o) **Exhibit 9 – Offer of Proof & Evidence of SCFCU’s SCUTPA Violations:** My Exhibit 9 is the same as **SCFCU’s Exhibit 7 of 02/18/ 2015:** Exhibit 9 is a copy of my **LOANLINER® Application** for my mobile home purchase that is dated 02/28/2003. As already stated, for over 7 years, my mobile home purchase is not in SCFCU’s account records. My monthly payments were misapplied to a non-existent loan that is dated February 24, 2003. SCFCU’s loan was not even closed until after the date and time in question and no loan paperwork or documents were executed and delivered on February 24, 2003.

(p) **Exhibit 10:** My Exhibit 10 is a copy of the \$5,500.00 **Voucher** for my mobile purchase. Like the **LOANLINER® Application** for my mobile home purchase that is dated February 28, 2003, the voucher is also dated February 28, 2003. {For Comparison, See My **Exhibit 12**}

(q) **Exhibit 11 – Offer of Evidence & Proof:** My Exhibit 11 is the same as SCFCU’s **Exhibit 6 of 02/18/ 2015.** Exhibit 11 is a copy of the **Email from Angel Rabon.** Angel Rabon’s email is a document that verifies I was notified by Angel Rabon that I was approved for a loan on February 24, 2003. On February 24, 2003, I had not committed to accepting responsibility to pay back any loan to SCFCU. **Offer of Proof:** February 24, 2003 is an approval date, not a loan date.

(1) As already stated, **ON FEBRUARY 24, 2003, THERE WAS NO LOAN, ONLY AN APPROVAL FOR A LOAN.** As stated, on or about February 25, 2003 and before February 28, 2003, I called and spoke to Angel Rabon. Angel Rabon asked me what was the loan for? I told Angel Rabon I wanted a loan to purchase a mobile home. It was at this time that Angel Rabon told me that my mobile home loan would be essentially the same as my car loan. Therefore, the loan was closed after February 24, 2003 and before March 5, 2003 and not on or before February 24, 2003.

(2) **Offer of Proof:** As stated, for over 4 years, Amy Rogers and SCFCU have consistently misstated and misrepresented material facts. As already stated, someone at SCFCU turned an approval date into a loan date, and as already stated, this is why there is no application or paperwork for a loan of any kind dated February 24, 2003. **Offer of Proof:** Therefore, it is a misrepresentation of a material fact to state in a Complaint that loan documents were executed and delivered to SCFCU on February 24, 2003, when no documents were executed or delivered until after February 28, 2003. It is impossible for SCFCU to charge me interest and put credit life on an 02/24/2003 loan that does not exist.

(r) **Exhibit 12 – Offer of Evidence & Proof That There Is No Valid Complaint For A February 24, 2003 Loan:** My Exhibit 12 is a copy of the **LOANLINER®** credit application for my car loan that is dated 09/05/2002. It will be helpful if the Appellate Court notes the similarities between my mobile home loan and my car loan. For example:

(1) The date of the application for my mobile home loan is 02/28/2003 the same format is used for my car loan that is dated 09/05/2002.

- (2) [Car] is handwritten on the application for the car, and [House] is handwritten on the application for the mobile home. {Review Exhibit 9}
- (3) The interest rate is fixed for the car and the interest rate is fixed for the mobile home. {Review Exhibit 9}
- (4) The date of the car loan is the date on the voucher, 09/05/2002 and the date of the mobile home loan is the date of the voucher, 02/28/2003. My mobile loan is not the subject of SCFCU's Complaint. **Offer of Proof:** These documents also prove SCFCU misapplied my monthly payments to a February 24, 2003 open-end loan that does not exist.
- (5) **Offer of Proof:** There is no application and/or voucher for the 02/24/2003 loan in SCFCU's filed Complaint. As previously stated, **I am not confused, the Court and SCFCU are confused.** February 24, 2003 is an approval date, not a loan date.
- (s) **Exhibit 13:** My Exhibit 13 is a copy of the Voucher for my car loan. Note the similarities in format. They are identical to the format in the Voucher for my fixed interest rate closed-end mobile home loan. {See My Exhibit 10}
- (t) **Exhibit 17:** My Exhibit 17 is a copy of SCFCU's Membership & Account Agreement that has already been explained in this pleading on pg 36. My Exhibit 17 is the same as SCFCU's Exhibit 2 of 02/18/2015. {Review Page 21, ¶ 1}
- (u) **Exhibit 24:** My Exhibit 24 is a copy of SCFCU's Complaint that has already been thoroughly discussed in this pleading. {Review ¶¶ 7-10, on pg 2}
- (v) **Exhibit 25 - Offer of Evidence & Proof of SCFCU's and/or Amy Rogers' Misrepresentation of a Material Fact:** My Exhibit 25 is a copy of Amy Rogers Affidavit in Support of Motion for Summary Judgment. In ¶ 5 on pg 2, Amy Rogers attempts to change the subject matter of SCFCU's Complaint. My mobile home purchase on February 28, 2003 is not the subject matter of SCFCU's filed Complaint for the following reasons:

(1) On 11/23/2011, on pg 1, in Amy Rogers' Corporate Verification of Account, she clearly states, "[t]he facts in the pleading are true." On November 23, 2011, the facts in the pleadings that are true are; "[T]hat on or about February 24, 2003, the Defendant executed and delivered to South Carolina Federal Credit Union that certain Open-End Disbursement Receipt Plus Loanliner® Credit and Security Agreement ("Fixed Interest Rate Agreement") calling for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars (\$5,556.44) a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference"

(2) On May 10, 2012, Amy Rogers, default loan statement, {Review pg 2}, that is attached to her Corporate Verification of Account, {Review *Plaintiff's Exhibit "C"*} verified the Plaintiff's Complaint and Debt Collection are based on an Open-End Disbursement Receipt Plus LOANLINER® Credit and Security Agreement ("Fixed Interest Rate Agree-

ment”) that was executed and delivered to South Carolina Federal Credit Union on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars (\$5,556.44) that is now in default with an amount due and payable of \$5,274.84.

(3) **Offer of Proof:** The loan paperwork for my February 28, 2003 loan is for a mobile home. Amy Rogers made no reference to a mobile home loan on November 23, 2011 nor on May 10, 2012 in her Affidavit.

(4) SCFCU, Amy Rogers and SCFCU’s law firm are effectively barred from changing their Complaint by the legal Doctrine of **Judicial Estoppel**.

(5) Russell v. Rolfs, 893 F. 2d 1033 (9th Cir. 1990) “[I]n her dissent to Religious Technology Center v. Scott, 869 F.2d 1306, 1311 (9th Cir.1989) (citation omitted), Judge Hall sets forth the principles underlying judicial estoppel: The doctrine of judicial estoppel, sometimes referred to as the doctrine of preclusion of inconsistent positions, is invoked to prevent a party from changing its position over the course of judicial proceedings when such positional changes have an adverse impact on the judicial process. See 1B *Moore's Federal Practice* ¶ .405[8], at 238-42 (2d Ed.1988). ‘The policies underlying preclusion of inconsistent positions are “general consideration[s] of the orderly administration of justice and regard for the dignity of judicial proceedings.”’ Arizona v. Shamrock Foods Co., 729 F.2d 1208, 1215 (9th Cir.1984), *cert. denied*, 469 U.S. 1197, 105 S.Ct. 980, 83 L.Ed.2d 982 (1985) (citations omitted). Judicial estoppel is ‘intended to protect against a litigant playing’ “fast and loose with the courts.”’ Rockwell International Corp. v. Hanford Atomic Metal Trades Council, 851 F.2d 1208, 1210 (9th Cir.1988) (citations omitted). Because it is intended to protect the integrity of the judicial process, it is an equitable doctrine invoked by a court at its discretion.... Judicial estoppel is most commonly applied to bar a party from making a factual assertion in a legal proceeding which directly contradicts an earlier assertion made in the same proceeding or a prior one. See generally Note, *Judicial Estoppel: The Refurbishing of a Judicial Shield*, 55 Geo.Wash. L.Rev. 409, 410-12 (1987); Comment, *Precluding Inconsistent Statements: The Doctrine of Judicial Estoppel*, 80 Nw.U.L.Rev. 1244 (1986).”

(6) Allen v. Zurich Ins. Co., 667 F. 2d 1162 (4th Cir. 1982) “[T]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle, but they may be found where neither collateral estoppel nor equitable estoppel, see Scarano v. Central R. Co., 203 F.2d at 512-13, nor any requirements of election of remedies or theories, see Eads Hide & Wool Co. v. Merrill, 252 F.2d 80, 84 (10th Cir. 1958), would apply. Its essential function and justification is to prevent the use of “intentional self-contradiction as a means of obtaining unfair advantage in a forum provided for suitors seeking justice.” Scarano v. Central R. Co., 203 F.2d at 513.”

(7) Bank of the West v. Kline, 782 NW 2d 453 (Iowa: S. Ct. 2010) “[T]he doctrine of recoupment ‘allows a defendant to ‘defend’ against a claim by asserting—up to the amount of the claim—the defendant’s own claim against the plaintiff growing out of the same transaction.” *Bolduc*, 167 F.3d at 672; *see also Emery*, 674 A.2d at 925 n. 4 (“[A] ‘recoupment’ is a reduction of part of the plaintiff’s damages because of a right in the defendant arising out of the same transaction.” (quoting *Inniss v. Methot Buick-Opel, Inc.*, 506 A.2d 212, 217 (Me.1986))); *Dilorenzo Article*, 8 U. Miami Bus. L. Rev. at 224-25 (providing a definition of recoupment); Richard J. Wirth & Jonathan B. Alter, *Spousal Defenses Based in Equal Credit Laws*, 99 Com. L.J. 93, 100-01 (1994) (same). **Additionally, the defense of recoupment survives as long as the cause of action upon the claim continues to exist.** [Boldness added for emphasis.]

B. There is no evidence in the Court’s Records to Support a Summary Judgment in favor of SCFCU.

56. **Offer of Proof:** There is no evidence in the Court’s Record to support a Summary Judgment in favor of SCFCU. Egregious Judicial Errors have been made; i.e., the entering of a Judgment Order into the record for a Complaint that was never filed {**Exhibit 41**} and Denial of a Motion I never filed. {**Exhibit 46**} These errors have been compounded by additional Errors of Fact or Law that are not in accordance with South Carolina’s Rules of Civil Procedure, Rules of Evidence, Precedent and Amendment VII to the Constitution of the United States of America.

57. There is no Rule of Civil Procedure in South Carolina that allows a litigant to address a Judge’s error during a proceeding. The procedure being followed to object comes from rulings in federal courts relative to a Judge’s mistake/s during a federal judicial proceeding. According to the rulings or decisions I have read, the following (4) elements must be present:

- (a) There is an "error";
- (b) The error is "clear or obvious, rather than subject to reasonable dispute";
- (c) The error "affected the appellant's substantial rights, which in the ordinary case means" it "affected the outcome of the district court proceedings"; and
- (d) The error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.

(1) Puckett v. US, 129 S. Ct. 1423 (2009) “[I]f a litigant believes that an error has occurred (to his detriment) during a federal judicial proceed-

ing, he must object in order to preserve the issue. If he fails to do so in a timely manner, his claim for relief from the error is forfeited. "No procedural principle is more familiar to this Court than that a ... right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." Yakus v. United States, 321 U.S. 414, 444, 64 S.Ct. 660, 88 L.Ed. 834 (1944). If an error is not properly preserved, appellate-court authority to remedy the error (by reversing the judgment, for example, or ordering a new trial) is strictly circumscribed. There is good reason for this; "anyone familiar with the work of courts understands that errors are a constant in the trial process, that most do not much matter, and that a reflexive inclination by appellate courts to reverse because of unpreserved error would be fatal." United States v. Padilla, 415 F.3d 211, 224 (C.A.1 2005) (en banc) (Boudin, C. J., concurring)."

(2) US v. Marcus, 130 S. Ct. 2159 (2010) "[R]ule 52(b) permits an appellate court to recognize a "plain error that affects substantial rights," even if the claim of error was "not brought" to the district court's "attention." Lower courts, of course, must apply the Rule as this Court has interpreted it. And the cases that set forth our interpretation hold that an appellate court may, in its discretion, correct an error not raised at trial only where the appellant demonstrates that (1) there is an "error"; (2) the error is "clear or obvious, rather than subject to reasonable dispute"; (3) the error "affected the appellant's substantial rights, which in the ordinary case means" it "affected the outcome of the district court proceedings"; and (4) "the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." Puckett v. United States, 556 U.S. ___, ___, 129 S.Ct. 1423, 1429, 173 L.Ed.2d 266 (2009) (internal quotation marks omitted); see also United States v. Olano, 507 U.S. 725, 731-737, 113 S. Ct. 1770, 123 L.Ed.2d 508 (1993); Johnson v. United States, 520 U.S. 461, 466-467, 117 S.Ct. 1544, 137 L.Ed.2d 718 (1997); United States v. Cotton, 535 U.S. 625, 631-632, 122 S.Ct. 1781 (2002).

(3) Fisher v. Bybee, 2004 UT 92 (Utah: S. Ct. 2004) "...[t]he term "mistake," as used in rule 60(b)(1), has general application to the activities of counsel and parties, but seldom extends to judicial decisions, we bring logical harmony to this component of the rule. The other forms of unintentional conduct that rule 60(b)(1) deems eligible to be considered as grounds to set aside a judgment—inadvertence, surprise, and excusable neglect—are aptly suited to describe circumstances which might befall counsel or parties. Those afflicted by these circumstances are also best suited to explain them to a court in a motion for relief under rule 60(b)(1). The same is not true of the inadvertence, surprise, or neglect, which might influence the decision of judges. It would be far-fetched, indeed, for a party to bring a rule 60(b)(1) motion based on the claim that a judge's unfavorable ruling could be traced to one or more of these untoward circumstances."

(4) Grice v. J. Ray McDermott and Company, Inc., 465 F. 2d 486 (5th Cir. 1972) “[W]e recognize that “[i]t is the general rule that the appellate court will not consider trial errors to which no timely objection has been made. [But the] rule is not inexorable and is subject to exception. [Citations omitted]. Where it is apparent on the face of the record that a miscarriage of justice may have resulted from counsel's failure to properly protect the interest of his client by timely objection, the error must be noticed and rectified.””

58. **Offer of Proof:** There is no filed Complaint or an Amended filed Complaint or Debt Collection for a LOANLINER® fixed interest rate mobile home loan dated February 28, 2003 and there is no evidence in the Court's Records for a loan executed and delivered on February 24, 2003 for \$5,556.44. Therefore, a Summary Judgment cannot be entered into the Court's Record for a Complaint that was never filed..and..for which no evidence exist. {See My **Exhibits 24 & 41**}

(a) “[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]

(b) “[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]

(c) “[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

(d) “[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. “[R]ather, 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 non-moving 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”

(e) “[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*, 78 Ohio App.3d 561, 563, 605 N.E.2d 478 (1992).” “[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.” [Boldness for emphasis.]

(f) “[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.”

(g) “[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. “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.”

59. **Offer of Proof:** My Recoupment Defense survives TILA’s 1-year limit; and this matter of **Recoupment** was not addressed in any one of Judge Jackson’s Court Orders. {Review My Exhibits 41 & 46 and see Exhibit 47} There is no evidence in the Court’s Record that SCFCU objected to my Recoupment Defense and there is no evidence in the Court’s Records that SCFCU refused my offer to settle this matter without further litigation, pursuant to the legal Principle of Equitable Maxim that was file in my *Answer to Complaint* on December 21, 2011, that is incorporated by reference, as though I have written it herein verbatim.

60. **Offer of Proof:** I did not mislabel my post judgment motion and I did not file a Motion to Reconsider under Rule 59(e), SCRCp. The language of my filed motion is clear and unambiguous and my Motion, to Alter or Amend, that is incorporated by reference as though I have written herein verbatim, required a ruling from the Court. {See Filed Exhibits 42-45}

Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 (2004) “[R]ule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.

Neither contains any provision for a motion for "reconsideration." However, federal courts consider it appropriate for a party to make a "motion for reconsideration" under Rule 59(e) even though the rule mentions only a "motion to alter or amend a judgment." This view holds true even when a party mislabels a post-trial motion. See *Blair v. Equifax Check Services, Inc.*, 181 F.3d 832, 837 (7th Cir.1999) (Rule 4(a)(4), FRAP, restates long-accepted practice of considering motions for reconsideration, a practice independent of any appellate rule); 12 *Moore's Federal Practice* § 59.30[2][a] and [7]; 11 Wright, Miller & Kane § 2810.1; 20 *Moore's Federal Practice* §§ 304.13[2] and 304.13[4][b] (3d ed. 2003). "[T]he wisdom of giving district courts the opportunity promptly to correct their own alleged errors is all the justification needed" for the practice of freely allowing a motion for reconsideration. *Blair*, 181 F.3d at 837. In fact, the United States Supreme Court explicitly has described a motion under federal Rule 59(e) as one which "involves reconsideration of matters properly encompassed in a decision on the merits." *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174, 109 S.Ct. 987, 990, 103 L.Ed.2d 146, 154 (1989)"

61. **Offer of Proof:** In addition to ruling on and entering a Judgment Order for a Complaint that was never filed by the Plaintiff, SCFCU {**Exhibit 41**} and denying a Motion that I never filed according to the specific language of the motion – to ---- Alter or Amend; {**Exhibits 42-43**}, the Lower Court failed to acknowledge the **Offers of Proof** in my Adjudicative Facts that should have been apparent from the context.

62. **Offer of Proof:** I specifically requested Judicial Notice of Adjudicative Facts in my *Legal Memorandum Supporting Motion to Alter or Amend the Order of Judgment*. that is incorporated by reference as though I have written it herein verbatim. Judicial Notice is mandatory when requested and my Adjudicative Facts should have been considered by the Court. Therefore, the Court's Orders violated Rules 103(a)(2), and 201(d), SCRE.

(a) *State v. Foster*, 277 S.C. 211, 212, 284 S.E.2d 780, 780 (1981) ("Taken literally, the word 'shall' is mandatory.")

(b) *Rule 103(a)(2), SCRE*, clearly states in pertinent parts under **Offer of Proof**; "[(2)] In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer **or were apparent from the context.**"

(c) *Rule 201(d), SCRE*, clearly states in pertinent parts; "[A] court shall take judicial notice if requested by a party and supplied with the necessary information. [Note: **Shall means mandatory**]

63. **Offer of Proof:** Based on the Court's Orders, the Court ignored SCFCU's TILA violations and liability. Once a violation of TILA is discovered, the Court has no discretion with respect to liability. *Johnson v. McCrackin-Sturman Ford, Inc.*, 527 F.2d 257, 262 (3d Cir.1975)

64. **Offer of Proof:** Based on the Court's Orders, the Court accepted the false evidence of an Addendum I reportedly received that was presented on February 18, 2015 as SCFCU's **Exhibit 3**. The presentation of false evidence by an Officer of the Court in order to win a case or Judgment and to sign a Judgment Order that favors SCFCU that is based on known false evidence is an egregious error of law, a violation of South Carolina's and the Federal Rules of Evidence, Judicial and Professional Ethics and goes to the very heart of South Carolina's Judicial System and its Legal Profession. {Review SCFCU's **Exhibit 3 of 02/18/ 2015**}

(a) *Holloway v. Arkansas*, 435 US 475 (1978) "...[a]ttorneys are officers of the court, and "when they address the judge solemnly upon a matter before the court, their declarations are virtually made under oath." *State v. Brazile*, 226 La. 254, 75 So. 2d 856 (1954); at 266, 75 So. 2d, at 860-861."

(c) *Ex parte Garland*, 71 US 333 (1866) "[T]he profession of an attorney and counsellor is not like an office created by an act of Congress, which depends for its continuance, its powers, and its emoluments upon the will of its creator, and the possession of which may be burdened with any conditions not prohibited by the Constitution. Attorneys and counsellors are not officers of the United States; they are not elected or appointed in the manner prescribed by the Constitution for the election and appointment of such officers. They are officers of the court, admitted as such by its order, upon evidence of their possessing sufficient legal learning and fair private character. --- The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counsellors, and are entitled to appear as such and conduct causes therein. From its entry the parties become officers of the court, and are responsible to it for professional misconduct. They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded. --- Attorneys and counsellors," said that court, "are not only officers of the court, but officers whose duties relate almost exclusively to proceedings of a judicial nature."

(b) *State v. Brazile*, 226 La. 254, 75 So. 2d 856 (1954) "[A]ttorneys at law are, in a sense, officers of the court, and are under oath; and, when they address the judge solemnly upon a matter before the court, their declarations are virtually made under oath. (Italics ours.)"

65. Rule 3.3, RPC, Rule 407, SCACR: Candor Toward The Tribunal, clearly states

the following in pertinent parts; [**Boldness** shall be added for emphasis.]

“[(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.”**

66. 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."

67. Rule 4.1, RPC, Rule 407, SCACR clearly states in pertinent parts; "[I]n the course of representing a client a lawyer shall not knowingly:

- (a) **make a false statement of material fact or law to a third person; or**
- (b) **fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6."**

68. Rule 8.4, RPC, Rule 407, SCACR clearly state in pertinent parts; "[I]t is professional misconduct for a lawyer to:

- (a) **violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**
- (b) **commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;**
- (c) **commit a criminal act involving moral turpitude;**
- (d) **engage in conduct involving dishonesty, fraud, deceit or misrepresentation;**
- (e) **engage in conduct that is prejudicial to the administration of justice;**
- (f) **state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or**
- (g) **knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.**

69. **Offer of Proof:** As stated in ¶ 51(q) part (2) and in subpart (H) on page 38, in Coulson v. Coulson (1983), 5 Ohio St.3d 12, 15, 5 OBR 73, 76, 448 N.E.2d 809, 811-812, "[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." {SCFCU's Exhibit 3 of 02/18/2015}

§ 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.”

70. **Offer of Proof:** Rule 60(b)(3), SCRCP, specifically allows for judgments to be set aside for Misrepresentation or Misconduct by an Adverse Party. SCFCU’s presenting an Addendum to the Court as though one were given to me on September 5, 2002; by definition; is either, “**Fraud**” - a deliberated deception; a “**Misrepresentation**” – false evidence; or “**Misconduct by an Adverse Party**” that can also be defined as...and/or....described as....Improper Conduct or Dishonest Conduct during a legal proceeding. Offer of Proof: There is no evidence in the Court’s Record or in the Court’s Order that would indicate the Lower Court considered this fact.

(a) Pope v. Federal Express Corp., 138 F.R.D. 675, 683 (W.D. Mo. 1990), *aff’d in part, vacated in part on other grounds*, 974 F.2d 982, 984 (8th Cir. 1992) (court has inherent power to sanction litigants for improper conduct) Pope, 138 F.R.D. at 682 (dishonest conduct by a party or conduct that “threatens the integrity of the judicial process” is grounds for dismissal with prejudice under Rule 41(b)).

(b) Black’s Law Dictionary (rev. 4th ed. 1968) pg 1150, defines **Misconduct** in pertinent parts as; “[A] transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.”

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

(d) "[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)

(e) "[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)

XIV. STATEMENT OF THE EVIDENCE: MY COUNTERCLAIMS WERE NOT CONSIDERED OR RULED UPON BY THE COURT

71. **Offer of Proof:** Based on the Court's Orders, my Counterclaims that SCFCU Misrepresented Material Facts in its Complaint - No loan was executed and delivered to SCFCU on February 24, 2003 --Violated South Carolina's Unfair Trade Practice Act, by Misrepresenting its interest rates as fixed and by misapplying my mobile home payments for a fixed interest rate closed-end loan to an open-end loan; for which, no application or voucher exists.

72. **Offer of Proof:** Based on the Court's Orders, my Counterclaims that SCFCU Violated the TILA and engaged in Misconduct as an adverse party by fraudulently presenting facts to the Court in the form of an Addendum I never received. Not considering my Counterclaims is a Manifest Injustice, an egregious Error of Law and an Abuse of Discretion. {My Exhibits, 41, 46 & 47 & SCFCU's Exhibit 3 of 02/18/2015}

(a) *Johnson v. SC National Bank*, 354 SE 2d 895 (1987) "[w]here a complaint is equitable and the counterclaim is legal and compulsory, the trial judge has two options. He may either order separate trials pursuant to Rule 42(b) or may order the claims tried in a single proceeding. In making this determination, caution should be taken to assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues ---- Moreover, when issues common to both legal and equitable claims are to be tried in a single proceeding, legal issues are to be determined first, and the findings of the jury are binding on the sitting judge, as trier of the equitable claims...." (Citations omitted)

(b) *Rule 42(b), SCRPC*, clearly states in pertinent parts; "[T]he court, in furtherance of convenience or to avoid prejudice --- may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State."

(c) "[G]enerally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." Lester, 327 S.C. at 267, 491 S.E.2d at 242. "[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.

(d) "[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.

(e) Rule 8(f), SCRPC, states; "[A]ll pleadings shall be so construed as to do substantial justice to all parties."

(f) Rule 13(a), SCRPC, clearly states in pertinent parts, "[A] pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction."

(g) "[R]ules of procedure, like statutes, should be given their plain meaning." Valentine v. Davis, 319 S.C. 169, 173, 460 S.E.2d 218, 220 (Ct. App. 1995). "[B]y definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party's claim." First-Citizens Bank & Trust Co. v. Hucks, 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991). "[T]he test for determining if a counterclaim is compulsory is whether there is a "logical relationship" between the claim and the counterclaim." Mullinax v. Bates, 317 S.C. 394, 396, 453 S.E.2d 894, 895 (1995).

(h) 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.")

(i) "[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."

(j) Giglio v. United States, 405 US 150 (1972) "[A]s long ago as Mooney v. Holohan, 294 U. S. 103, 112 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice."

(k) Nix v. Whiteside, 475 US 157 (1986) "[I]n Strickland, we recognized coun-

sel's duty of loyalty and his "overarching duty to advocate the defendant's cause." *Ibid.* Plainly, that duty is limited to legitimate, lawful conduct compatible with the very nature of a trial as a search for truth. Although counsel must take all reasonable lawful means to attain the objectives of the client, counsel is precluded from taking steps or in any way assisting the client in presenting false evidence or otherwise violating the law. This principle has consistently been recognized in most unequivocal terms by expositors of the norms of professional conduct since the first Canons of Professional Ethics were adopted by the American Bar Association in 1908."

(I) Rozier v. Ford Motor Co., 573 F. 2d 1332 (5th Cir. 1978), "[O]ne who asserts that an adverse party has obtained a verdict through fraud, misrepresentation or other misconduct has the burden of proving the assertion by clear and convincing evidence." Saenz v. Kennedy, 178 F.2d 417, 419 (5th Cir. 1949); Gilmore v. Strescon Industries, Inc., 66 F.R.D. 146, 153 (E.D.Pa.1975), *aff'd* without opinion, Bucks County Const. Co. v. P. Agnes, Inc., 521 F.2d 1398 (3d Cir.).

73. **Offer of Proof:** If the Court is deceived by false testimony or the presentation of false evidence by an adverse party and enters a judgment based on the presentation of false testimony and/or false evidence, such reliance voids the Judgment of the Court. However, the evidence must be clear and convincing. Therefore, see Exhibit 3 in SCFCU's Presentation Notebook that was used at the hearing on February 18, 2015 and SCFCU's filed Complaint. {My

Exhibit 24, ¶¶ 7-10, pg 2}

(a) "[A]ccordingly, cases require a party seeking to show fraud on the court to present clear and convincing evidence of the following elements: "1) [conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) **is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth**; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) **deceives the court.**" Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010); (quoting Carter v. Anderson, 585 F.3d 1007, 1011-12 (6th Cir. 2009))." {Review SCFCU's **Exhibit 3 of 02/18/2015**}

(b) 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.

(c) Kyles v. Whitley, 514 US 419 (1995) "[t]he 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.

(d) Perry v. Heirs at Law of Gadsden, 590 S.E.2d 502 (S.C. Ct. App. 2003) "[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). "[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"

XV. STATEMENT OF THE EVIDENCE: MY AFFIRMATIVE DEFENSES WERE NOT CONSIDERED OR RULED UPON BY THE COURT

74. **Offer of Proof:** Based on the Court's Orders, {My **Exhibits, 41, 46 & 47**} my Affirmative Defenses were not considered by the Lower Court. This is another Manifest Injustice, and another egregious Error of Law and an Abuse of Discretion. The Lower Court must rule on my Affirmative Defenses of Recoupment, Unclean Hands and Unjust Enrichment. My loan was handled by telephone and not in person. Therefore, it was impossible for SCFCU to give me an Addendum over the telephone. This statement has been **Sworn to**, **Notarized** and **Verified** and has never been denied or refuted by anyone from SCFCU that was alive or employed by SCFCU in 2002 or 2003. Any such attempt by SCFCU's personnel to deny or lie about the truth now would be **Perjury** and **Dishonest Conduct**.

(a) "[W]hen 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)). "[T]he movant must disprove the affirmative defenses or show they are legally insufficient. Id."

(b) "[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).

(c) “[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.”

(d) 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.)

(e) “[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).

(f) “[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).

(g) “[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)

(h) Wendt v. Laske, 760 So. 2d 1125 (Fla. 5th DCA 2000), “[W]e conclude that the court’s summary judgment order fails to adequately address the viability of all of the affirmative defenses raised and that the court improperly placed the burden on Mr. Wendt to prove his defenses. --- Accordingly, we reverse the summary judgment entered in favor of the Laskes and remand this matter to the trial court with instructions that the court rule on the legal sufficiency of Mr. Wendt’s affirmative defenses. Also see 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).

XVI. STATEMENT OF THE EVIDENCE – CASE NO. 2011-CP-38-1392 DEMANDS A JURY TRIAL OR A DISMISSAL WITH PREJUDICE AND NOT A SUMMARY JUDGMENT

A. The material facts and evidence in this case demand a trial by jury.

75. **Offer of Proof:** The material facts in this case, (1) no Addendum was given to me prior to September 5, 2002, (2) there is no consummated Membership & Account Agreement, (3) no loan was ever executed and delivered to SCFCU on February 24, 2003, (4) my mobile home purchase is not in SCFCU's account records, (5) the interest rate on my mobile home purchase of February 28, 2003 is not fixed, (6) there is no "Open-end Fix Interest Rate" that is recognized by federal law and (7) my payments were misapplied to an 02/24/2003 open-end loan I never approved. **These material facts; as well as, the evidence in this case demand a trial by jury.**

(a) "[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).

(b) "[A] 'genuine issue' exists where the record contains competent materials that evidence two plausible, but contradictory, accounts of the essential facts." ITT Commercial Finance v. Mid-America Marine, 854 S.W.2d 371, 376, at 382; and "[A] 'genuine issue' is a dispute that is real, not merely argumentative, imaginary or frivolous. Id."

(c) Duncan v. Ford Motor Co., 385 S.C. 119, 138, 682 S.E.2d 877, 886 (Ct. App. 2009) ("Clear and convincing evidence is: 'that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established.'" (quoting Anderson v. Augusta Chronicle, 355 S.C. 461, 473, 585 S.E.2d 506, 512 (Ct. App. 2003))

(d) Buckley v. Shealy, 370 S.C. 317, 323, 635 S.E.2d 76, 79 (2006) ("...all courts have the inherent power to all things reasonable necessary to ensure that just results are reached to the fullest extent possible.")

(e) "[E]llison v. Simmons, 238 S.C. 364, 120 S.E.2d 209 (1961) "[I]n the case of Dickson's Drug Store, Inc. v. Davis, 197 S.C. 294, 15 S.E. (2d) 332, it was held that testimony is relevant which renders it properly applicable in determining the truth and falsity of matters in issue between the parties to the suit. In Francis v. Mauldin et al., 215 S.C. 374, 55 S.E. (2d) 337, it was held that all that is required to render evidence admissible is that fact shown thereby legally tends to prove, or make more or less probable, some matter in issue, and bear directly or indirectly thereon."

(f) “[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)

(g) “[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).

(h) “[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.

(i) “[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).

B. Amendment VII to the Constitution preserves the right of trial by jury in civil cases.

76. **Offer of Proof:** The facts and material facts in this case demand a jury trial or a dismissal with prejudice that includes compensatory and punitive damages or a trial by jury that is based on the evidence, the facts and the material facts. Amendment VII to the Constitution of the United States of America. preserves "the right of trial by jury" in civil cases.

(a) Amendment VII clearly states in pertinent parts; “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.”

(b) “[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. “..‘the evidence of the non-movant[s] is to be believed,’” Anderson v. Liberty Lobby, Inc., 477 U.S. at 255.”

(c) Landgraf v. Ellsworth, 126 NW 2d 766 (Minn. S. Ct. 1964) “[I]t has been held that Amendment VII of the United States Constitution applies only to Federal and not to state action. However, determination of the right to a jury trial under the facts of this case would be much the same under either the Federal or state constitution. One of the best discussions of this question may be found in Dairy Queen, Inc. v. Wood, 369 U.S. 469, 477, 82 S. Ct. 894, 899, 8 L. ed. (2d) 44, 51, where the court said: “[W]e think it plain that their claim for a money judgment is a claim wholly legal in its nature however the complaint is construed. As an action on a debt allegedly due under a contract, it would be difficult to conceive of an action of a more traditionally legal character ---- Where a party has a constitutional right to a jury trial, denial of the right is reversible error.””

(d) “[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) “[T]he 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.”

(e) “[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)

(f) Rule 43(a), SCRPC, clearly states in pertinent parts.. “[A]ll 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.”

(h) Black's Law Dictionary (9th ed. 2009), pg. 1323 – “[P]robative means tend-ing 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). (Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates.)

(i) 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)

(j) 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).

(k) Black’s Law Dictionary (4th ed. 1968), pg 706, defines **Fact**, in pertinent parts as; “[A] thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence. An actual happening in time or space or an event mental or physical...” “That which has taken place, not what might or might not have taken place.”

(l) Diblik v. Marcy, 166 P.3d 23, 28 (Alaska 2007) “[A] material fact is one “to which a reasonable man might be expected to attach importance in making his choice of action.” It is a fact which could reasonably be expected to influence someone’s judgment or conduct concerning a transaction. (quoting W. Prosser, Law of Torts § 108, at 719 (4th ed. 1971))”

(m) “[A] ‘conclusion of law’ is the court’s statement of the law which is determinative of the matter at issue between the parties.” Peoples v. Peoples, 10 N.C. App. 402, 179 S.E. 2d 138 (1971). “[A] conclusion of law must be based on the facts found by the court and must be stated separately.” Williams v. Williams, 13 N.C. App. 468, 186 S.E. 2d 210 (1972). “[T]he conclusions of law necessary to be stated are the conclusions which, under the facts found, are required by the law and from which the judgment is to result.” 89 C.J.S., Trial, § 615b (1955).

(n) CPT v. John Deere Health Care, 714 NW 2d 603 – (Iowa: S. Ct. 2006) “[I]f all the pieces fit together correctly, the court enters judgment. However, if the pieces do not fit together correctly, the court can see what went wrong and attempt to fix the puzzle instead of starting over again with a new jury. Each puzzle piece, or finding, must be supported by the evidence presented. Cowan v. Flannery, 461 N.W.2d 155, 158 (Iowa 1990). Furthermore, the findings made cannot be internally inconsistent. See Dutcher, 221 N.W.2d at 761 (“[W]hen there is an irreconcilable conflict between the general verdict and special findings the latter must prevail and the general verdict cannot stand.”); 89 C.J.S. Trial § 992, at 603 (2001) (stating that when findings in special verdicts “are utterly and irreconcilably inconsistent with, or repugnant to, each other, they neutralize, nullify, or destroy each other”).”

(o) Qantel Business Systems, Inc. v. Custom Controls Co., 761 SW 2d 302 (Tex: S. Ct. 1988) “[I]n reviewing a case in which a verdict has been directed, appellate courts must view the evidence in the light most favorable to the party against whom the verdict was rendered and disregard all contrary evidence and inferences. White v. Southwestern Bell Tel. Co., 651 S.W.2d 260, 262 (Tex.1983); Collora v. Navarro, 574 S.W. 2d 65, 68 (Tex.1978). If the appellate court finds that there is any evidence of probative value which raises a material fact issue, then the judgment must be reversed and the case remanded for the jury's determination of that issue. White at 262; Collora at 68.---- a non-jury trial --- forces an appellate court to reverse the trial court's judgment and remand the case if "there is any evidence of probative force to raise fact issues on the material questions presented." Stegman v. Chavers, 704 S.W.2d 793, 794-95 (Tex.App.—Dallas 1985, no writ). See also Meyers v. Ford Motor Credit Co., 619 S.W.2d 572, 573 (Tex.Civ. App.—Houston [14th Dist.] 1981, no writ).”

C. **The lower court failed to consider or ignored South Carolina's long standing Policy of Law.**

77. **Offer of Proof:** The facts and material facts in this case also reveal the failure of the Lower Court to utilize South Carolina's long standing **Policy of Law**, **Restatement (Second) of Contracts** and **Restatement (Second) of Torts** to resolve the issue before the Court.

(a) Jackson v. Bi-Lo Stores, Inc., 437 SE 2d 168 (Ct. App. 1993) “[I]t is a well founded **policy of law** that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act. 86 C.J.S. *Torts* § 12 (1954). This rule applies at both law and in equity and whether the cause of action is in contract or in tort. 1A C.J.S. *Actions* § 29 (1985). See also Graham v. Graham, 276 S.C. 341, 278 S.E.2d 345 (1981); Nelson v. Bryant, 265 S.C. 558, 220 S.E.2d 647 (1975); Roundtree v. Ingle, 94 S.C. 231, 77 S.E. 931 (1913); Restatement (Second) of Torts § 774 (1977).” [Boldness shall be added for emphasis]

(b) W & N CONSTRUCTION COMPANY v. Williams, 472 SE 2d 622 (1996) “[I]n Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993, we recognized the general rule that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the constitution. See also Grant v. Butt, 198 S.C. 298, 17 S.E.2d 689 (1941); Roundtree v. Ingle, 94 S.C. 231, 77 S.E. 931 (1913). Similarly, the Court of Appeals recently held: It is a **well-founded policy of law** that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act. 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, 437 S.E.2d 168, 170 (1993).”

(c) NCH Corp. v. Share Corp., 757 F. 2d 1540 (5th Cir.1985) “[R]ESTATEMENT (SECOND) OF TORTS § 774 (1977) (no liability for interference with

illegal agreement or agreement effecting violation of public policy).” Beach v. Ocwen Fed. Bank, 523 US 410 (1998) “[A]ccordingly, the Act requires creditors to provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights. See §§ 1631, 1632, 1635, 1638. Failure to satisfy the Act subjects a lender to criminal penalties for noncompliance, see § 1611, as well as to statutory and actual damages traceable to a lender's failure to make the requisite disclosures, see § 1640. Section 1640(e) provides that an action for such damages “may be brought” within one year after a violation of the Act, but that **a borrower may assert the right to damages “as a matter of defense by recoupment or set-off” in a collection action brought by the lender even after the one year is up.**”

(d) “[a] misrepresentation may make a contract voidable if it is either fraudulent or material.” *Restatement (Second) Contracts ch. 7, Introductory Note (1981)* “[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.” 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.”).

(e) “[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.” 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”)

(f) Sununu v. Philippine Airlines, Inc., 792 F. Supp. 2d 39 – (Dist. Ct. Dist. of Columbia 2011) “[R]estatement §§ 163-164. A contract is void “[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 reasonable opportunity to know of the character or essential terms of the proposed contract.” Id. § 163. --- A contract is voidable for misrepresentation “if a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying.” Restatement § 164.”

(g) Emery v. Smith, 603 SE 2d 598 (Ct. App. 2004) “[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 inequiteness 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.”)

(h) *Precision Co. v. Automotive Co.*, 324 US 806 (1945) "[T]he guiding doctrine in this case is the equitable maxim that 'he who comes into equity must come with clean hands.' This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abettor of iniquity.'" *Bein v. Heath*, 6 How. 228, 247. Thus while "equity does not demand that its suitors shall have led blameless lives," *Loughran v. Loughran*, 292 U.S. 216, 229, as to other matters, it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue. *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 245; *Johnson v. Yellow Cab Co.*, 321 U.S. 383, 387; 2 Pomeroy, Equity Jurisprudence (5th Ed.) §§ 379-399. This maxim necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant. It is "not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion." *Keystone Driller Co. v. General Excavator Co.*, *supra*, 245, 246. Accordingly one's misconduct need not ---- be punishable as a crime or as to justify legal proceedings of any character."

XVII. STATEMENT OF THE EVIDENCE: MY AFFIDAVITS OF FACTS & TRUTH WERE IGNORED OR NOT CONSIDERED BY THE COURT

78. Rule 56 does not require fact finding by the court. However, under Rule 56(c), SCRCP, a Summary Judgment can only be granted when and 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. My affidavits not only contain specific facts that are admissible as evidence, they refuted every affidavit that was filed by Amy Rogers. **Offer of Proof:** Based on the Court's Orders, none of the following Affidavits were considered by the Court.

(a) Defendant Dorothy Harley Sistrunk's Affidavit of Facts Material Facts & Truth To Rebut Any Statement Made By the Plaintiff or the Plaintiff's Attorney/s That is not Consistent With the Plaintiff's Filed Complaint, Filed Exhibits and Filed Affidavits During the Hearing for Summary Judgment Scheduled for Tuesday June 19, 2012 at 2:25 O' Clock P.M., filed on June 14, 2012.

(b) Defendant Dorothy Harley Sistrunk's Response to Plaintiff's Motion for Summary Judgment, Affidavit of Amy Rogers in Support of Motion for Summary Judgment and the Plaintiff's Reply to Defendant's Answer and Counterclaims, filed on May 18, 2012.

(c) Defendant Dorothy Harley Sistrunk's Counter Affidavit to Amy Rogers in Support of Plaintiff's Motion for Summary Judgment, also filed on May 18, 2012.

(1) Rule 11(c), SCRPC that clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, , 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) Carlton v. Davisson (1995), 104 Ohio App.3d 636, 646, 662 N.E.2d 1112, "[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)"

(3) Brannon v. Rinzler (1991), 77 Ohio App.3d 749, 756, 603 N.E.2d 1049, "[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."

(4) Oldham v. West, 47 F. 3d 985 (8th Cir. 1995) "[o]n summary judgment judges must resolve all facts and inferences from the facts in favor of the nonmoving party. --- we reverse the grant of summary judgment dismissing the plaintiff's complaint and remand the case to the district court for appropriate further proceedings."

(5) Eagle Oil & Ref. Co. v. Prentice, 19 Cal. 2d 553 (Cal: S. Ct. 1942) "[A]lthough it may well be argued that defendant's affidavits could have been more carefully drawn, we are satisfied that under the rule of liberal construction they establish the existence of factual issues existing between plaintiff and defendant which must be determined at a trial."

(6) North Carolina Nat'l Bank v. Harwell, 38 N.C.App. 190, 192, 247 S.E.2d 720, 722 disc. rev. denied, 296 N.C. 410, 267 S.E.2d 656 (1979) (failure to object to form or sufficiency of pleadings and affidavits waives objection on summary judgment); Noblett v. General Electric Credit Corp., 400 F.2d 442, 445 (10th Cir.1968), cert. denied, 393 U.S. 935, 89 S.Ct. 295, 21 L.Ed.2d 271 (1969) (affidavit not conforming to Rule 56(e) is subject to motion to strike, but objection waived absent motion); see also 10A C. Wright & A. Miller, Federal Practice and Procedure Sec. 2738 at 507-09 (1983) (party must move to strike affidavit not conforming with Rule 56(e) before appeal).

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

XVIII. STATEMENT OF THE EVIDENCE: THE LOWER COURT FAILED TO CONSIDER I AM A PRO SE LITIGANT NOT TRAINED IN LAW AND SHOULD HAVE TAKEN STEPS TO ENSURE ALL THE CLAIMS AND FACTS IN C. A. CASE NO. 2011-CP-38-1392 WERE ADDRESSED

79. 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).}

80. 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 explanation 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.”

81. 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. 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. While the right "does not exempt a party from compliance with relevant rules of procedural and substantive law," *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir.1981), 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)."

82. 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. (*Rapplevea v. Campbell* (1994) 8 Cal.4th 975, 35 Cal.Rptr. 2d 669, 884 P.2d 126.)". "They 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."

83. 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."

84. **Offer of Proof:** In C. A. Case No. 2011-CP-38-1392, based on the Court's Orders, no steps were taken to insure all the facts in this case were adjudicated properly. In fact, the opposite is true. For over 4 years, nothing I relied upon happened in court.

(a) Rule 13(a), SCRMC, 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.

(b) 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.”

(c) “[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.”)

(d) 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.”)

(e) Blair v. Maynard, 324 S.E.2d 391, 396 (West Virginia 1984) “[T]rial courts possess “[a] discretionary range of control over parties and proceedings that allow reasonable accommodations to self-represented litigants.”

(f) Howard v. U.S. Bureau of Prisons, 487 F.3d 808, 815 (10th Cir. 2007). “[I]n addition, “[w]hen the substance of a legal claim is otherwise present, this court has indicated that ‘confusion of various legal theories,’ a technical pleading error, should not be dispositive in pro se cases.” Switzer v. Coan, 261 F.3d 985, 988 (citing Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)). “[A]t the same time, we do not believe it is the proper function of the district court to assume the role of advocate for the pro se litigant.” Hall, 935 F.2d at 1110.

(g) Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). “[I]t is well established that “[a] pro se litigant’s pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers.” Rule 8(f), SCRCP clearly states in pertinent parts; “[A]ll pleadings shall be so construed as to do substantial justice to all parties.”

(h) Breck v. Ulmer, 745 P.2d 66, 75 (Alaska 1987) "[T]he trial judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish."

(i) Plaskey v CIA, 953 F.2d 25, "[C]ourt errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings."

(j) Balistreri v. Pacifica Police Dept., 901 F.2d 696 (9th Cir. 1990) "[T]his court recognizes that it has a duty to ensure that pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements. Borzeka v. Heckler, 739 F.2d 444, 447 n. 2 (9th Cir. 1984) (defective service of complaint by pro se litigant does not warrant dismissal)"

(k) Traguth v. Zuck, 710 F.2d 90 (2nd Cir. 1983) "[T]he district court also abused its discretion in failing to take into account Zuck's *pro se* status. 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. While the right "does not exempt a party from compliance with relevant rules of procedural and substantive law," Birl v. Estelle, 660 F.2d 592, 593 (5th Cir.1981), it should not be impaired by harsh application of technical rules. 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 (2^d Cir.1980). The court's duty is even broader in the case of a *pro se* defendant who finds herself in court against her will with little time to learn the intricacies of civil procedure. ---- The judgment of the district court is reversed and the cause remanded for further proceedings on the merits."

(l) GJR Investments, Inc. v. County of Escambia, Fla., 132 F.3d 1359 (11th Cir. 1998) "[C]ourts do and should show a leniency to *pro se* litigants not enjoyed by those with the benefit of a legal education. See, e.g., Powell v. Lennon, 914 F.2d 1459, 1463 (11th Cir.1990). Yet even in the case of *pro se* litigants this leniency does not give a court license to serve as *de facto* counsel for a party, see Hall v. Bellmon, 935 F.2d 1106, 1109 (10th Cir.1991), or to rewrite an otherwise deficient pleading in order to sustain an action, see Pontier v. City of Clearwater, 881 F.Supp. 1565, 1568 (M.D.Fla. 1995)."

(m) Phillips v. Girdich, 408 F.3d 124 (2nd Cir. 2005) "[All] complaints must be read liberally; dismissal on the pleadings *never* is warranted unless the plaintiff's allegations are doomed to fail under any available legal theory. See Warren v. District of Columbia, 353 F.3d 36, 37 (D.C.Cir.2004); see also Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984). But as low as the requirements are for a complaint drafted by competent counsel, we hold *pro se* complaints to an even lower standard. See Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) (per curiam). --- We will therefore excuse technical pleading irregularities as long as they neither undermine the purpose of notice pleading nor prejudice the adverse party. See, e.g., Wynder v. McMahon, 360 F.3d 73, 79 (2^d Cir.2004)"

XIX. STATEMENT OF THE EVIDENCE: THE LOWER COURT FAILED TO CONSIDER OR IGNORED JUDICIAL ADMISSIONS AND EVIDENTIARY ADMISSIONS IN MY NOTARIZED AND/OR VERIFIED PLEADINGS

A. Verified Pleadings.

85. **Offer of Proof:** I have filed over 10 **Notarized** and/or **Verified Pleadings** in the Court of Common Pleas over a 4 year period. **All my pleadings have the probative force of Affidavits.** In any other Court of competent jurisdiction, except for Conclusions of Law, **Affidavits** are treated as statements of fact when submitted and when judicial or evidentiary admissions are not controverted, refuted or denied they are deemed admitted.

86. My admissions in **Verified Pleadings**; that are essentially **Affidavits**, have not been controverted, denied, refuted or contested in over 4 years. *Rynn v. Owens*, 181 Ill.App. 3d 232, 235, 536 N.E.2d 959, 962 (1st Dist. 1989).... and should have been deemed admitted years ago. A judicial admission is a deliberate, clear, unequivocal statement by me about a concrete fact that is based on my personal knowledge and not information or belief. Once made, a judicial admission binds me to the statement and I cannot change or contradict the statement later.

87. Unlike an attorney's responsive pleading, as stated, my **Verified Pleadings** have the probative force of **Affidavits**. As any competent jurist can see, my **Verified Pleadings** are based on my personal knowledge, SCFCU's filed documents and not information or belief. And.. as to matters that are based on information or belief....., I believe them to be true.

88. Accordingly, a **Verified Pleading**, in Courts of competent jurisdiction, can only be countered by another **Affidavit** based on personal knowledge, a sworn deposition based on personal knowledge and/or certified hard evidence to the contrary. Uncertified copies are legally insufficient and an attorney's brief that is not supported by an Affidavit based on personal knowledge, certification or another **Verified Pleading** are dismissed because an unverified pleading is legally insufficient to challenge sworn statements in a **Verified Pleading** or an **Affidavit**.

- (a) Boner v. Drazek (1973), 55 Ill. 2d 279, 291, 302 N.E.2d 280, "[W]hile it is not drawn in the customary language, the law imposes no set form. The verification clearly declares that the allegations are true 'to the best of his [affiant's] knowledge. ---- We may treat the word 'belief' used therein as mere surplusage, and accept the verification as a positive one, not one based on information and belief."
- (b) 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)
- (c) Washington ex rel. Victor Boom Co. v. Peterson, 70 P. 71 (Wash. 1902) (holding that a verified pleading can constitute an affidavit)."
- (d) 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) "[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."
- (e) "[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.3rd 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."
- (f) Dawkins v. Fields, 580 S.E.2d 433 (S.C. 2003) "[A]lthough our courts have not specifically addressed whether a verified complaint is the equivalent of an affidavit for purposes of summary judgment, Rule 56 of the South Carolina Rules of Civil Procedure is identical to its federal counterpart. In the absence of state law on the issue in question, federal cases interpreting the rule are persuasive."
- (g) State v. Colf, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998) (noting that federal interpretation of the rules of civil procedure is persuasive when there is no South Carolina interpretation). "[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)." See Huckabay v. Moore, 142 F.3d 233 (5th Cir. 1998); Ford v. Wilson, 90 F.3d 245 (7th Cir. 1996); Colon v. Coughlin, 58 F.3d 865 (2d Cir. 1995); Neal v. Kelly, 963 F.2d 453 (D.C. 1992); Williams v. Griffin, 952 F.2d 820 (4th Cir. 1991); United States v. Four Parcels of Real Property, 941 F.2d 1428 (11th Cir. 1991); Williams v. Adams, 935 F.2d 960 (8th Cir. 1991); Sheinkopf v. Stone, 927 F.2d 1259 (1st Cir. 1991); Conaway v. Smith, 853 F.2d 789 (10th Cir. 1988); Hooks v. Hooks, 771 F.2d 935 (6th Cir. 1985); Lew v. Kona Hosp., 754 F. 2d 1420 (9th Cir. 1985).

89. Likewise, numerous state courts have held that a verified complaint and/or pleading is the equivalent of an affidavit for summary judgment purposes.

(a) Smith v. Thompson, 923 P.2d 101 (Alaska 1996) (noting that verified and notarized documents satisfy the same basic requirements)

(b) Kiser v. A. J. Bayless Mkts., 449 P.2d 637 (Ariz. Ct. App. 1969) (recognizing that a verified complaint may be adequate to controvert the affidavits of the moving party)

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

(d) Camp v. Jiminez, 693 P.2d 1080, 1083 (Idaho Ct. App. 1984) ("[A] verified complaint may be presented to the court . . . and it will be accorded the probative force of an affidavit if it meets the requirements of Rule 56(e).")

(e) 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)

(f) Pentecost v. Harward, 699 P.2d 696 (Utah 1985) (holding that a verified pleading that meets the requirements of Rule 56(e) can be considered the equivalent of an affidavit)

(g) Willis v. Lauridson, 118 P. 530 (Cal. 1911) (holding that when seeking an injunction, a verified pleading is equivalent to an affidavit)

(h) Golden Canal Co. v. Bright, 6 P. 142 (Colo. 1884) (holding that under mandamus statute, a verified petition was equivalent to an affidavit)

(i) Iowa v. One Certain Automobile, 23 N.W.2d 847 (Iowa 1946) (noting the general rule that a verified pleading may be held to be an affidavit)

(j) 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)

(k) 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)

(l) 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)"

B. Judicial Admissions.

90. **Offer of Proof:** A judicial admission cannot be contradicted in a motion for summary judgment. A judicial admission cannot be contradicted at trial. Dayan v. McDonald's Corp., 125 Ill.App.3d 972, 983, 466 N.E.2d 958, 967 (1st Dist. 1984). Thus, I cannot introduce an affidavit or testify contrary to a prior judicial admission. Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc. 71 Ill.App.3d 562, 568, 390 N.E.2d 60 (1979)

91. I cannot offer contrary testimony from other witnesses or experts. Caponi v. Larry's 66, 236 Ill.App.3d 660, 671, 601 N.E.2d 1347, 1355 (2nd Dist 1992) Formal admissions in open court, admissions pursuant to requests to admit and stipulations also constitute judicial admissions.

(a) 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).

(b) American Title Ins. Co. v. Lacelaw Corp., 861 F. 2d 224 (9th Cir. 1988) "[J]udicial admissions are formal admissions in the pleadings which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." In re Fordson Engineering Corp., 25 B.R. 506, 509 (Bankr. E.D. Mich. 1982). Factual assertions in pleadings and pretrial orders, unless amended, are considered judicial admissions conclusively binding on the party who made them."

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

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

(e) Koserkoff v. Chesapeake & Ohio Ry. Co., 427 F.2d 1049, 1054 (6th Cir. 1970) (holding that "positive statement of fact" is required for a binding admission not "contradictory statements").

C. Evidentiary Admissions.

92. As stated, my admissions in **Notarized** and/or **Verified Pleadings** that are essentially **Affidavits** must be ruled upon as either Judicial Admissions or Evidentiary Admissions because there is a major difference. **Offer of Proof:** In over 4 years, the Lower Court ignored, failed to rule on or decide the classification of my admissions as Judicial or Evidentiary.

(a) Keller v. US, 58 F. 3d 1194 n. 8 (7th Cir. 1995) "[J]udicial admissions are formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding upon the party making them. They may not be controverted at trial or on appeal. Indeed, they are "not evidence at all but rather have the effect of withdrawing a fact from contention." Michael H. Graham, *Federal Practice and Procedure: Evidence* § 6726 (Interim Edition); see also John William Strong, *McCormick on Evidence* § 254, at 142 (1992). A judicial admission is conclusive, unless the court allows it to be withdrawn; ordinary evidentiary admissions, in contrast, may be controverted or explained by the party. *Id*"

(b) Barnes v. Owens-Corning Fiberglas Corp., 201 F. 3d 815 (6th Cir. 2000) "[T]he Ninth Circuit gave the following analysis of the nature of factual assertions contained in pleadings: "[U]nder federal law, stipulations and admissions in the pleadings are generally binding on the parties and the Court. Not only are such admissions and stipulations binding before the trial court, but they are binding on appeal as well." Ferguson v. Neighborhood Housing Services, 780 F.2d 549, 551 (6th Cir.1986) (citations omitted). "Judicial admissions are formal admissions in the pleadings which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." In re Fordson Engineering Corp., 25 B.R. 506, 509 (Bankr.E.D.Mich.1982). Factual assertions in pleadings and pretrial orders, unless amended, are considered judicial admissions conclusively binding on the party who made them. See White v. ARCO/Polymers, Inc., 720 F.2d 1391, 1396 (5th Cir.1983)."

(c) Martinez v. Bally's Louisiana, Inc., 244 F. 3d 474 (5th Cir. 2001) "[B]y contrast, an ordinary evidentiary admission is "merely a statement of assertion or concession made for some independent purpose," and it may be controverted or explained by the party who made it."

(d) Radtke v. Miller, Canfield, Paddock & Stone, 551 NW 2d 698 (Mich: S. Ct. 1996) "[A] judicial admission differs dramatically from an evidentiary admission with respect to the effect of the admission. Although both judicial and evidentiary admissions are subject to all pertinent objections to admissibility that might be interposed at trial (4A Moore, *Federal Practice* (2d ed.), ¶ 36. 08, p. 36-82, and Martin, Dean & Webster, *Michigan Court Rules Practice* (3d ed.), Rule 2.312, p. 357), ---- the judicial admission, unless allowed by the court to be withdrawn, is conclusive in the case, whereas the evidentiary admission is not conclusive but is always subject to contradiction or explanation. [McCormick, p. 142.]"

XX. STATEMENT OF THE EVIDENCE: NO SUBJECT MATTER JURISDICTION

A. No Complaint was ever filed for a February 28, 2003, fixed interest rate mobile home loan.

93. As the Defendant in this case, I use Exhibits, Affidavits and Citations of Authorities to support my Statements of Fact; as well as, my contentions relative to the Lower Court's Errors of Law and/ or Judgment as to the facts and/or law. As a rule, I do not speculate or argue law. I state the facts and support my facts with the appropriate evidentiary basis and/or material; be it an exhibit, affidavit, document and/or citations authorities. However, in this case, I must pursue "**Lack of Subject Matter Jurisdiction**" as an issue and raise it to the Appellate Court.

94. As stated in my *Legal Memorandum of Law and Authorities to Alter of Amend the Judgment* and in my *Objections to Judicial Errors; Re: A Judgment on a Complaint That Was Never Filed; a Denial of a Motion Never Filed, and Additional Errors of Fact or Law That Are Not in Accordance with South Carolina's Rules of Civil Procedure, Rules of Evidence, Precedent and Amendment VII to the Constitution of the United States of America*, that are incorporated by reference as though I have written them herein verbatim, the Court cannot issue a Judgment Order for a Complaint that was never filed.

B. The Court Lacked Subject Matter Jurisdiction to issue a Judgment on a Complaint that was never filed pursuant to South Carolina's Rules of Civil Procedure.

95. The reference document that compelled me to raise this issue of "**No Subject Matter Jurisdiction**" is the Court's Order of Judgment that is dated April 20, 2015, my Exhibit 41, that was retrieve from the mailbox at 423 Bayne Street in Orangeburg, South Carolina on April 23, 2015. Offer of Proof: **The Court lacked subject matter jurisdiction to issue an Order of Judgment.** No Complaint was ever filed for a LOANLINER® loan that was executed and delivered on February 28, 2003. "[P]arties cannot by consent confer jurisdiction upon a court." *Cox v. Lunsford*, 272 S.C. 527, 252 S.E. (2d) 918 (1979)

- (a) Rule 3(a), SCRCF, clearly states, in pertinent parts; “[A] civil action is commenced when the summons and complaint are filed with the clerk of court.”
- (b) Rule 4(a), SCRCF, states, “[T]he summons shall be issued by plaintiff or plaintiff's attorney. Copies of the original summons shall be served upon each defendant.”
- (c) Rule 4(b), SCRCF, clearly states, “[T]he summons shall be signed by the plaintiff or his attorney, contain the name of the State and county, the name of the court, the file number of the action, and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.
- (d) Rule 4(d), SCRCF, clearly states, “[T]he summons and complaint must be served together.” Subpart d(1) states in pertinent parts, that service shall be made; “[U]pon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process.”
- (e) Rule 7(a), SCRCF, states in pertinent parts; “[T]here shall be a complaint and an answer. ---- No other pleadings shall be allowed...,”
- (f) MATTER OF FRY v. Tarrytown, 680 NE 2d 578 (NY: Ct. App. 1997)”[O]ther Federal courts have also held that the failure to properly commence an action because of a defect in the initiatory document deprives the court of power to act (*see, e.g., Application of Howard*, 325 F.2d 917, 919-920 [ordering the dismissal of an "application" for "failure to comply with the applicable rules of civil procedure" where the party failed to file a complaint and to "proceed in such manner as the rules of civil procedure prescribe"]; *Farrell v Ignatius*, 283 F Supp 58, 60 ["Since [only an affidavit and] no complaint was filed and no summons was issued in the case at bar, no action has ever been commenced or is pending in this court. The court has no jurisdiction to act. The order to show cause is vacated and set aside as wholly void and the proceeding is dismissed"]; *Warren v Arzt*, 18 FRD 11, 13 ["To commence an action, it is necessary that the Rules of Civil Procedure be complied with, that a complaint be filed, a summons issued, and service made as prescribed in the Rules. * * * Since no action has ever been commenced or is pending in this Court, this Court obviously has no jurisdiction to act"]; *In re Market Basket*, 122 F Supp 321, 322 ["Inasmuch as no action has been commenced or is pending in this court in respect of this matter, it follows that the jurisdiction of the court has never been invoked and that the ex parte order signed and entered herein by the court on September 9, 1953, is, and always was, wholly void"])).”

96. SCFCU's Complaint and Debt Collection are for a LOANLINER® account executed and delivered on February 24, 2003 that called for the payment of \$5,556.44. The acts of a court with respect to a matter as to which it has no jurisdiction are void. {See State v. Guthrie}

(a) State v. Guthrie, 352 S.C. 103, 107, 572 S.E.2d 309, 311-12 (Ct.App.2002) "[T]he acts of a court with respect to a matter as to which it has no jurisdiction are void."

(b) Dema v. TENET PHYSICIAN SERVICES-HILTON, 678 SE 2d 430 (2009) "[S]ubject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008). South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts. S.C. Const. art. V, § 11."

(c) Bunkum v. Manor Properties, 467 SE 2d 758 (Ct. App. 1996) "[S]ince the master had entered final judgment in this case, and therefore had no subject matter jurisdiction to hear the motion for assessment of costs, fees, expenses and damages against the appeal bond, his order entering judgment against Bunkum on the appeal bond is void. See DeWitt v. S.C. Dept. of Highways & Public Transp., 274 S.C. 184, 262 S.E.2d 28 (1980) (all proceedings of a court lacking subject matter jurisdiction are a nullity, and its judgment has no effect).

(d) Fielden v. Fielden, 262 SE 2d 43 (1980) "[L]ack of subject matter jurisdiction cannot be waived and should be taken notice of by this Court on its own motion. Harden v. S.C.H.D., 266 S.C. 119, 221 S.E. (2d) 851 (1976); McCullough v. McCullough, 242 S.C. 108, 130 S.E. (2d) 77 (1963

(e) Lake v. Reeder Const. Co., 498 SE 2d 650 (Ct. App. 1998) "[L]ack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. Ex Parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661 (1993); Eaddy v. Eaddy, 283 S.C. 582, 324 S.E.2d 70 (1984); Bunkum v. Manor Properties, 321 S.C. 95, 467 S.E.2d 758 (Ct. App. 1996). The burden rests on the appellant to show the Circuit Court's decision is against the preponderance of the evidence. Crim v. Decorator's Supply, 291 S.C. 193, 352 S.E.2d 520 (Ct.App.1987).

(f) Town of Hilton Head Island v. Godwin, 634 SE 2d 59 (Ct. App. 2006) "[T]he appellate court must always take notice of the lack of subject matter jurisdiction. Amisub of S.C., Inc. v. Passmore, 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994). The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. See, e.g., Lake v. Reeder Constr. Co., 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct.App.1998) (holding issues related to subject matter jurisdiction may be raised at any time)"

XXI. CITATIONS TO AUTHORITIES THAT SUPPORT MY COUNTERCLAIMS THAT ARE IN NOTARIZED AND/OR VERIFIED PLEADINGS THAT WERE NEVER RULED UPON COURT

A. COUNTERCLAIM I - (Deceptive Business Practice – Under SCUTPA)

97. **Offer of Proof:** According to Angel Rabon, I was agreeing to and signing a standard “**Fixed Rate**” loan agreement {Review My **Exhibits 9 & 11**}; SCFCU’s 02/24/20303, loan is open-end, not “**Fixed**”, and operates similar to and is virtually the same as a “Revolving Charge” or similar account. {Review SCFCU’s **Exhibits 2, pg 21, 6, 7 & 8 of 02/18/2015**}

98. Such accounts are rarely paid off with a minimum monthly payment. Angel Rabon never discussed the nature and character of this type loan and it was never explained or fully disclosed by SCFCU. Angel Rabon did what she was supposed to do. She asked what was the loan for? And clearly explained, “[M]y mobile home loan would be essentially the same as my car loan.” I have presented the evidence and the facts. {Review My **Exhibits 9, 11 & 12**} It is up to the Court to decide whether or it is a deceptive practice to mislead the public that interest rates are fixed when they are not. Such practices are unlawful in South Carolina under § 39-5-20.

99. **Offer of Proof:** Review SCFCU’s filed Complaint, ¶¶ 7-10, pg 2. By Misrepresenting facts, SCFCU must return all my money. There was never any loan executed and delivered to SCFCU on February 24, 2003 for \$5,556.44. February 24, 2003 is the date Angel Rabon notified me the loan was approved. {Review SCFCU’s **Exhibit 6 of 02/18/2015**}

101. However, in 2011, I applied the principle of “Equitable Maxim” to SCFCU’s indiscretions and SCFCU need only return \$4,240.00 (\$10,340.00 – [\$5,500 Loan + \$600.00 in Advances] = \$4,240.00; plus, any payments less than \$110.00 and comply with my request in my “Prayer for Relief”. After, using SCFCU’s **Exhibit 3 of 05/10/2012**, I discovered SCFCU owed me \$4,660.84 for misapplying my mobile home payments to a loan; for which, no application or voucher exists and I never approved.

(a) *Ardis v. Cox*, 431 SE 2d 267 (Ct. App. 1993) “[T]he SCUTPA is unavailable to redress private wrongs if the public interest is unaffected. *LaMotte v. The Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988); *Noack Enterprises, Inc. v. Country Corner Interiors*, 290 S.C. 475, 351 S.E.2d 347 (Ct.App.1986). An unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the Act’s embrace. *Noack*. Unfair or deceptive acts or practices have the potential for repetition. *Id.*” SCFCU’s deceptive practice using “**Fixed**” when rates are not “fixed” is **Misleading** and can impact the public. Therefore, this is a matter of public interest.

(b) *Daisy Outdoor Advertising Co. v. Abbott*, 473 SE 2d 47 (1996) “[I]n order to determine whether there is evidence to support the finding, we first must clarify what kind of evidence is sufficient to establish a potential for repetition. Plaintiffs in prior cases generally have shown potential for repetition in two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence (e.g., *Jones Chevrolet*), or (2) by showing the company’s procedures create a potential for repetition of the unfair and deceptive acts (e.g., *Haley Nursery, Dowd*). Sometimes, the potential for repetition or other adverse impact on the public interest will be apparent. Conversely, it will sometimes be apparent that an action has no real potential for repetition. For example, unfair or deceptive acts in the sale of a business itself, or in sales outside the ordinary course of business, are not readily susceptible to repetition and, therefore, have no impact on the public interest. *See, e.g., Noack Enterprises, supra* (finding no impact on public interest where allegedly unfair and deceptive acts occurred in the sale of a business)”

B. COUNTERCLAIM II - (SCFCU’s Unjust Enrichment)

101. As a direct result of SCFCU’s misrepresentations and disclosure failures, I was misled.... and paid SCFCU over \$11,000.00, based on SCFCU’s **Exhibit 3 of 05/10/2012**. Consequently, granting SCFCU’s claim would continue to unjustly enriched SCFCU at my expense. Unjust enrichment results when the facts display an enrichment and a corresponding deprivation in the absence of any juristic reason for the enrichment. This “**Unjust Enrichment**” is due to SCFCU’s omissions, misinformation, misrepresentations and TILA violations.

102. Since SCFCU declined my generous offer, I no longer use the principle of “Equitable Maxim” for SCFCU’s indiscretions and now use my **Affirmative Defense of Recoupment** for SCFCU’s TILA violations. My interest rate was not fixed {Review My **Exhi Exhibit 9**} and my mobile home purchase is not in SCFCU’s account records. No **Addendum** was ever given

to me, therefore, no consummated Membership And Account Agreement ever existed under CUNA's lending guidelines or under the TILA. Without a consummated agreement, no interest, credit life premiums and late fees can be charged. As a direct result of these violations and others SCFCU must return all my money since 2002, minus the money actually borrowed.

(a) Sharp v. Kosmalski, 40 NY 2d 119 (NY: Ct. App. 1976) "[A] person may be deemed to be unjustly enriched if he (or she) has received a benefit, the retention of which would be unjust (Restatement, Restitution, § 1, Comment a)"

(b) Leasepartners Corp. v. Brooks Trust, 942 P. 2d 182 (Nev: S. Ct. 1997) "[T]he doctrine of unjust enrichment or recovery in quasi contract applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another [or should pay for]." 66 Am.Jur.2d Restitution § 11 (1973); see Lipshie v. Tracy Investment Co., 93 Nev. 370, 379, 566 P.2d 819, 824 (1977) ("To permit recovery by quasi-contract where a written agreement exists would constitute a subversion of contractual principles.")"

(c) Blusal Meats, Inc. v. United States, 638 F. Supp. 824 (S.D. N.Y. 1986) "[T]o prevail on a claim for unjust enrichment the plaintiff need only show that the defendant was enriched at plaintiff's expense, and that the circumstances were such that in equity and good conscience the defendant should return the money to the plaintiff. Reprosystem, B.V. v. SCM Corp., 727 F.2d 257, 263 (2d Cir.), cert. denied, ___ U.S. ___, 105 S.Ct. 110, 83 L.Ed.2d 54 (1984); Songbird Jet Ltd., Inc. v. Amax, Inc., 581 F.Supp. 912, 926 (S.D.N.Y.1984). Proof of wrongful conduct by the defendant is not required. Simonds v. Simonds, 45 N.Y.2d 233, 408 N.Y.S.2d 359, 364, 380 N.E.2d 189, 194 (Ct.App.1978); Tordai v. Tordai, 109 A.D.2d 996, 486 N.Y. S.2d 802, 804 (1984)."

(d) Desert Miriah, Inc. v. B & L AUTO, INC., 12 P. 3d 580 (Ut. S. Ct. 2000) "[I]n order to prevail on a claim for unjust enrichment, three elements must be met. See Berrett v. Stevens, 690 P.2d 553, 557 (Utah 1984). First, there must be a benefit conferred on one person by another. See *id.* Second, the conferee must appreciate or have knowledge of the benefit. See *id.* Finally, there must be "the acceptance or retention by the conferee of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value." *Id.* The plaintiff must prove all three elements to sustain a claim of unjust enrichment."

(e) Costa & Sons Constr. Co. v. Long, 306 S.C. 465, 468 n.1, 412 S.E.2d 450, 452 n.1 (Ct. App. 1991). "Implied in law or quasi-contracts are not considered contracts at all, but are akin to restitution which permits recovery of that amount the defendant has been benefitted at the expense of the plaintiff in order to preclude unjust enrichment." Stanley Smith & Sons v. Limestone College, 283 S.C. 430, 435 n.1, 322 S.E.2d 474, 478 n.1 (Ct.App.1984). ("[r]estitution is a remedy designed to prevent unjust enrichment.")

C. COUNTERCLAIM III - (Misrepresentation of Material Facts)

103. Since SCFCU's Misrepresentation of Material Facts has been thoroughly discussed in this pleading it would be needless repetition to discuss it here. Review pages 31-43.

Black's 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."

D. COUNTERCLAIM IV - (SCFCU's Unclean Hands)

104. The doctrine of unclean hands precludes SCFCU from recovering in equity if SCFCU acted unfairly in a matter that is the subject of the litigation that is prejudicial to me. {See *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct.App. App.1998). SCFCU's hands are not clean by misrepresenting facts, CUNA and TILA violations.

(a) *Arnold v. City of Spartanburg*, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). "[T]he expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." "The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity. *Id.*"

(b) *Ingram v. Kasey's Assoc's.*, 340 S.C. 98, 107, 531 S.E.2d 287, 292 (2000). "If a party has unclean hands, it is precluded from recovering in equity. A party will be found to have unclean hands where the party behaves "unfairly in a matter that is the subject of the litigation to the prejudice of the defendant."

E. COUNTERCLAIM V - (Fraud in the Inducement)

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

106. Texas' Supreme Court has written in a final ruling: "Fraud is, and has been for a long time, an exception to virtually every known legal doctrine. *See, e.g., Drinkard v. Ingram*, 21 Tex. 650 (1858). The reason is that fraud undermines the process, the foundation, of all transactions. Thus, fraud in the inducement vitiates contracts. Fraud is an exception to the parol evidence rule. Fraud tolls statutes of limitation. Fraud can revoke wills and divisions of community property. Fraud will undo real estate conveyances. There is no reason to sanctify fraud in any litigation. --- Preclusion does not apply when there has been fraud. *E.g., Heiser v. Woodruff*, 327 U.S. 726 (1946); see also *Sea-Land Serv., Inc. v. Gaudet*, 414 U.S. 573, 579 (1974). This exception applies whenever evidence is either fraudulently concealed or when it could not have been discovered with due diligence in the original proceeding. *Guerrero v. Katzen*, 774 F.2d 506, 508 (D.C. Cir. 1985)."

107. "In South Carolina, the statute of limitations for causes of action for fraud is governed by the 'discovery rule,' and does not begin to run until discovery of the fraud itself or of 'such facts as would have led to the knowledge thereof, if pursued with reasonable diligence.'" *Burgess v. Am. Cancer Soc., S.C. Div., Inc.*, 300 S.C. 182, 185, 386 S.E.2d 798, 799 (Ct. App. 1989) (external citations omitted)."

108. In order to prevail on a claim of fraud in the inducement, I must prove (1) SCFCU misrepresented a material fact; (2) SCFCU knew or should have known the statement was false; (3) SCFCU intended that the representation would induce me to enter into reply; and (4) I was injured by acting in justifiable reliance on the misrepresentation.

F. COUNTERCLAIM VI - (Restitution)

109. SCFCU must return all the money they received from me because of SCFCU's misrepresentation of its open-end loan agreement as a "Fixed" rate loan. Restitution is appropriate. "Restitution is a remedy designed to prevent unjust enrichment." Stanley Smith & Sons v. Limestone College, 283 S.C. 430, 435 n. 1, 322 S.E.2d 474, 478 n. 1 (Ct.App.1984)." To recover on a theory of restitution, I must show that: (1) I conferred a non-gratuitous benefit to SCFCU due to SCFCU's misrepresenting CUNA's LoanLiner® Credit and Security Agreement as a "Fixed" interest rate loan. {Review SCFCU's Exhibits 2, pg 21, 6, 7 & 8 of 02/18/2015}

110. SCFCU received interest earnings from my monthly payments of over \$10,340.00 and paid unauthorized Credit Life and Credit Disability premiums with on my loan. {Review SCFCU's Exhibit 3 of 05/10/2012} (2) SCFCU realized some value from the benefit, [interest earnings] and (3) It would be inequitable for SCFCU to retain the benefit [interest earnings] and insurance premiums and not repay me what is rightfully owed. Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 581 S.E.2d 161 (2003).

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

112. Implied in law or quasi-contracts are not considered contracts at all, but are akin to restitution which permits recovery of that amount SCFCU has been benefitted at my expense precludes unjust enrichment. See Costa & Sons Constr. Co. v. Long, 306 S.C. 465, 468 n.1, 412 S.E.2d 450, 452 n.1 (Ct. App. 1991); Earthscapes Unlimited, Inc., 390 S.C. at 616, 703 S.E.2d at 225; & Schott v. Westinghouse Elec. Corp., 436 Pa. 279 (Pa. S. Ct. 1969)

G. COUNTERCLAIM VII - (Infliction of Unnecessary Emotional Distress)

113. The strain of this proceeding has created **mental anguish, anxiety** and this action by SCFCU has me to experience and endure unnecessary emotional distress and stress.

Parkway Co. v. Woodruff, 901 SW 2d 434 (Tex: S. Ct. 1995) “[U]nder this admittedly nebulous definition and the traditional standard of review, it is nevertheless clear that an award of mental anguish damages will survive a legal sufficiency challenge when the plaintiffs have introduced direct evidence of the nature, duration, and severity of their mental anguish, thus establishing a substantial disruption in the plaintiffs' daily routine. Such evidence, whether in the form of the claimants' own testimony, that of third parties, or that of experts, is more likely to provide the fact finder with adequate details to assess mental anguish claims. Although we stop short of requiring this type of evidence in all cases in which mental anguish damages are sought, the absence of this type of evidence, particularly when it can be readily supplied or procured by the plaintiff, justifies close judicial scrutiny of other evidence offered on this element of damages.”

H. COUNTERCLAIM VIII - (Unconscionability)

114. “Section 37-5-108 of the South Carolina Code (Supp. 2005) outlines factors utilized to determine if unconscionable conduct has occurred and the remedies the court may provide. Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004).”

115. “Unconscionable conduct is also found in acts of fraud and deceit, where the deliberate misrepresentation of fact deprives someone of a valuable possession. Whenever someone takes unconscionable advantage of another person, the action may be treated as criminal fraud or the civil action of deceit. When a court uses the word *unconscionable* to describe conduct, it means that the conduct does not conform to the dictates of conscience. In addition, when something is judged unconscionable, a court will refuse to allow the perpetrator of the conduct to benefit.” {*West's Encyclopedia of American Law, Edition 2*}

116. "An unconscionable contract is one that no person who is mentally competent would enter into and that no fair and honest person would accept." {*West's Encyclopedia of American Law, Edition 2*} No reasonable person; when disclosed the actual facts, would enter into SCFCU's Loanliner® open-end Credit And Security Agreement with its daily periodic interest rate plan that creates a debt equal to or greater than the original loan.

(a) § 37-5-108(1)(a)(b) *SC Code of Laws*, clearly states in relevant parts; "[1)] With respect to a transaction that is, gives rise to, or leads the debtor to believe will give rise to, a consumer credit transaction, if the court as a matter of law finds: (a) the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or (b) any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result and award the consumer any actual damages he has sustained."

(b) § 37-5-108(3) *SC Code of Laws*, states; "[3)] If it is claimed or appears to the court that the agreement or transaction or any term or part thereof may be unconscionable, or that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the agreement or transaction or term or part thereof, or of the conduct, to aid the court in making the determination."

(c) "[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).

(d) *Fanning v. Fritz's Pontiac-Cadillac-Buick*, 472 SE 2d 242 (1996) Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Jones Leasing v. Gene Phillips and Assoc.*, 282 S.C. 327, 318 S.E.2d 31 (Ct.App.1984). In the case of consumer credit sales, courts are to consider the gross disparity between the prices of the property or services sold, and the value of property or services measured by the price at which similar property or services are readily obtainable by like consumers are factors to be considered in determining unconscionability. S.C.Code § 37-5-108(4)(c)."

I. COUNTERCLAIM IX - (Negligent Misrepresentation)

117. To maintain a claim for negligent misrepresentation, I must show by a preponderance of the evidence: (A) SCFCU made a false representation to me {My Exhibits 9 & 11}; (B) SCFCU had a pecuniary or monetary interest in making the statement; [i.e., **interest earnings from loans**] {SCFCU's Exhibit 3 of 05/10/2012} (C) SCFCU owed a duty of care to see that SCFCU and/or SCFCU's employees, agents and/or staff communicated truthful information to me; {SCFCU's Exhibit 2 of 02/18/2015, ¶ 1, pg 21} (D) SCFCU breached that duty by failing to exercise due care; {SCFCU's Exhibits 6, 7 & 8 of 02/18/2015 and Filed Complaint, ¶¶ 7-10, pg 2} (E) I justifiably relied on the representation; {My Exhibit 10} and (F) I suffered a pecuniary or monetary loss of over \$11,000.00 as the proximate result of his reliance upon the representation. {SCFCU's Exhibit 3 of 05/10/2012}

118. SCFCU's documents are presentations and material, not promises. Evidence of a mere broken promise is not sufficient to prove negligent misrepresentation. See AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992) and Winburn v. Insurance Co. of North America, 287 S.C. 435, 443, 339 S.E.2d 142, 147 (Ct. App. 1985).

119. "The key difference between fraud and negligent misrepresentation is that fraud requires the conveyance of a known falsity, while negligent misrepresentation is predicated upon transmission of a negligently made false statement. Armstrong v. Collins, 366 S.C. 204, 219-20, 621 S.E.2d 368, 375-76 (Ct. App. 2005)

Brown v. Stewart, 557 SE 2d 676 (Ct. App. 2001) "[T]hus, a key difference between fraud and negligent misrepresentation is that fraud requires the conveyance of a known falsity, while negligent misrepresentation is predicated upon transmission of a negligently made false statement. Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 20, 419 S.E.2d 795, 799 (Ct.App.1992) ("Recovery in negligent misrepresentation cases is based upon negligent conduct and predicated upon a negligently made false statement where a party suffers either injury or loss as a consequence of relying upon the misrepresentation. It is not a fraud and deceit action; it is a negligence action. . . .") (citation omitted).

J. COUNTERCLAIM X - (Fraudulent Misrepresentation)

120. Like negligent misrepresentation, an actionable fraudulent misrepresentation case requires there first be a false representation predicated upon misstatements of fact rather than upon expression of opinion, intent, or confidence that the deal would be satisfactory. See Bishop Logging Co. v. John Deere Indus. Equip. Co., 317 S.C. 520, 526–27, 455 S.E.2d 183, 187 (Ct. App. 1995) (finding statements by equipment seller concerning expected performance of logging system were opinions as to future performance and could not be basis for claim of fraud). SCFCU's loan application is a factual representation, not an opinion. {See My Exhibit 9}

K. COUNTERCLAIM XI - (Fraud)

121. To maintain a claim for fraud, I must show by clear and convincing evidence: (A) SCFCU's representation; {My Exhibits 9 & 11} (B) its falsity; {SCFCU's Exhibit 8 of 02/18/2015} (C) its materiality; {My Exhibit 10} (D) SCFCU's knowledge of its falsity or a reckless disregard for its truth or falsity; {SCFCU's Exhibits 6, 7 & 8 of 02/18/2015 and Filed Complaint, ¶¶ 7-10, pg 2} (E) intent that I act upon the representation; {My Exhibits 9 & 10} (F) My ignorance of its falsity; {My Exhibits 9, 10 & 11} (G) My reliance on its truth; {My Exhibit 10} (H) My right to rely thereon; {My Exhibits 9, 10 & 11} and (I) My consequent and proximate injury – over \$11,000.00 paid to SCFCU. {SCFCU's Exhibit 3 of 05/10/2012} See also Hendricks v. Hicks, 374 S.C. 616, 620, 649 S.E.2d 151, 152-53 (Ct. App. 2007); Slack v. James, 589 SE 2d 772 (Ct. App. 2003) & Nine v. Henderson, 437 SE 2d 182 (Ct. App. 1993)

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

XXII. CITATIONS TO AUTHORITIES THAT SUPPORT MY AFFIRMATIVE DEFENSES THAT ARE IN NOTARIZED AND/OR VERIFIED PLEADINGS THAT WERE NEVER RULED UPON COURT

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

123. At no time prior to filing this Complaint did SCFCU's personnel show any inclination to cooperate, negotiate in "Good Faith" (*honesty and best effort in dealings with others*) or explain what happened to the over \$10,340.00 plus, I paid SCFCU. Since this cannot be proven in court, this Affirmative Defense is moot.

B. SECOND AFFIRMATIVE DEFENSE - (Deceptive Lending Practice)

124. My second Affirmative Defense is the same as Counterclaim I on page 94. In 2011, I did not know the difference. Over 4 years later, I still don't know the difference between an Affirmative Defense and a Counterclaim. This is why "Deceptive Lending Practice" is listed as a Counterclaim and an Affirmative Defense.

C. THIRD AFFIRMATIVE DEFENSE - (Parole Evidence Rule)

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

D. FOURTH AFFIRMATIVE DEFENSE - (Failed to State Facts Sufficient to Constitute a Cause of Action. – Rule 12(b)(6), SCRCF)

126. SCFCU's complaint is woefully inadequate, grossly insufficient and riddled with false accusations, misstatement of material facts and misrepresentation of material facts. No loan was executed and delivered to SCFCU on February 24, 2003. SCFCU's Debt Verification lacks meaningful relevance. SCFCU's Debt Verification did not include my mobile account and/or payment history; nor did SCFCU present a record of my mobile home payments and/or account history. Therefore, the Verification of Debt lacks the necessary substantive value to support SCFCU's claim for relief. Consequently, SCFCU's claim can be dismissed pursuant to Rule 12(b)(6), SCRCF.

E. FIFTH AFFIRMATIVE DEFENSE - (Failure to Disclose/Fraudulent Concealment of Material Facts)

127. I never had a loan with SCFCU for Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44). If it exists, this additional 02/24/2003 loan is an unauthorized addition that SCFCU did not disclose to me. There is no voucher for it and no loan paperwork. Under CUNA's LOANLINER® plans, closed-end loans are separate transactions. If I had known the interest rate on the 02/28/2003 \$5,500.00 loan was not "Fixed" at 15%, I never would have cashed the check. {See my Exhibits 9 & 10 and SCFCU's Exhibits 7 & 8 of 02/18/2015}

(a) Warner Constr. Corp. v. City of Los Angeles, 466 P. 2d 996 (Cal: S. Ct. 1970) "[I]n transactions which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: (1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; (3) the defendant actively conceals discovery from the plaintiff."

(b) Dodd v. Nelda Stephenson Chevrolet, Inc., 626 So. 2d 1288 (Ala: S. Ct. 1993) "[T]o establish a prima facie case of fraudulent concealment of a material fact, a plaintiff must show (1) that the defendant had a duty to disclose a material fact, (2) that the defendant concealed or failed to disclose a material fact, (3) that the defendant's concealment or failure to disclose the material fact induced the plaintiff to act or to refrain from acting, and (4) that the plaintiff suffered actual damage as a proximate result. Soniat v. Johnson-Rast & Hays, 626 So.2d 1256 (Ala. 1993); see Cornelius v. Austin, 542 So.2d 1220, 1223 (Ala.1989). Mere si-

lence is not fraudulent in the absence of a duty to disclose. A duty to disclose may arise from the particular circumstances of the case, from a confidential relationship, or from a request for information. Hardy v. Blue Cross & Blue Shield of Alabama, 585 So.2d 29, 32 (Ala.1991); King v. National Foundation Life Ins. Co., 541 So.2d 502 (Ala.1989). One may also recover for fraudulent concealment by showing active concealment of a material fact with an intent to deceive or mislead."

(c) Rhee v. Highland Development Corp., 958 A. 2d 385 (Md: Ct.App. 2008) "[I]n other words, "fraudulent concealment—without any misrepresentation or duty to disclose—can constitute common-law fraud. . . . Although silence as to a material fact (nondisclosure), without an independent disclosure duty, usually does not give rise to an action for fraud, suppression of the truth with the intent to deceive (concealment) does." United States v. Colton, 231 F.3d 890, 899 (4th Cir.2000). This is so because, as the Supreme Court has explained, a fraudulent concealment is "equivalent to a false representation." Stewart v. Wyoming Cattle Rancho Co., 128 U.S. 383, 388, 9 S.Ct. 101, 32 L.Ed. 439 (1888). See also Hoffman v. Stamper, 385 Md. 1, 28 n. 12, 867 A.2d 276 (2005) (fraud may consist of suppression of the truth as well the assertion of a falsehood); Schnader v. Brooks, 150 Md. 52, 57-58, 132 A. 381 (1926) (concealment may amount to fraud "where it is effected by misleading and deceptive talk, acts, or conduct, or is accompanied by misrepresentations, or where, in addition to a party's silence, there is any statement, word, or act on his part, which tends affirmatively to the suppression of the truth, or to a covering up or disguising of the truth, or to a withdrawal or distraction of a party's attention from the real facts"); Colton, supra, 231 F.3d at 898-99 (fraudulent concealment may be common-law fraud when the concealment consists of "deceptive acts or contrivances intended to hide information, mislead, avoid suspicion, or prevent further inquiry into a material matter"); RESTATEMENT (SECOND) OF TORTS § 550 (1977) ("One party to a transaction who by concealment or other action intentionally prevents the other from acquiring material information is subject to the same liability to the other, for pecuniary loss as though he had stated the nonexistence of the matter that the other was thus prevented from discovering."); W. Page Keeton et al., Prosser and Keeton on Torts § 106 (5th ed. 1984) ("Any words or acts which create a false impression covering up the truth, or which remove an opportunity that might otherwise have led to the discovery of a material fact ... are classed as misrepresentation, no less than a verbal assurance that the fact is not true."). Cf. Sass v. Andrew, 152 Md.App. 406, 430, 832 A.2d 247 (2003) stating in *dicta* that, even in the absence of a duty to disclose, the suppression of facts "which materially qualify representations made to another" may support a claim for fraud (quoting Finch v. Hughes Aircraft Co., 57 Md.App. 190, 239, 469 A.2d 867 (1984)).

(d) NRMA v. Human Service Center, 884 NE 2d 700 (Ill: App. Ct, 4th Dist. 2008) "In order to prove fraud by intentional concealment of a material fact, the plaintiff must show the existence of a special or fiduciary relationship with the defendant that would give rise to a duty to speak." Lewis v. Lead Industries Ass'n, 342 Ill.App.3d 95, 105, 276 Ill.Dec. 110, 793 N.E.2d 869, 876 (2003)

F. SIXTH AFFIRMATIVE DEFENSE - (In Pari Delicto)

128. As I understood this Affirmative Defense in 2011, it prohibited SCFCU from recovering damages resulting from its own wrongdoing. Therefore, each and every purported Cause of Action by SCFCU's authorized representatives, personnel and/or employees are acts and courses of conduct that rendered them "In Pari Delicto", equally guilty. This included SCFCU's Columbia Office and their Charleston Office. In 2011, I believed, this legal doctrine effectively barred SCFCU from profiting from its own wrongdoing.

129. **Offer of Proof:** No Addendum was given to me prior to 9/5/2002, there is no consummated Membership & Account Agreement (MAAA), no loan was ever executed and delivered to SCFCU on 02/24/2003 {My **Exhibit 24**, ¶¶ 7-10, pg 2}; my mobile home purchase is not in SCFCU's account records, the interest rate on my 02/28/2003 mobile home is not fixed {My **Exhibit 29**}; there is no "Open-end Fixed Rate of Interest" {My **Exhibit 25**, ¶ 5}; that is recognized by federal law {**Regulation Z**} and my payments were misapplied to an 02/24/2003 open-end loan I never approved. {SCFCU's **Exhibit 3 of 05/10/2012**} However 4, years later, after seeing how this defense was used and ruled upon by Judges in District Courts and in South Carolina, I have decided to abandon this Affirmative Defense, in favor of **Unclean Hands**.

Nisselson v. Lernout, 469 F. 3d 143 (1st Cir. 2006) [I]n pari delicto is both an affirmative defense and an equitable defense. Broadly speaking, the defense prohibits plaintiffs from recovering damages resulting from their own wrongdoing. See *Terlecky v. Hurd (In re Dublin Sec.)*, 133 F.3d 377, 380 (6th Cir. 1997). The label derives from the Latin phrase *in pari delicto potior est conditio possidentis*, which admonishes that "[i]n a case of equal or mutual fault . . . the condition of the [defending party] is the better one." Black's Law Dictionary 791 (6th ed. 1990). The doctrine is grounded on twin premises. The first is that "courts should not lend their good offices to mediating disputes among wrongdoers." *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 306, 105 S.Ct. 2622, 86 L.Ed.2d 215 (1985). The second is that "denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality." *Id.* As originally conceived, the in pari delicto doctrine forged a defense of limited utility. Over time, however, courts expanded the doctrine's sweep, deploying it as a basis for dismissing suits whenever a plaintiff had played any role—no matter how modest—in the harm-producing activity. See *Bateman Eichler*, 472 U.S. at 307, 105 S.Ct. 2622."

G. SEVENTH AFFIRMATIVE DEFENSE - (Estoppel - Judicial)

129. SCFCU is "Estopped" from changing the facts in SCFCU's 11/23/11 Complaint {My Exhibit 24, ¶¶ 7-10}; in Amy Rogers' Corporate Account Verification of 11/23/11 and in her Affidavit Supporting Summary Judgment that was filed on 05/10/12. Therefore, for each and every Cause of Action contained in the Complaint that is an omission of a material fact, misrepresentation of a material fact, courses of misconduct, identified deceptive and any unfair trade practice/s that is contained in the Complaint and Affidavit effectively bar SCFCU from any judicial relief.

(a) Cothran v. Brown, 592 SE 2d 629 (2004) "[J]udicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. See Colleton Reg. Hosp. v. MRS Med. Rev. Sys., 866 F.Supp. 896, 900 (D.S.C.1994). The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary. See Hawkins v. Bruno Yacht Sales, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003). In Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997), we formally adopted the doctrine of judicial estoppel as it relates to matters of fact, not law."

(b) Hayne Federal Credit Union v. Bailey, 489 SE 2d 472 (1997) "[T]he purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. 31 C.J.S. Estoppel & Waiver § 139, at 593 (1996). Judicial estoppel generally applies only to inconsistent statements of fact. Cannon v. H.K Porter Co., 705 F.Supp. 288 (E.D.Va.1989). --- the doctrine does not apply to conclusions of law or assertions of legal theories. See United States v. Siegel, 472 F.Supp. 440 (N.D.Ill.1979). --- Our research of South Carolina case law has not revealed an explicit discussion of judicial estoppel; however, there are opinions alluding to the doctrine. --- see also Zimmerman v. Central Union Bank, 194 S.C. 518, 532, 8 S.E.2d 359, 365 (1940) ("[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position.") --- In order for the judicial process to function properly, litigants must approach it in a truthful manner. Although parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process. The doctrine thus punishes those who take the truth-seeking function of the system lightly. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him. --- However, the truth-seeking function of the judicial process is undermined if parties are allowed to change positions as to the facts of the case, unless compelled by newly-discovered evidence."

H. EIGHTH AFFIRMATIVE DEFENSE - (Statute of Frauds)

130. **Offer of Proof:** There is no paperwork of any kind and voucher for the Open-end “Fixed Rate of Interest” Agreement identified in SCFCU’s 11/23/2011 Complaint in ¶¶ 7-10, on pg 2; and in Amy Rogers’ filed 05/10/2012 Affidavit in Support of Motion for Summary Judgment. {My Exhibit 25, ¶ 5, pg 2} This so-called Open-end “Fixed Rate of Interest” Agreement is not mentioned in 15 U.S.C. § 1601 et seq. – Regulation Z or in CUNA Mutual Group’s LOANLINER® lending plans. {SCFCU’s Exhibit 2 of 02/18/2015} Therefore, it represents a class of contracts that must be in writing to be enforced. SCFCU’s “Open-end Fixed Rate of Interest Agreement”, is not in writing and I never signed or approved any such agreement.

131. Therefore, SCFCU is barred by the provisions of the Statute of Frauds from filing a Complaint and/or seeking any judicial relief from any claim filed against me. Agreements and/or contracts brought into existence by misinformation, omissions, misrepresentations, deception, violations of public law and/or policy and/or unfair trade and/or business practices are rendered null and void as a matter of law {§ 36-3-305(a)(1)(ii) - SC Code of Laws} Consequently, SCFCU must return over \$11,000 back to me minus the money actually borrowed.

(a) § 36-3-305(a)(1)(ii) - SC Code of Laws, clearly states the following in pertinent parts: “[a)] Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following: (1) a defense of the obligor based on..... (ii) illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms....”

(b) § 32-3-10(4) - SC Code of Laws, clearly states in pertinent parts; “[N]o action shall be brought whereby: ---- (4) To charge any person upon any contract --- Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.”

(c) 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. “[A]n agreement that omits material terms may be determined to be unenforceable for indefiniteness.”

(d) Truck South, Inc. v. Patel, 339 S.C. 40, 50, 528 S.E.2d 424, 429 (2000).

"[C]ontracts may be rescinded based upon mutual mistake of fact upon which the contract is based." "[T]he mistake must be common to both parties and cause each to do what neither intended. *Id.*"

(e) "[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.*"

(f) *Tupper v. Dorchester County*, 487 SE 2d 187 (1997) "[I]n any event, the purpose of the statute of frauds is to protect the promisor and may be waived by him. *Cooper v. A.A.A. Highway Express, Inc.*, 206 S.C. 372, 34 S.E.2d 589 (1945). Cf. *American Wholesale Corporation v. Mauldin*, 128 S.C. 241, 122 S.E. 576 (1924) (statute of frauds is an affirmative defense which must be pled); *Hatcher v. Harleysville Mutual Insurance Co.*, 266 S.C. 548, 225 S.E.2d 181 (1976) (a stranger to an oral contract cannot avail himself of the fact that the statute of frauds renders the contract unenforceable).

(g) *Roberts v. Gaskins*, 486 SE 2d 771 (Ct.App.1997) "[T]he Statute of Frauds provides that all agreements not to be performed within one year from their making, shall be in writing and signed by the party to be charged. S.C.Code Ann. § 32-3-10(5) (1991). An oral agreement, including an oral modification, will be barred by the Statute of Frauds if it is incapable of being performed within one year. *Player v. Chandler*, 299 S.C. at 105, 382 S.E.2d at 894."

(h) *Cash v. Maddox*, 220 SE 2d 121 (1975) "[T]here must be written evidence of the contract, if there is no written contract, and our court has gone so far as to hold that a letter which recites the contract, but repudiates it, is sufficient. *Colleton Realty Co. v. Folk*, 85 S.C. 84, 67 S.E. 156. As stated in 37 C.J.S., Frauds, Statute of, § 174; 'The note or memorandum is not the contract, but only the written evidence of it required by statute.'"

I. NINTH AFFIRMATIVE DEFENSE - (Bad Faith – Dishonesty or Fraud in a Transaction)

132. **Offer of Proof:** I was misled for over 7 years that I had a "Fixed Rate" loan and my loan was a Personal Access Line was also fixed at 15% instead of an open-end loan that applied interest at a daily periodic rate. {My **Exhibits 9 & 11** & SCFCU's **Exhibit 3 of 05/10/12**} This is "Bad Faith" (*dishonesty or fraud in a transaction*).

(a) USALegal.com defines **Bad Faith** in pertinent parts as; “[d]ishonesty or fraud in a transaction..” Wex Legal Dictionary defines **Bad Faith** in pertinent parts as.. “[A] term that generally describes dishonest dealing. Depending on the exact setting, bad faith may mean a dishonest belief or purpose, untrustworthy performance of duties, neglect of fair dealing standards, or a fraudulent intent.” [Boldness added for emphasis.]

(b) Alliance Nat. Bank v. State Sur. Co., 390 NW 2d 487 (Neb: S. Ct. 1986) “[I]n a law action fraud must be proved by a preponderance of evidence. See Tobin v. Flynn & Larsen Implement Co., 220 Neb. 259, 369 N.W.2d 96 (1985). However, as we indicated in Nielsen v. Adams, 223 Neb. p. 262, 388 N.W.2d 840 (1986), a claimant does not have to prove intent to deceive to sustain a cause of action for fraudulent misrepresentation or deceit. Fraud may be proved by circumstantial evidence.” **Fraud in a transaction** may be proved by inferences which may reasonably be drawn from intrinsic evidence respecting the transaction itself ... or extrinsic circumstances surrounding the transaction. In fact, many of the elements of fraud are such as not to be susceptible of proof by direct testimony. Fraud in its nature is not a thing susceptible of ocular observation or readily demonstrable physically; it must, of necessity, be proved in many cases by inferences from the circumstances shown to have been involved in the transaction in question.” --- See Russo v. Williams, 160 Neb. 564, 572, 71 N.W.2d 131, 138 (1955) (“Direct evidence is not essential to establish fraud. It may be inferred from circumstances; but such inference must not be guesswork or conjecture, but the rational and logical deduction from the circumstances proved”).”

(c) Trebelhorn v. Bartlett, 47 NW 2d 374 (Neb: S. Ct. 1951) “[A]s stated in Restatement, Contracts, § 479, p. 915, approved in George v. Guarantee Mutual Life Co., 144 Neb. 285, 13 N.W.2d 176, 177: “Where fraud or misrepresentation is material with reference to a transaction subsequently entered into by a person deceived thereby, it is assumed in the absence of facts showing the contrary that it was induced by the fraud or misrepresentation.” Also, as stated in 37 C.J.S., Fraud, § 22, p. 259: “It is generally held that a fraudulent intent or the equivalent thereof is an essential element of fraud, and that such intent may be established by appropriate inference or presumption from the facts proved.” In Falkner v. Sacks Bros., 149 Neb. 121, 30 N.W.2d 572, 573, this court held: “To maintain an action for damages for false representation the plaintiff must allege and prove what representation was made; that it was false and so known to be by the defendant charged with making it, or else was made without knowledge as a positive statement of known fact; that the plaintiff believed the representation to be true; and that he relied and acted upon it, and was thereby injured.” A person is justified in relying upon a representation made to him in all cases where the representation is a positive statement of fact, and where an investigation would be required to discover the truth.” The general rule that fraud is not presumed, but must be proved by the party who alleges it, does not mean that it cannot be otherwise proved than by direct and positive evidence. **Fraud in a transaction** may be proved by inferences which may reasonably be drawn from intrinsic evidence respecting the transaction itself, such as inadequacy of consideration, or extrinsic circumstances surrounding the transaction.” [Boldness added for emphasis.]

J. TENTH AFFIRMATIVE DEFENSE - (Willful Tort)

133. Each and every cause of action contained in SCFCU's Complaint, is barred from pursuing judicial relief of any kind by reason of acts, omissions, misinformation, misrepresentations, courses of conduct, deception, unfair trade practices, and misleading me for over 7 years I had a "Fixed Rate" loan, instead of an Open-Ended loan that applied interest at as daily periodic rate. {See Exhibits 9 & 11} Such acts SCFCU constitute a "**Willful Tort**" (*a civil wrong that is done consciously and intentionally*).

(a) Kamlar Corp. v. Haley, 299 SE 2d 514 (Va: S. Ct. 1983) "[T]he relationship of the parties arose out of privity of contract, but the facts alleged showed both a breach of the contract terms and a tortious breach of duty. We held: The general rule is that exemplary or punitive damages (with certain exceptions not here pertinent) are not allowed for breach of contract even though the action is *ex delicto* and not in *assumpsit*. [Citations omitted]. As a general rule, damages for breach of contracts are limited to the pecuniary loss sustained. According to the overwhelming weight of authority, exemplary damages are not recoverable in actions for breach of contract, although there are dicta and intimations in some of the cases to the contrary. This rule does not obtain, however, in those exceptional cases *where the breach amounts to an independent, willful tort*, in which event exemplary damages may be recovered under proper allegations of malice, wantonness, or oppression [Emphasis added]. *Id.* at 615, 90 S.E.2d at 860."

(b) Luna v. North Star Dodge Sales, Inc., 667 SW 2d 115 (Tex: S. Ct. 1984) "[T]he trial court's charge defined "knowingly" to mean "actual awareness of the falsity, deception, or unfairness of the act or practice giving rise to the consumer's claim of actual awareness of an act or practice constituting a breach of warranty, but actual awareness may be inferred when objective manifestations indicate that a person acted with actual awareness." This definition substantially follows the statutory "knowingly" definition in § 17.45(9). --- If a person commits a wrongful act with actual awareness of the falsity, deception or unfairness of the act, then this is a more culpable mental state than one who is grossly negligent. We are not attempting to equate the terms gross negligence, "knowingly," "willful" and intentional. These terms lie on a continuum with gross negligence being the lowest mental state and intentional being the highest. - Mental anguish damages are recoverable when there is proof of a **willful tort**, willful and wanton disregard, or gross negligence. [**Boldness** for emphasis.]

(c) Rogers v. Florence Printing Co., 106 SE 2d 258 (1958) "[T]he test by which a tort is to be characterized as reckless, willful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights. Tolleson v. Southern R. Co., 88 S.C. 7, 70 S. E. 311; Eberle

v. *Southern R. Co.*, 98 S.C. 89, 79 S.E. 793. It is this present consciousness of wrongdoing that justifies the assessment of punitive damages against the tortfeasor, *State ex rel. Gwynn v. Citizens' Tel. Co.*, 61 S.C. 83, 39 S.E. 257, 55 L.R.A. 139, 85 Am. St. Rep. 870; and it has been variously referred to as "conscious failure to observe due care", *Darlington County Fair & Driving Ass'n v. Atlantic Coast Line R. Co.*, 90 S.C. 436, 73 S.E. 790; as "conscious indifference to the rights of others". *Cox v. Coleman*, 189 S.C. 218, 200 S.E. 762, 764; and as "gross disregard of the rights of the person injured", *Fulton v. Atlantic Coast Line R. Co.*, *supra*. But the common denominator of these expressions is the test before mentioned. viz.: that at the time of his act or omission to act the tort-feasor be conscious, or chargeable with consciousness, of his wrongdoing. As was said in *Hicks v. McCandlish*, 221 S.C. 410, 70 S.E. (2d) 629, 631: "We have held in many cases that exemplary damages should not be awarded for mere gross negligence, and that the element that distinguishes actionable negligence from **willful tort** is inadvertence. Applying this test, we perceive no real difference between "gross disregard of the rights of the person injured," for which appellant contends, and "conscious indifference to the rights of the plaintiff," which the trial judge charged. If any difference could be held to exist, it would seem that the language charged was perhaps the more favorable to the defendant." [**Boldness** for emphasis.]

(d) *ZD Howard Company v. Cartwright*, 537 P. 2d 345 (Okla. S. Ct. 1975) "[A]s a general rule, damages for breach of contract are limited to the pecuniary loss sustained, and exemplary or punitive damages are not recoverable. This rule is not applicable, however, in those exceptional instances where the breach amounts to an independent, **willful tort**. In such case punitive damages may be recovered under proper allegation." [**Boldness** for emphasis.]

K. ELEVENTH AFFIRMATIVE DEFENSE - (Violation of TILA)

134. As already stated, in 2011, I did not know the difference between an Affirmative Defense and a Counterclaim. Over 4 years later, I still don't know the difference. SCFCU's TILA violations might be a Counterclaim rather than an Affirmative Defense.

135. **Offer of Proof:** The language in CUNA Mutual Group's MAAA is misleading. {Review SCFCU's Exhibit 2 of 02/18/2015, pg 21} There is no mentioning of "Fixed Interest Rate" on page 21, or on any other page. SCFCU's interest charges on its account represent a revolving charge card's daily periodic interest rate and not a fixed interest rate. {See My Exhibits 9 & 11} and SCFCU's Exhibit 3 of 05/10/2012} The only difference is, there is no actual credit card. LoanLiner® is an unconscionable means for SCFCU to utilize a daily periodic revolving charge card interest rates without using the words "Revolving Charge".

136. There is no warning to credit union members that... **“A Minimum Monthly Payment Will Never Payoff This Account. The Monthly Interest Can Be Greater Than Your Monthly Payment.”** SCFCU’s use of CUNA’s LoanLiner® lending plan is a horrendous lending scheme that borders on criminality and a severe violation SCUTPA that has tremendous impact on an unsuspecting public; as well as, credit union members.

137. With the most egregious being SCFCU’s failure to give me an Addendum that violated CUNA Mutual Group’s and TILA’s disclosure requirements; SCFCU’s TILA violations have already been thoroughly discussed in this pleading and in all my pleadings since December of 2011. There is ample documentary support from citations to authorities in my pleadings that toll the time past TILA’s 1-year limitation, so that TILA violations can be adequately addressed in any collection action by a lender.

(a) King v. State of Cal., 784 F. 2d 910 (9th Cir.1986) “[W]e agree with the Sixth Circuit that equitable tolling might be appropriate in certain circumstances. To decide whether equitable tolling should apply to Section 1640(e), our basic inquiry is whether tolling the statute in certain situations will effectuate the congressional purpose of the Truth-in-Lending Act. See Burnett v. New York Central R.R. Co., 380 U.S. 424, 427, 85 S.Ct. 1050, 1054, 13 L.Ed.2d 941 (1965). ---- Section 1601 of TILA sets forth the purpose of the Act: ---- (a) The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.... 15 U.S.C. § 1601(a). --- Thus, Congress through TILA sought to protect consumers' choice through full disclosure and to guard against the divergent and at times fraudulent practices stemming from uninformed use of credit. See Mourning v. Family Publications Service, Inc., 411 U.S. 356, 363-64 nn. 18, 19, 93 S.Ct. 1652, 1657-58 nn. 18, 19, 36 L.Ed.2d 318 (1973) (citing H.R.Rep. No. 1040, 90th Cong., 1st Sess., 13 (1967); S.Rep. No. 392, 90th Cong., 1st Sess. 1-2 (1967) U.S.Cong. & Admin. News 1968, p. 1962). The courts have construed TILA as a remedial statute, interpreting it liberally for the consumer. Riggs v. Government Employees Financial Corp., 623 F.2d 68, 70-71 (9th Cir.1980). As the Sixth Circuit noted, “[o]nly if Congress clearly manifests its intent to limit the federal court's jurisdiction will it be precluded from addressing allegations of fraudulent concealment which by

their very nature, if true, serve to make compliance with the limitation period imposed by Congress an impossibility." *Jones v. TransOhio Savings Ass'n*, 747 F.2d at 1041. For these reasons, we hold that the limitations period in Section 1640(e) runs from the date of consummation of the transaction but that **the doctrine of equitable tolling may, in the appropriate circumstances, suspend the limitations period until the borrower discovers or had reasonable opportunity to discover the fraud or nondisclosures that form the basis of the TILA action. Therefore, as a general rule the limitations period starts at the consummation of the transaction.** The district courts, however, can evaluate specific claims of fraudulent concealment and equitable tolling to determine if the general rule would be unjust or frustrate the purpose of the Act and adjust the limitations period accordingly. ---- Since fraudulent concealment and equitable tolling involve factual determinations, we remand King's damage claims for the June 1979 loan and the March 1981 loan. The district court should consider such evidence as it deems appropriate to decide whether the claims as to these two transactions are time barred." [Boldness for emphasis.]

(b) *Johnson v. West Suburban Bank*, 225 F. 3d 366 (3rd Cir. 2000) "[T]he TILA provides for civil liability for lenders who fail to give the disclosures required by the statute. See 15 U.S.C. § 1640. An aggrieved party is entitled to recover actual as well as statutory damages. Statutory damages can be twice the amount of any finance charge, but, for most transactions, they may not exceed \$1,000 or fall short of \$100. See *id.* §§ 1640(a)(1), (2)."

(c) *Ellis v. General Motors Acceptance Corp.*, 160 F. 3d 703 (11th Cir. 1998) Despite TILA's clearly remedial purpose, if we were to read its time limit literally, consumers whose cause of action was fraudulently concealed from them until after a year had passed could not pursue a cause of action under TILA. That would lead to the anomalous result that a statute designed to remediate the effects of fraud would instead reward those perpetrators who concealed their fraud long enough to time-bar their victims' remedy. We cannot believe this was Congress' intent. Rather, in these circumstances we apply the general rule that equitable tolling applies to all federal statutes unless the statute states otherwise. *Holmberg*, 327 U.S. at 394-95, 66 S.Ct. 582."

(d) *Turner v. Beneficial Corporation*, 242 F. 3d 1023 (11th Cir. 2001) "[T]ILA provides three other remedies for violations of its provisions. First, TILA empowers the Federal Trade Commission as its overall enforcement agency. 15 U.S.C. § 1607(c), and provides other federal agencies with enforcement authority over specific categories of lenders. 15 U.S.C. § 1607(a). --- The enforcing agencies are authorized to require the creditor to "make an adjustment to the account of the person to whom credit was extended, to assure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower." 15 U.S.C. § 1607(e)(1). Second, TILA imposes criminal liability on persons who willfully and knowingly violate the statute. 15 U.S.C. § 1611. Finally, TILA creates a private cause of action for statutory damages, which may be assessed in addition to any actual damages awarded. 15 U.S.C. § 1640(a)(2)(A)."

L. **TWELVETH AFFIRMATIVE DEFENSE** - (Scienti Et Volenti Non Fit Injuria)

138. In 2011, I invoked the Doctrine of Scienti Et Volenti Non Fit Injuria that literally means "a person who knowledgeably consents to legal wrong has no legal right" to recover damages. SCFCU's personnel in Charleston, South Carolina knew I did not have an Addendum in 2002 and simply relied on my ignorance of CUNA Mutual Group's policies, procedures and lending guidelines and my ignorance of 15 U.S.C. § 1601 et seq. – Regulation Z. My ignorance relative to these matters lasted for over 7 years. In 2011, I realized something was horribly wrong with my loan from SCFCU. Therefore, due to SCFCU's personnel knowingly violating the TILA and CUNA's guidelines, SCFCU has no legal right to any judicial relief and must return all my money minus the money actually borrowed. [**Boldness** will be added for emphasis.]

(a) LeNy v. Friedman, 372 So. 2d 721 (La: Ct. App. 4th Cir. 1979) "[s]cienti et volenti non fit injuria (an injury is not done to one who knows and wills it)."

(b) Halepeska v. Callihan Interests, Inc., 371 SW 2d 368 (Tex: S. Ct. 1963) "[T]he volenti doctrine is an affirmative defense. "Volenti" is a contraction of the Latin phrase, **volenti non fit injuria**, which means legally that a plaintiff may not recover for an injury to which he assents.."

(c) Wood v. Kane Boiler Works, 238 SW 2d 172 (Tex.: S. Ct. 1951) "[I]n any event, when plaintiff has brought himself within the operation of the maxim, **Volenti non fit injuria**, he cannot recover. The doctrine discussed herein, by whatever name it may be designated, is said to rest on, or be in its nature, effect, and import the equivalent at least of, the principle expressed by the maxim, **Volenti non fit injuria**, which is itself predicated on the theory of knowledge and appreciation of the danger and voluntary assent thereto."

M. **THIRTEENTH AFFIRMATIVE DEFENSE** - (Usurious Interest)

139. Even though SCFCU will never admit to charging an usually high revolving charge daily periodic interest rate, SCFCU's daily periodic revolving charge interest rate is usurious and violates state and federal law. How else can any person with reasonable intelligence explain SCFCU's unpaid balance of \$5,287.34; with a purported principal payment \$212.66 after 7 years and over \$11,000.00 actually paid on a \$5,500 loan. {SCFCU's **Exhibit 3 of 05/10/2012**}

(a) Brown v. Crandall, 61 SE 2d 761 (1950) “[U]sury is an affirmative defense and the burden of proof rests upon the party asserting such claim.”

(b) 15 U.S. Code § 1611 clearly states in pertinent parts; “[W]hoever willfully and knowingly (1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this subchapter or any regulation issued thereunder, (2) uses any chart or table authorized by the Bureau under section 1606 of this title in such a manner as to consistently understate the annual percentage rate determined under section 1606 (a)(1)(A) of this title, or (3) otherwise fails to comply with any requirement imposed under this subchapter shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(c) Vallies v. Sky Bank, 591 F. 3d 152 (3rd Cir. 2009) “[T]he Truth in Lending Act provides a range of remedies to achieve its goals. First, it authorizes the Federal Trade Commission as its overall enforcement agency, 15 U.S.C. § 1607(c), and provides other federal agencies with enforcement power over certain categories of lenders, 15 U.S.C. § 1607(a). The enforcement agencies are authorized to remediate unlawful finance charges by requiring adjustments of consumers' accounts. 15 U.S.C. § 1607(e)(1). Second, TILA imposes criminal liability for knowing and willful violations. 15 U.S.C. § 1611. Finally, TILA creates a private cause of action for actual damages, 15 U.S.C. § 1640(a)(1), and also for statutory damages, 15 U.S.C. § 1640(a)(2).”[E]very exercise of statutory interpretation begins with an examination of the plain language of the statute.” Rosenberg v. XM Ventures, 274 F.3d 137, 141 (3d Cir.2001). The statute here provides in part: Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, subsection (f) or (g) of section 1641 of this title, or part D or E of this subchapter with respect to any person is liable to such person in an amount equal to the sum of— (4) in the case of a failure to comply with any requirement under section 1639 of this title, an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material.”

(d) Midland Guardian Co. v. Thacker, 314 SE 2d 26 (Ct. App. 1984) “[B]efore any action can be maintained, of course, there must exist a “justiciable controversy.” Dantzler v. Callison, 227 S.C. 317, 88 S.E. (2d) 64, 65 (1955). A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute of difference of a contingent, hypothetical or abstract character. Guimarin & Doan, Inc. v. Georgetown Textile and Mfg. Co., Inc., 249 S.C. 561 at 566, 155 S.E. (2d) 618 (1967). An action to recover usurious interest will lie at common law. 47 C.J.S. *Interest & Usury* § 210 at 360 (1982). Prior to its repeal, Section 34-31-50 prescribed that double the amount received as usurious interest could be collected as damages in an action for usury asserted as a counterclaim to an “action brought to recover the principal sum.” Also, where, as in the instant case, an action is brought to recover personal property pledged to secure credit or a debt, Section 15-33-50 of the Code expressly permits the assertion of a counterclaim which arises out of the same transaction; and such a counterclaim, obviously, can properly embrace, as here, allegations of usury.”

N. **FOURTEENTH AFFIRMATIVE DEFENSE** - (An Unlawful Bait & Switch Credit Scheme)

140. The BAIT is a “Fixed Interest Rate” loan application that SWITCHES to an open-end daily periodic rate plan and this is only the beginning of this scheme. Based upon the facts in Case No. 2011-CP-38-1392, I have been victimized by a cleverly crafted lending scheme that has been researched and developed and relies on a thorough understanding of human nature and America’s legal system. SCFCU’s use of CUNA Mutual Group’s LOANLINER® Credit and Security Agreement is wrapped in a legalese package so all inclusive that only the best legal minds can unravel its intricate parts. {See SCFCU’s **Exhibit 2 of 02/18/2015**, pgs 1- 32}

141. What makes SCFCU’s use of CUNA’s LOANLINER® so effective in its deception of the uninformed; is SCFCU’s BAITING & SWITCHING looks innocent, but in reality, SCFCU’s LOANLINER® is a wolf in sheep’s clothing. SCFCU’s LOANLINER® is no more than an updated, repackaged, modernized, high tech version of the oldest con game in the world and the daily periodic rate is the biggest scam in the financial services industry. Luring the unsuspecting with the illusion of a “Fixed Interest Rate” loan into this open-end credit scheme is criminal.

142. SCFCU’s LOANLINER® operates just like...the age old sales con game of BAIT & SWITCH, except there is no attempt to sell a much higher priced item or interest rate. SCFCU’s LOANLINER®, by utilizing its “Fixed Rate” loan application to lure the unsuspected into its open-end credit plan, can manipulate its daily periodic rate and SWITCH rates everyday it operates. SCFCU will never identify its Membership and Account Agreement (MAAA) as a BAIT & SWITCH con game. A “multi-featured Credit Plan” is much more respectable, acceptable and euphemistic to the public, federal regulators and state law enforcement. {See My **Exhibits 9, 11 & 12** and SCFCU’s **Exhibit 2 of 02/18/2015**, pgs 1- 32 & SCFCU’s **Filed Complaint of 11/23/2011**, ¶¶ 7-10, pg 2}

(a) *Tashof v. FTC*, 437 F. 2d 707 n.3 (Ct.App. Dist. of Columbia Cir. 1970) "[B]ait and switch" describes an offer which is made not in order to sell the advertised product at the advertised price, but rather to draw a customer to the store to sell him another similar product which is more profitable to the advertiser. *See generally* Guides Against Bait Advertising, 16 C.F.R. § 238 (1970)."

(b) 16 CFR § 238.1 clearly states in pertinent parts; "[N]o advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product."

(c) 12 C.F.R. § 226.16(a) clearly states in pertinent parts; "[**(a)**] If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor. **(b)(1)** Any term required to be disclosed under § 226.6(b)(3) set forth affirmatively or negatively in an advertisement for an open-end (not home-secured) credit plan triggers additional disclosures under this section. Any term required to be disclosed under § 226.6(a)(1) or (a)(2) set forth affirmatively or negatively in an advertisement for a home-equity plan subject to the requirements of § 226.5b triggers additional disclosures under this section. If any of the terms that trigger additional disclosures under this paragraph is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following: **(i)** Any minimum, fixed, transaction, activity or similar charge that is a finance charge under § 226.4 that could be imposed. **(ii)** Any periodic rate that may be applied expressed as an annual percentage rate as determined under § 226.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed. **(iii)** Any membership or participation fee that could be imposed. **(2)** If an advertisement for credit to finance the purchase of goods or services specified in the advertisement states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount." [**Boldness** for emphasis.]

(d) *Rossman v. Fleet Bank (RI) Nat. Ass'n*, 280 F. 3d 384 (3rd Cir. 2002) "[T]he Federal Trade Commission treats advertising in **bait-and-switch** schemes as false or misleading. 16 C.F.R. Pt. 238 ("Guides Against Bait Advertising"). Regulation Z also addresses these schemes. *See* 12 C.F.R. § 226.16(a) ("If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor."); Ralph J. Rohner & Fred H. Miller, *Truth in Lending* 752 (2000) ("This rule is aimed at the ancient but dishonorable practice of '**bait and switch**' advertising where the creditor uses the lure of attractive credit terms to induce customers in, but no such favorable terms are in fact available."). Bait advertising, although not necessarily literally false (there is usually a real item described in the advertising), is nonetheless considered deceptive, insofar as it suggests the product advertised is actually offered and intended to be sold, when the real intention is simply to create a contact with the buyer that allows the seller to switch the consumer to a more profitable sale. It is the bait, not the switch, that is deceptive. Hence, the deception occurs at the time of the bait advertisement. [**Boldness** for emphasis.]

(e) Hauk v. JP Morgan Chase Bank USA, 552 F. 3d 1114 (9th Cir. 2009) “[I]ndeed, the Third Circuit has held that a disclosure that is adequate when viewed in isolation could still be misleading, and thereby give rise to a TILA claim, if the creditor's undisclosed intent was inconsistent with its disclosure. Rossman v. Fleet Bank (R.I.) Nat'l Ass'n, 280 F.3d 384, 399-400 (3d Cir.2002); accord Clark v. Troy & Nichols, Inc., 864 F.2d 1261, 1266 (5th Cir.1989) (Thornberry, J., dissenting). Specifically, the court concluded that, even though the creditor's initial "no annual fee" disclosure was accurate in the "narrowest of senses," the creditor's alleged intent to impose an annual fee six months later rendered the initial disclosure misleading and gave rise to a TILA claim. Rossman, 280 F.3d at 400. The Third Circuit's expansive reading of Regulation Z appears to have originated with its general premise that TILA prohibits "not only literal falsities, but also misleading statements." *Id.* at 391 (citing Taylor v. Quality Hyundai, Inc., 150 F.3d 689, 692 (7th Cir.1998); Smith v. Chapman, 614 F.2d 968, 977 (5th Cir.1980)). While a misleading statement may violate TILA, Wilson v. Creditthrift of Am., Inc., No. 3, 659 F.2d 122, 124 (9th Cir.1981), our circuit has neither rejected nor adopted the blanket proposition that a misleading statement violates TILA. Instead of determining whether a particular disclosure is "misleading" in the abstract, our circuit has focused on subsection 226.5(c)'s requirement that disclosures "reflect the terms of the legal obligation between the parties" and the requirements in other relevant subsections of Regulation Z or TILA.”

M. FIFTEENTH AFFIRMATIVE DEFENSE - (Reservation of Rights)

143. In 2011, I reserved the right to amend replies and responses pursuant to South Carolina and the Federal Rules Civil Procedure. I also reserved the right to add additional AFFIRMATIVE DEFENSES and COUNTERCLAIMS as this litigation progresses if the circumstances warrant such additions.

144. I did not refer to the Principle of “Equitable Maxim” relative to SCFCU’s indiscretions in my Statement of the Evidence. As stated, SCFCU rejected my generous offer to end this matter. Because I was expecting a Jury Trial, in 2011, my Affirmative Defenses and Counterclaims were written with few, if any, citations to authorities to support my factual statements. Over 50, with international citations, are in my Statement of the Evidence.

145. Since I do not know the difference between a Counterclaim and an Affirmative Defense, I must rely and I ask the Court to rely on Rule 8(c), SCRCPP that states in pertinent parts “[W]hen a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation.”

XXIII. AFFIRMATIVE DEFENSES THAT CAME INTO EXISTENCE AFTER DECEMBER OF 2011

A. AFFIRMATIVE DEFENSE XVI – Violation of 15 USC § 1692(e))

1. SCFCU was duly notified.

146. In 2011, in my *Answer* to SCFCU's Complaint in ¶ 8, on pg 5 and in ¶ 11, on pg 6, I notified SCFCU's attorneys that "[T]he Plaintiff's allegation that this is an action to collect a consumer debt owed by the Defendant cannot be substantiated by the real facts and the real evidence. SCFCU's claim of an unpaid balance of \$4,625.82; with a payoff of \$5,274.94, is a misrepresentation of existing material facts." and "[T]he Defendant denies the allegations in paragraph #7. SCFCU's allegation is reckless and cannot be substantiated by the real evidence and the real facts. The Defendant did not sign any LoanLiner Credit and Security Agreement (hereafter also called LLCASA) (Fixed Interest Agreement) that calls for the payment of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) with SCFCU."

Faulkner v. Millar, 319 S.C. 216, 221, 460 S.E.2d 378, 381 (1995) (discussing principles of agency). "[N]otice to an attorney is notice to the client."

2. Affirmative Defenses matured as this litigation progressed over a 4 year period.

147. Since I have Affirmative Defenses that have matured or were acquired over the past 4 years, that were never ruled upon and are scattered in over 10 **Verified** and/or **Notarized Pleadings**, these Affirmative Defenses and the pleadings that contain them must included in the Record on Appeal. The misrepresentations are not new. The governing law is identified.

(a) *Rule 8(f), SCRCP*, clearly states in pertinent parts; "[A]ll pleadings shall be so construed as to do substantial justice to all parties."

(b) *Rule 13(e), SCRCP*, states in pertinent parts; "[A] claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleadings."

(d) *Rule 15(b), SCRCP*, states in pertinent parts; "[W]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment

of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall upon motion grant a continuance reasonably necessary to enable the objecting party to meet such evidence. Upon allowing any such amendment or evidence the Court shall state in the record the reason or reasons for allowing the amendment or evidence. In the event the Court should try issues not raised by the pleadings, it shall state in the record all such issues tried and the reason therefor."

148. Rule 15(d), SCRCP provides that in the case of transactions and/or occurrences and/or events happening after a Complaint or *Answer* has been filed, the Court may permit the Defendant or the Plaintiff to serve a Supplemental Pleading setting forth those transaction/s, occurrence/s or event/s. McClaslan v. Latimer, 17 S.C. 123 (1882) & Francis Marion Hotel v. Chicco, 131 S.C. 344, 127 S.E. 436 (1924). There are no new transactions or events.

149. Rule 15 SCRCP, provides that leave to amend shall be freely given when justice requires and does not prejudice any other party. Foggie v. CSX Transp., Inc., 313 S.C. 98, 431 S.E.2d 587, 590 (1993). "[I]t is well established that a motion to amend or supplement is addressed to the discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice. *Id.*" My Affirmative Defenses are not Counterclaims as I understand it.

150. "The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. Pool v. Pool, 329 S.C. 324, 494 S.E.2d 820 (1998). It is the responsibility of the party opposing an amendment or supplemental complaint or pleading to establish prejudice. Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988)." SCFCU misrepresentations are not a new issue.

151. "Leave to amend pleadings pursuant to Rule 15 SCRCP, shall be liberally and freely given when justice so requires and does not prejudice any other party." Crestwood Golf

Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (S.C. App. 1998). "This rule strongly favors amendments and the Court is encouraged to freely grant leave to amend." *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E. 2d 398 (S.C. App. 1987)."

3. SCFCU violated the FDCPA as early as May 18, 2011.

152. In *Tanner v. Florence Cty. Treasurer, et al.*, South Carolina's Supreme held, "[E]ven though a supplemental pleading is technically different than a motion to amend the pleadings under Rule 15 (a) SCRCP, the standard for granting or denying these motions is the same. Cf. Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §1504 (1990) ("Inasmuch as the discretion exercised by the court in deciding whether to grant leave to amend is similar to that exercised on a motion for leave to file a supplemental pleading, the court's inattention to the formal distinction between amendment and supplementation is of no consequence."). Therefore, South Carolina's case law interpreting Rule 15(a), SCRCP, is authoritative.

15 USC § 1692(e), clearly states in pertinent parts; "[A] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. "[Liability is exempted not the false representation.]

153. **Offer of Proof:** As stated, I did not execute and deliver any loan paperwork to SCFCU on February 24, 2003 and I never agreed to any loan for \$5,556.44. {See SCFCU's Exhibit "**A**" of 11/23/2011 and filed **Complaint**, ¶¶ 7-10, pg 2} SCFCU was in violation of the Act for false representation of a debt as early as May 18, 2011. {See My **Exhibits I-V**}

(a) *Peters v. AT & T CORP.*, 43 F. Supp. 2d 926 (D. Ct. N.D. Ill. 1999) "[T]he FDCPA holds debt collectors liable for deceptive practices. Although a creditor is generally exempt from liability under the FDCPA when it collects its own debts, a creditor becomes a debt collector within the meaning of the statute when, "in the process of collecting his own debts, [he] uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts." 15 U.S.C. § 1692a(6) --- Minimal participation by a debt collector in the collection process is not enough to avoid liability under the FDCPA. As the court noted in *White*, "[t]he preparation of form letters lending a debt collector's name is a participation of sorts, and explicitly a statutory violation." *White*, 41 F.Supp.2d 794, ___, 1998 WL 850814, at n. 2. To determine whether parties can be held

liable under the FDCPA, courts have focused on whether the collection agency was hired only as a mailing service, or whether the collection agency performs more traditional collection services as well. Epps, 1998 WL 851488, at n. 4. "[M]erely mailing letters is not the sort of meaningful participation in debt collection that absolves a defendant of § 1692 liability." Randle v. GC Services, 25 F.Supp.2d 849, 854 (N.D.Ill.1998).

(b) Myers v. SESSOMS & ROGERS, PA, 781 F. Supp. 2d 264 (D. Ct. N. C. 2011) "[R]ule 11 requires an attorney to make a reasonable inquiry to determine that a complaint is well grounded in both fact and law, and not filed for an improper purpose. Fed.R.Civ.P. 11(b). In determining whether a complaint is well grounded in fact, "[a]n objective test is used to determine the reasonableness of a lawyer's pre-filing investigation." In re Kunstler, 914 F.2d 505, 514 (4th Cir.1990) (quotation omitted). A complaint's factual allegations fail to meet the requirements of Rule 11(b)(3) when no corroborating information has been obtained before filing. Morris v. Wachovia Sec., Inc., 448 F.3d 268, 277 (4th Cir.2006). A legal argument violates Rule 11(b)(2) when it has "absolutely no chance of success under the existing precedent." Hunter v. Earthgrains Co. Bakery, 281 F.3d 144, 153 (4th Cir. 2002) (quotation omitted). However, a legal position must be more than unsuccessful to warrant sanctions. *Id.* at 151. Attorneys must be allowed to seek good faith expansions and changes of the law. Fed. R.Civ.P. 11(b)(2); Blue v. Dep't of Army, 914 F.2d 525, 534 (4th Cir.1990). Only when "a reasonable attorney in like circumstances could not have believed [her] actions to be legally justified" are sanctions warranted. Hunter, 281 F.3d at 153 (quotation omitted). Finally, a complaint violates Rule 11(b)(1) when it is filed without the central and sincere purpose of vindicating rights in court. Kunstler, 914 F.2d at 518. Improper purposes include the filing of suit as leverage in separate proceedings, to obtain discovery for use in those other proceedings, and to embarrass, intimidate, or harass. *Id.* at 519. --- "[A] sanction imposed under [Rule 11] must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." Fed.R.Civ.P. 11(c)(4); Morris, 448 F.3d at 284. "Since the purpose of Rule 11 sanctions is to deter rather than to compensate," monetary sanctions "should ordinarily be paid into court as a penalty." Fed. R.Civ.P. 11, advisory committee's note, 1993 Amendments. Rule 11 also serves to prevent litigation abuse, streamline court dockets, facilitate court management, and compensate victims of violations. Kunstler, 914 F.2d at 522-23. However, only "under unusual circumstances," typically including filings for an improper purpose, should a court direct a monetary sanction be paid to those injured by a Rule 11 violation. Fed.R.Civ.P. 11, advisory committee's note, 1993 Amendments."

(c) Magee v. PORTFOLIO RECOVERY ASSOCIATES, LLC, (D. Ct. N.D. Ill. 2015) "[T]he FDCPA prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. --- To prove a violation of 15 U.S.C. § 1692(e), the plaintiff must show that the debt collector's statement was misleading or deceptive to an unsophisticated consumer. Ruth v. Triumph P'ships, 577 F.3d 790, 800 (7th Cir. 2009)."

4. Additional evidence of SCFCU's Unclean Hands.

154. There is no private right of action to sue SCFCU under the FDCPA; however, SCFCU's false and misleading representation of a debt I supposedly executed and delivered on February 24, 2003 is additional evidence of SCFCU's **Unclean Hands** that effectively bar any judicial relief.

Dempsey v. GREENVILLE HERITAGE FEDERAL CREDIT UNION, (D. Ct. D. S.C. 2015) "[H]owever, under this federal law, a consumer is authorized to sue a debt collector as defined by the statute but not a creditor as defined by the statute. See 15 U.S.C. § 1692a. Here, Plaintiff does not plausibly allege a violation of the FDCPA because the only reasonable inference from the Complaint is that Defendants were creditors because the Credit Union was the entity to whom the debt was owed and it was secured by Plaintiff's car. Plaintiff does not allege that Defendants were attempting to collect a debt owed to another, which is the definition of a debt collector under the FDCPA. The FDCPA does not create a private right of action against a creditor for unfair practices."

B. AFFIRMATIVE DEFENSE XVII – (Recoupment)

155. **Offer of Proof:** In 2011, I did not know the technical term of what I wanted the Court to do. The only legal term I could find; at the time, was the Principle of "Equitable Maxim" relative to SCFCU's indiscretions and misrepresentation of material facts. I now know the legal term is **Recoupment**. {Review My Answer to Complaint}

(a) Phillips v. Girdich, 408 F. 3d 124 (2nd Cir. 2005) "[A]t base, the Rules command us never to exalt form over substance. See Fed. R.Civ.P. 8(f). We will therefore excuse technical pleading irregularities as long as they neither undermine the purpose of notice pleading nor prejudice the adverse party. See, e.g., Wynder v. McMahon, 360 F.3d 73, 79 (2d Cir.2004); Kelly v. Schmidberger, 806 F.2d 44, 46 (2d Cir.1986)."

(b) Gordon v. Watson, 622 F. 2d 120 (5th Cir. 1980) --- "[p]ro se litigants are not held to the same standards of compliance with formal or technical pleading rules applied to attorneys,"

(c) First Acadiana Bank v. Federal Deposit Ins. Corp., 833 F. 2d 548 (5th Cir. 1987) "[T]he Truth-in-Lending Act requires the Bank to disclose to the borrower, among other things, three components of a credit transaction: the "amount financed," the "finance charge," and the "annual percentage rate." 15 U.S.C. § 1638 (1982). The APR is a function of the loan's duration, payment terms, and the finance charge."

(d) *Beach v. Ocwen Fed. Bank*, 523 US 410 (1998) "[T]hey are, of course, correct that as a general matter a defendant's right to plead 'recoupment,' a 'defense arising out of some feature of the transaction upon which the plaintiff's action is grounded,' " *Rothensies v. Electric Storage Battery Co.*, 329 U. S. 296, 299 (1946) (quoting *Bull v. United States*, 295 U. S. 247, 262 (1935)), survives the expiration of the period provided by a statute of limitation that would otherwise bar the recoupment claim as an independent cause of action. So long as the plaintiff's action is timely, see *ibid.*, a defendant may raise a claim in recoupment even if he could no longer bring it independently, absent "the clearest congressional language" to the contrary. *Reiter v. Cooper*, 507 U. S. 258, 264 (1993) (quoting *United States v. Western Pacific R. Co.*, 352 U. S. 59, 71 (1956)). As we have said before, the object of a statute of limitation in keeping "stale litigation out of the courts," *id.*, at 72, would be distorted if the statute were applied to bar an otherwise legitimate defense to a timely lawsuit, for limitation statutes "are aimed at lawsuits, not at the consideration of particular issues in lawsuits," *ibid.* -- Subsection (e) reads that the 1-year limit on actions for damages "does not bar a person from asserting a violation of this subchapter in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law." 15 U. S. C. § 1640(e). Thus the effect of the 1-year limitation provision on damages actions is expressly deflected from recoupment claims."

(e) *Tuloka Affiliates, Inc. v. Moore*, 268 SE 2d 293 (1980) "[A] recoupment, unlike a counterclaim, only reduces the plaintiff's claim; it does not allow recovery of an affirmative money judgment for any excess over that claim. Unlike set-off, it must grow out of the identical transaction that gave rise to the plaintiff's claim. *Mullins Hospital v. Squires*, 233 S.C. 186, 104 S.E. (2d) 161 (1958). "Recoupment, therefore, is the right of the defendant to cut down or diminish the claim of the plaintiff in consequence of his failure to comply with some provision of the contract sought to be enforced, or because he has violated some duty imposed upon him by law in the making or performance of that contract. The delinquency or deficiency which will justify the reduction of the plaintiff's claim must arise out of the same transaction, and not out of a different transaction." *Mullins Hospital v. Squires*, *supra*, 104 S.E. (2d) at page 166, citing Burks' Pleading and Practice, 4th Ed., Section 247, page 438. (Emphasis added). While the limitation of Section 1640(e) may be interposed to bar an affirmative counterclaim or set-off, it may not be used to defeat the equitable defense of recoupment. This Court has long held the view that: "[Recoupment] grows out of the contract itself which is the cause of action, and is not barred by the statute of limitations. It would be manifestly unjust to permit the vender to enforce a subsisting contract, and deny to the purchaser, from lapse of time, a defense involving the validity of it at its inception. *Evans' Executors v. Yongue*, 42 S.C.L. (8 Rich.) 113, 115 (1854). See also, *Bull v. United States*, 295 U.S. 247, 55 S.Ct. 695, 79 L.Ed. 1421 (1935); *Earle v. Owings*, 72 S.C. 362, 51 S.E. 980 (1905). The purpose of the TILA is "to assure meaningful disclosure of credit terms" so that the consumer can shop for credit on an informed basis. 15 U.S.C. § 1601. The provisions for remedies at Section 1640(a) place enforcement of the TILA in the

hands of the consumer. If recoupment claims were barred by the limitation in Section 1640(e), lenders could avoid the consequences of non-compliance simply by waiting a year to bring suit on a default, thereby defeating the purpose of the TILA. The summary judgment on appellants' recoupment claim is reversed and the matter is remanded. For guidance recoupment is available against the costs and attorney's fees, as well as any other monetary claim awarded to respondent in this action.

C. **AFFIRMATIVE DEFENSE XVIII** – (Misconduct & Misrepresentation By An Adverse Party Under Rule 60(b)(3), SCRPC)

156. Since I never went to Charleston, South Carolina to receive an Addendum that is a mandatory requirement for any LOANLINER® Credit Union loan, and since SCFCU did not and cannot produce any witness testimony or documentation that can or will verify, I was at their office in Charleston, South Carolina, by all prevailing judicial standards, SCFCU's loan cannot be legalized by the Circuit Court or the Equity Court as an authorized LOANLINER® loan or a legitimate SCFCU Membership and Account Agreement. This could not be done in 2002 or from 2003-2014, and it still cannot be done by the Circuit Court or the Equity Court in 2015.

157. **Offer of Proof:** Any person of reasonable intelligence will agree with the following undeniable and irrefutable facts that are either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability. **Even SCFCU's attorneys and the Court can agree with this undeniable and irrefutable fact,** it was not physically possible to give me an Addendum over the telephone. Documents can only be physically given to another person when they are in each other's physical and immediate presence or in close proximity to each other.

158. **Offer of Proof:** There is no evidence or testimony in the Court's Records that can or will verify SCFCU's personnel witnessed someone or anyone from their Charleston office giving me an Addendum to consummate SCFCU's LOANLINER® credit plan or Membership and Account Agreement.

159. **Offer of Proof:** There is no evidence or testimony in the Court's Records that can or will verify SCFCU's personnel from their Columbia office gave me an Addendum when I picked up the check for the car on September 5, 2002. This statement has been **Sworn to**, **Notarized** and **Verified** and has never been denied or refuted by anyone from SCFCU that was alive or employed by SCFCU in 2002 or 2003. Any such attempt by SCFCU's personnel would be **Perjury** and **Dishonest Conduct**.

160. **Offer of Proof:** At the hearing on February 18, 2015, SCFCU's attorney presented a notebook to Judge Jackson and myself. In the notebook is an Addendum that is identified as Exhibit 3. This Addendum is a misrepresentation of a material fact and/or false testimony and/or false evidence and represents a misrepresentation and misconduct and/or dishonest conduct by an adverse party. Under Rule 60(b)(3), SCRCP, the Lower Court's Order of Judgment can be set aside. As previously stated, If SCFCU did this, it is still **Dishonest Conduct** and/or **False Testimony**. By definition, if it is done by SCFCU's attorney/s, it is also **Dishonest Conduct**, **False Testimony** or **Fraud upon the Court**.

161. If the Court is deceived by false testimony or the presentation of false evidence by an adverse party and enters a judgment based on the presentation of false testimony and/or false evidence, such reliance voids the Judgment of the Court. However, the evidence must be clear and convincing. **Offer of Proof:** Review Exhibit 3 in SCFCU's Presentation Notebook of 02/18/2015. The citations to authorities for this violation can be found on pages 47-41 in this pleading and on pages 9-10 in my *Legal Memorandum of Law and Authorities Supporting Motion to Alter or Amend the Judgment*, that was filed on April 6 2015. More citations follow:

(a) **Zurich North America v. Matrix Service, Inc.**, 426 F. 3d 1281 (10th Cir. 2005) "[B]y its terms, Rule 60(b)(3) deals with 'fraud . . . , misrepresentation, or **misconduct by an adverse party**,' while the savings clause to Rule 60(b) recognizes 'the power of a court to entertain an independent action to relieve a party from a judgment . . . for fraud upon the court.'" See **Wilkin**, 466 F.2d at 717

(recognizing "Rule 60(b) does not limit a court's power to redress fraud on the court."). This distinction allows fraud on the court claims to be brought outside of the one year period of limitations imposed on the grounds expressly listed in Rule 60(b)(3). Ordinarily, therefore, claims of fraud between the parties are brought under Rule 60(b)(3), while claims of fraud on the court are brought as an independent action which is recognized in the savings clause. However, courts have allowed parties to file a claim for fraud on the court under subsection (b)(3). See Gonzalez v. Secretary for Dept. of Corrections, 366 F.3d 1253, 1259 (11th Cir. 2004) ("A claim that the State had perpetrated a fraud on the federal court in order to obtain the judgment denying the habeas petition could be raised in a Rule 60(b)(3) motion.") *aff'd by* Gonzalez v. Crosby, ___ U.S. ___, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005).

(b) Coates v. Drake, 346 NW 2d 858 (Mich. Ct. App. 1984) "[T]he denial of a motion for relief from a judgment brought under GCR 1963, 528.3 will not be disturbed on appeal absent a clear showing of an abuse of discretion. Lark v Detroit Edison Co, 99 Mich App 280, 282; 297 NW2d 653 (1980), *lv den* 410 Mich 906 (1981). Relief may be granted under GCR 1963, 528.3(6) for "any other reason justifying relief from the operation of the judgment" if subsections (1) through (5) are inapplicable, extraordinary circumstances exist which warrant setting aside the judgment in order to achieve justice, and the substantial rights of the opposing party will not be detrimentally affected by setting aside the judgment. Lark, supra, p 284; Kaleal v Kaleal, 73 Mich App 181, 189; 250 NW2d 799 (1977), quoting Honigman & Hawkins, Michigan Court Rules Annotated (2d ed), p 189. The only subsection other than (6) of GCR 1963, 528.3 which might at first blush appear applicable is (3), but a close reading reveals that (3) is limited to fraud, misrepresentation, or other misconduct "by an adverse party". In the present case, the misconduct was engaged in by plaintiffs' own attorney, and it is undisputed that defendants were not responsible for that misconduct."

(c) Disher v. Citigroup Global Markets, Inc., 486 F. Supp. 2d 790 (D. Ct. S.D. Ill. 2007) "[T]he general common-law rule governing the effect of reversal on a judgment is that, after reversal, "[the] decree [is] no longer of any force or effect. The parties [are] in precisely the same situation as though no decree had been entered." Kaplan v. Joseph, 125 F.2d 602, 606 (7th Cir.1942). See also Keller v. Hall 111 F.2d 129, 131 (9th Cir.1940) (quoting Butler v. Eaton, 141 U.S. 240, 244, 11 S.Ct. 985, 35 L.Ed. 713 (1891)) (a judgment, "after it was reversed, was 'without any validity, force, or effect.'"). As Justice Story explained, "[a]t common law, if a plaintiff obtain a judgment in an inferior tribunal, which is reversed in the appellate court, it is very clear, that the reversal operates no further, than to nullify the original judgment. In other respects, the parties are precisely in the same situation, as to their rights and remedies touching the matter in controversy, as if no such judgment had ever existed." Harvey v. Richards, 11 F. Cas. 740, 745 (C.C.D.Mass. 1814) (No. 6,182). Accordingly, when "the decision of the United States Circuit Court of Appeals [is] reversed by the Supreme Court . . . the reversal of [the] decree sets aside the adjudication of such

decree and same becomes no longer of any force and effect. After the reversal the situation [is] as if no decree had been entered by the Circuit Court of Appeals." National Nut Co. of Cal. v. Kelling Nut Co., 61 F.Supp. 76, 80 (N.D.Ill.1945). See also 36 C.J.S. *Federal Courts* § 712 (1955 & Supp. 2007) ("The effect of a general and unqualified reversal of a judgment, order, or decree by [a reviewing court] is to nullify it completely and to leave the cause standing as if it had never been rendered[.]" (collecting cases)."

(d) TONAWANDA SCH. EMPLOYEES FED. CREDIT UNION v. Zack, 242 AD 2d 894 (NY: App.Div 4th Dept. 1997) "[D]efendant's allegations, if true, establish fraud, misrepresentation or other misconduct by an adverse party, entitling defendant to vacatur of the judgment without the necessity of defendant's establishing a meritorious defense to the action (see, CPLR 5015 [a] [3]; Shaw v Shaw, 97 AD2d 403, 404. The conflicting allegations present an issue of fact, which the court erred in determining without holding a hearing (see, D'Alleva v D'Alleva, 127 AD2d 732, 735; Rifenburg v Liffiton Homes, 107 AD2d 1015, 1016-1017). We therefore reverse the order and remit the matter to Supreme Court for that purpose."

(e) Woginiak v. Kleiman, 523 So. 2d 1209 (Fla. 3rd DCA 1988) "[R]elief from an order or judgment is appropriate where, as here, the movant is a victim of fraud or other misconduct by an adverse party. Fla.R.Civ.P. 1.540(b); Lacore v. Giralda Bake Shop, Inc., 407 So.2d 275 (Fla. 3d DCA 1981). See Zoning Bd. of Monroe County v. Hood, 484 So.2d 1331, 1333 n. 4 (Fla. 3d DCA 1986) (strangers to original action may assail judgment by rule 1.540(b) motion based on fraud). Reversed and remanded with instructions that further proceedings be conducted in the probate action."

(f) Chewning v. Ford Motor Co., 550 SE 2d 584 (Ct. App. 2001) "[A]lthough perjury alone will not serve to vacate a judgment, it is considered fraud upon the court when it involves or is suborned by an attorney. See generally *Moore's Federal Practice, supra*, at § 60.21[4][b] & [c]. "Involvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court." Great Coastal Express, Inc. v. Int'l Bhd. of Teamsters, 675 F.2d 1349, 1357 (4th Cir.1982); see also Meindl v. Genesys Pac. Techs., Inc., 204 F.3d 124, 130 (4th Cir.) ("[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.");"

(g) IN RE ESTATE OF DOMBROSKI, 2014 Ohio 5828 (OH: Ct. App. 7th App. D. 2014) "[T]he Court stated "in a broad sense" any fraud connected with the presentation of the case to a court is fraud upon the court, *but usually a party must resort to (B)(3) for relief rather than (B)(5)*. *Id.* In other words, a party's fraud in procuring a judgment is a fraud upon the court as well as a fraud by a party, but since it falls under (B)(3) due to the latter observation, resort to (B)(5) cannot be had. The *Coulson* Court then declared: "Where an officer of the court, e.g., an attorney, however, actively participates in defrauding the court, then the court may entertain a Civ.R. 60(B)(5) motion for relief from judgment." *Id.*"

XXIV. PUNITIVE DAMAGES MUST BE AWARDED TO DETER FUTURE PRACTICES

162. In order to recover punitive damages, I have the burden of proving by clear and convincing evidence SCFCU's conduct was willful, wanton, or in reckless disregard of the my rights. S.C. Code Ann. § 15-33-135 (2005); Taylor v. Medenica, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). {Review SCFCU's **Exhibit 3 of 5/10/2012 & Exhibit 3 of 2/18/2015**}

163. 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.

164. Due to SCFCU'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 SCFCU in the future from repeating being **complicit** with illegality. {Review My **Exhibits D, K-M, 9 & 11** & SCFCU's **Exhibit 3 of 5/10/12**}

165. 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, "[t]o 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).

166. "[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. Baldrige, 243 S.C. 414, 419, 134 S.E.2d 248, 251 (1964)).

167. "[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))."

168. "[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. OHG 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, I have the burden of proving 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)."

169.. What SCFCU has done to the Sistrunk family should never happen again. I have proven with clear and convincing documentation, Affidavits and over 40 Exhibits, SCFCU's **complicity** in illegality. In over 4 years no one has come forward to refute or deny any **Sworn Statement of Fact** I have made. 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. SCFCU and its management personnel must be held accountable for their failure to act and their actions. {Review the **Court's Records**}

Clark v. Cantrell, 529 SE 2d 528 (2000) "[C]ases mentioning the compensatory aspect of punitive damages provide little support for Cantrell's position. All merely illustrate the obvious truth that punitive damages serve at least three important purposes: punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the reckless or willful invasion of the plaintiff's private rights."

XXV. STANDARD OF REVIEW FOR SUMMARY JUDGMENT

170. 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. Since my Pleadings are Verified, Sworn To and/or Notarized they must be included; along with, my Affidavits and Exhibits for just and fair adjudication. The following pleadings are Sworn To, Notarized or Verified and are incorporated by reference as though I have written them herein verbatim.

YEAR - 2011

(a) Answer to Summons, Complaint, Fair Debt Collection Notice And Corporate Verification of Account With Counterclaims, Affirmative Defenses And A Demand For A Jury Trial; that was filed on December 21, 2011.

YEAR - 2012

(b) Defendant Dorothy Harley Sistrunk’s Legal Memorandum In Support Of Notice Of Motion And Motion For Summary Judgment; that was filed on April 25, 2012.

(c) Defendant Dorothy Harley Sistrunk’s Statement Of Material Facts That Are Not In Dispute that was filed on April 25, 2012.

(d) Defendant Dorothy Harley Sistrunk’s Response To Plaintiff’s Motion For Summary Judgment, Affidavit of Amy Rogers In Support of Motion For Summary Judgment and The Plaintiff’s Reply To Defendant’s Answer And Counterclaims; that was filed on May 18, 2012.

(e) Defendant Dorothy Harley Sistrunk’s Rebuttals To Any Statement Made By The Plaintiff Or The Plaintiff’s Attorneys That Is Not Consistent With The Filed Complaint, Exhibits Or The Filed Affidavits During The Hearing For Summary Judgment Scheduled For Tuesday, June 19, 2012 At 2:25 O’clock PM; that was filed on June 12, 2012.

(f) Defendant Dorothy Harley Sistrunk’s Memorandum Of Points And Authorities In Opposition To Summary Judgment For The Plaintiff --- Hearing Date: June 19, 2012 --- Judge: The Honorable Diane Shafer Goodstein --- Time: 2:25 O’clock PM --- Today’s Date: June 19, 2012; that was filed on June 20, 2012.

(g) Defendant Dorothy Harley Sistrunk’s Opposition To Summary Judgment For The Plaintiff --- Hearing Date: June 19, 2012 --- Judge: The Honorable Diane Shafer Goodstein --- Time: 2:25 O’clock PM -- Today’s Date: June 19, 2012; that was filed on June 20, 2012.

YEAR - 2013

(h) Defendant Dorothy Harley Sistrunk's Objections To Dismissal Pursuant To SCRCF Rule 41(a)(2); Response To The Plaintiff's Stipulation Of Dismissal, And Counter Stipulations For Dismissal --- Today's Date: January 3, 2013; that was filed on January 3, 2013.

(i) Request To Submit For A Decision Pursuant To Rule 56(e), SCRCF --- Today's Date: November 18, 2013; that was filed on November 18, 2013.

YEAR - 2014

(j) Defendant Dorothy Harley Sistrunk Objects To Notice Of Continuance And Files A Second Settlement Offer To The Plaintiff, South Carolina Federal Credit Union (SCFCU), Pursuant To Rule 43(k), SCRCF For A Return Of \$4,660.89 Back To The Defendant For An Equitable Settlement --- Today's Date: March 17, 2014; that was filed on March 17, 2014.

(k) Defendant Dorothy Harley Sistrunk's Objections To The Plaintiff's Memorandum In Support Of Plaintiff's Renewed Motion For Summary Judgment --- **Notification: This Is A Verified Pleading** --- Today's Date: April 8, 2014; that was filed on April 8, 2014.

(l) Defendant Dorothy Harley Sistrunk Does Not Object To Plaintiff's Renewed Motion For Summary Judgment. The Defendant Encourages The Court To Accept The Motion As Written And The New Evidence As Presented & Deny Any Attempt By The Plaintiff To Withdraw The Motion And/Or The Evidence And/Or Alter Amy Rogers' Filed Affidavit In Support Of The Plaintiff's Renewed Motion For Summary Judgment --- Today's Date: April 8, 2014; that was filed on April 8, 2014.

YEAR - 2015

(m) Dorothy Harley Sistrunk's Legal Memorandum Of Law And Authorities Supporting Motion To Alter Or Amend The Judgment Pursuant To Rule 59(e), SCRCF; that was filed on April 6, 2015.

(n) Legal Memorandum Of Law & Authorities Supporting Motion To Set Aside The Judgment And Vacate The Order Ending This Case Due To Judicial Errors That Do Not Comply With Rules 42(b), 52(b), 54(b), 56(c)-(d), 60(b)(3), SCRCF, South Carolina's Policies Of Law, Precedents, And The 7th Amendment To The Constitution of the United States of America. ---- **Judicial Notice Requested Pursuant To Rule 201, SCRE.** --- Today's Date: April 30, 2015.

(o) Dorothy Harley Sistrunk's Objections to Judicial Errors; Re: A Judgment On A Complaint That Was Never Filed; A Denial Of A Motion Never Filed, And Additional Errors Of Fact Or Law That Are Not In Accordance With South Carolina's Rules Of Civil Procedure, Rules of Evidence, Precedent And Amendment VII to the Constitution of the United States of America; that was filed on April 30, 2015.

171. Rule 12 and 56 do not require fact finding, they do require reliance on the Record.

172. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. If triable issues exist, those issues must go to the jury. Mulherin-Howell v. Cobb, 362 S.C. 588, 595, 608 S.E.2d 587, 591 (Ct. App. 2005). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

173. On the other hand, summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 59, 518 S.E.2d 301, 305 (Ct. App. 1999). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). Summary judgment is a drastic remedy; it should therefore be cautiously invoked to prevent the improper deprivation of a trial of the disputed factual issues. Lanham v. Blue Cross & Blue Shield, 349 S.C. 356, 363, 563 S.E.2d 331, 336 (2002)."

174. Under Rule 56, SCRPC, when a party makes a motion for summary judgment and supports it by affidavits the adverse party may not rest on the allegations of his pleadings but must respond by affidavits or other evidence demonstrating a genuine issue of material fact.

175. A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony. In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. Hancock v. Mid-South Mgmt Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. Id. at 330–31, 673 S.E. 2d at 803."

176. “[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.” Friedel v. City of Madison, 832 F.2d 965, 970 (7th Cir. 1987); Martz v. Union Labor Life Insurance Co., 757 F.2d 135, 138 (7th Cir. 1985)

177. 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 (Ct.App. 2004).

178. “[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).

179. “[T]his Court has elaborated on that explication with explanation that clear error exists where (1) the findings are without substantial evidence to support them, (2) the court misapprehended the effect of the evidence, and (3) if, although there is evidence which if credible would be substantial, the force and effect of the testimony, considered as a whole, convinces the Court that the findings are so against the great preponderance of the credible testimony that they do not reflect or represent the truth and right of the case.” White v. ARCO/Polymers, Inc., 720 F. 2d 1391 (5th Cir. 1983).

XXVI. ARGUMENTS

A. I demanded a Jury Trial on 12/21/2011 that was never scheduled.

180. Since I knew I did not execute and deliver any LOANLINER® Account and Security Agree on February 24, 2003. **Offer of Proof:** On December 21, 2011; in my Answer to SCFCU's Complaint, I demanded a Jury Trial. It is written on page 1, in bold all capital type. For over 3, years, Judge Goodstein never called any hearing relative to my Jury Trial. This is one of many egregious errors of law in C. A. Case 2011-CP-38-1392. {Review my **Answer to Complaint**, pg 1}

(a) **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."

(b) **SOUTH CAROLINA'S 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."

(c) *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."

(d) *Rule 38(a)-(d), SCRCP*, clearly states the following in pertinent parts.

"[(a)] 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)] 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)] 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)." [Boldness for emphasis]

(e) Rule 53(b), SCRPC - 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." [Boldness for emphasis]

(f) Federal Rule 38 - Right to a Jury Trial; Demand ... Clearly states...

"[(a)] 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)] 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)] 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....."

(g) Rule 43(a), SCRPC – 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."

B. In 4 years, no statement of fact or material fact has ever been denied.

181. In my *Legal Memorandum in Support of Notice of Motion and Motion for Summary Judgment*, that is incorporated by reference as though I have written herein verbatim, that

was filed on April 25, 2012, in ¶ 10, on pg 3, I clearly stated, “[A]my Rogers’ default loan statement, {Page 2}, that is attached to her Corporate Verification of Account, {Plaintiff’s Exhibit “C”} authenticates the Plaintiff’s filed Complaint and Debt Collection are based on a loan that was purportedly executed and delivered on or about February 24, 2003 that called for the payment of the sum of \$5,556.44 that is now in default. {Supporting Evidence – Plaintiff’s Complaint Pages 2-3, Paragraphs 7-12, Amy Rogers’ Corporate Verification of Account, Page 1, Paragraph 1, Exhibit “C” Column 1, Payoff W/Escrow \$5,274.84 & Plaintiff’s Exhibit “A”, Page 1, Paragraphs 1 & 3}

182. Judge Goodstein never scheduled a hearing for my motion. This is another egregious violation of the Due Process Clause in South Carolina’s and the United States Constitution. **Offer of Proof:** In addition, in over 4 years, no evidence, statements or documents have ever been presented to refute or deny any statement of fact or any material fact in my memoranda or in any filed pleading; nor can any be legitimately presented. {Review the **Court’s Records**}

C. **At the hearing on 02/18/2015, SCFCU’s account representative misrepresented facts.**

183. At the hearing in 02/18/2015, SCFCU’s account representative misrepresented facts. She did not mention a mobile home purchase or identified any fixed interest rate account statement for a closed-end fixed interest rate account. **Offer of Proof:** The account she verified is the account record for SCFCU’s open-end cyber loan that is dated February 24, 2003. Judge Jackson mistakenly believed and relied upon an erroneous presentation of non-existing facts that are not relative to February 28, 2003. {Review my **Exhibit 41**} **I am not confused, the Court and SCFCU are confused.**

184. **Offer of Proof:** In ¶ 3, on pg 1, in my *Memorandum of Points and Authorities in Opposition to Summary Judgment for the Plaintiff*, that is incorporated by reference as though I

have written it herein verbatim, that was filed on June 20, 2012, I clearly stated, “[T]he Plaintiff’s Complaint and Debt Collection are for an Open-End Disbursement Receipt Plus Loan-Liner Credit and Security Agreement (“Fixed Interest Rate Agreement”) that was executed and delivered on or about 02/24/2003 that called for the payment of Five Thousand Five Hundred Fifty-Six and 44/100 (\$5,556.44) Dollars that is now in default with a payoff of \$5,274.84. {Supporting Evidence – Plaintiff’s Complaint, Pages 2-3, Paragraphs #7 & #12, Filed on 11/23/2011}

The Defendant’s loan advance for the mobile home purchase is not in the Plaintiff’s account records.”

185. In my *Defendant Dorothy Harley Sistrunk’s Statement Of Material Facts That Are Not In Dispute* that is incorporated by reference as though I have written it herein verbatim, that was filed on April 25, 2012, I clearly stated in ¶ 8 and (A)(B), on pg3, “[B]ased on the facts in this case and the filed Complaint, the Plaintiff, South Carolina Federal Credit Union, has not presented any affidavits, declarations or other competent evidence, setting forth specific facts showing that there is a genuine issue for trial.{See FED. R. CIV. P. 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)}

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

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

D. As early as June 12, 2012, I put the Court on notice that SCFCU was going to change its Complaint.

186. I knew SCFCU was going to change its Complaint and try to link my mobile home purchase to their cyber loan of February 24, 2003. The reason, there is no voucher or paperwork for a February 24, 2003 loan. This why in my *Defendant Dorothy Harley Sistrunk's Rebuttals To Any Statement Made By The Plaintiff Or The Plaintiff's Attorneys That Is Not Consistent With The Filed Complaint, Exhibits Or The Filed Affidavits During The Hearing For Summary Judgment Scheduled For Tuesday, June 19, 2012 At 2:25 O'clock PM*; that was filed on June 12, 2012, that is incorporated by reference as though I have written it herein verbatim, I put the Court on Notice in the caption of my pleading of SCFCU's need to change the pleading in an effort to make sense of the facts. The follow excerpts are from ¶¶ 2-4, on pg 6.

**“[D]URING THE HEARING, THE PLAINTIFF
IS BARRED FROM FILING ANOTHER AFFIDAVIT”**

187. “[A]ll Three Affidavits from the Plaintiff contradict each other and Amy Rogers has contradicted herself, misstated facts and verified two (2) loans the Defendant never signed for or received. {Supporting Evidence –Exhibits 6 & 4 - Amy L. Hewitt's Affidavit that was filed in Magistrate Court on May 18, 2011; Exhibit 8 – Amy Rogers' Corporate Verification of Account that was filed on 11/23/2011 & Exhibit 25 – Amy Rogers Affidavit Supporting Motion for Summary Judgment filed on 05/10/2012} {Authority –Rule 56(c), SCRCP}”

188. “[N]one of the Plaintiff's Affidavits can be used to support the Plaintiff's Complaint, Debt Collection or Motion for Summary Judgment. The Plaintiff is effectively barred from introducing another Affidavit during the Hearing for Summary Judgment. {Authority – Rule 56(c), SCRCP - “The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file...”}

189. “[A]my Rogers and Amy L. Hewitt are also effectively barred from contradicting

their sworn statements due to the legal concept of Judicial Estoppel. {Authority - 28 Am. Jur. 2d Estoppel and Waiver §74 ("The fundamental concept of judicial estoppel is that a party in a judicial proceeding is barred from denying or contradicting sworn statements made therein."})

The following excerpts are from ¶¶ 9-17, pgs 7-8.

**"[D]URING THE HEARING, THE PLAINTIFF IS
EFFECTIVELY BARRED FROM INTRODUCING
DOCUMENTS TO REMEDY THE PLAINTIFF'S COMPLAINT"**

190. "[T]he Defendant's loan payments were improperly applied to a **LoanLiner Plus Account the Defendant never agreed to**. The Defendant's loan advance; that was received on March 5, 2003, was for a house. {Supporting Evidence – Defendant's Exhibit 9} The loan counselor told the Defendant her 15% fixed rate advance was essentially the same as the car loan. Car Loans and home purchases are primarily Closed-Ended loans. {Authorities - 15 USC 1601 et. seq. & LoanLiner – stating "the following types of subaccounts should not be a part of the Plan, Mobile Homes, Home Equity, Real Estate and Home Purchases."} "

191. "[W]ith Closed-End lending, there are between 18 and 30 disclosures that must be made before consummation of the loan. Truth in Lending *requires* that these disclosures:

- (A) Be in writing and in a form members can keep.
- (B) Be segregated from other information – the "Fed. Box".
- (C) Have itemization of amount financed disclosed outside of the Fed. Box.
- (D) These disclosures may be on the same document as the other loan documents and disclosures. Disclosure must be grouped together in one place – the "Fed Box." {Authority – 15 USC 1601 et. seq.} There are penalties for inaccurate and defective disclosure. {Authority – 15 USC 1601 et. seq.}"

192. "[F]ailure to give accurate disclosures in the "Fed Box" or failing to substantially comply with TILA's regulatory requirements, means the Defendant can file a claim against the Plaintiff for violating the Defendant's rights under TILA. The penalty can be up to \$1,000.00 for each violation. {Authority – 15 USC 1601 et. seq.}"

193. “[T]he Plaintiff did not file any documents that remotely resemble the lending or compliance requirements for a Closed-Ended 15% fixed rate loan. {Defendant’s Exhibit 9} The Plaintiff’s TILA violations are egregious and extensive. {Supporting Evidence – the Plaintiff’s Filed Complaint, Filed Documents, Exhibits and Filed Affidavits}”

194. “[T]he Plaintiff is effectively barred from introducing any new documentation to remedy the Plaintiff’s violations of TILA and South Carolina’s Unfair Trade Practices Act. {Authority – Rule 56(c), SCRPC – “The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file...”}”

195. “[T]he Defendant’s Closed-Ended loan for a mobile home purchase with no Disability or Credit Life Insurance is not in the Plaintiff’s accounting records. {Supporting Evidence – the Plaintiff’s Exhibits 3 & 4}”

196. “[T]he Defendant’s over \$10,340.00 in payments were not used to pay off the Defendant’s Closed-Ended loan, the Defendant’s monthly payments were being applied to a LoanLiner Plus Account, the same account that is the subject of the Plaintiff’s Complaint. {Supporting Evidence – the Plaintiff’s Exhibit 3, Filed Complaint and Filed Affidavits}”

197. “[T]he Plaintiff’s misuse of the Defendant’s Monthly payments is not only a clear violation of SCUTPA and TILA, the Plaintiff has also violated LoanLiner’s mandates, guidelines and procedures. {Supporting Evidence – LoanLiner – stating – “the following types of sub-accounts should not be a part of the Plan, Mobile Homes, Home Equity, Real Estate and Home Purchases.”}”

E. **The Appellate Court; in fact, no Court of competent jurisdiction can allow SCFCU to file bogus Addendums, engage in dishonest conduct, falsify evidence and/or allow SCFCU’s attorneys to openly commit fraud upon the court to win a case.**

198. The reason why there is no checklist, statement, note card or any other SCFCU document or record relative to an Addendum is because neither SCFCU’s Charleston Office, nor

its Columbia office gave me one. My loan was done entirely by telephone. My only personal appearance was to sign the Member 1 Plan, some insurance documents, receive some paperwork and pickup the check for the car. {See My Exhibits 12 & 13} Therefore, when SCFCU's attorneys claimed they had new evidence, I knew it was a **BOGUS ADDENDUM** that was snatched from someone's file with a loan date the same or close to my own. Without an Addendum, SCFCU does not have a legitimate case. This is why the law firm initially wanted to drop the case in 2012.

199. **Offer of Proof:** On December 19, 2012, Moore & Van Allen, PLLC, filed a **Stipulation of Dismissal**. On January 3, 2013, I filed my *Defendant Dorothy Harley Sistrunk's Objections To Dismissal Pursuant To SCRCP Rule 41(a)(2); Response To The Plaintiff's Stipulation Of Dismissal, And Counter Stipulations For Dismissal* that is incorporated by reference as though I have written it herein verbatim.

200. On March 26, 2014, Moore & Van Allen, PLLC, filed their **Plaintiff's Renewed Motion for Summary Judgment**. Since, I knew a **BOGUS ADDENDUM** was going to show up sooner or later, with another Amy Rogers' Affidavit or Corporate Verification of Account. This is exactly why on April 8, 2014, I worded my response thusly: *Defendant Dorothy Harley Sistrunk Does Not Object To Plaintiff's Renewed Motion For Summary Judgment. The Defendant Encourages The Court To Accept The Motion As Written And The New Evidence As Presented & Deny Any Attempt By The Plaintiff To Withdraw The Motion And/Or The Evidence And/Or Alter Amy Rogers' Filed Affidavit In Support Of The Plaintiff's Renewed Motion For Summary Judgment* that is incorporated by reference as though I have written it herein verbatim.

201. Now that Moore & Van Allen, PLLC, had their **BOGUS ADDENDUM**, it was only a matter of time before either SCFCU **COMMITTED PERJURY** or Moore & Van Allen, PLLC, engaged in **DISHONEST CONDUCT** and/or committed a **FRAUD UPON THE COURT**.

E. **Judge Jackson erred. He did not realize, there is no filed complaint for a February 28, 2003, open ended mobile home loan and SCFCU's Addendum is BOGUS. I never received one.**

202. On February 18, 2015 Moore and Van Allen, PLLC committed a **FRAUD UP-ON THE COURT** by placing a **BOGUS ADDENDUM** in the notebook that Reid E. Dyer gave to Judge Jackson. **Offer of Proof:** SCFCU's **BOGUS ADDENDUM** is identified as **Exhibit 3**. **Exhibit 3** is clear and convincing evidence. I do not know whose Addendum it is. It certainly was never given to me, nor any copy thereof.

203. By failing to utilize the entire Court's Record, Judge Jackson made critical errors in his Findings of Fact in his Order of Judgment that is dated and signed, March 26, 2015.

{Review my **Exhibit 41**}

(a) **First Critical Error:** I never borrowed any money from the Plaintiff pursuant to a Loanliner open ended disbursement agreement. {**Exhibit 41, ¶ 1, pg 1, Sent. #2**} **Offer of Proof:** My LOANLINER® Credit Application clearly states the interest rate is "Fixed" at 15%. {Review **My Exhibit 9**} In addition, there is no filed Complaint for a Loanliner open ended disbursement agreement dated February 28, 2003. Even SCFCU's filed Complaint clearly states "Fixed Interest Rate" Agreement. {See My **Exhibit 24, ¶¶ 7-10, pg 2**}

(b) **Second Critical Error:** I did not think I received a closed end loan that is similar to my previous loan, I was told..that is what..it was going to be. {**Exhibit 41, ¶ 1, pg 2, Sent. #1**} **Offer of Proof:** This fact is verified by the LOANLINER® Credit Application, {SCFCU's **Exhibit 7**} Angel Rabon's Email {SCFCU's **Exhibit 6**} and CUNA Mutual Group's lending guidelines. {See My **Exhibits D & J-K**}

(c) **Third Critical Error:** The interest rate on CUNA's February 24, 2003 loan is not fixed at 15%. {**Exhibit 41, ¶ 2, pg 2**} Therefore, this is a misstatement of fact. **Offer of Proof:** For verification this is a misstatement of fact, see my **Exhibit 29**.

204. In my *Dorothy Harley Sistrunk's Objections to Judicial Errors; Re: A Judgment On A Complaint That Was Never Filed; A Denial Of A Motion Never Filed, And Additional Errors Of Fact Or Law That Are Not In Accordance With South Carolina's Rules Of Civil Procedure, Rules of Evidence, Precedent And Amendment VII to the Constitution of the United States of America*; that was filed on April 30, 2015 are a list of the Court's errors of fact and law.

XXVII. SUMMARY

205. The errors of law and judgment in the Lower Court will not change the undeniable facts that SCFCU has no legally enforceable right/s to keep my money. No valid and consummated signed agreement exists for the 02/28/2003 advance, no valid and consummated signed agreement exists for the non-existent Cyber loan of 02/24/2003 and no valid and signed agreement exist for the advance I received on March 5, 2003 for a home purchase. In addition, under current laws and precedent, SCFCU is barred from receiving any judicial relief due to unjust enrichment, misrepresentation, violations of TILA, SCUPTA, negligent misrepresentation, unclean hands, dishonest conduct and Fraud upon the Court

XXVIII. CONCLUSION

206. Therefore, for all the reasons stated in my Statement of the Evidence, Affidavits, Appellate Briefs and Exhibits, the Appellant prays the Appellant Court will remand this case back to the Circuit Court from which it came with clear instructions to examine the evidence, the pleadings, the depositions, answers to interrogatories, the exhibits, and the admissions on file; especially the Judicial Admissions in verified pleadings, together with the affidavits, to determine the facts and the truth.

Respectfully Submitted as a Verified Pleading.



Dorothy Sistrunk
423 Bayne Street
Orangeburg, SC 29115
Ph: 803-268-0716
Fx: 803-534-6727

XXIX. NOTIFICATIONS

207. A copy of my *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:

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

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly **SWORN**, and under the **PENALTY OF PERJURY** declares the afore stated facts in her "Statement of the Evidence" 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, Re: C.A. Case #2011-CP-38-1392 & Appellate Case #2014-001683 and based on the stated facts, has signed, sealed and executed these attestations this 15th day of June in the year 2015 in City and County of Orangeburg, in the State of South Carolina.

Rule 11(c), SCRCP clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

Affiant Signature: Dorothy Sistrunk

Notary's Signature as Witness (1): Kim Lynn Paine

Signed, sealed and delivered in the presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On June 15, 2015 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 her "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 Kim Lynn Paine

Commission Expires 10-17-24

FILED FOR RECORD
WINNIFAB CLARK
CLERK OF COURT
ORANGEBURG, SC
2015 JUN 15 A 9:07

TRUE COPY
Winnifab Clark
CLERK OF COURT
ORANGEBURG COUNTY

(Seal)



SOUTH CAROLINA
Federal Credit Union
P.O. Box 190012
North Charleston, SC 29419-9012
(843) 797-3300 • (800) 845-0432

48

Member1 Plan Application

Help us get to know you

MEMBER NAME ROBTY A HARLEY		STREET ADDRESS 223 MARTHA HEIGHTS LANE	CITY/STATE/ZIP NORTH, SC, 29112	HOW LONG HAVE YOU LIVED AT THIS ADDRESS?
HOME PHONE (803)-268-0716	WORK PHONE (803)-534-3709	MAILING ADDRESS (if different from street address) 223 MARTHA HEIGHTS LANE NORTH, SC 29112		DRIVER'S LICENSE NUMBER SC
SSN/TIN 2747	YOUR E-MAIL ADDRESS		MOTHER'S M.A.DEN NAME	PASSWORD
DATE OF BIRTH 3/ 1959	Are you a U.S. Citizen or resident alien? Yes ☒ No ☐ <i>If you select no, please follow the instructions for TIN Certification and backup withholding in the section below</i>			

How did you become eligible for South Carolina Federal Credit Union membership?

- ☒ I qualify under one of the following membership eligibility options, or ☐ My family or household member qualifies under one of the following eligibility options.

Is this relative a member of SC Federal Credit Union? ☐ Yes ☐ No

FAMILY MEMBER'S NAME: _____ RELATIONSHIP: _____

☐ Employed by or retired from _____ COMPANY EMPLOYER NAME OR MILITARY BRANCH ☒ Member of ORANGEBURG COUNTY ASSOCIATION

☐ Student at _____ Medical University of SC _____ College of Charleston _____ Charleston Southern University

☐ Employed by or retired from a military contractor who contracts with a US Government/Naval Installation in Charleston, SC _____ CONTRACTOR

☐ Live, work, worship, or attend school in Georgetown County, SC

How Can We Serve You?

Deposit Accounts	New Loan Accounts	Convenient, No-Cost Services
☒ 1 Savings	☐ 13 Personal Access Line of Credit	☐ ATM Card (Savings Accounts)
☐ 2 Clown Club (for children age 12 and under)	☐ 14 Vehicle loan	☐ MasterMoney Check/ATM Card (Not available on some accounts)
☐ 3 Zich® Checking	☐ 15 VISA Credit card	☐ Payroll Deduction
☐ 4 Senior Service Checking	☐ 16 MasterCard Credit Card	☒ Teller Talk
☐ 5 Members' Choice Checking	<i>*Additional information needed</i>	☐ iTeller
☐ 6 Money Market Account	<i>Let us help save you money and expand your purchasing options!</i>	☐ Overdraft Protection for Checking Accounts
☐ 7 Share Certificate	Business & Organization Accounts*	<i>Please indicate which account(s) you prefer for overdraft protection funding, and the order in which you prefer funds to be used.</i>
☐ 8 Student Banking Package (for full-time students enrolled in four year accredited college)	☐ Business/Organization Savings	☐ Savings
☐ 9 Christmas Club	☐ Business/Organization Checking	☐ Money Market Account
☐ 10. Dream Club	☐ Business Checking Plus	☐ Personal Access Line of Credit
☐ 11. Trust Account		
☐ 12 Individual Retirement Account (IRA)*		

Who will be on your account?

☐ Individual

Beneficiary or POD #1 ☐ All Accounts ☐ Designated Accounts _____ Which product number? _____

Beneficiary or POD #2 ☐ All Accounts ☐ Designated Accounts _____ Which product number? _____

☐ Joint

Joint Owner #1 ☐ All Accounts ☐ Designated Accounts _____ Which product number? _____

Joint Owner #2 ☐ All Accounts ☐ Designated Accounts _____ Which product number? _____

Beneficiary Complete Only if Payable on Death

NAME #1	RELATIONSHIP	NAME #2	RELATIONSHIP
---------	--------------	---------	--------------

Joint Owner Information

JOINT OWNER/TRUSTEE AGENT AUTHORIZED SIGNER #1	ADDRESS (if different from Member Address)	CITY/STATE/ZIP	HOME PHONE
SSN/TIN	DATE OF BIRTH	DRIVER'S LICENSE NUMBER	WORK PHONE
JOINT OWNER/TRUSTEE AGENT AUTHORIZED SIGNER #2	ADDRESS (if different from Member Address)	CITY/STATE/ZIP	HOME PHONE
SSN/TIN	DATE OF BIRTH	DRIVER'S LICENSE NUMBER	WORK PHONE

Gifts to Minors

TMA/UGMA (as custodian for _____ (minor) under the Uniform Transfer/Gifts to Minors Act)

Minor's SSN/TIN _____

Exhibit A



SOUTH CAROLINA
Federal Credit Union
PO Box 190012
North Charleston, SC 29419-9012
(843) 797-8300 • (800) 845-0432

LOANLINE

CREDIT INSURANCE

You can protect your financial future by signing up for voluntary credit insurance below. Enroll by simply indicating your preference in the "Credit Insurance Application" section below. Your credit union will be happy to explain the various insurance options and coverage. The cost is reasonable.



CUNA MUTUAL GROUP

CUNA Mutual Insurance Society

P O Box 391 • 5910 Mineral Point Road
Madison, WI 53701-0391
Phone 800/937-2644

CREDIT INSURANCE ENROLLMENT FORM AND SCHEDULE

"You" or "Your" means a person who is borrowing from the credit union. A co-signer is not eligible for coverage.

Credit insurance is voluntary and not required in order to obtain this loan. You may select any insurer of your choice. You can get this insurance only if you are eligible for the coverage and check "yes" below to select coverage and sign your name and write in the date. The rate you are charged for the insurance is subject to change. You will receive written notice before any increase goes into effect. You have the right to stop this insurance by notifying your credit union in writing. Your signature below means you agree that:

- If you elect insurance, you authorize the credit union to add the charges for insurance to your loan each month.

- You are eligible for disability insurance only if you are working for wages or profit 25 hours a week or more on the date of any advance. If you are not, that particular advance will not be insured until you return to work. If you are off work only because of temporary layoff, strike or vacation, but soon to resume, you will be considered at work.
- You are eligible for insurance if you are not older than the maximum age for insurance
- You are insured only for advances actually received by you. You are not insured for any unused credit which may be available to you.

NOTE: THE INSURANCE CONTAINS CERTAIN BENEFIT MAXIMUMS, INCLUDING AN AGE MAXIMUM. THE INSURANCE ALSO CONTAINS CERTAIN BENEFIT EXCLUSIONS, INCLUDING A PRE-EXISTING CONDITION EXCLUSION.

YOU ELECT THE FOLLOWING INSURANCE				COST PER \$100 OF YOUR MONTHLY LOAN BALANCE	
Credit Disability For Borrower #1	☒ YES ☐ NO OR	Borrower #2	☐ YES ☐ NO BUT NOT BOTH	Single Credit Disability	SEE
Credit Life For Borrower #1	☒ YES ☐ NO	Borrower #2	☐ YES ☐ NO	Joint Credit Disability	ADDENDUM
				Single Credit Life	FOR
				Joint Credit Life	RATES
WAITING PERIOD If you are totally disabled for more than 14 days, then the disability benefit will begin with the 1st day of disability.					
Borrower #1 Name ARLEY/DOROTHY A			Borrower #2 Name		
Borrower #1 Date of Birth 03/ /1959			Borrower #2 Date of Birth		
Group Policy Number 039-0001-3	Account Number 68-	INSURANCE MAXIMUMS		DISABILITY	LIFE
		Maximum Monthly Total Disability Benefit		\$ 750.00	N/A
		Maximum Insurable Balance Per Loan Account		\$ 50,000.00	\$ 50,000.00
		Maximum Age for Insurance		65	69
		Maximum Number of Monthly Disability Payments		120	N/A
		Age for Insurance Termination		66	70
Date of Issue of Certificate 09/05/2002	Secondary Beneficiary (if you desire to name one) GEORGE M SISTRUNK				

BY SIGNING BELOW, YOU ACKNOWLEDGE THAT:

- THE INSURANCE COVERAGE IS SUBJECT TO THE INSURANCE MAXIMUMS, INCLUDING THE AGE FOR INSURANCE TERMINATION, SHOWN ABOVE; AND
 - YOU WANT THE COVERAGE(S) SELECTED, EVEN IF THE INSURANCE WILL TERMINATE DUE TO ONE OR MORE OF THESE MAXIMUMS BEFORE YOUR LOAN IS PAID OFF; AND
 - YOU HAVE RECEIVED THE CERTIFICATE OF OF INSURANCE FOR THE COVERAGE(S) SELECTED.
- PLEASE REFER TO YOUR CERTIFICATE FOR DETAILS OF YOUR COVERAGE.

X Dorothy Arley 9/5/02
SIGNATURE OF BORROWER 1 DATE

X
SIGNATURE OF BORROWER 2 DATE

7 MP-EF-1199(SC)

Exhibit B



Federal Credit Union
P.O. Box 190012
North Charleston, SC 29419-9012
(843) 797-8300 • (800) 845-0432

CREDIT INSURANCE

You can protect your financial future by signing up for voluntary credit insurance below. Enroll by simply indicating your preference in the "Credit Insurance Application" section below. Your credit union will be happy to explain the various insurance options and coverage. The cost is reasonable.



CUNA MUTUAL GROUP

CUNA Mutual Insurance Society

P.O. Box 391 • 5910 Mineral Point Road
Madison, WI 53701-0391
Phone: 800/937-2644

CREDIT INSURANCE ENROLLMENT FORM AND SCHEDULE

"You" or "Your" means a person who is borrowing from the credit union. A co-signer is not eligible for coverage.

Credit insurance is voluntary and not required in order to obtain this loan. You may select any insurer of your choice. You can get this insurance only if you are eligible for the coverage and check "yes" below to select coverage and sign your name and write in the date. The rate you are charged for the insurance is subject to change. You will receive written notice before any increase goes into effect. You have the right to stop this insurance by notifying your credit union in writing. Your signature below means you agree that:

If you elect insurance, you authorize the credit union to add the charges for insurance to your loan each month.

- You are eligible for disability insurance only if you are working for wages or profit 25 hours a week or more on the date of any advance. If you are not, that particular advance will not be insured until you return to work. If you are off work only because of temporary layoff, strike or vacation, but soon to resume, you will be considered at work.
- You are eligible for insurance if you are not older than the maximum age for insurance.
- You are insured only for advances actually received by you. You are not insured for any unused credit which may be available to you.

NOTE: THE INSURANCE CONTAINS CERTAIN BENEFIT MAXIMUMS, INCLUDING AN AGE MAXIMUM. THE INSURANCE ALSO CONTAINS CERTAIN BENEFIT EXCLUSIONS, INCLUDING A PRE-EXISTING CONDITION EXCLUSION.

YOU ELECT THE FOLLOWING INSURANCE

Credit Disability For Borrower #1 ☒ YES ☐ NO OR Borrower #2 ☐ YES ☐ NO BUT NOT BOTH
Credit Life For Borrower #1 ☒ YES ☐ NO Borrower #2 ☐ YES ☐ NO

COST PER \$100 OF YOUR MONTHLY LOAN BALANCE
Single Credit Disability SEE
Joint Credit Disability ADDENDUM
Single Credit Life FOR
Joint Credit Life RATES

WAITING PERIOD: If you are totally disabled for more than 14 days, then the disability benefit will begin with the 1st day of disability.

Borrower #1 Name HARLEY/DOROTHY A Borrower #2 Name

Borrower #1 Date of Birth 03/18/1959 Borrower #2 Date of Birth

Group Policy Number	Account Number	INSURANCE MAXIMUMS	DISABILITY	LIFE
039-0001-3	1119448-	Maximum Monthly Total Disability Benefit	\$ 750.00	N/A
		Maximum Insurable Balance Per Loan Account	\$ 50,000.00	\$ 50,000.00
Date of Issue of Certificate	Secondary Beneficiary (If you desire to name one)	Maximum Age for Insurance	65	69
9/05/2002	GEORGE M SISTRUNK	Maximum Number of Monthly Disability Payments	120	N/A
		Age for Insurance Termination	66	70

BY SIGNING BELOW, YOU ACKNOWLEDGE THAT:

- THE INSURANCE COVERAGE IS SUBJECT TO THE INSURANCE MAXIMUMS, INCLUDING THE AGE FOR INSURANCE TERMINATION, SHOWN ABOVE; AND
 - * YOU WANT THE COVERAGE(S) SELECTED, EVEN IF THE INSURANCE WILL TERMINATE DUE TO ONE OR MORE OF THESE MAXIMUMS BEFORE YOUR LOAN IS PAID OFF; AND
 - * YOU HAVE RECEIVED THE CERTIFICATE OF OF INSURANCE FOR THE COVERAGE(S) SELECTED.
- PLEASE REFER TO YOUR CERTIFICATE FOR DETAILS OF YOUR COVERAGE.

X

SIGNATURE OF BORROWER 1

DATE

X

SIGNATURE OF BORROWER 2

DATE

Exhibit C

Loanliner® Documents

Loanliner® is a system of documents created by CUNA Mutual to help Credit Unions with meeting members' lending and deposit needs. A variety of options and formats allow flexibility in operations to assist with loan originations, compliance and internal processes; and facilitate payment protection sales.

Types of Loans

The LOANLINER® closed end lending system was designed to handle all types of credit secured by personal property, including mobile homes. However, these documents are not designed for the types of loans listed below:

- Any type of real estate mortgage loan (1st or 2nd mortgage, whether fixed or variable rate) where the borrower's dwelling is the security for the loan.
- Government Insured Student Loans.
- Variable/adjustable rate mobile home loans.

CLOSED-END LENDING

"Closed-End credit" is defined in Regulation Z ("Reg Z") as:

Consumer credit other than "Open-end credit." Closed-end loans are those loans in which the credit union agrees to loan a certain amount to the borrower. The borrower agrees to repay that amount over a stated period of time at an agreed upon interest rate. The borrower cannot re-borrow any portion that has been paid back.

Some of the indicators of a Closed-end loan are:

- Fixed amount borrowed – with no anticipation of future amounts
- Set repayment schedule and maturity date (Term)
- No ability to reuse any portion of the loan document or "relationship" in the future. If the member wants to borrow again, in a closed-end environment, you must initiate an entirely new transaction; and you cannot reuse any portion of the existing transaction.

There are several requirements lenders are obligated to comply with when conducting closed-end transactions. These are:

- Must provide "Truth in Lending" (TIL) disclosures to members before consummation of the loan.
- A full credit application is required for each Closed-End loan transaction
- Signatures are required with each transaction
- The loan must be refinanced or re-disclosed if the member wants to modify the terms
- If the member wishes to borrow more, you cannot simply "add-on" to an existing balance. You must close that loan and start all over with a new transaction.

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 **CUNA MUTUAL GROUP**

Common Purpose. Uncommon Commitment.

Exhibit D

2012 JUN 14 PM 2:34

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

Exhibit E

THIS MULTITONE AREA OF THE DOCUMENT CHANGES COLOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM

OFFICIAL CHECK



ISSUING BRANCH BB&T ORANGEBURG MAIN-802659

73953827

DATE MARCH 10, 2008

5-708/110

PAY TO THE ORDER OF BOMBARDIER CAPITAL

** \$5,500.00 **

\$

BB&T \$5,500.00 DOLLARS

BB&T

ISSUED BY: TRAVELERS EXPRESS COMPANY, INC.
P.O. BOX 9478, MINNEAPOLIS, MN 55480
DRAWEE: BOSTON SAFE DEPOSIT & TRUST CO., BOSTON, MASSACHUSETTS

DRAWER: BB&T
AUTHORIZED SIGNATURE

Patsy R. Kelt

MEMO/PURCHASER DOROTHY HARLEY SISTRUNK

⑈ 73953827 ⑈ ⑆ 011007092 ⑆ 0160010451092 ⑈

THIS DOCUMENT HAS AN ARTIFICIAL WATERMARK PRINTED ON THE BACK. THE FRONT OF THE DOCUMENT HAS A MICRO-PRINT SIGNATURE LINE AND BORDER. ABSENCE OF THESE FEATURES WILL INDICATE A COPY.

ATTEST TRUE COPY

Winnifred Clark
Clerk of Court
Orangenburg, SC



AFFIDAVIT FOR REPOSSESSED MOTOR VEHICLE

(Entire Form to be Typed or Printed)

Under penalties of perjury, I PATSY GOODWIN certify that all facts set forth herein are true and correct and further certifies that the holders of other unsatisfied liens recorded against this vehicle on the records Division of Motor Vehicles, Department of Public Safety, Columbia, S.C., have been duly notified to protect their interest in the vehicle if any, and this is to certify that the undersigned has repossessed the motor vehicle described below because of the failure of the former owner to meet this obligation for settlement of a lien or mortgage on said vehicle.

LILLIE A COUNCIL

Name of Owner from Whom Vehicle Repossessed

1056 BAYVIEW ST HOLLY HILL SC 29059

Street	City	State	Zip Code
REDMAN	13844735		29494578 A

Make	Vehicle Identification Number (Serial)	Title Number
1999		MBH

Year Model	Current License Number	License Year	Body Style
------------	------------------------	--------------	------------

Method Of Repossession
XXX VoluntaryXXX Terms of Lien or Mortgage
Public Sale

(IF BY PUBLIC SALE ATTACH BILL OF SALE OF SHERIFF, OR AUTHORIZED SELLER)

Amount of Original Lien \$	25,450.00	Date of Lien	6-27-00
Lienholder's Name	BOMBARDIER CAPITAL INC.,		
Street, City, State, Zip Code	P.O. BOX 600763 JACKSONVILLE, FL 32260-0763		
Date of Repossession	6-6-02		
Signature of Lienholder	<u>Patsy Goodwin</u>	Title	TITLE CLERK

Furthermore, this is to certify that for the value received \$ 5,500.00 the above vehicle has been assignedto: YEP ENTERPRISES, DOROTHY HARLEY 5074 COLBURG LN ORANGEBURG, SC 29116

NAME	STREET	CITY	STATE	ZIP CODE
------	--------	------	-------	----------

for disposition or sale.

By: Patsy Goodwin
Date: 3-18-03

Sales Tax No.: _____

2012 JUN 14 PM 2:34
RECEIVED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC

NOTICE: This form must accompany the Certificate of Title, which must be properly assigned over to the new owner on the back of the title.

(See instructions on reverse side)

Exhibit F



South Carolina Department of Public Safety

BILL OF SALE

(Must Be Typed or Printed in Black Ink)

Check One:

- ☐ Purchase License Plate
☐ Transfer License Plate

I, YEP Enterprises c/o Dorothy A. Harley
POB 217 Orangeburg SC 29116
Street City State Zip Code

state that on the 10th day of March Yr. 2003 the following vehicle:

MAKE Redman MODEL Parker BODY TYPE MBH YEAR 1999

VEHICLE IDENTIFICATION NO. 13844735 LICENSE NO. _____

was sold to Lillie Ann Council

1056 Bayview ST. Holly Hill SC 29059
Street City State Zip Code

And the above described vehicle is free of all liens and encumbrances in the buyer's name except

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle \$ 9,500⁰⁰
Less trade-in \$ _____
Taxable Total \$ 9,500⁰⁰

FILED FOR RECORD
WINNIE A. CLARK
CLERK OF COURT
ORANGEBURG, SC
2003 JUN 14 PM 2:34

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the **ACTUAL MILEAGE** of the vehicle described herein, **UNLESS** one of the following statements is checked.

STOP! DO NOT check one of the following unless it applies.

1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

WARNING: Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Lillie Ann Council 3-10-03 Dorothy Harley 3-10-03
Signature(s) of Buyer(s) Date Signature(s) of Seller(s) Date

Lillie Ann Council YEP Enterprises c/o Dorothy A. Harley
Hand Print Name(s) of Buyer(s) Hand Print Name(s) of Seller(s)

Return to: South Carolina Department of Public Safety
Division of Motor Vehicles
P.O. Box 1498
Columbia, S.C. 29216-0024

Exhibit G

ANY ALTERATION OR ERASURE VOID THIS DOCUMENT.
ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT.

Bombardier Capital ACCT# 00005841513

MANUFACTURED HOME RETAIL INSTALLMENT CONTRACT SOUTH CAROLINA No. _____ Date <u>10-03</u>	Seller <u>YEP Enterprises</u> <u>C/o Dorothy A. Harley</u> <u>POB 217</u> <u>Orangeburg, SC 29116</u> "We" and "us" mean the Seller above, its successors and assigns.	Buyer <u>Lillie Ann Cancell</u> <u>1056 Bayview Street</u> <u>Holly Hill, SC 29059</u> "You" and "your" mean each Buyer above, and guarantor, separately and together.
---	---	--

SALE: You agree to purchase from us the manufactured home described below, together with any related services and furnishings, equipment, appliances, and accessories included at the time of its purchase (together referred to as "Manufactured Home"). Your purchase of the Manufactured Home is subject to the terms of this Contract. "Contract" means this document and any separate document that secures this Contract.

Manufacturer <u>Redman</u>	Model Name & Number <u>Parker</u>	Year <u>1999</u>	Serial Number <u>13844735</u>	Length <u>70'</u>	Width <u>14'</u>	Color <u>White</u>	☐ New ☒ Used
-------------------------------	--------------------------------------	---------------------	----------------------------------	----------------------	---------------------	-----------------------	--

Services, furnishings, equipment, appliances, and accessories include:

☐ Tires and Wheels ☐ Axles ☒ Refrigerator ☒ Oven/Range
☐ Washer ☐ Dryer ☒ A/C Unit(s)
☐ Awning(s) ☒ Skirting ☐ Accessory Shed
☐ Services
☒ Other Already Installed Prior to acquisition by YEP Enterprises
And included in acquisition from Bombardier Capital.

Location of Manufactured Home after delivery to Buyer:
 Description of Trade-In: 1056 Bayview ST, Holly Hill, SC 29059

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest or chattel mortgage security interest in the Manufactured Home and, unless prohibited by law, all parts, accessories, repairs, improvements, and accessions to the Manufactured Home and all proceeds, products, and benefits from it.

☐ This Contract is also secured by a separate mortgage or deed of trust dated _____, on real estate, as shown in the TRUTH IN LENDING DISCLOSURES.

The term "Property" means all property securing this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ 8,000.00 plus interest on the unpaid balance at the rate(s) of Eighteen Per Cent per year until this Contract is paid in full. Interest will begin to accrue on Apr. 1, 2003 and will accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms of this Contract.

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED.

☒ **ESCROW:** You ☒ may, but are not required to ☐ must pay certain expenses and fees into an escrow account. If an escrow account is established, it will be governed by a separate agreement.

HAZARD INSURANCE: No policy of hazard insurance issued or delivered to cover a mobile home risk situate in South Carolina may be written to provide for a policy period in excess of three years.

Every such policy, and the manual of rules and rates of every insurer issuing such policies in this State, shall provide that all premiums held by the insurer in respect to that part of the policy term subsequent to the anniversary date of the then current policy year are considered unearned and must be refunded in full if the policy is cancelled, without respect to whether cancellation is effected by the insured or insurer. In the event of cancellation during the first year of the policy term, refund of premium for that portion of the policy term must be on a pro rata basis if cancellation is effected by the insurer or on the short rate basis if cancellation is effected by the insured. In the event of cancellation during the second year of the policy term, refund of that portion of the unearned premium attributable to the second year must be on a pro rata basis if cancellation is effected by the insurer or on the short rate basis if cancellation is effected by the insured, subject, however, to the provision that the portion of the unearned premium attributable to the third year is considered entirely unearned and must be returned in full regardless of the party responsible for cancellation. In the event of cancellation during the third year of the policy term, refund of that portion of the unearned premium attributable to the third year must be on a pro rata basis if cancellation is effected by the insured.

Upon the cancellation of any such policy, without respect to the party effecting the cancellation, any unearned premium must be returned to the insured or to the mortgagee. If returned to the mortgagee the unearned premium must be applied to any payment then due or to the next payment or payments to become due. No agreement may be made requiring or permitting the mortgagee to apply the returned premiums to the final payment or payments on the indebtedness.

It is a violation of South Carolina law for the seller of a mobile home or any person lending on the security of a mobile home to require that hazard insurance be purchased from any particular insurer or agent. Violations or attempted violations of this provision shall be reported to the South Carolina Department of Insurance, Property and Casualty Division at the following location: 1612 Marion Street, P.O. Box 100105, Columbia, SC 29202-3105. Telephone: (803)737-6230.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. <u>18</u> %	FINANCE CHARGE The dollar amount the credit will cost you. <u>\$ 6,123.51</u>	AMOUNT FINANCED The amount of credit provided to you or on your behalf. <u>\$ 8,000.00</u>	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments. <u>\$ 14,123.51</u>	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment. of \$ <u>1,500.00</u> <u>\$ 15,623.51</u>
---	--	---	---	--

Payment Schedule: Your payment schedule will be

Number of Payments <u>60</u>	Amount of Payments <u>\$ 118.14</u>	When Payments Are Due <u>11/8/14</u>
---------------------------------	--	---

OFFICE OF TITLE/REGISTRATION

S.C. Department of Public Safety - DMV
P.O. Box 1498
Columbia, S.C. 29216

STAPLE HERE ONLY

Original Title _____
Duplicate Title _____

Purchase Tag _____
Transfer Tag _____

PLEASE READ INSTRUCTIONS

If you intend to operate this vehicle, you MUST purchase a license plate or transfer a license plate.

Please see instructions "A" or "C" below.

A. IF LICENSE TAG IS TO BE PURCHASED:

- (1) Complete Section 1, 2, 4, 5*, and 6 of this application and submit:
- (2) a. Manufacturer's Statement of Origin, or title** properly assigned to new owner, (if out-of-state title is held by lienholder, submit out-of-state registration).
- b. Certified Odometer Mileage Statement for each sale.
- c. Paid property tax receipt from county of residence for vehicle being registered. ****
- d. Fee - See Fee Schedule (Casual Excise or Use Tax is not included***).
- (3) If applying by mail, use zip code 29216-0019.

B. IF APPLYING FOR DUPLICATE TITLE:

- Original title was: (check one only)
- Lost _____ Stolen, or _____ Mutilated _____
- (1) Complete Sections 1, 6, and 7* of this application.
 - (2) If title has been mutilated, title must be submitted.
 - (3) Submit fee of \$5.00.
 - (4) If applying by mail, use zip code 29216-0024.

C. IF LICENSE TAG IS BEING TRANSFERRED (Same Owner's Name)

- (1) Complete Sections 1, 2, 4, 5* and 6.
- (2) Submit the following:
 - a. Title** or Manufacturer's Statement of Origin properly assigned to new owner.
 - b. Certified Odometer Mileage Statement from previous owner.
 - c. Previous registration in same registered owner's name.
 - d. Fee - See Fee Schedule
- (3) If applying by mail, use zip code 29216-0019.

D. IF APPLYING FOR ONLY A TITLE:

- (1) Complete Section 1, 3*, 4*, 5*, 6 and 7* of this application.
- (2) Previous title** properly assigned (lien properly satisfied).
- (3) Submit fee of \$5.00 (Casual Excise or Use Tax is not included***).
- (4) If applying by mail, use zip code 29216-0026.

NOTE: A copy of this application for a mobile home must be filed with the County Auditor's Office in which the mobile home is titled.

FEE SCHEDULE - DO NOT SEND CASH

Personal checks accepted in applicant's name only.
You may be eligible to pay an uninsured motorist's fee. Information on this program will be furnished upon request.
Passenger cars - \$24.00 fee (Persons 64 years of age \$22.00, 65 or older or disabled \$20.00, upon proof by driver's license number, department issued identification card number or social security number _____)
Date of Birth _____
If disabled, attach a statement from a medical doctor as to the permanency of the disability. Placard # _____
Motorcycles - \$10.00 fee
Utility or Camper Trailers - \$10.00 fee
Trailers with empty weight in excess of 2500 lbs. - \$20.00 fee
Trucks, Truck-Trailers and Road Tractors (All Property Carrying Vehicles)****
GROSS VEHICLE WEIGHT FEE

0001-4000	\$30.00
4001-5000	\$40.00
5001-6000	\$60.00
6001-7000	\$70.00
7001-8000	\$80.00
8001-9000	\$90.00

(Over 9000 GVW upon request)
Transfer - \$3.00 fee (Additional fees may be due when transferring a plate to a truck.)
Title - \$5.00
PENALTY FEES - (In addition to regular fees)
Failure to register within 45 days is as follows: 46 to 60 days - \$10.00
61 to 75 days - \$25.00
76 to 135 days - \$50.00
Over 135 days - \$75.00

DMV USE ONLY

CLASS _____ RATED BY _____

Expedite Title Fee _____
Expedite Reg. Fee _____
LIC. FEE _____
Uninsured Fee _____
Use or Excise Tax _____
Penalty _____
Wt. Increase _____
Transfer _____
Title _____
Gift of Life Fund _____
TOTAL FEES _____

*Additional information only if applicable.

**S.C. Title dated prior to June, 1989 must be signed over on back and be accompanied by a Bill of Sale.

***5% of selling price (\$300.00 maximum)

****Trucks over 26,000 GVW and buses 16 passengers or more for hire must show SSN or FEIN, but tax receipt is not required.

SECTION 1 FORM TO BE TYPED (MINIMUM FONT SIZE 14) OR PRINTED LEGIBLY IN BLACK INK

Make of Vehicle Redman	Year Make 1999	Title Number (DO NOT WRITE IN THIS BLOCK)		Vehicle Tag No.	Tag (Validation) No.
Model No.	New _____ Used ☒	Vehicle Identification Number 13844735		Exp. Date of Tag	Gross Wgt.
Body Style MOH	Veh. Wgt.	Odometer Mileage	Surrendered Title No.	Date Brought Into S.C./Date Established Residency	Date Acquired 01/2
Name of Owner(s) Lillie Ann Council				City Limits Yes _____ No _____	FEIN/Social Security No. _____ Driver License No. _____
Street Address (For Special Mailing, Use Lower Right Corner) 1056 Bayview Street				Vehicle Used (Check One) Privately _____ Commercially _____	Date First Operated PM 2:34
City Holly Hill	State SC	Zip Code 29059	County Orangeburg	From Whom Vehicle Purchased (Check One) Dealer _____ Individual ☒	S.C. Dealer's/Wholesaler's Number _____
Vehicle is subject to the following liens: 1st Lien YEP Enterprises c/o Dorothy A. Harley 3-10-03				Sales Price 9,500.00	Sales Tax Number _____
Address P.O. 217				Name of Seller YEP Enterprises c/o Dorothy A. Harley	Address P.O. 217
City Orangeburg	State SC	Zip Code 29116	Date:	City Orangeburg	State SC
Address Exhibit H (Page 1 of 2)				Special Mailing of New Owner	Zip Code 29116
City	State	Zip Code	City	State	Zip Code

SECTION 2 - INSURANCE CERTIFICATION

Under penalties of perjury, I declare that this vehicle is insured with the company named below, and I will maintain liability insurance throughout the registration period.

Name of Insurance Company _____

SECTION 3 - SALVAGE VEHICLE INFORMATION

The vehicle described on this application is: (Check One) ☐ Rebuildable ☐ Non-Rebuildable (These vehicles may not be re-titled)

Furthermore, the vehicle sustained the following damage: ☐ Collision ☐ Fire ☐ Water ☐ Stolen (Recovered) ☐ Stolen (Unrecovered)

Calculate the Salvage Percentage: Predamaged Value _____
Estimate for Repairs _____
Percentage _____

SECTION 4 - ODOMETER MILEAGE STATEMENT

I state that the odometer now reads _____ (no tenths) and to the best of my knowledge that it reflects the

ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked.

(STOP!) DO NOT check one of the following unless it applies.

- ☐ 1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
☐ 2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY

WARNING: Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

SECTION 5 - CASUAL SALESTAX EXEMPTION

Vehicles purchased from individuals and titled in South Carolina are subject to an excise tax unless exempt. The tax is 5% of the sales price up to a maximum of \$300.00. (Mobile homes are calculated differently)

_____, I, _____, am not entitled to a sales tax exemption.
Signature of Owner

Vehicle transferred from: (check one)

☐ mother ☐ father ☐ wife ☐ husband ☐ son ☐ daughter ☐ sister ☐ brother ☐ grandparent ☐ grandchild

_____, This vehicle is transferred to me as: (check one) ☐ legal heir ☐ beneficiary ☐ distributee

_____, I am a non-resident military person

_____, Bonafide gift

SECTION 6 - SIGNATURE OF OWNER

Under penalties of perjury, I declare that I am the owner of this vehicle and request that a South Carolina certificate of title and/or registration be issued. I further certify that the information on this application is correct to the best of my knowledge. The vehicle is subject to the liens listed and no others.

Little Ann Council

Signature of Owner(s) - must be signed in ink by each owner or authorized agent

SECTION 7 - SATISFACTION OF LIENS

SATISFACTION OF FIRST LIEN

This is to certify that the lien against the vehicle has been fully satisfied on

_____, Yr. _____

NAME OF LIENHOLDER

By _____

Title _____

SATISFACTION OF SECOND LIEN

This is to certify that the lien against the vehicle has been fully satisfied on

_____, Yr. _____

NAME OF LIENHOLDER

By **Exhibit H** (Page 2 of 2)

Title _____

SECTION 8 - GIFT OF LIFE TRUST FUND

Do you wish to donate an additional \$1.00 or more to the Gift of Life Trust Fund? ☐ Yes ☐ No

Amount _____

56-3-240 (South Carolina Code of Laws) - The Department shall obtain the federal employer identification number or social security number when a vehicle is registered with a gross vehicle weight of more than 26,000 pounds or as a bus common carrier. The Driver's Privacy Protection Act of 1994 (DPPA), 18 USC Section 2721-2725 restricts the disclosure of personal information contained in our records.



The Credit Union Must Reasonably Contemplate Repeated Transactions

COMMENTARY - Section 226.2(a)(20)-3

Repeated transactions. Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with consumers under the credit plan as a whole and need not believe a consumer will reuse a particular feature of the plan. The determination of whether a creditor can reasonably contemplate repeated transactions requires an objective analysis. Information that much of the creditor's customer base with accounts under the plan make repeated transactions over some period of time is relevant to the determination, particularly when the plan is opened primarily for the financing of infrequently purchased products or services. A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that particular consumers do not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with its customers. For example:

- A. It would be more reasonable for a thrift institution chartered for the benefit of its members to contemplate repeated transactions with a member than for a seller of aluminum siding to make the same assumption about its customers.
- B. It would be more reasonable for a financial institution to make advances from a line of credit for the purchase of an automobile than for an automobile dealer to sell a car under an open-end plan.

LOANLINER®

- It is the credit union's expectation that the plan will be reused, not the member's actual usage.
- Credit unions have a unique relationship with "MEMBERS" which almost assumes that repeated dealings can be expected.
- A "thrift institution chartered for the benefit of its members" is a credit union.
- The commentary specifically mentions the ability to do automobile lending under an open-end credit plan.



Note: No SCFCU Loan Counselor could reasonably expect me to purchase mobile homes for \$5,500.00 on an ongoing basis. When I told my loan counselor that I was borrowing the money to purchase a mobile home, she immediately told me my loan would be essentially the same as my car loan. My \$5,845.00 car loan was Closed-Ended and was paid out in less than 3 years. 09/05/2002 to 10/22/04 - the date the lien on the car was signed and released. {Defendant's Exhibits 12-14}

Exhibit J



CUNA MUTUAL GROUP

ATTEST: TRUE COPY
 [Signature]
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

Revised:

FILED FOR REC'D
 CLERK OF COURT
 ORANGEBURG COUNTY, SC
 JUN 14 PM

2012 JUN 14 PM

4. Who Signs What?

- Borrowers must be members of the credit union.
- Persons who receive the proceeds of the advances and are obligated to repay are borrowers.
- Borrowers sign the Credit Agreement or the signature form.
- Since the Addendum is incorporated into the Credit Agreement by reference, the signatures to the Credit Agreement indicate agreement to the terms of the Addendum also. There is no legal requirement to sign the Addendum but Addendums with signature lines are available.
- The Credit Agreement is only signed once.



A copy of the Credit Agreement and Addendum must be given to the borrower before the first transaction under the plan. If there are joint borrowers, only one of the borrowers needs to get a copy. Section 226.5(d).

- The Credit Insurance Application/Schedule should be signed by borrowers regardless of whether credit insurance is elected. Only borrowers are eligible for credit insurance coverage. That means guarantors cannot elect the credit insurance. The same rules apply to debt cancellation contracts.
- If collateral is taken as security for the advance, there must be agreement by the owners of collateral to the terms of the Security Agreement. The agreement can be obtained by:
 - ♦ signing the voucher
 - ♦ signing under the restrictive endorsement on the back of the proceeds check
 - ♦ if PLUS option is being used, signing the Permanent Security Agreement or Credit and Security Agreement.
- A guarantor signs a Guaranty Agreement, not the Credit Agreement. The guarantor can guarantee the entire plan, a subaccount or a particular advance. The guarantor should also receive a Notice to Co-Signer.

2012 JUN 14 PM 2:34
FILED FOR RECORD
JENNIFER D. CLARK
CLERK OF COURT
FRANCEBURG, SC

Note: No Addendum was given to me before I received by car loan; and I have not received an Addendum from SCFCU since 9/06/2002. No Addendum has been filed and during the Summary Judgment Hearing no Addendum can be introduced. {Authority – Rule 56(c), SCRCF}

7. **Are There Certain Loans that Shouldn't be Done on an Open-End Credit Plan?**

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

* Therefore the following types of subaccounts should not be part of the plan:

- ♦ mobile homes
- ♦ home equity
- ♦ real estate
- ♦ home purchase

- Home improvement subaccounts are okay as long as the property is not given as security.
- Credit cards are NOT part of the LOANLINER® agreement. They are not a subaccount. If the credit union offers credit cards, they need to provide a separate credit card agreement and disclosures. The LOANLINER® Credit Agreement cannot be used for credit cards.

Occasionally, you will see credit card tabular disclosures on Addendums. Since the tabular disclosures must be given at the time of application, the Addendum must be given with the application.

- Guaranteed government student loans should not be done on a LOANLINER® Plan.
- The LOANLINER® forms were not designed to be used for agricultural, business or commercial loans. These types of loans are not subject to the Truth in Lending Act. If the credit union wants to use the forms for one of these purposes, it should (1) realize that it is giving more disclosures than it needs to and (2) consult with its own legal counsel about whether these forms are legally adequate for doing this type of loan.
- The LOANLINER® forms were not designed to be used with living trusts. The credit union should consult with its local counsel on the advisability of using the forms with a living trust.
- Individual Retirement Account (IRA) secured advances should not be done as the borrower may lose the tax-exempt status if the IRA is given as security.

* **Note:** As I have stated in my pleadings that are incorporated by reference as though set forth herein Verbatim, My loan advance was a Closed-Ended loan without Credit Life or Disability Insurance. My loan is not in SCFCU's account record. No record of my loan advance has been filed; and none can be introduced during the Summary Judgment Hearing. *{Supporting Evidence – SCFCU's (the Plaintiff's) Filed Documents} {Authority Rule 56(c), SCRCF}*

 CUNA MUTUAL GROUP

Exhibit L

8. How Should the Addendum Be Used?

- The Addendum is part of the Credit Agreement. It is "incorporated by reference" to make it an integrated document.
- Since the Credit Agreement and Addendum are considered to be one document, the signature on the Credit Agreement is the only signature necessary.
- The Credit Agreement includes the language that is applicable to all credit unions. The Addendum includes the plan terms unique to each credit union's plan.
- * The Addendum is given out at the time the plan is opened, along with a copy of the Credit Agreement. That is the only time it needs to be given to the member.
- * At the time the plan is opened, the member must receive an Addendum which discloses the current rates.
- The following terms should not be used:
 - Unsecured - The plan is always secured by the borrower's shares and deposits so it is never considered "unsecured."
 - Refinancing - Loan advances on an open-end plan are not "refinanced." Advances just continue to accrue interest at the applicable rate until repaid.
 - * Term - This connotes a closed-end loan. The credit union may use "approximate term" to differentiate APR's.
- A copy of the Addendum may, but does not have to be kept in each loan file. The credit union may maintain a master file of Addendums, in which a record is kept of which Addendum was used with plans opened during certain time periods, e.g., June 15 - August 31, 2002.
- * Whenever a rate or fee changes, the Addendum must be updated.
- If the credit union wants to be able to impose collection costs, it must be included in the contract. Normally, collection costs are included on the Addendum.

* **Note:** This page is self-explanatory. As I have stated in my pleadings that are incorporated by reference as though fully set forth herein, SCFCU's (the Plaintiff's) violations of TILA and South Carolina's Unfair Trade Practices Act are egregious. I didn't know anything about an Addendum that I was supposed to receive until this suit. If Amy Rogers, Amy L. Hewitt or anyone else from SCFCU states in Court or swears on writing or before an Administer of Oaths that I received an Addendum before I received my car loan or that an Addendum was mentioned to me or explained to me; they are lying. No Addendum has been filed or can be filed during the Summary Judgment Hearing. {Supporting Evidence - SCFCU's (the Plaintiff's) Filed Documents} {Authority Rule 56(c), SCRCP}



CUNA MUTUAL GROUP

Exhibit M



Pooser's

and
SERVICENTER
AUTO SALES

INSURANCE CO.
AGENT
POLICY NO.
EFFECTIVE DATES

1225 BOULEVARD N.E. ORANGEBURG, S.C. (803) 531-6696
29115 FAX (803) 531-9521

BUYER'S ORDER

SOLD TO: Dorothy Ann HARLEY PHONE: _____ DATE: 8-29-02

ADDRESS: 223 MARTHA HEIGHTS LA. CITY: NORTH ZIP: 29112

(WORK) # _____ DRIVER'S LIC. # 008190796

SOCIAL SECURITY # _____ EMPLOYED BY: _____

INCOME: _____

MAKE: MERCEDES MODEL: SDL BODYTYPE: 4 Dr YEAR: 1987

VIN: WDBCB2504HA313233 COLOR: TAN
MILEAGE: 203K

☐ Vinyl Roof ☒ AM/FM Stereo ☐ Tape ☐ CD ☒ Power Windows ☒ Power Locks ☒ Power Seat
Engine ☒ 4 ☐ 6 ☐ 8 Transmission ☒ Automatic ☐ 5 Speed ☐ 4 Speed ☐ 3 Speed Air condition ☒ Front ☐ Rear
☒ Cruise Control ☐ Tilt Wheel ☐ Sun Roof ☐ Wire Wheels ☐ Custom Wheels ☒ Antilock Brakes ☐ Other

WARRANTY: _____ YES _____ NO

SOLD AS IS: _____ YES _____ NO

WARRANTY TERMS: Extended

WARRANTY AVAILABLE

TRADE-IN INFO.

MAKE: _____ MODEL: _____

YEAR: _____ MILEAGE: _____

ID NO. _____

LIST PRICE: _____ \$

TRADE-IN
ALLOWANCE/DISCOUNT: _____ \$

WARRANTY: PLAN \$

SELLING PRICE: \$ 6500.00

SALES TAX: \$ 300.00

License & Title : \$ 45.00

TOTAL AMOUNT: \$ 6,845.00

DOWN PAYMENT: \$ 1,000.00

Amount to be Financed \$ 5,845.00

FILED FOR RECORD
JAN 11 2012
CLERK OF COURT
ORANGEBURG, SC

SELLERS SIGNATURE: HMM Rowell
DATE: 8-29-02

BUYERS SIGNATURE: Dorothy Ann Harley
DATE: 8/29/02

By signing this form in the above space, the buyer agrees and authorizes the seller to forward all of the above information to any institution for the purpose of securing a credit check (DI report) and securing loan to purchase the above vehicle.

Exhibit N

**SOUTH CAROLINA
FEDERAL**
CREDIT UNION

12/08/2010

DOROTHY H SISTRUNK
423 BAYNE STREET
ORANGEBURG, SC 29115

Account: 1119448 10

Balance: \$ 4,614.35
Due Date: 10/31/2010
Amount Due: \$ 184.00

Dear DOROTHY H SISTRUNK:

Your account with South Carolina Federal Credit Union is now past due in the amount of \$184.00. This account became delinquent as of 11/01/2010.

If you cannot remit the amount past due by return mail, please call our office so that satisfactory payment arrangements can be made.

Your concern and cooperation in this matter would be appreciated.

Sincerely,

Renee Priadka
Credit Counselor
1-800-845-0349
843-569-5045

Exhibit 1

LIFESIMPLE

Re: YOUR SCFCU ACCOUNT

Monday, January 3, 2011 8:25 AM

From:

"Dorothy Harley-Sistrunk" <dah29115@yahoo.com>

To:

"Sabrina Gaskins" <sgaskins@scfederal.org>

Hello Ms. Gaskins,

I'm sorry your company feel that way, but I do not have 92.00 to send you. If I did you would have been getting your payment on time as always. I can send 20.00 per month in good faith until my financial situation change. Since the least you will accept is 92.00, then there is no need for me to send you anything. Feel free to email me back with your decision.

Thank-You

Ms. Sistrunk

--- On Fri, 12/31/10, Sabrina Gaskins <sgaskins@scfederal.org> wrote:

From: Sabrina Gaskins <sgaskins@scfederal.org>

Subject: YOUR SCFCU ACCOUNT

To: "DAH29115@YAHOO.COM" <DAH29115@YAHOO.COM>

Date: Friday, December 31, 2010, 4:13 PM

Ms. Sistrunk,

3085MsoNormal">

It is very important that you contact Loss Prevention at South Carolina Federal Credit Union immediately. You stated earlier this week that you would be able to pay something on your account today. To be able to continue working with you on this account we can accept nothing less than one payment of \$92.00 to clear your October payment. Please feel free to respond to email or contact us by phone at the numbers listed below. Thank you.

Exhibit 2



SOUTH CAROLINA
Federal Credit Union
P.O. Box 190012
North Charleston, SC 29419-9012
(843) 797-8300 • (800) 845-0432

LOANLINER

**Open-End Disbursement
Receipt Plus**

BORROWER INFORMATION

BORROWER 1 NAME HARLEY/DOROTHY A	ACCOUNT NUMBER 9448-10	DATE 02/28/2003
BORROWER 2 NAME		

SECURITY OFFERED CONSUMERS CLAIMS AND DEFENSES IF CHECKED, SEE NOTICE BELOW

THE ADVANCE IS SECURED BY YOUR SHARES, ALL PROPERTY SECURING OTHER PLAN ADVANCES AND LOANS RECEIVED IN THE PAST OR IN THE FUTURE, AND THE FOLLOWING PROPERTY:

PROPERTY/MODEL	YEAR	I.D. NUMBER	VALUE	KEY NUMBER
			\$	
			\$	
			\$	
			\$	

PLEDGE OF SHARES AND/OR DEPOSITS \$	ACCOUNT NUMBER	PLEDGE OF SHARES AND/OR DEPOSITS \$	ACCOUNT NUMBER
--	-------------------	--	-------------------

REPAYMENT TERMS

DAILY PERIODIC RATE 0.041095%	ANNUAL PERCENTAGE RATE 15.0000 %	INTEREST RATE IS: FIXED	OTHER FEES (Amount and Description) \$	NEW BALANCE THIS SUBACCOUNT \$ 5,500.00
AMOUNT ADVANCED \$ 5,500.00	PAYMENT AMOUNT \$ 110.00	DATE DUE 04/16/2003	PAYMENT FREQUENCY Monthly	LINE OF CREDIT LIMIT \$ 5,500.00
				REMAINING LIMIT \$ 0.00

By endorsing the proceeds check for the advance described above, or by having the loan proceeds deposited into your share/share draft account or paid to a third party, you agree: (1) that the property described in the Security Offered section above ("Property") is security under the terms of the LOANLINER Credit and Security Agreement (the "Plan") for all amounts you owe under the Plan and that the property description is incorporated into and a part of the Plan; (2) that the Property is also security for any other loans, including but not limited to, any credit card loan that you have with the credit union now or in the future; and (3) to make payments as disclosed above and in accordance with the terms of the Plan.

CONSUMERS CLAIMS AND DEFENSES NOTICE

The following paragraph applies to the Advance only if the box is checked.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

FOR CREDIT UNION USE ONLY

REQUESTED:	MEMBER PAYS PREMIUM FOR:	CHECK NUMBER: 617806	BRANCH NUMBER: 23
DATE 02/28/2003	LOAN OFFICER COMMENTS:	PLANSUBACCOUNT NO.: 10	PROCESSED BY: AIR
			LOAN OFFICER INITIALS AIR

Exhibit 5

Date: June 14, 2011

Branch Banking and Trust

Page 1 of 1

Reference: 10000259567860:10000259568860:10000259252866

DOROTHY HARLEY-SISTRUNK
 5074 COBURG LANE
 ORANGEBURG, SC 29115-9000

1764
 87-160/532
 24501

9/16/08

PAY S. C. Federal Credit Union \$ 110.00
One hundred ten Dollars

BB&T
 BRANCH BANKING AND TRUST COMPANY
 1-800-BANK-BST BST.com

Loan Dorothy Harley-Sistrunk

⑆053201607⑆0005122729003⑆01764 ⑆0000011000⑆

FEDERAL CREDIT UNION

SEP 16 08 11

1119448-10

RECEIVED TELL #261
CREDIT UNION
SEP 16 08 11

7500733540

PKT003
09/17/2008

0163446 09/16/2008

Date	20080917
Amount	11000
Serial Number	0000001764

Account Number	0000005122729003
CR-DR	D
Transaction Link	014475760073364317

Exhibit 7

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SOUTH CAROLINA FEDERAL CREDIT
UNION,

Plaintiff,

vs.

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

Defendant.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS

)

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

)

)

)

)

)

)

)

)

)

)

)

)

CORPORATE VERIFICATION OF
ACCOUNT

FILED FOR RECORD
WINNIEA D. CLARK
CLERK OF COURT
ORANGEBURG, SC

2011 NOV 23 AM 9:43

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

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

SOUTH CAROLINA FEDERAL CREDIT UNION

By:

Amy Rogers

Its: Credit Counselor

SWORN to before me this

26 day of October, 2011.

Notary Public for South Carolina

My Commission Expires: 1-29-2013

(LS)

ATTEST: TRUE COPY

Winnie B. Clark
CLERK OF COURT

Exhibit 8

**SOUTH CAROLINA**

Federal Credit Union

P.O. Box 190012

North Charleston, SC 29419-9012

(843) 797-8300 • (800) 845-0432

LOANLINER**Open-End Disbursement
Receipt Plus****BORROWER INFORMATION**

BORROWER 1 NAME

HARLEY/DOROTHY A

BORROWER 2 NAME

ACCOUNT NUMBER

111794428-110

DATE

02/28/2003

SECURITY OFFERED**CONSUMERS' CLAIMS AND DEFENSES - IF CHECKED, SEE NOTICE BELOW**

THE ADVANCE IS SECURED BY YOUR SHARES, ALL PROPERTY SECURING OTHER PLAN ADVANCES AND LOANS RECEIVED IN THE PAST OR IN THE FUTURE, AND THE FOLLOWING PROPERTY:

PROPERTY/MODEL	YEAR	I.D. NUMBER	VALUE	KEY NUMBER
			\$	
			\$	
			\$	
			\$	

PLEDGE OF SHARES
AND/OR DEPOSITS \$ACCOUNT
NUMBERPLEDGE OF SHARES
AND/OR DEPOSITS \$ACCOUNT
NUMBER**REPAYMENT TERMS**

DAILY PERIODIC RATE	ANNUAL PERCENTAGE RATE	INTEREST RATE IS:	OTHER FEES (Amount and Description)	NEW BALANCE THIS SUBACCOUNT
0.0410952	15.0000 %	FIXED	\$	\$ 5,500.00
AMOUNT ADVANCED	PAIDMENT AMOUNT	DATE DUE	PAIDMENT FREQUENCY	LINE OF CREDIT LIMIT
\$ 5,500.00	\$ 110.00	04/14/2003	Monthly	\$ 5,500.00
				\$ 0.00

* Please see attached for payment instructions. Thank you!

By endorsing the proceeds check for the advance described above, or by having the loan proceeds deposited into your share/share draft account or paid to a third party, you agree: (1) that the property described in the Security Offered section above ("Property") is security under the terms of the LOANLINER Credit and Security Agreement (the "Plan") for all amounts you owe under the Plan and that the property description is incorporated into and a part of the Plan; (2) that the Property is also security for any other loans, including but not limited to, any credit card loan that you have with the credit union now or in the future; and (3) to make payments as disclosed above and in accordance with the terms of the Plan.

CONSUMERS' CLAIMS AND DEFENSES NOTICE

The following paragraph applies to the Advance only if the box is checked.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

pt 186-4/11/03-110.00
pt 806-5/5/03-110.00

Please use the following guideline every time you make your payment. This method ensures your payment is processed accurately and efficiently.

- On the FOR line of the check or on the bottom left side of a money order, include **account number, suffix number and surname** (first 2 letters of your last name). Refer to the exhibit below for an example.

You will not receive a coupon book.

Jane Smith		5626
214 Monarch Drive		
Goose Creek SC 29445		Date <u>December 1, 2001</u>
Pay to		
The order of	<u>SCFCU</u>	\$264.36
<u>Two hundred and sixty four dollars and 36/100</u>		
 SOUTH CAROLINA Federal Credit Union North Charleston, SC 29419-9012		
For <u>1001236-24-5A</u>		<u>Jane Smith</u>
253278401 :	1001236715	5626

Exhibit 10

No. 617806

LOAD check Disbursement Voucher

02/28/93 09:37AM 2585 87 445 AIR BR:22

RECEIVED BY

DETACH THIS PORTION BEFORE DEPOSITING

INBOX Message

☐ REPLY ☐ REPLY ALL ☐ FORWARD ☐ DELETE ☐ PRINT

<< Previous Next >>

From: LC Coordinator Coordinator

[Add to Address Book](#)

Date: Mon, 24 Feb 2003 12:40:36 -0500

To: dah29115@earthlink.net

Subject: SC Federal Credit Union Internet Request

Dorothy A Harley,

Your recent application has been received and processed. You have been approved for a Personal Access Line for \$5,500 at 15%. Please contact me at 569-4314 for closing information.

Thank you,
Angel Rabon
Loan Center Coordinator
SC Federal Credit Union

843-569-4314

APPROVED FOR CLOSING
Wingie B. White
2-20-03

☐ REPLY ☐ REPLY ALL ☐ FORWARD ☐ DELETE ☐ PRINT

<< Previous Next >>

Exhibit 11

http://webmail.esc.earthlink.net/home/home?email=dah29115&mail_id=00000016

2/24/2003



Federal Credit Union
P.O. Box 190012
North Charleston, SC 29419-9012
(843) 797-8300 • (800) 845-0432

CONFIDENTIAL

Open-End Disbursement Receipt *Plus*

BORROWER INFORMATION			
BORROWER 1 NAME		ACCOUNT NUMBER	DATE
HARLEY/DOROTHY A	Car	1119448-21-HA	09/05/2002
BORROWER 2 NAME			

SECURITY OFFERED		CONSUMERS' CLAIMS AND DEFENSES - IF CHECKED, SEE NOTICE BELOW		
THE ADVANCE IS SECURED BY YOUR SHARES, ALL PROPERTY SECURING OTHER PLAN ADVANCES AND LOANS RECEIVED IN THE PAST OR IN THE FUTURE, AND THE FOLLOWING PROPERTY:				
PROPERTY/MODEL	YEAR	I.D. NUMBER	VALUE	KEY NUMBER
MERCEDES 300SDL	1987	WDBC2504HA313233	\$ 8275	
			\$	
			\$	
			\$	
			\$	
PLEDGE OF SHARES AND/OR DEPOSITS \$	ACCOUNT NUMBER	PLEDGE OF SHARES AND/OR DEPOSITS \$	ACCOUNT NUMBER	

REPAYMENT TERMS					
DAILY PERIODIC RATE	ANNUAL PERCENTAGE RATE	INTEREST RATE IS:	OTHER FEES (Amount and Description)	NEW BALANCE THIS SUBACCOUNT	
0.030821%	11.2500 %	FIXED	\$	\$ 5,845.00	
AMOUNT ADVANCED	PAYMENT AMOUNT	DATE DUE	PAYMENT FREQUENCY	LINE OF CREDIT LIMIT	REMAINING LIMIT
\$ 5,845.00	\$ 287.12	10/18/2002	Monthly	\$ 0.00	\$ 0.00

By endorsing the proceeds check for the advance described above, or by having the loan proceeds deposited into your share/share draft account or paid to a third party, you agree: (1) that the property described in the Security Offered section above ("Property") is security under the terms of the LOANLINER Credit and Security Agreement (the "Plan") for all amounts you owe under the Plan and that the property description is incorporated into and a part of the Plan; (2) that the Property is also security for any other loans, including but not limited to, any credit card loan that you have with the credit union now or in the future; and (3) to make payments as disclosed above and in accordance with the terms of the Plan.

CONSUMERS' CLAIMS AND DEFENSES NOTICE
The following paragraph applies to the Advance only if the box is checked.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Exhibit 12



Federal Credit Union

P.O. Box 190012 • N. Charleston, SC 29419-9012
(843) 797-8300 • 1-800-845-0432

No. 660074

MULTIPLE LOAN DISBURSEMENT 09/05/02 10:37AM 24538 23 721 CLF BR:23

19949-211 HODOLY, DOROTHY A EFF DATE 09/05/02 CHECK 1 OF 1
-5,845.00 FROM LOAN NO 09/05/02 INT 00
CURR BAL: 5,845.00 ONE YEAR 12/15/02 PAID THRU 05/25/02
11,2500 SCHEDULED PMT 227.12 STORED INT ADDED 00
5,845.00 FEES ASSESSED 20 SUBPENSE PNT 00
INTEREST CREDIT METHOD DEFERRED INT ADDED 00
AMOUNT CHECK 3 AMOUNT CHECK 4 AMOUNT CHECK 4
5,845.00 660074

Share your way! Enjoy Free Checking with us. Included!
Unlimited balance - no monthly service fees - unlimited check
ing - Free MasterCard ATM/check card. Just \$25 to open

X Dorothy Hody

RECEIVED BY

DETACH THIS PORTION BEFORE DEPOSITING

Exhibit 13



SOUTH CAROLINA Federal Credit Union

P.O. Box 190012, North Charleston, SC 29419-9012
843-797-8300 • 800-845-0432 • www.scfederal.org

ACCOUNT #
1119448

FROM
09/01/04

THROUGH
09/30/04

PAGE
1 of 2



DOROTHY A HARLEY
223 MARTHA HEIGHTS LANE
NORTH SC 29112

11266

Need a rate break?

Transfer your loan from
another bank and get a
new rate that's 1%
lower than your
current rate.



Call us for details or visit www.scfederal.org

STATEMENT OF ACCOUNT

SAVINGS ACCOUNT

SUFFIX NO. 00

Beginning Balance:

15.00

DATE	DESCRIPTION	AMOUNT	BALANCE
09/21	Deposit	1.03	16.03

Credit union bylaws require that members maintain a minimum \$5.00 share account balance.

Y-T-D Dividends: 0.00

PERSONAL ACCESS LINE

SUFFIX NO. 10

Beginning Balance:

5,214.30

Annual Percentage Rate

15.0000%

Daily Periodic Rate

.0410959%

DATE	DESCRIPTION	AMOUNT	FINANCE CHARGE	PRINCIPAL	BALANCE
09/01	SINGLE LIFE	-4.59		-4.59	5,218.89
09/01	DISABILITY	-15.64		-15.64	5,234.53
09/21	Loan Payment	105.00	75.16	29.84	5,204.69

New Loan Balance

5,204.69

Due Date: 10/16/04

Loan Limit:

5,500.00

Current Payment: 105.00

Available Funds:

295.31

Past Due: 0.00

Payments & Credits:

29.84

Total Due: 105.00

Debits:

20.23

YTD Finance Charge Paid: 609.28

Finance Charge:

75.16

1987 MERCEDES

SUFFIX NO. 21

Beginning Balance:

269.32

Annual Percentage Rate

11.2500%

Daily Periodic Rate

.0308219%

DATE	DESCRIPTION	AMOUNT	FINANCE CHARGE	PRINCIPAL	BALANCE
09/01	SINGLE LIFE	-0.24		-0.24	269.56
09/01	DISABILITY	-0.81		-0.81	270.37
09/21	Loan Payment	273.29	2.92	270.37	0.00

ACCOUNT #
1119448

FROM
09/01/04

THROUGH
09/30/04

PAGE
2 of 2

New Loan Balance

Due Date: 00/00/00
Current Payment: 0.00
Past Due: 0.00
Total Due: 0.00
YTD Finance Charge Paid: 117.17

Loan Limit:
Available Funds:
Payments & Credits:
Debits:
Finance Charge:

27

For 2004 Reporting:

IRA Y-T-D

Other Y-T-D

Total Y-T-D

Total Y-T-D

Total Y-T-D

Dividends

Dividends

Dividends

Withholding

Forfeitures

0.00

0.00

0.00

0.00

0.00

Total **Finance Charge** paid

726.45

As part of our external audit procedures, the Supervisory Committee would like for you to verify your account information. If the information is correct, please disregard this audit request. However, if there are discrepancies, please write to our Supervisory Committee. Please reference your letter with your name, account number, address, and a description of the discrepancy, and mail this information to: Supervisory Committee, South Carolina Federal Credit Union, P.O. Box 60935, North Charleston, SC 29419-0935. Thank you for your assistance and cooperation.

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at 1-800-845-0432 or in Charleston at 797-8300 or write us at South Carolina Federal Credit Union PO Box 190012 N. Charleston, SC 29419-9012 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- 1 Tell us your name and account number (if any).
- 2 Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- 3 Tell us the dollar amount of the suspected error.

Your Rights and Our Responsibilities After We Received Written Notice

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

In Case of Errors or Inquiries about Your Statement-Bill

If you think your statement-bill is wrong, or if you need more information about a transaction on your statement-bill, write us (on a separate sheet) at South Carolina Federal Credit Union PO Box 190012 N. Charleston, SC 29419-9012 as soon as possible. We must hear from you no later than 60 days after we sent you the first statement-bill on which the error or problem appeared. You can telephone us at 1-800-845-0432 or in Charleston at 797-8300, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your statement-bill that are not in question. While we investigate your questions, we cannot report you as delinquent or take action to collect the amount you question.

The FINANCE CHARGE for an open-end loan is computed by applying the periodic rate to each unpaid balance for the exact number of days each balance was outstanding. The balance used to compute the FINANCE CHARGE is that balance after credits are subtracted and new advances or other charges are added.

Outstanding Items

ITEM NO. AMOUNT

Balance Shown on this Statement \$

Add

Deposits not Credited in this Statement (if any) \$

Total \$

Subtract

Items Outstanding \$

Balance \$

Your register should show this balance.

Special Rule for Credit Card Purchases
If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than \$50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

TOTAL:

1114448-21

Sistrunk, Don

STATE OF SOUTH CAROLINA
CERTIFICATE OF TITLE
OF A VEHICLE

VEHICLE ID NUMBER
ND8CB25D4HA313233

YEAR MAKE
1987 MERZ

MODEL
SDL

NEW/USED
USED

BODY STYLE
43

DATE ISSUED
09-23-2002

ODOMETER
203,693

WEIGHT
38000

TITLE NUMBER
7703001017674779

VEHICLE BRAND(S)
ACTUAL MILEAGE

Use Evidence

For Use In This Litigation Only

C/A Case #2011-CP-38-1392

FULL NAME OF OWNER(S)
SISTRUNK, DOROTHY HARLEY
223 MARTHA HEIGHTS LN
NORTH SC 291128975

CUSTOMER NUMBER: 025569207

FIRST LIENHOLDER
SC FEDERAL CREDIT UNION
PO BOX 190012
N CHARLESTON SC 294199012
DATE OF LIEN: 09/05/2002

Evidence

1ST LIEN RELEASED

BY

(DATE)

(AUTHORIZED AGENT)

For Use In This Litigation Only

C/A Case #2011-CP-38-1392

THE SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

B. BOYKIN ROSE, DIRECTOR
DEPT. OF PUBLIC SAFETY

JIM HODGES, GOVERNOR

032930342

Exhibit 15

Security Agreement

LOANLINER® Credit and Security Agreement, which includes the Truth in Lending Act, will be referred to as the Plan. The Plan documents include this agreement and an Addendum. You, your and borrower mean any person who signs the Plan. Credit union, we, our and us mean South Carolina Federal Credit Union or anyone to whom the Credit Union transfers its rights under the Plan.

THIS PLAN WORKS — This is an open-end, multi-featured credit plan. We anticipate that, from time to time, you will borrow money (called "advances") under the Plan. We are not obligated to make advances to you under the Plan and can refuse a request for an advance at any time. The Addendum describes the different types of credit (called "subaccounts") available under the Plan, the current interest rate for each subaccount expressed as a daily periodic rate corresponding annual percentage rate and other charges. It may also have other terms and conditions for determining the payment amounts.

IT LIMIT — We may, but do not have to, establish a credit limit on certain subaccounts. If a credit limit is set for a subaccount, you promise not to exceed the established credit limit. If you exceed the credit limit, you promise to repay immediately the amount which exceeds the credit limit.

PAYMENT — You promise to repay all amounts you owe under the Plan plus interest. Payments are due on the last day of the month unless we set a different day at the time of an advance. If the Addendum has no payment schedule for a subaccount, your payment will be determined at the time of each advance. Payments must include any amount past due and any amount by which you have exceeded any credit limit you have been given for a subaccount. You may repay all or part of what you owe at any time without any prepayment penalty. Even if you do so, you will still be required to make the regularly scheduled payments unless we agree in writing to a change in the payment schedule. I understand and agree that a joint owner of any credit line that can be used to access my line of credit directly or indirectly with this access device, shall accept full responsibility and agree to pay for all transactions and credit advances made with any access device issued pursuant to this request by any such joint account owner or other authorized person. Unless otherwise required by law, payments will be applied to amounts owed under the Plan, in the manner the Credit Union chooses.

NO ACCESS — You can obtain credit advances in any manner authorized by us. If we allow you to use your ATM/Debit card to access the Plan, you may be liable for the unauthorized use of your ATM/Debit card. You will not be liable for unauthorized use that occurs after you notify us, orally or in writing, of the loss, theft, or possible unauthorized use. If you believe your ATM/Debit card has been lost or stolen, immediately inform the Credit Union by calling or writing us at the phone number or address that appears elsewhere in the Plan. If the card is used to obtain unauthorized advances directly from the Plan, your liability will not exceed \$50. If the unauthorized withdrawal is from a shared draft account, your liability is governed by the Regulation E disclosures you received at the time you received your ATM/Debit card, even if the withdrawal is in an advance being made from your overdraft subaccount.

FINANCE CHARGE — The dollar amount you pay for money borrowed is called a "finance charge" and begins on the date of each advance. A finance charge will be computed separately for each advance balance under the Plan. To compute the finance charge, the unpaid balance for each day after your last payment (or since an advance if you have not yet made a payment) is multiplied by the applicable daily periodic rate. The sum of these amounts is the finance charge owed. The balance used to compute the finance charge is the unpaid balance each day after payments and credits to the balance have been subtracted and any additions to the balance have been made. In addition to the finance charge, we may charge other finance charges which are disclosed on the Addendum. If the interest rate is a variable interest rate, the Addendum explains how the variable interest rate works.

100 (MDD)

(continued)

The following exclusion(s) apply to Credit Life Insurance Coverage.

Suicide. We won't pay a claim for any advance on your loan if you commit suicide within 12 months after the effective date of insurance on the advance. We will, however, refund the life insurance premium on that advance.

The following exclusion(s) apply to Credit Disability Insurance Coverage.

Pre-Existing Conditions. We won't pay a claim for any advance on your loan or return your disability insurance premium if your total disability:

- begins within six (6) months after the effective date of insurance on the advance; and
- results from or is related to any disease or bodily injury for which you received medical consultation, diagnosis, or treatment at any time within the six (6) month period immediately preceding the effective date of insurance on the advance.

Other Credit Disability Insurance exclusions: We won't pay a claim for any advance on your loan or return your disability insurance premium if your total disability:

- is a result of normal pregnancy; or
- is a result of an intentionally self-inflicted injury.

WHEN INSURANCE STOPS

This insurance stops on the earliest of the following dates:

- the last day of the month in which we receive your written request to stop the insurance, or if earlier,
- the last day of the month in which you withdraw your authorization for the addition of charges for the insurance on your loan; or
- the date your loan stops; or
- the last day of the month in which you reach the age for insurance termination; or
- the date the balance of your loan has been paid by a lump sum disability benefit under a credit life insurance policy;
- the last day of the month in which you are three (3) months delinquent in any payment on your loan; or
- the date the group policy stops; or
- the date your loan is transferred to a creditor other than the credit union; or
- the date of your death

WHAT THE CONTRACT IS AND HOW YOUR STATEMENTS AFFECT IT

The group policy, the application for the group policy, this certificate, including any endorsements, riders, amendments, and the attached member's enrollment form and schedule are the complete contract of insurance. The credit union cannot change this contract, waive any of its terms or make promises that will be binding on us.

All statements made by you are considered to have been made to the best of your knowledge and belief. No statement made by you with respect to your insurability can be used to void this insurance or deny a claim unless it is signed by you and is causally related to the contingency or event for which a claim arises.

After two (2) years from the effective date of insurance for an advance, no statement made by you with respect to your insurability can be used to void this insurance or deny a claim.

If you stated in your enrollment form that you are older than the maximum age for insurance, or if insurance is issued on the maximum amount, we will return the premium for the insurance issued in error if no otherwise payable claim has been submitted to us. Return of the premium will not prejudice an otherwise payable claim that arises in or prior to the month the premium is returned.

HOW TO FILE A LIFE CLAIM

We must be given:

- a claim report;
- a copy of your loan records;
- insurance enrollment form/certificate; and
- a certified copy of the death certificate (or other lawful evidence); as proof of a life insurance claim.

Page 2 of 2 **Exhibit 18**

HOW TO FILE A TOTAL DISABILITY CLAIM

You must contact us or your credit union about your total disability claim when you are eligible for benefits. Your credit union will provide you with claim forms, or you can simply send us written proof of your disability. That proof must show:

- the date and the cause of the total disability;
- how serious it is; and
- must be signed by a physician or a chiropractor.

The initial proof should be for the initial period of total disability, after you have completed the waiting period. After that we will require proof of your continued disability, from time to time. You must send proof to us within 90 days after your total disability stops. If you cannot send proof to us within 90 days, you must do so as soon as you can. Unless you have been legally incapable of filing proof of total disability, we won't accept it if it is filed after one (1) year from the time it should have been filed. You can't start any legal action:

- until 60 days after you send us proof of your total disability; nor
- more than six (6) years after you send the proof.

CONFORMITY WITH STATE STATUTES

Any part of the group policy which, on the effective date of the group policy, conflicts with the statutes of the state where the group policy was delivered is changed to conform to the minimum standards of those statutes.

PHYSICAL EXAMINATION

We, at our own expense, have the right, and you must allow us the opportunity, to examine your person as often as reasonably required while a claim is pending.

Amortization Schedule

Loan Amount : \$5,500.00
Number of Years: 7
Annual Rate: 15.000

Total Payments : \$8,914.62
Total Interest : \$3,414.62

Year	Month	Balance	Payment	Principal	Interest	New Balance
2007	5	\$3,388.13	\$106.14	\$63.79	\$42.35	\$3,324.34
	6	\$3,324.34	\$106.14	\$64.59	\$41.55	\$3,259.75
	7	\$3,259.75	\$106.14	\$65.39	\$40.75	\$3,194.36
	8	\$3,194.36	\$106.14	\$66.21	\$39.93	\$3,128.15
	9	\$3,128.15	\$106.14	\$67.04	\$39.10	\$3,061.11
	10	\$3,061.11	\$106.14	\$67.88	\$38.26	\$2,993.23
	11	\$2,993.23	\$106.14	\$68.72	\$37.42	\$2,924.51
	12	\$2,924.51	\$106.14	\$69.58	\$36.56	\$2,854.93
	1	\$2,854.93	\$106.14	\$70.45	\$35.69	\$2,784.48
	2	\$2,784.48	\$106.14	\$71.33	\$34.81	\$2,713.15
	3	\$2,713.15	\$106.14	\$72.23	\$33.91	\$2,640.92
	4	\$2,640.92	\$106.14	\$73.13	\$33.01	\$2,567.79
2008	5	\$2,567.79	\$106.14	\$74.04	\$32.10	\$2,493.75
	6	\$2,493.75	\$106.14	\$74.97	\$31.17	\$2,418.78
	7	\$2,418.78	\$106.14	\$75.91	\$30.23	\$2,342.87
	8	\$2,342.87	\$106.14	\$76.85	\$29.29	\$2,266.02
	9	\$2,266.02	\$106.14	\$77.81	\$28.33	\$2,188.21
	10	\$2,188.21	\$106.14	\$78.79	\$27.35	\$2,109.42
	11	\$2,109.42	\$106.14	\$79.77	\$26.37	\$2,029.65
	12	\$2,029.65	\$106.14	\$80.77	\$25.37	\$1,948.88
	1	\$1,948.88	\$106.14	\$81.78	\$24.36	\$1,867.10
	2	\$1,867.10	\$106.14	\$82.80	\$23.34	\$1,784.30
	3	\$1,784.30	\$106.14	\$83.84	\$22.30	\$1,700.46
	4	\$1,700.46	\$106.14	\$84.88	\$21.26	\$1,615.58
2009	5	\$1,615.58	\$106.14	\$85.95	\$20.19	\$1,529.63
	6	\$1,529.63	\$106.14	\$87.02	\$19.12	\$1,442.61
	7	\$1,442.61	\$106.14	\$88.11	\$18.03	\$1,354.50
	8	\$1,354.50	\$106.14	\$89.21	\$16.93	\$1,265.29
	9	\$1,265.29	\$106.14	\$90.32	\$15.82	\$1,174.97
	10	\$1,174.97	\$106.14	\$91.45	\$14.69	\$1,083.52
	11	\$1,083.52	\$106.14	\$92.60	\$13.54	\$990.92
	12	\$990.92	\$106.14	\$93.75	\$12.39	\$897.17
	1	\$897.17	\$106.14	\$94.93	\$11.21	\$802.24
	2	\$802.24	\$106.14	\$96.11	\$10.03	\$706.13
	3	\$706.13	\$106.14	\$97.31	\$8.83	\$608.82
	4	\$608.82	\$106.14	\$98.53	\$7.61	\$510.29
	5	\$510.29	\$106.14	\$99.76	\$6.38	\$410.53
	6	\$410.53	\$106.14	\$101.01	\$5.13	\$309.52
	7	\$309.52	\$106.14	\$102.27	\$3.87	\$207.25
	8	\$207.25	\$106.14	\$103.55	\$2.59	\$103.70
	9	\$103.70	\$105.00	\$103.70	\$1.30	\$0.00

Amortization Schedule

Loan Amount : \$5,500.00
 Number of Years: 7
 Annual Rate: 15.000

Total Payments : \$8,914.62
 Total Interest : \$3,414.62

Year	Month	Balance	Payment	Principal	Interest	New Balance
2002	10	\$5,500.00	\$106.14	\$37.39	\$68.75	\$5,462.61
	11	\$5,462.61	\$106.14	\$37.86	\$68.28	\$5,424.75
	12	\$5,424.75	\$106.14	\$38.33	\$67.81	\$5,386.42
2003	1	\$5,386.42	\$106.14	\$38.81	\$67.33	\$5,347.61
	2	\$5,347.61	\$106.14	\$39.29	\$66.85	\$5,308.32
	3	\$5,308.32	\$106.14	\$39.79	\$66.35	\$5,268.53
	4	\$5,268.53	\$106.14	\$40.28	\$65.86	\$5,228.25
	5	\$5,228.25	\$106.14	\$40.79	\$65.35	\$5,187.46
	6	\$5,187.46	\$106.14	\$41.30	\$64.84	\$5,146.16
	7	\$5,146.16	\$106.14	\$41.81	\$64.33	\$5,104.35
	8	\$5,104.35	\$106.14	\$42.34	\$63.80	\$5,062.01
	9	\$5,062.01	\$106.14	\$42.86	\$63.28	\$5,019.15
	10	\$5,019.15	\$106.14	\$43.40	\$62.74	\$4,975.75
	11	\$4,975.75	\$106.14	\$43.94	\$62.20	\$4,931.81
	12	\$4,931.81	\$106.14	\$44.49	\$61.65	\$4,887.32
2004	1	\$4,887.32	\$106.14	\$45.05	\$61.09	\$4,842.27
	2	\$4,842.27	\$106.14	\$45.61	\$60.53	\$4,796.66
	3	\$4,796.66	\$106.14	\$46.18	\$59.96	\$4,750.48
	4	\$4,750.48	\$106.14	\$46.76	\$59.38	\$4,703.72
	5	\$4,703.72	\$106.14	\$47.34	\$58.80	\$4,656.38
	6	\$4,656.38	\$106.14	\$47.94	\$58.20	\$4,608.44
	7	\$4,608.44	\$106.14	\$48.53	\$57.61	\$4,559.91
	8	\$4,559.91	\$106.14	\$49.14	\$57.00	\$4,510.77
	9	\$4,510.77	\$106.14	\$49.76	\$56.38	\$4,461.01
	10	\$4,461.01	\$106.14	\$50.38	\$55.76	\$4,410.63
	11	\$4,410.63	\$106.14	\$51.01	\$55.13	\$4,359.62
	12	\$4,359.62	\$106.14	\$51.64	\$54.50	\$4,307.98
2005	1	\$4,307.98	\$106.14	\$52.29	\$53.85	\$4,255.69
	2	\$4,255.69	\$106.14	\$52.94	\$53.20	\$4,202.75
	3	\$4,202.75	\$106.14	\$53.61	\$52.53	\$4,149.14
	4	\$4,149.14	\$106.14	\$54.28	\$51.86	\$4,094.86
	5	\$4,094.86	\$106.14	\$54.95	\$51.19	\$4,039.91
	6	\$4,039.91	\$106.14	\$55.64	\$50.50	\$3,984.27
	7	\$3,984.27	\$106.14	\$56.34	\$49.80	\$3,927.93
	8	\$3,927.93	\$106.14	\$57.04	\$49.10	\$3,870.89
	9	\$3,870.89	\$106.14	\$57.75	\$48.39	\$3,813.14
	10	\$3,813.14	\$106.14	\$58.48	\$47.68	\$3,754.66
	11	\$3,754.66	\$106.14	\$59.21	\$46.93	\$3,695.45
	12	\$3,695.45	\$106.14	\$59.95	\$46.19	\$3,635.50
2006	1	\$3,635.50	\$106.14	\$60.70	\$45.44	\$3,574.80
	2	\$3,574.80	\$106.14	\$61.45	\$44.69	\$3,513.35
	3	\$3,513.35	\$106.14	\$62.22	\$43.92	\$3,451.13
	4	\$3,451.13	\$106.14	\$63.00	\$43.14	\$3,388.13



SOUTH CAROLINA
Federal Credit Union
P.O. Box 190012
North Charleston, SC 29419-9012
(843) 797-8300 • (800) 845-0432

LOANLINER

2012 JUN 13 AM 8:32

FILED FOR RECORD
WINNIFER D. CLARK
CLERK OF COURT

**Open-End Disbursement
Receipt Plus**

BORROWER INFORMATION		
BORROWER 1 NAME	ACCOUNT NUMBER	DATE
HARLEY/DOROTHY A	48-10	02/28/2003
BORROWER 2 NAME		

SECURITY OFFERED					CONSUMERS CLAIMS AND DEFENSES IF CHECKED, SEE NOTICE BELOW				
THE ADVANCE IS SECURED BY YOUR SHARES, ALL PROPERTY SECURING OTHER PLAN ADVANCES AND LOANS RECEIVED IN THE PAST OR IN THE FUTURE, AND THE FOLLOWING PROPERTY:									
PROPERTY/MODEL	YEAR	LD. NUMBER	VALUE	KEY NUMBER					
PLEDGE OF SHARES AND/OR DEPOSITS		ACCOUNT NUMBER	PLEDGE OF SHARES AND/OR DEPOSITS		ACCOUNT NUMBER				

REPAYMENT TERMS					
DAILY PERIODIC RATE	ANNUAL PERCENTAGE RATE	INTEREST RATE IS:	OTHER FEES (Amount and Description)		NEW BALANCE THIS SUBACCOUNT
0.041095%	15.0000 %	FIXED			\$ 5,500.00
AMOUNT ADVANCED	PAYMENT AMOUNT	DATE DUE	PAYMENT FREQUENCY	LINE OF CREDIT LIMIT	REMAINING LIMIT
\$ 5,500.00	\$ 110.00	04/16/2003	Monthly	\$ 5,500.00	\$ 0.00

By endorsing the proceeds check for the advance described above, or by having the loan proceeds deposited into your share/share draft account or paid to a third party, you agree: (1) that the property described in the Security Offered section above ("Property") is security under the terms of the LOANLINER Credit and Security Agreement (the "Plan") for all amounts you owe under the Plan and that the property description is incorporated into and a part of the Plan; (2) that the Property is also security for any other loans, including but not limited to, any credit card loan that you have with the credit union now or in the future; and (3) to make payments as disclosed above and in accordance with the terms of the Plan.

CONSUMERS CLAIMS AND DEFENSES NOTICE
The following paragraph applies to the Advance only if the box is checked.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

FOR CREDIT UNION USE ONLY			
REQUESTED:	MEMBER PAYS PREMIUM FOR:	CHECK NUMBER: 617806	BRANCH NUMBER: 23
DATE: 02/28/2003	LOAN OFFICER COMMENTS:	PLANSUBACCOUNT NO.: 10	PROCESSED BY: AIR
			LOAN OFFICER INITIALS: AIR



Exhibit 27

LOIN	48-10	SISTRUNK/DOROTHY H	LN:	BR:	6 DT:100311
Current Balance	4625.82	Due Date	10/31/10	Coll Code	999 VRLCode 0
Payoff Int	649.02	Sched Pmt	2012 JUN 27 10AM	Desor:	PERSONAL ACCESS LI
Payoff LC	.00	Past Due	.00	APR	15.0000
Payoff Amount	5274.84	Unpaid LC	FILED FOR RECORD	Only Interest	1.90102
Cur Escrow Bal	.00	Unpaid Int	WIN 1031 27 CLK	Insurance Code	0
Pend Distrib	.00	Last Int Date	01/31/11	Entry Date	02/24/03
Unpaid Div	.00	Term	ORAL 108	Credit Avail	.00
Adjusted Escrow	.00	Unpd PP Int	.00		
Payoff W/Escrow	5274.84	Cred Limit	0		
App Date	02/24/03	Loan Off/DecTell	EBB/AIR	Collector	
Review Date	02/24/11	Original Amt	5556.44	Census Tract	.00
		Pledge Amt	.00	Meth/Freq/Skip	C/M/
Alt Pmt	.00	Pledge Code	0	Action O	Status N
Alt Pmts Left	0	X Pledge	0-00	Ln Dr Acct	0
Co Makers	0	Last PBF Amt	.00		
Credit Score	Pur 4	Last PBF Date	00/00/00	Paid Off Date	00/00/00
C/O Date	01/31/11	YTD Int	.00	Last Pmt Amt	1.00
C/O Reason		NYPD Int	.00	Last Pmt Date	11/02/10

LOAN INSURANCE CODE IS PRESENT

SOUTH CAROLINA FEDERAL CREDIT UNION

DATE: [10/03/11]

ID: [	]	
TRAN CODE: [	]	PARAMETERS: [
[		]
other	GENERAL	INTERPT
keys	SCREEN	PRINT
		SCREEN
		PRINTER
		CONTROL
		main
		keys

Exhibit 28



Loan Opened:

2/28/2003 Interest: 15%

1st Pymt Due:

4/17/2003

Orig Loan Amount
Advanced:

\$5,500.00

2012 JUN 13 AM 8:32

FILED FOR RECORD
WINNIEA R. CLARK
CLERK OF COURT
ORANGEBURG, SC

Account History

Date	Credit Life	Credit Disability	Advances	Finance Charge	Late Charge	Principal	Total Payment Applied	Princ. Bal
2/28/2003	\$0.00	\$0.00	\$5,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,500.00
3/1/2003	\$4.84	\$16.50	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,521.34
4/14/2003	\$4.86	\$16.56	\$0.00	\$102.71	\$0.00	\$7.79	\$110.00	\$5,534.97
5/7/2003	\$4.87	\$16.60	\$0.00	\$52.37	\$0.00	\$57.63	\$110.00	\$5,598.81
6/17/2003	\$4.84	\$16.50	\$0.00	\$92.79	\$0.00	\$17.21	\$110.00	\$5,502.94
7/18/2003	\$4.84	\$16.51	\$0.00	\$70.25	\$0.00	\$39.75	\$110.00	\$5,484.54
8/19/2003	\$4.83	\$16.45	\$0.00	\$72.28	\$0.00	\$37.72	\$110.00	\$5,468.10
9/17/2003	\$4.81	\$16.40	\$0.00	\$65.30	\$0.00	\$44.70	\$110.00	\$5,444.61
10/22/2003	\$4.79	\$16.33	\$0.00	\$78.50	\$0.00	\$30.50	\$109.00	\$5,435.23
10/22/2003	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1.00	\$1.00	\$5,434.23
11/17/2003	\$4.78	\$16.30	\$0.00	\$58.20	\$0.00	\$51.80	\$110.00	\$5,403.51
12/17/2003	\$4.76	\$16.21	\$0.00	\$66.76	\$0.00	\$42.24	\$109.00	\$5,382.24
1/21/2004	\$4.74	\$16.15	\$0.00	\$77.59	\$0.00	\$30.41	\$108.00	\$5,372.72
2/19/2004	\$4.73	\$16.12	\$0.00	\$64.19	\$0.00	\$43.81	\$108.00	\$5,343.76
2/19/2004	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2.00	\$2.00	\$5,347.76
3/18/2004	\$4.71	\$16.04	\$0.00	\$61.68	\$0.00	\$48.32	\$110.00	\$5,320.19
4/19/2004	\$4.68	\$15.96	\$0.00	\$70.12	\$0.00	\$36.88	\$107.00	\$5,303.95
5/18/2004	\$4.67	\$15.91	\$0.00	\$63.36	\$0.00	\$43.64	\$107.00	\$5,280.89
6/18/2004	\$4.65	\$15.84	\$0.00	\$67.42	\$0.00	\$42.58	\$110.00	\$5,258.80
7/21/2004	\$4.63	\$15.78	\$0.00	\$71.48	\$0.00	\$38.52	\$110.00	\$5,240.63
8/21/2004	\$4.61	\$15.72	\$0.00	\$58.28	\$0.00	\$46.72	\$105.00	\$5,214.30
9/21/2004	\$4.59	\$15.64	\$0.00	\$75.16	\$0.00	\$29.84	\$105.00	\$5,204.69
10/18/2004	\$4.58	\$15.61	\$0.00	\$57.89	\$0.00	\$52.11	\$110.00	\$5,172.77
11/18/2004	\$4.55	\$15.52	\$0.00	\$66.04	\$0.00	\$43.96	\$110.00	\$5,148.88
12/17/2004	\$4.53	\$15.45	\$0.00	\$61.50	\$0.00	\$48.50	\$110.00	\$5,120.38
1/18/2005	\$4.51	\$15.36	\$0.00	\$67.47	\$0.00	\$42.53	\$110.00	\$5,097.70
2/17/2005	\$4.49	\$15.29	\$0.00	\$62.98	\$0.00	\$47.02	\$110.00	\$5,070.46
3/17/2005	\$4.46	\$15.21	\$0.00	\$58.48	\$0.00	\$51.52	\$110.00	\$5,038.61
4/18/2005	\$4.43	\$15.12	\$0.00	\$66.40	\$0.00	\$43.60	\$110.00	\$5,004.56
5/16/2005	\$4.41	\$15.04	\$0.00	\$57.82	\$0.00	\$52.18	\$110.00	\$4,981.83
6/20/2005	\$4.38	\$14.95	\$0.00	\$71.81	\$0.00	\$28.19	\$100.00	\$4,972.97
6/20/2005	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$10.00	\$10.00	\$4,962.97
7/18/2005	\$4.37	\$14.89	\$0.00	\$57.25	\$0.00	\$52.75	\$110.00	\$4,929.48
8/17/2005	\$4.34	\$14.79	\$0.00	\$60.90	\$0.00	\$49.10	\$110.00	\$4,899.51
9/19/2005	\$4.31	\$14.70	\$0.00	\$66.58	\$0.00	\$43.42	\$110.00	\$4,875.10
10/18/2005	\$4.29	\$14.63	\$0.00	\$58.23	\$0.00	\$39.77	\$98.00	\$4,854.25
10/18/2005	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$12.00	\$12.00	\$4,862.25
11/28/2005	\$4.26	\$14.53	\$0.00	\$81.80	\$0.00	\$28.20	\$110.00	\$4,832.84
12/19/2005	\$4.25	\$14.50	\$0.00	\$41.85	\$0.00	\$68.15	\$110.00	\$4,783.44
1/18/2006	\$4.21	\$14.35	\$0.00	\$59.11	\$0.00	\$50.89	\$110.00	\$4,751.11
2/21/2006	\$4.18	\$14.25	\$0.00	\$66.54	\$0.00	\$43.46	\$110.00	\$4,726.08
3/17/2006	\$4.16	\$14.18	\$0.00	\$46.74	\$0.00	\$63.26	\$110.00	\$4,681.16
4/14/2006	\$4.12	\$14.04	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,699.32
5/19/2006	\$4.14	\$14.10	\$0.00	\$110.00	\$0.00	\$0.00	\$110.00	\$4,717.56
6/19/2006	\$4.15	\$14.15	\$0.00	\$71.93	\$0.00	\$38.07	\$110.00	\$4,697.79
7/18/2006	\$4.13	\$14.09	\$0.00	\$56.12	\$0.00	\$53.88	\$110.00	\$4,662.13
8/18/2006	\$4.10	\$13.99	\$0.00	\$59.52	\$0.00	\$50.48	\$110.00	\$4,629.74
9/19/2006	\$4.07	\$13.89	\$0.00	\$61.02	\$0.00	\$48.98	\$110.00	\$4,598.72
10/16/2006	\$4.05	\$13.80	\$0.00	\$51.14	\$0.00	\$58.86	\$110.00	\$4,557.71
11/17/2006	\$4.01	\$13.67	\$0.00	\$60.05	\$0.00	\$49.95	\$110.00	\$4,525.44
11/22/2006	\$0.00	\$0.00	\$350.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,875.44
12/20/2006	\$4.29	\$14.63	\$0.00	\$65.55	\$0.00	\$34.45	\$100.00	\$4,859.91
1/17/2007	\$4.28	\$14.58	\$0.00	\$56.05	\$0.00	\$63.95	\$120.00	\$4,834.82
2/20/2007	\$4.24	\$14.44	\$0.00	\$67.42	\$0.00	\$42.58	\$110.00	\$4,790.92
3/20/2007	\$4.22	\$14.37	\$0.00	\$55.27	\$0.00	\$54.73	\$110.00	\$4,754.78
4/17/2007	\$4.18	\$14.26	\$0.00	\$54.84	\$0.00	\$55.16	\$110.00	\$4,718.06
5/21/2007	\$4.15	\$14.15	\$0.00	\$66.08	\$0.00	\$43.92	\$110.00	\$4,682.44
6/19/2007	\$4.13	\$14.08	\$0.00	\$56.06	\$0.00	\$63.94	\$120.00	\$4,646.71
7/17/2007	\$4.09	\$13.94	\$0.00	\$53.59	\$0.00	\$65.41	\$110.00	\$4,608.33
8/10/2007	\$4.06	\$13.82	\$0.00	\$45.52	\$0.00	\$64.48	\$110.00	\$4,561.73
9/17/2007	\$4.01	\$13.69	\$0.00	\$71.35	\$0.00	\$38.65	\$110.00	\$4,540.78
10/22/2007	\$4.00	\$13.62	\$0.00	\$65.47	\$0.00	\$44.53	\$110.00	\$4,513.87
10/25/2007	\$0.00	\$0.00	\$500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,013.87
11/16/2007	\$4.41	\$15.04	\$0.00	\$51.02	\$0.00	\$49.98	\$101.00	\$4,983.34
11/16/2007	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$9.00	\$9.00	\$4,974.34
12/1/2007	\$4.38	\$14.92	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,993.64
1/18/2008	\$4.39	\$14.98	\$0.00	\$0.00	\$0.00	\$50.00	\$50.00	\$4,963.01
2/12/2008	\$4.37	\$14.89	\$0.00	\$110.00	\$0.00	\$0.00	\$110.00	\$4,982.77
3/14/2008	\$4.38	\$14.95	\$0.00	\$110.00	\$0.00	\$0.00	\$110.00	\$5,001.60
4/14/2008	\$4.40	\$15.00	\$0.00	\$87.77	\$0.00	\$13.23	\$101.00	\$5,007.77
4/14/2008	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$9.00	\$9.00	\$4,998.77
5/15/2008	\$4.40	\$15.00	\$0.00	\$63.79	\$0.00	\$46.21	\$110.00	\$4,971.96
6/1/2008	\$4.38	\$14.92	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,991.26
7/2/2008	\$4.39	\$14.97	\$0.00	\$11.00	\$5.00	\$0.00	\$16.00	\$5,000.62
7/18/2008	\$0.00	\$0.00	\$0.00	\$100.00	\$0.00	\$10.00	\$110.00	\$5,009.62
8/21/2008	\$4.40	\$15.00	\$0.00	\$90.32	\$0.00	\$19.68	\$110.00	\$5,000.34
9/16/2008	\$4.40	\$15.00	\$0.00	\$53.34	\$0.00	\$56.46	\$109.80	\$4,963.28
10/6/2008	\$4.37	\$13.40	\$0.00	\$0.00	\$0.00	\$55.00	\$55.00	\$4,926.05
10/28/2008	\$0.00	\$0.00	\$0.00	\$85.38	\$0.00	\$14.62	\$100.00	\$4,911.43
11/17/2008	\$4.32	\$13.26	\$0.00	\$40.48	\$0.00	\$58.52	\$99.00	\$4,880.49
12/12/2008	\$4.29	\$13.15	\$0.00	\$50.00	\$0.00	\$0.00	\$50.00	\$4,887.93
12/22/2008	\$0.00	\$0.00	\$0.00	\$20.71	\$0.00	\$29.79	\$50.00	\$4,858.14
1/8/2009	\$4.28	\$13.12	\$0.00	\$33.99	\$0.00	\$16.01	\$50.00	\$4,839.53
1/20/2009	\$0.00	\$0.00	\$0.00	\$23.96	\$0.00	\$26.04	\$50.00	\$4,833.49
2/1/2009	\$4.25	\$13.05	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,839.79
3/2/2009	\$4.17	\$13.10	\$0.00	\$81.66	\$0.00	\$18.34	\$100.00	\$4,849.82
3/17/2009	\$0.00	\$0.00	\$0.00	\$29.90	\$0.00	\$20.10	\$50.00	\$4,829.72
4/15/2009	\$4.25	\$13.04	\$0.00	\$36.80	\$6.20	\$0.00	\$23.00	\$4,817.01
4/27/2009	\$0.00	\$0.00	\$0.00	\$64.76	\$0.00	\$35.24	\$100.00	\$4,811.77
5/26/2009	\$4.23	\$12.99	\$0.00	\$57.52	\$0.00	\$39.48	\$97.00	\$4,789.51
5/26/2009	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3.00	\$3.00	\$4,786.51
6/19/2009	\$4.21	\$12.92	\$0.00	\$47.33	\$0.00	\$52.67	\$100.00	\$4,750.97
7/1/2009	\$4.18	\$12.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,767.96
8/6/2009	\$4.20	\$12.87	\$0.00	\$93.80	\$6.20	\$0.00	\$100.00	\$4,785.05
8/18/2009	\$0.00	\$0.00	\$0.00	\$23.80	\$0.00	\$76.20	\$100.00	\$4,708.85
9/1/2009	\$4.14	\$12.71	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,725.70

Page 1 of 2

Exhibit 29

PLAINTIFF'S
EXHIBIT

3

10/9/2009	\$4.16	\$12.76	\$0.00	\$95.00	\$0.00	\$0.00	\$95.00	\$4,742.62
11/12/2009	\$4.17	\$12.81	\$0.00	\$72.29	\$0.00	\$24.71	\$97.00	\$4,734.89
12/17/2009	\$4.17	\$12.78	\$0.00	\$68.21	\$6.20	\$25.59	\$100.00	\$4,726.25
1/15/2010	\$4.16	\$12.76	\$0.00	\$56.42	\$0.00	\$43.58	\$100.00	\$4,699.59
2/16/2010	\$4.14	\$12.69	\$0.00	\$61.90	\$6.20	\$30.90	\$100.00	\$4,684.52
3/4/2010	\$4.12	\$12.65	\$0.00	\$30.83	\$0.00	\$69.17	\$100.00	\$4,632.12
3/15/2010	\$0.00	\$0.00	\$0.00	\$22.84	\$0.00	\$77.16	\$100.00	\$4,554.96
4/1/2010	\$4.01	\$12.30	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,571.27
5/4/2010	\$4.02	\$12.34	\$0.00	\$91.97	\$0.00	\$0.03	\$92.00	\$4,587.60
6/21/2010	\$4.04	\$12.39	\$0.00	\$80.63	\$6.20	\$53.17	\$150.00	\$4,550.86
7/20/2010	\$4.00	\$12.29	\$0.00	\$54.96	\$6.20	\$14.44	\$75.00	\$4,552.71
8/6/2010	\$4.01	\$12.29	\$0.00	\$31.84	\$0.00	\$18.16	\$50.00	\$4,550.85
9/21/2010	\$4.00	\$12.29	\$0.00	\$43.80	\$6.20	\$0.00	\$50.00	\$4,567.14
9/24/2010	\$0.00	\$0.00	\$0.00	\$48.00	\$0.00	\$2.00	\$50.00	\$4,565.14
10/1/2010	\$4.02	\$12.33	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,581.49
11/2/2010	\$4.03	\$12.37	\$0.00	\$59.80	\$7.20	\$0.00	\$67.00	\$4,597.89
12/1/2010	\$4.05	\$12.41	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,614.35
1/31/2011	\$4.06	\$12.46	\$0.00	\$0.00	\$0.00	\$5.05	\$5.05	\$4,625.82

2012 JUN 13 AM 8:33

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

See Last Statement to Confirm Ending Princ Balance

Totals \$411.81 \$1,364.23 \$6,350.00 \$5,679.03 \$55.60 \$3,500.22

Advances	\$6,350.00
Credit Life	\$411.81
Credit Disab.	\$1,364.23
Princ Pymts	\$3,500.22

Total Princ
Left Owed \$4,625.82

Advances 6,350. +
CL 411.81 +
CD 1,364.23 +
Princ Pymts 3,500.22 -
Total → 4,625.82 *
Princ
left owed

Dorothy Harley Sistrunk

423 Bayne Street • Orangeburg, SC 29115 • Phone: 803-268-0716

Fax: 803-534-6727

Date: July 24, 2013

Re: Former Account #1119448-21

Board of Directors

Brigadier General J. Emory Mace (Ret.), Board Chairman
Rodney E. Druschel CPA, Vice Chairman
Richard I. Buckner, Secretary
Mary L. Whited CPA, Treasurer, or
Current Board of Directors
Suite 501 P.O. Box 190012 North Charleston, SC 29419-9012

Supervisory Committee

Joseph E. Bolchoz, Jr., Chairman
CAPT R. Patrick Flynn, Vice Chairman
Joseph S. Daning, Secretary
Rodney E. Druschel, Board Liaison, or
Current Supervisory Committee Members
P.O. Box 60935 North Charleston, SC 29419-0935

Management

Scott Woods, CPA, CIA, MBA President and CEO
Troy Hall, MBA Chief Operations Officer
Beth Jaskiewicz, CME Senior Vice President, Marketing
Leslie Norris, SPHR Senior Vice President, Human Resources
Joe Grech, CPA, CCUE, MBA Chief Financial Officer
Bonnie Karst Ciuffo, CPA, CIA, President - South Carolina Financial Solutions, LLC
Brad Williams Chief Technology Officer
Margaret V. Miller, CFSA, CBM Senior Vice President, Audit Services
John F. Bryan, Senior Vice President, Lending Services
Glen Senterfeit, Senior Vice President, Operations, or Current
Management Personnel
POB 190012, North Charleston, SC 29419

2013 NOV 19 PM 1:03
FILED FOR RECORD
CLERK OF COURT
ORANGE COUNTY, SC

NOTICE OF INTENT TO FILE "STATEMENT OF DAMAGES"

To: The Aforementioned Directors, Supervisors, Managers and/or Current Members,

Finality is important in all litigation...and I want finality so I can move on with my life and you can move on with your business. Civil Action Case #2011-CP-38-1392 has been going on for over 2 years. I have made a very generous offer to South Carolina Federal Credit Union (SCFCU) to end this matter that will save both of us unnecessary litigation, time and money. {See Pages 12-14 in the Attached Pleading}

"A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives." *Travelers Ins. v. Roof Doctor*, 325 S.C. 614, 615-616, 481 S.E.2d 451, 452.

Exhibit 33

App. 1997) Therefore, it is the duty and responsibility of the Board of Directors, Supervisory Personnel and the Management Team to take appropriate steps and/or actions to save SCFCU unnecessary cost and expense. SCFCU's personnel made a mistake. Instead of correcting the mistake, staff members became hostile toward me and their actions led to the aforementioned case that is pending in the Court of Common Pleas.

I never received an Addendum in September of 2002, nor was one filed in court as evidence nor has anyone from SCFCU filed an affidavit or presented any testimony that I received one. After I paid off my car loan, I never ordered any additional Credit Life or Disability Insurance. In fact, I did not even know an Addendum was a necessary component of the Membership & Account Agreement until this litigation. *{See Page 21 of the MAAA}*

A BRIEF HISTORY

In March of 2003, SCFCU loaned me \$5,500.00 to purchase a mobile home. Someone at SCFCU treated the loan as though it were an open-ended revolving charge account (credit card) instead of a closed end fixed interest rate loan. *{See CUNA Guidelines for Mobile Homes}*

As a result, after paying SCFCU over \$11,000.00 over a seven year period, SCFCU's personnel had the nerve to tell me I still owed SCFCU almost \$5,300.00. SCFCU's personnel claimed it was for a Open-End Disbursement Receipt Plus LoanLiner Credit and Security Agreement ("Fixed Interest Rate Agreement") that was executed and delivered on or about February 24, 2003 that called for the payment of the sum of Five Thousand Five Hundred Fifty-Six and 44/100 Dollars (\$5,556.44). *{See Your Filed Complaint & Exhibits}*

I never agreed to any such account and no signed agreement exists for this account or for the \$5,500.00 check I received in March of 2003. *{See Section 37-10-107(1) SC Code of Laws}*

CLOSURE

Consequently, because I did receive the check and purchased the mobile home, the only honorable thing to do was to let SCFCU keep the **\$6,350.00** that has already been paid back and return the over payment of **\$4,660.89** back to me. However, if this offer were not accepted, then I will file a "**Statement of Damages**" to recover the entire **\$11,010.89**, that is pursuant to prevailing legal precedent. However, before I file this statement, I must notify the Plaintiff, SCFCU and give you an opportunity to respond. This is the purpose of this letter.

I have already notified your attorneys by the filed Pleading that is attached to this notification letter.... and to date, I have not received a response from them. I am not even sure Moore & Van Allen, PLLC or Amy L. Hewitt is still representing SCFCU in this litigation after their Cross-claim for Summary Judgment was denied. This is why, I am forced to contact you directly. I am not a lawyer, I am a former member of your credit union account #1119448-21 and I want this litigation to end without SCFCU losing anymore money than it already has. Please go to pages 12-14 of the filed Pleading that accompanies this letter for the Settlement Offer and Agreement that has been filed in the Court of Common Pleas since May 10, 2013. Thank you.

Sincerely,


Dorothy Harley Sistrunk

Encl: May 10, 2013 Filed Pleading

Exhibit 33

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SCFCU
Supervisory Committee
POB 60935
North Charleston, SC
29419

2. Article Number

(Transfer from service label)

7002 2410 0007 9187 8936

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Susan Kincaid

☐ Agent☐ Addressee

B. Received by (Printed Name)

Susan Kincaid

C. Date of Delivery

7-26-18

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☒ No

3. Service Type

☒ Certified Mail ☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SCFCU
Management Personnel
POB 190012
North Charleston, SC
29419

2. Article Number

(Transfer from service label)

7002 2410 0007 9187 8974

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Susan Kincaid

☐ Agent☐ Addressee

B. Received by (Printed Name)

Susan Kincaid

C. Date of Delivery

7-26-18

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☒ No

3. Service Type

☒ Certified Mail ☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Board of Directors
SCFCU
Suite 501
POB 190012
North Charleston, SC 29419

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Susan Kincaid

☐ Agent☐ Addressee

B. Received by (Printed Name)

Susan Kincaid

C. Date of Delivery

7-26-18

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☒ No

3. Service Type

☒ Certified Mail ☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

7002 2410 0007 9187 8974

IN THE
COURT OF COMMON PLEAS
COUNTY OF COLUMBIA
Exhibit 34



SOUTH CAROLINA
Federal Credit Union

acct. #

1119448-21-H0

Leon Frazier

Branch Services Representative • West Columbia Branch

Mailing Address:

P.O. Box 190012 Phone: (803) 787-3626 x 4381
N. Charleston, SC 29419-9012 Fax: (803) 791-8545
Web: www.scfederal.org Toll Free: (800) 845-0432

Exhibit VI

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master in Equity

Case No. 2015-001112

South Carolina Federal Credit Union,

Respondent

v.

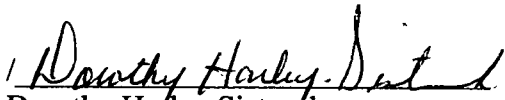
Dorothy Harley Sistrunk aka Dorothy
Harley-Sistrunk aka Dorothy A. Harley
aka Dorothy Sistrunk

Appellant.

CERTIFICATE OF RELEVANCE

The Appellant certifies to the best of her knowledge that the Record on Appeal; Volumes I-III contains all material proposed to be included by any of the parties and not any other material.

December 2, 2015


Dorothy Harley Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
Ph: (803) 268-0716
Fx: (803) 534-6727

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

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly **SWORN**, declares under the **PENALTY OF PERJURY** that the facts and the material facts in the "Record on Appeal", Volumes I-III, are true and correct. 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; Re: Appellate Case No. 2015-001112 and Civil Action Case No. 2011-CP-38-1392, will sign, seal and execute her attestations on this 2 day of December in the year 2015 in the City and County of Oranburg, in the State of South Carolina.

Rule 11(c), SCRCP clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

Appellant's Signature: Dorethy Harley-Sistrunk
Notary's Signature as Witness (1): Lure Steeller

Signed, Sealed, Executed and Delivered in the Presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On 12-2-2015 before me appeared Dorethy Harley-Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she is executing the same in her authorized capacity, and by her signature on the Certificate of Relevance for Volumes I-III of the Record on Appeal and this Notary Certification presents this document to the Appellate Court.

WITNESS My Hand and Official Seal.

Notary's Signature Lure Steeller

Commission Expires 01-21-2025

(Seal)