

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2018-001845

RECEIVED
JUL 19 2019
SC Court of Appeals

WFG National Title Insurance Company Respondent,

v.

DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC..... Appellants.

RECORD ON APPEAL

William M. Wilson III (S.C. Bar No. 15808)
Wyche, P.A.
P.O. Box 728
Greenville, SC 29602-0728
(864) 242-8200
ATTORNEYS FOR APPELLANTS

Shaun C. Blake (S.C. Bar No. 76349)
Drew B. Walker (S.C. Bar No. 78271)
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main Street, Suite 1200
P.O. Box 11803 (29211)
Columbia, SC 20201
(803) 256-1268
ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2016CP4004718**

WFG National Title Insurance Company

Dataquick Lending Solutions Inc

PLAINTIFF(S)

Dataquick Lending Solutions LLC

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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

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

Circuit Court Judge _____

Judge Code 2161

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 18 day of OCT, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 18 day of OCT, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Andrew Bryant Walker

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

James E. White

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance
Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS

IN THE COURT OF COMMON PLEAS

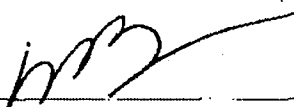
C/A NO.: 2016-CP-40-04718

ORDER OF ENTRY OF DEFAULT

RICHLAND COUNTY
CLERK OF COURT
2016 OCT 27 PM 2:09
JAMES L. GIST, JR.
CLERK OF COURT

The below Defendants are in default as shown by the Affidavits of Service and Affidavits of Default filed herein. Plaintiff duly served the Summons and Complaint on said Defendants as required by the South Carolina Rules of Civil Procedure. Said Defendants did not serve an answer or otherwise timely respond to the Summons and Complaint as required by the South Carolina Rules of Civil Procedure.

Therefore, on motion by Plaintiff WFG National Title Insurance Company ("Plaintiff") and its counsel, pursuant to Rule 55(a), entry of default is ordered to be entered in the clerk's calendar against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC.



Honorable DeAndrea Gist Benjamin
Chief Administrative Judge

10-19, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO.: 2016-CP-40-04718

WFG National Title Insurance Company

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff.

vs.

DataQuick Lending Solutions, Inc. et al.

Defendants.

Plaintiff's Attorney:

Drew B. Walker, Bar No. 78271

Address:

PO Box 11803, Columbia, SC 29211

Phone: 803-978-2836 Fax 803-252-3653

E-mail: dwalker@rogerslewis.com Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Drew B. Walker
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

10/6/16
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: metts

Date Filed: 10/20/16

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance
Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-04718

ORDER OF ENTRY OF DEFAULT

The below Defendants are in default as shown by the Affidavits of Service and Affidavits of Default filed herein. Plaintiff duly served the Summons and Complaint on said Defendants as required by the South Carolina Rules of Civil Procedure. Said Defendants did not serve an answer or otherwise timely respond to the Summons and Complaint as required by the South Carolina Rules of Civil Procedure.

Therefore, on motion by Plaintiff WFG National Title Insurance Company ("Plaintiff") and its counsel, pursuant to Rule 55(a), entry of default is ordered to be entered in the clerk's calendar against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC.

Honorable DeAndrea Gist Benjamin
Chief Administrative Judge

_____, 2016

_____, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS

IN THE COURT OF COMMON PLEAS

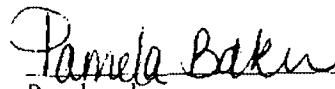
CIVIL ACTION NO.: 2016-CP-40-04718

CERTIFICATE OF SERVICE

The undersigned, of the law office of Rogers Lewis Jackson Mann & Quinn, LLC, does certify that on **October 10**, 2016, she did cause to have served by U.S. Postal Service, regular mail with postage prepaid and return address clearly indicated, copies of the **PROPOSED ORDER OF ENTRY OF DEFAULT** to the following:

DataQuick Lending Solutions, LLC
The Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801
Defendant

DataQuick Lending Solutions, Inc.
C T Corporation System
2 Office Park Ct.
Suite 103
Columbia, SC 29223
Defendant


Pamela Baker

Paralegal

Rogers Lewis Jackson Mann & Quinn, LLC

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

FORM 4

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS
WFG National Title Company

CASE NO. 2016-CP-40-04718
DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Drew B. Walker	Attorney for : ☒ Plaintiff ☐
	Defendant
	or
☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
WFG National Title Insurance Company	DataQuick Lending Solutions, Inc.	\$3,912,550.47
WFG National Title Insurance Company	DataQuick Lending Solutions, LLC	\$3,912,550.47
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 19 day of Sept, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 19 day of Sept, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Drew B. Walker, SC Bar # 78271

PO Box 11803

Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jeanette W. McBride
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance
Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-04718

ORDER

RICHLAND COUNTY
FILED
2017 SEP 19 AM 9:22
JEANETTE M. MCGRIFE
C.C.P. & G.S.

THE CASE COMES BEFORE THE COURT pursuant to the motion of the Plaintiff, WFG National Title Insurance Company ("Plaintiff"), seeking an order for default judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC (collectively referred to as "Defendants") for the causes of action in its Complaint. Plaintiff's motion is based on the Summons and Complaint ("Complaint"), Affidavits of Service, Affidavit of Amount Due, Affidavit of Default filed and the South Carolina Rules of Civil Procedure, including Rule 55(b)(1).

The Defendants were served with the Summons and Complaint and have not responded within thirty (30) days, as required by the South Carolina Rules of Civil Procedure. The Defendants have been entered into default by the Honorable DeAndrea Gist Benjamin as shown in the Order of Entry of Default filed herein on October 27, 2016.

Plaintiff seeks an order for joint and several judgment against Defendants for amounts owed under an agency agreement. The Plaintiff instituted this proceeding against the Defendants for amounts due under the Agreement as defined in Paragraph 17 of the Complaint.

I find that Defendants are in default under the terms of the Agreement, and that liquidated sums are due and owing to the Plaintiff on the claim accounts listed in Exhibit A of the Complaint. The total liquidated amount due to Plaintiff on the accounts as of July 12, 2017, and as shown in the Affidavit of Amount Due, is One Million Two Hundred Ninety-Nine Thousand Eight Hundred Eighty-Eight and 99/100 (\$1,299,888.99) Dollars, as well as court costs and attorney's fees provided for in the Agreement as pled in Paragraph 13 of the Complaint, supported by an Attorney's Fee Affidavit filed herein, and as outlined below.

The liquidated damages owed in this action under the Complaint's First, Second, Third and Fourth Causes of Action against Defendants are due and owing as follows:

Amounts owed under Agreement	\$1,299,888.99
Court Costs - filing fee	\$150.00
Service of Process	\$144.50
Attorney's Fee for this action	<u>\$4,000.00</u>

Amount Due	\$1,304,183.49
-------------------	-----------------------

Plaintiff is entitled to treble damages under the Complaint's Fifth Cause of Action for Defendants' violations of the South Carolina Unfair Trade Practices Act, and the trebled amount of the damages awarded above shall be awarded to the Plaintiff and entered against the Defendants in the total amount of:

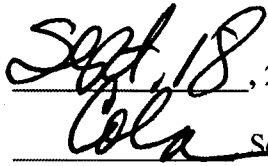
\$3,912,550.47

IT IS THEREFORE ORDERED THAT:

The Plaintiff is awarded joint and several judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC in the amount of Three Million Nine Hundred Twelve Thousand Five Hundred Fifty and 47/100 (**\$3,912,550.47**) Dollars and interest at the statutory rate from the date this judgment is entered until the date paid.

AND IT IS SO ORDERED.


Circuit Court Judge

 , 2017
Columbia South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-04718

ORDER**BACKGROUND**

On August 21, 2018, a hearing was held before this Court (hereinafter, the "Hearing") regarding the Defendant DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC's (collectively, "DataQuick") Motion for New Trial, to Alter or Amend Judgment, and for Relief from Judgment (hereinafter, the "Motion"), filed with this Court. Present at the hearing were Drew B. Walker as counsel for the Plaintiff WFG National Title Insurance Company ("WFG"), of Rogers Lewis Jackson Mann & Quinn, and Defendant DataQuick, represented by William Wilson, III, of Wyche, PA.

DataQuick, with the filing of its Motion, attempts to set aside an entry of default and subsequent default judgment against DataQuick (the "Default Judgment"), and seeks to file an Answer in this action. Alternatively, DataQuick sought to have the Default Judgment vacated and/or amended so as to allow a damages hearing pursuant to Rule 52(a), Rule 59(a), and/or Rule 59(e). Based on the testimony presented at the Hearing, and for the reasons set forth herein, the relief sought by DataQuick in its Motion is Denied.

UNDISPUTED FACTS AND PROCEDURE

The Parties do not dispute that WFG properly served DataQuick's registered agents

with every pleading, motion, proposed order, and other filing in this case. See the Procedural Timeline and Factual Statement in DataQuick's Memorandum in Support of its Motion for Relief.

DataQuick concedes that it internally failed to update its points of contacts with its registered agent, CT Corporation, in South Carolina and Delaware. See Id. at ¶12 of Factual Statement. DataQuick concedes its subsequent Delaware agent, Maples, failed to forward it the properly-served Motion for Default Judgment. Id. at ¶21 of Factual Statement.

DataQuick states it has no employees currently, yet submits two affidavits from individuals on its behalf. Id. at ¶10. DataQuick has always maintained registered agents for service of process in the State of South Carolina and Delaware during the pendency of this lawsuit. Id. at ¶¶ 11, 12. DataQuick states that it has had no business operations in recent years, yet maintains its corporate form, has updated and corrected addresses with its registered agents, and has changed registered agents during the pendency of this lawsuit. Id. at ¶¶ 4, 9, 13, 19. It also claims to have General Counsel. See Affidavit of Adam Fliss at ¶ 2, and Affidavit of Michael LaGatta at ¶ 2.

DataQuick states it has no knowledge or possession of the Agency Agreement between WFG and DataQuick, (upon which WFG's claims are based) (the "Agency Agreement"), and has no knowledge of the substance of Plaintiff's claims. Id. at 11, 12. Nevertheless, DataQuick claims it has defenses, and also that it could unilaterally assign the Agency Agreement to another corporate entity and bases its meritorious defense arguments on liberal assumptions it takes with regard to its unknown contents of the Agency Agreement. Id. at ¶¶ 6, 8, 27 (a), (b) and (d).

DataQuick Lending Solutions, Inc. was served with the Summons and Complaint through its South Carolina registered agent on August 11, 2016 as shown on the Affidavit of Service filed with this Court. DataQuick Lending Solutions, LLC was served with the Summons and Complaint through its Delaware registered agent on August 10, 2016 as shown on the Affidavit of Service filed with this Court. DataQuick did not appear in this action until October 13, 2017 when it filed its Motion, which was over fourteen (14) months after service of the Summons and Complaint. Additionally, the Hearing on the Motion took place over two (2) years after WFG's statutorily-prescribed service of the Summons and Complaint on DataQuick.

LEGAL FINDINGS

I. The Entry of Default Should Not be Set Aside per Rule 60, SCRPC

DataQuick's argument to be relieved from the Default Judgment does not meet the criteria of Rule 60(b), SCRPC. WFG unequivocally served an agent with actual authority to accept service for DataQuick under statute and the South Carolina Rules of Civil Procedure. Rule 4(d)(3), SCRPC, states that service may be made on a corporation by "delivering a copy of the summons and complaint ... to any other agent authorized by appointment or by law to receive service of process..." Further, as a Delaware corporation registered to do business with the South Carolina Secretary of State, DataQuick was an authorized foreign corporation whose registered agent could accept service of process pursuant to S.C. Code Ann. 15-9-240. Finally, WFG properly served DataQuick's registered agent in Delaware pursuant to Rule 4(h), SCRPC.

A. DataQuick has Not Shown Excusable Neglect

The Rule 60 standard for lifting judgment is more stringent than the Rule 55 "good

cause” standard for lifting entry of default. See Sundown Operating Co., Inc. v Intedger Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009). In cases analyzed both under Rule 55 standards and Rule 60 standards, courts have refused to lift default and judgment even when the neglect was not the actual neglect of the Movant (in this instance, DataQuick), but the neglect was imputed to it through its insurer or attorney. Richardson v. P.V. Inc., 283 SC 610, 682 S.E.2d 263 (2009) (holding an agent with apparent authority as being properly served, that the Rule 60 standard is more rigorous than Rule 55, and denying to lift default under the Rule 55(c) “good cause” standard even though the insurance company was assumed to be at fault for Petitioner’s failure to answer the complaint); see also Williams v Vanvokenburg, 312 S.C. 373, 440 S.E.2d 408 (1994) (holding Rule 55 “good cause” standard was not met to lift default when default is due to attorney’s negligent failure to file answer for client). DataQuick’s direct, unimputed failures and neglect does not rise to good cause under Rule 55 standards and therefore, does not meet the more stringent standard for Rule 60.

In the instant case, by serving DataQuick’s registered agents, WFG served agents with actual authority to accept service on DataQuick’s behalf. DataQuick’s failures to internally update who received the process within its corporation after its actual agents received the summons and complaint do not rise to the excusable neglect standard discussed in controlling South Carolina case law. DataQuick’s registered agents had actual knowledge of instant lawsuit and DataQuick presented no excuse for this internal negligence.

Furthermore, the court’s records and DataQuick’s affidavits conclusively show that DataQuick’s registered agent received service of process. DataQuick has failed to provide the Court with conclusive proof to meet the excusable neglect standard provided by Rule 60. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (2008) (the Court holding Defendant to a

“conclusive proof” standard under Rule 60, requiring that he show that he had not been served with the summons and complaint). Therefore, DataQuick cannot meet the excusable neglect standard of Rule 60 and is not entitled to the relief it seeks in its Motion.

B. Lack of Promptness and Sufficient Reasoning for DataQuick's Failures; Prejudice

“In determining whether to grant a motion under Rule 60, the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party.” Micronics, Inc. v. South Carolina Dept. of Revenue, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001). This Court finds that DataQuick lacked promptness and sufficient reasons for its failure to update appropriate personnel with its registered agents. As noted in the Factual Statement, over fourteen months went by between service of the Summons and Complaint and DataQuick’s appearance in the case. At any point during those fourteen months, DataQuick could have audited its deficiencies and uncovered that the people it appointed to receive notices from its registered agent were no longer associated with DataQuick.

DataQuick cannot shift the blame to CT Corporation as CT Corporation sent notices to the individuals that DataQuick requested. Further, CT Corporation remains DataQuick’s registered agent in South Carolina at the present time. When DataQuick chose to change its Delaware agent in December 2016, it could have uncovered its failure to update the addresses and asked the obvious question to CT Corporation – have you forwarded any service of process to those people since their relationship ceased with us. Rather, it did not appear in the case for an additional ten months. With over two years having elapsed since service of the Summons and Complaint on DataQuick and the Hearing on this Motion for Relief, WFG

would suffer significant prejudice due to the dilatory practices and failures of DataQuick and, as such, DataQuick is not entitled to the relief it seeks in its Motion.

C. WFG's UTPA Claim

DataQuick's analysis on the South Carolina Unfair Trade Practices Act ("UTPA") is misguided. Ardis v. Cox, 314 S.C. 512, 519, 431 S.E.2d 27, 32 (Ct.App.), does not hold that any lawsuit with a breach of contract cause of action unequivocally causes a UTPA cause of action to fail. Rather, the Ardis court held that UTPA is "unavailable to redress private wrongs if the public interest is unaffected." Id. In the instant case, WFG cites to 47 claims that were affected by DataQuick's actions. Critically, DataQuick's culpable actions have lead to damage to the South Carolina citizenry at large when title premiums increase due to the agents and their insurance carriers not shouldering any of the underwriter's loss. South Carolina consumers completing loan transactions are typically required to purchase title insurance lender's policies in order to obtain financing, and consumers routinely make the prudent choice to purchase owner's policies to protect their own investment. When DataQuick takes culpable actions as alleged in the Complaint, consumer insurance premiums unnecessarily rise, which has a direct effect on South Carolinians. Thus, it is the public that bears the burdens of rising costs due to DataQuick's actions or lack thereof. WFG's allegations in its UTPA cause of action is deemed admitted as plead and the Default Judgment grants the relief requested and contemplates DataQuick's knowing and willful violation of the UTPA and, as such, the judgment should not be set aside.

D. Lack of Meritorious Defense

DataQuick's allegations concerning its legal argument of a meritorious defense are fail. WFG sued the party it has an Agency Agreement with, DataQuick. DataQuick remains

a corporate entity to this day. It can be served. It was served. It failed to file an Answer and lost its right to conduct discovery. The records do not support the suggestion of any assignment of an Agency Agreement. Additionally, the suggestion that such an assignment could be done unilaterally by DataQuick when it admits that it is not familiar with the contents of the Agency Agreement creates more conjecture.

Further, any indemnification DataQuick may be able to seek from Stewart is a Third Party Claim, rather than a meritorious defense to its admitted liability to WFG, and is not considered by this Court. “It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff’s allegations and to have conceded liability.” Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998).

Finally, DataQuick’s argument that the judgment is “void” under Rule 60 (b)(4) fails. “The definition of void under the rule (60) only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. See Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (2002). DataQuick wrote title policies in South Carolina which conferred personal jurisdiction when its South Carolina registered agent was served with process, negating any unsupported defense claim of lack of personal jurisdiction or venue.

For these reasons, DataQuick has failed to show any reason to void the Order under the Rule 60, SCRCF, standard. DataQuick’s speculation of “likely exculpatory evidence” does not rise to the meritorious defense standard required by South Carolina courts. See Id. and ¶27 of Fliss Affidavit. The McClurg Court, cited by DataQuick, requires “a showing of a prima facie meritorious defense” and holds “[a] party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essentially to entitle him to relief.”

McClurg at 575, 671 S.E.2d at 93-94 (holding that neither appellant met burden of proving prima facie case for meritorious defense). Here, DataQuick has shown no meritorious defense and presented no evidence that would entitle it to relief.

II. The Damages in the Order are Liquidated and Should Not be Set Aside under Rule 60, SCRPC

In the instant action, WFG's damages are liquidated. WFG reviewed corporate records for each of the forty-seven (47) claims enumerated in its Complaint in order to compute sum certain amounts that had already been paid by WFG in the form of loss, expense, charges, attorney's fees and allocated loss adjustment expenses.

DataQuick assertion that the Default Judgment exceeded the amount prayed for in the Complaint in violation of Rule 54(c) is without merit. Rule 54(c) does not require a sum certain amount be plead in the initial Complaint in order to obtain default judgment. Rule 55(b)(1) allows default judgment without hearing for liquidated amounts to be supported by an Affidavit of Debt, upon motion of the party seeking default. In its Complaint, WFG alleged damages exceeding \$25,000.00 and filed an Affidavit of Debt along with its Motion for Default Judgment. South Carolina courts allow the use of Affidavits of Debt in support of default judgments at the time of application for default judgment on liquidated damages and pursuant to Rule 55(b)(1) in lieu of a verified pleading. DataQuick's efforts to conflate Rule 54(c) and Rule 55(b)(1) are incongruent with South Carolina practice and its Rules of Civil Procedure.

Further, this Court finds that any error in the Order of trebling the meager attorney's fees shown by the previously filed affidavit of attorney's fees (\$4,000.00) was harmless error under Rule 61, SCRPC. As shown by the updated Attorney's Fees Affidavit filed with this Court on August 21, 2018, WFG has suffered reasonable attorney's in the amount of

\$20,000.00 for over ninety (90) hours of legal work by WFG's retained firm since its retention in 2016. This amount is well in excess of the \$12,000.00 (\$4,000.00 trebled) awarded in the Order.

Additionally, the issuance of an award for attorney's fees prior to the ten days contemplated in Rule 55(b)(3) resulted in harmless error. While WFG did provide proper notice that it sought attorney's fees in its motion for default judgment as contemplated in Rule 55(b)(3), the Order was entered prior to the ten-day objection period contemplated in the Rule. Nevertheless, ten days did actually go by after Maples was served with the Notice that WFG sought attorney's fees, and no objection was made during that time period concerning the attorney's fees. This resulted in harmless error under Rule 61, SCRCP, and any award of attorney's fees in the Default Judgment should not be set aside.

III. DataQuick is not Entitled to Relief under either Rule 59(a) or Rule 59(e), SCRCP

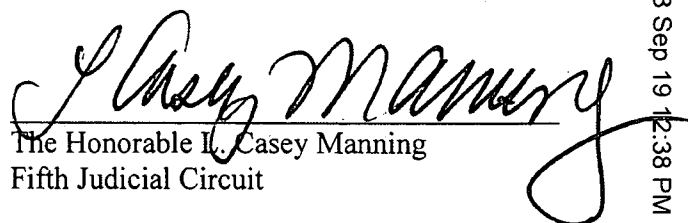
Because this Court issued a default judgment without a hearing, the defaulting DataQuick did not raise any issues at a hearing that could be altered or amended pursuant to Rule 59(e), SCRCP. See Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 437,437 (Ct. App. 1995) (holding "A party cannot for the first time raise an issue by way of a Rule 59(e) motion that could have been raised at trial"). Also, because there was no "action tried without a jury", DataQuick's relief for a new trial under Rule 59(a) fails. For these reasons, and because DataQuick's Motion for Relief was served on October 2, 2017, following service of the Order on September 27, 2017, more than ten days after service was complete, DataQuick's Rule 59 arguments fail, including the tolling for any time to appeal under Rule 59(f). This Court finds that DataQuick is not entitled to the relief it seeks in its Motion as relate to Rule 59(a) and Rule 59(e).

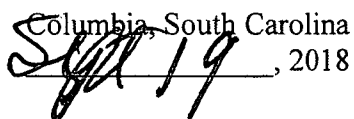
CONCLUSIONS OF LAW

WHEREAS, for the reasons set forth above, this Court finds that the Motion should be denied.

NOW, THEREFORE, the Motion is DENIED.

IT IS HEREBY ORDERED.


The Honorable L. Casey Manning
Fifth Judicial Circuit

Columbia, South Carolina
, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,
Plaintiff(s)

vs.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 40- 04718

Submitted By:
Drew Walker
Address:
PO Box 11803
Columbia, SC 29211

SC Bar #: 78271
Telephone #: 803-978-2836
Fax #: 803-253-3653
Other:
E-mail:

dwalker@rogerslewis.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| ☐ Contracts
☒ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☒ Other (199)
☐ Declaratory Judgment | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☒ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) Quiet Title |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Drew Walker

Date:

8/5/16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES OF

Aiken, Allendale, Anderson, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance
Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

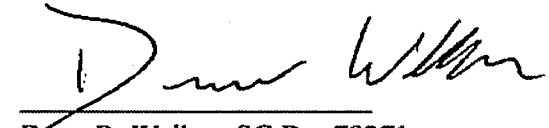
C/A NO: 2016-CP-40-_____

SUMMONS

RICHLAND COUNTY
FILED
2016 AUG -5 AM 10:40
JEANETTE W. MCBRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer on the subscribers at their offices, 1330 Lady Street, Suite 400, Columbia, SC 29201 or Post Office PO Box 11803, Columbia, SC 29211, within thirty (30) days after the service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the court for judgment by default for the relief demanded in the Complaint.


Drew B. Walker, SC Bar 78271

ROGERS LEWIS JACKSON MANN & QUINN, LLC
1330 Lady Street, Suite 400
PO Box 11803 (29211)
Columbia, SC 29201
Tel.: (803) 256-1268
Fax: (803) 253-3653
Email: dwalker@rogerslewis.com

August 5, 2016

ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance
Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO: 2016-CP-40-_____

COMPLAINT
(Non-Jury)

RICHLAND COUNTY
FILED
2016 AUG -5 AM 10:40
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Plaintiff WFG National Title Insurance Company complaining of Defendant DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC, hereby initiates this action and alleges and states the following.

JURISDICTION AND VENUE

1. WFG National Title Insurance Company is a domestic corporation duly formed under the laws of the State of South Carolina that maintains its principal place of business in Multnomah County, Oregon and does business in the State of South Carolina including Richland County.

2. DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC are, on information and belief, one foreign corporation or foreign limited liability company that has changed entity types, and is organized and existing under the laws of the State of Delaware, is licensed to do business in the State of South Carolina and does business in this state including in Richland County. Alternatively, if DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC ("DataQuick") are not the same entity, Plaintiff reserves its right to pursue each entity separately pursuant to the allegations below and herein.

3. This court possesses subject matter jurisdiction over this dispute pursuant to Article V, § 11 of the South Carolina Constitution and S.C. Code Ann. Title 15 et. seq.

4. Venue is proper in Richland County, South Carolina pursuant to S.C. Code Ann. § 15-7-30(F)(1) because the most substantial acts and omissions alleged against DataQuick and its predecessors (collectively and hereafter "Defendant") occurred in Richland County and WFG National Title Insurance Company and its predecessors (collectively "WFG") and Defendant have consented to venue and personal jurisdiction in Richland County pursuant to written agreement.

FOR A FIRST CAUSE OF ACTION

5. The above allegations are realleged here as if set forth again verbatim.

6. WFG and Defendant entered into an agency agreement on June 15, 1994.

7. The agency agreement, as amended from time to time (collectively with amendments "Agency Agreement"), inured to WFG and Defendant on or around 2011.

8. WFG and Defendant executed an amendment to the Agency Agreement on or around March 27, 2012 with an effective date of March 27, 2012.

9. Under the Agency Agreement, WFG, as an insurer and indemnitee of Defendant, authorized Defendant, as an agent and indemnitor, to take certain actions on behalf of WFG including the authority to sign, countersign, and issue commitments, binders, title insurance policies, endorsements, and other contracts under which WFG would assume liability for the condition of title on forms supplied by WFG on real estate located in various states throughout the United States of America.

10. Under the Agency Agreement, Defendant agreed to certain obligations including to receive and process applications for title insurance and issues commitments, binders and policies

in accordance with the usual and customary practices and procedures of responsible title insurance companies in the conduct of their business in a prudent, safe, sound, and ethical manner in accordance with recognized title underwriting principles and the rules, regulations and instructions of WFG.

11. Defendant also agreed to abide by the rules and regulations promulgated from time to time by WFG regarding the transaction of its business by Defendant.

12. Defendant agreed to reimburse and indemnify WFG for any loss, charge or expense, incurred by the Company due to a breach by the Defendant, any of its employees, partners or associates of the terms of the Agency Agreement.

13. Defendant agreed that an award for a dispute under the Agency Agreement could include the recovery of attorney's fees in favor of WFG.

14. The Agency Agreement has never been terminated and is in full force and effect.

15. Under the Agency Agreement, Defendant has breached its obligations and duties including those set forth above that include omissions concerning competency, capacity, authority, marital rights, irregularities in examination and opinion, assumed risks, incorrect use or furnishing of property descriptions, undisclosed heirs, incorrect surveys and inspections, searching irregularities, unforeseen risks, forgery, assertion of possessory rights and encroachments, incorrect abstracting and search procedures, off-record prescriptive rights, and access rights.

16. The aforesaid breaches have caused loss, expense, charges, attorney's fees, allocated loss adjustment expenses and other damages to WFG for which it has not been reimbursed and continues to pay loss under its insureds' claims for policies written by Defendant.

17. WFG's loss, expense, charges, attorney's fees and other damages exceed Twenty-Five Thousand and 00/100 (\$25,000.00) Dollars and include payments under its insureds' claims in excess of forty-seven claims, including those claim numbers listed in Exhibit A and incorporated herein.

18. WFG has made demand on Defendant for reimbursement under the Agency Agreement for the payments it has made on the claims due to Defendant's breach of the Agency Agreement, and those demands have been refused and ignored.

19. The loss, expense, charges, attorney's fees and other damages suffered by WFG are a direct and proximate result of the wrongful acts, omissions, negligence and/or representations of Defendant, which has damaged WFG, subjected it to further liability, and to which it has incurred consequential damages in having to expend attorney's fees and costs in this action and in order to prevent further loss, expense, charges, other damages, attorney's fees and costs and expenses in other actions for which Defendant has created liability for WFG.

20. WFG is entitled to full contractual indemnification from Defendant and for the loss, expenses, charges, allocated loss adjustment expenses, costs, expenses and attorney's fees for prosecution of this action, as well as prejudgment interest.

FOR A SECOND CAUSE OF ACTION

21. The above allegations are realleged here as if set forth again verbatim.

22. Defendant undertook and owed duties of care to WFG including to receive and process applications for title insurance and issues commitments, binders and policies in accordance with the usual and customary practices and procedures of responsible title insurance companies in the conduct of their business in a prudent, safe, sound, and ethical manner in accordance with recognized title underwriting principles.

23. Defendant was negligent, grossly negligent, wanton, willful, and careless in the aforementioned particulars when it breached its duties.

24. WFG's insureds have made claims, and other third parties have made claims against WFG's insureds, resulting in proximate damages to WFG in the form of payments of loss, expenses, charges, attorney's fees, costs and allocated loss adjustment expenses.

25. That by reason of the acts of Defendant as set forth above, WFG is entitled to an award of actual damages in excess of \$25,000.00, together with punitive damages in an appropriate amount, and for the costs and attorney's fees of this action.

FOR A THIRD CAUSE OF ACTION

26. The above allegations are realleged here as if set forth again verbatim.

27. Defendant was contractually responsible for any loss, charge, expense and attorney fee incurred by WFG due to a breach by Defendant under the Agency Agreement.

28. For the reasons aforesaid, Defendant breached the Agency Agreement and unjustifiably failed to perform under the contract.

29. The damage suffered by WFG is a direct and proximate result of Defendant's breach.

30. WFG is entitled to judgment against Defendant for damages due to the breaches of the Agency Agreement and certain consequential damages as actual damages, as well as prejudgment interest, attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION

31. The above allegations are realleged here as if set forth again verbatim.

32. WFG as an insurer has a special relationship with Defendant as its agent.

33. The special relationship implies and supports a basis for a claim of equitable indemnity.

34. WFG is entitled to equitable indemnification, indemnity implied in law and common law indemnification for its losses, expenses, charges, allocated loss adjustment expenses, costs and attorney's fees, and respectfully requests a ruling from this court awarding judgment for amounts due.

FOR A FIFTH CAUSE OF ACTION

35. The above allegations are realleged here as if set forth again verbatim.

36. Defendant's course of conduct and refusal to reimburse WFG for its loss in the form of insurance payments to its insureds and members of the public constitutes an unfair method of competition and unfair and deceptive act that affects the public interest.

37. WFG has suffered ascertainable losses that were and are being proximately caused by Defendant's acts and omissions.

38. Defendant's acts and omissions affect the public's ability to afford and obtain title insurance in the form of owner's policies and lender's policies in real estate transactions.

39. Defendant's acts and omissions are capable of repetition, they are being repeated, and they are ongoing.

40. Due to the unfair acts and omissions of Defendant, WFG has suffered actual, quantifiable damages in excess of \$25,000.00.

41. Therefore, WFG is entitled to and respectfully requests treble damages and attorney's fees for Defendant's violations of the Unfair Trade Practices Act.

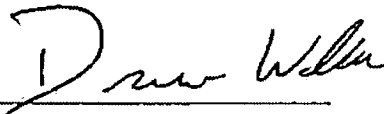
PRAYER FOR RELIEF

WHEREFORE WFG prays that this court enter judgment in favor of WFG against Defendant as follows:

- (1) for indemnification, loss, expense, charges, costs, attorney's fees, allocated loss adjustment expenses, prejudgment interest, consequential damages, and actual

damages for Defendant's breach of contractual indemnification, breach of equitable indemnification and breach of contract;

- (2) for actual damages and punitive damages, along with attorney's fees and costs for its negligence and gross negligence in breaching its duty of care to Plaintiff causing proximate damage;
- (3) for treble damages and attorney's fees for Defendant's violations of the Unfair Trade Practices Act; and
- (4) for such other relief as the court may find to be just and proper.



Drew B. Walker, SC Bar # 78271
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1330 Lady Street, Suite 400
PO Box 11803 (29211)
Columbia, SC 29201
Tel.: (803) 256-1268
Fax: (803) 253-3653
Email: dwalker@rogerslewis.com

August 5, 2016

ATTORNEY FOR PLAINTIFF

EXHIBIT

A

CLAIM NUMBERS	
1002080	1003135
1001981	1003210
1002047	1003788
1002338	1004300
1003196	1001682
1001389	1002068
1001538	1000636
1001781	1001061
1001788	1001398
1002020	1001738
1002108	1003703
1002191	1004387
1003134	1002090
1003693	1001727
1002474	1001725
1000811	1002546
1003328	1003958
1002284	1003995
1000725	1004116
1000791	1001119
1001104	1001596
1001276	1002773
1002149	1003174
1002934	1004601

State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2016-CP-40-4718

WFG National Title,)
Plaintiff,)
vs.)
DataQuick Lending Solutions,)
Defendant.)
_____)

Transcript of Record

August 21, 2018
Columbia, South Carolina

B E F O R E:

The Honorable L. Casey Manning, Judge

A P P E A R A N C E S:

Drew Walker, Esquire
Attorney for the Plaintiff

William W. Wilson, III, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Certificate Page.	25

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
	No exhibits introduced.	

1 THE COURT: Is everybody ready? I think it's your
2 motion, a motion -- is it 59(e), motion to reconsider entry
3 of default was it?

4 MR. WILSON: Yeah, our primary -- it, it's under
5 various rules. Our primary argument is under Rule ---

6 THE COURT: Well, which one is it?

7 MR. WILSON: 60(b).

8 THE COURT: Various rules doesn't tell me very much.
9 Which rule is it under?

10 MR. WILSON: 60(b) to lift the default judgment.

11 THE COURT: All right.

12 MR. WILSON: And 59.

13 THE COURT: Mr. Walker, you ready?

14 MR. WALKER: Yes, Your Honor.

15 THE COURT: You ready?

16 MR. WILSON: Yes, Your Honor.

17 THE COURT: Proceed.

18 MR. WILSON: Thank you. May it please the court?

19 THE COURT: Yes, sir.

20 MR. WILSON: I'm Bill Wilson. I'm with the Wyche firm
21 practicing in Greenville, and I represent the defendant,
22 DataQuick. The bottom line, I think our position can come
23 down to three essential facts, which is, one, we are
24 seeking to ---

25 THE COURT: You're in default. Four days later you

1 made some motions because you found out you were in
2 default. I guess your client -- am I right so far? You
3 were in default?

4 MR. WILSON: Yes, Your Honor.

5 THE COURT: Entry of default was made. Four days
6 later, I think you filed a motion. Is that correct?

7 MR. WILSON: We filed the motion ten days after
8 learning ---

9 THE COURT: Ten days. I was giving ---

10 MR. WILSON: Ten days after learning ---

11 THE COURT: --- you credit for four days. I'm sorry.
12 I take that back. Let me ask you this. Your client have
13 trouble counting up to thirty?

14 MR. WILSON: Your Honor, our client ---

15 THE COURT: This is the question. Does your client
16 have trouble counting up to thirty?

17 MR. WILSON: No, sir.

18 THE COURT: All right. Go ahead.

19 MR. WILSON: Thank you. DataQuick is a company that
20 does not -- has been out of business since 2014. It does
21 not have employees; it does not have operations. It sold
22 all of its assets.

23 THE COURT: So, the rule should be exempted because
24 they don't have employees? Help me out.

25 MR. WILSON: No, sir, I'm not ---

1 THE COURT: I'm not trying to be hard, but these are
2 legitimate questions.

3 MR. WILSON: I agree. I agree those are all
4 legitimate questions, Your Honor. Thank you, but our
5 position is this. The -- our -- the -- DataQuick did not
6 -- was not aware of this lawsuit until October 2, 2017. I
7 filed a motion on October 12, 2017.

8 THE COURT: Are you saying they were not served?

9 MR. WILSON: What I'm saying, Your Honor, is that
10 their registered agent was served, but we are asking this
11 court to exercise its discretion to find that there was
12 excusable neglect in failing to respond prior to when it
13 did respond.

14 THE COURT: Because the agent didn't pass the lawsuit
15 on to the company. All right.

16 MR. WILSON:) That's not our position, Your Honor. The
17 agent did forward to the address that ---

18 THE COURT: That makes it was worse then.

19 MR. WILSON: --- it had on file. I understand it is
20 -- it's -- I understand that, Your Honor.

21 THE COURT: I'm going to make a promise to you. I
22 know this has been a long time. I'm not going to stop you
23 anymore. Go ahead. I'll let you finish. Go ahead.

24 MR. WILSON: Well, thank you. Thank you, Your Honor.

25 THE COURT: All right.

1 MR. WILSON: The situation with this today is that
2 there are four factors the court can consider if we're
3 asking to lift the default judgment under 60(b)(1). The
4 first factor is how long did we take to respond once we
5 received actual notice. The answer is ten days. We think
6 that is a quick response once we actually knew and fits
7 within that criteria as far as you exercising discretion.

8 The second criteria is why didn't we respond before,
9 and the answer to that, there's not a -- the answer to that
10 is not an excuse as much as it -- an explanation.

11 THE COURT: What's the difference between an
12 explanation and an excuse?

13 MR. WILSON: Well, I, I might have misspoke. I would
14 say ---

15 THE COURT: No, no. I'm listening to you, and I'm not
16 trying to be hard on you, but this is a serious matter, and
17 you drove all the way from Greenville.

18 MR. WILSON: It is a very serious matter, Your Honor,
19 and the reason that the company did not know about the
20 lawsuit was it admittedly had failed to update its
21 information with its registered agent. It had registered
22 agents here in South Carolina and in Delaware with CT Corp.
23 After the suit was filed in August of 2016, in December of
24 2016 the company changed registered agents in Delaware in
25 December 2016. And the next thing that happened in the

1 suit wasn't until September of 2017 when the judgment
2 entered, and they did receive it because they had changed
3 agents. And so there is case law that says that ---

4 THE COURT: What case law? Name two cases.

5 MR. WILSON: Yes, Your Honor.

6 THE COURT: Do you cite it in your memo?

7 MR. WILSON: Yes, sir, they're cited in the memo.

8 THE COURT: All right.

9 MR. WILSON: There's two -- there, there's not a South
10 Carolina case I could find other than the ---

11 THE COURT: Is there anything ---

12 MR. WILSON: --- District of South Carolina.

13 THE COURT: --- east of the Mississippi that you
14 cited?

15 MR. WILSON: District of South Carolina and District
16 of Maine.

17 THE COURT: That's close enough. Go ahead.

18 MR. WILSON: Those two cases both held that there was
19 excusable neglect, one under Rule 55, one under Rule ---

20 THE COURT: What are the facts of those cases compared
21 to the facts in this one? Are they distinguishable? Are
22 they close to being the same?

23 MR. WILSON: I think they're pretty close to the same.
24 The ---

25 THE COURT: Explain how.

1 MR. WILSON: Well, the companies neglected to inform
2 their registered agent with their correct address, and so
3 when the process went to the old address, the company
4 didn't get it. But the company later learned -- in one
5 case the old address, somebody forwarded it on. In the
6 other case, I'm not sure how they learned it, but in both
7 cases when they ultimately learned, they asked to lift the
8 default and the court ruled in those cases. It exercised
9 its discretion to find that there was excusable neglect.

10 THE COURT: All right, sir.

11 MR. WILSON: And I think that the other factors are,
12 are very important as well, such as how promptly we
13 responded once we knew, and then whether we have a
14 meritorious defense, Your Honor, and we do have a defense
15 in this case.

16 Because the company sold all of its assets in 2014,
17 one of the assets that was sold is the contract that the
18 plaintiff is claiming on. It's a title agency
19 relationship. We sold that contract to Stewart Title.
20 Stewart Title agreed to indemnify DataQuick if there were
21 any claims that came on -- from the plaintiff. We have put
22 Stewart Title on notice, but of course they have said,
23 well, you didn't, you didn't give us notice before you were
24 in default, so that -- we don't have to indemnify.

25 But, Your Honor, if we can appear and have default

1 lifted and defend the case, if we can do that, then ---

2 THE COURT: Just like in baseball. If you give us
3 four strikes, we might hit a home run or something, but go
4 ahead. Don't let me stop you.

5 MR. WILSON: Well, Your Honor, I ---

6 THE COURT: And I haven't made a decision yet, as you
7 well know.

8 MR. WILSON: I understand. I appreciate your
9 questions; I think they're all good questions. I would ask
10 the exact same questions, and -- but in this case, Your
11 Honor, there's also the idea in every case of if a party
12 appears, there's a general policy in favor of resolving
13 cases on the merits, and especially when it comes to
14 high-dollar judgments. This is a judgment for \$3.9
15 million. It's a large judgment, and we would ask the court
16 to, to rely on the policy that generally favors resolving
17 cases on the merits, particularly when a defendant does
18 not ---

19 THE COURT: Let me ask you this question. If this was
20 a \$3000 default judgment, would you make the same argument?

21 MR. WILSON: Well, I don't think that would be ---

22 THE COURT: You don't have to answer.

23 MR. WILSON: I don't think that would rise to the
24 level, and it probably wouldn't be worth spending the
25 time ---

1 THE COURT: Driving from Greenville.

2 MR. WILSON: Excuse me?

3 THE COURT: Never mind. It wouldn't be worth driving
4 from Greenville for \$3000.

5 MR. WILSON: It, it, it probably would not be worth
6 that, Your Honor, and what I'm saying is there's -- I've
7 cited to some *Hornbook* law that says when you're dealing
8 with larger dollars, that policy favoring just resolving
9 disputes on the merits becomes even more -- even a higher
10 value.

11 THE COURT: I totally agree. It makes the case more
12 important. It really does. I understand.

13 MR. WILSON: So -- and because the defendant would
14 like to defend, because the defendant has received actual
15 notice and responded promptly, because the defendant was
16 not acting in bad faith when it did not update its
17 addresses -- it was a mistake. There's no question about
18 that. The company made a mistake. The company was out of
19 business and so -- but they still should have done it. And
20 the fact is they actually did do it in December of 2016
21 just three months, four months after the suit was filed.
22 So, that shows, I believe, that the company was not trying
23 to avoid being served with lawsuits.

24 I think whether or not the company exhibited good
25 faith or bad faith is an important factor, and we think

1 that is a demonstration of good faith. Our affidavit from
2 the company representative, who's a lawyer from the parent
3 company, says that we weren't trying to avoid lawsuits. We
4 weren't trying to act in bad faith. And so -- and with
5 those circumstances where they acted quickly, where there
6 is excusable neglect that even other courts have found was
7 excusable, where there is a meritorious defense -- in fact,
8 there, there's more -- I mean, the primary one is the one
9 that I've cited today about we, we would have Stewart
10 Title, third-party them in to indemnify.

11 And then the fourth factor is prejudice, and in
12 general courts don't resolve this issue on prejudice
13 because legal prejudice is more than just the plaintiff
14 having to prove his case. Legal prejudice requires that
15 somehow they've lost the ability to prove their case. The
16 fact is the defendant filed -- I mean, the plaintiff filed
17 the suit in August 2016 and didn't move for a default
18 judgment until September 2017. They waited thirteen
19 months.

20 THE COURT: Well, that's long enough for y'all to have
21 found out. That -- it makes your case worse, not better,
22 it seems to me. That's just my personal observation. If
23 it took them so long, if they waited that long before they
24 filed a default judgment, it's not like thirty days after
25 the lawsuit they filed default. They waited a whole year.

1 MR. WILSON: Well, the initial filings that were
2 served happened in, like, August and September of 2016. We
3 changed our agent in December of 2016, and then the next
4 thing that happened in the case was they moved for a
5 default judgment in September of 2017. The fact that they
6 waited -- if they had moved earlier in 2017, we would've
7 received it earlier and responded earlier, but that's -- I
8 would say that as far as prejudice goes, the plaintiff had
9 its own delay where it waited a year, over a year after
10 filing the case before it filed for default judgment. I
11 don't think they can come and say, well, we're prejudiced
12 by any delay.

13 (A PAUSE.)

14 THE COURT: All right.

15 MR. WILSON: Your Honor, may I make one other point?

16 THE COURT: Yes, sir. Go ahead.

17 MR. WILSON: That -- I have a second argument which is
18 independent from the first argument.

19 THE COURT: Go ahead.

20 MR. WILSON: The second argument ---

21 THE COURT: Are they connected?

22 MR. WILSON: They're connected in the sense that Rule
23 60(b)(4) says that a default judgment is void -- it can be
24 lifted if it's void. And there is also case law that says
25 that a judgment is void, default judgment is void if the

1 required notice of a hearing ---

2 THE COURT: Well, let me ask you this. What did the
3 plaintiff do wrong in this case? Did they do anything
4 wrong? How are they at fault? Do they have dirty hands?
5 What did the plaintiff do?

6 MR. WILSON: I, I -- well, on this particular point,
7 what I'm saying is the plaintiff, when they presented their
8 motion for default judgment, said this is for liquidated
9 damages. Liquidated damages, of course, creates a
10 different procedure for default than ---

11 THE COURT: That's why I signed the order. They said
12 it was liquidated. I don't know if it was or not. That's
13 what the order said.

14 MR. WILSON: I don't believe it was, and I've cited to
15 a case that says that liquidated damages requires there to
16 be detailed data and information contained in the pleadings
17 or the supporting affidavits that show how to calculate the
18 damages. Here that does not exist. The original pleading
19 just said there's damages over 25,000 and there's a couple
20 dozen claims.

21 The, the affidavit just assigned a number to each
22 claim and said the total is, is 1.3 and then they trebled
23 it. But I don't believe that is liquidated if you just say
24 this claim is worth X, this claim is worth Y.

25 THE COURT: Let me ask you this. Do you have a case

1 specifically as to the issue you're arguing to me right
2 now?

3 MR. WILSON: I do, Your Honor. So, the case is *Wells*
4 *Fargo vs.* ---

5 THE COURT: That's reliable. I won't say anything
6 about Wells Fargo.

7 MR. WILSON: Well, I don't -- it's *vs. Marion*
8 *Amphitheater* and in that case, the court said that if
9 damages claimed ---

10 THE COURT: What's the cite of the case? You just
11 said Wells Fargo. That's not good enough.

12 MR. WILSON: Yes, Your Honor.

13 THE COURT: What page is it on your memo?

14 MR. WILSON: It is on -- unfortunately, I did not
15 number my pages. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 is the
16 -- 12.

17 THE COURT: Can you follow that, Mr. Walker?

18 MR. WILSON: 12th page, excuse me.

19 THE COURT: All right.

20 MR. WILSON: 12th page, and it is 408 SC 87, page 92
21 to 93.

22 THE COURT: All right.

23 MR. WILSON: And it claims that:

24 If damages are not readily ascertainable from the
25 pleadings and record, a hearing is appropriate to

1 determine the amount of damages. There has to be
2 capable of ascertainment from definite figures
3 contained in the documentary evidence or in
4 detailed affidavits.

5 And in this case it said that because the measure of
6 damages was not liquidated, that a special -- the special
7 referée erred in awarding damages without conducting a
8 damages hearing. So, this case says if it's unliquidated,
9 there has to be a damages hearing. Here there was no
10 damages hearing. The motion was filed. Four days later,
11 the judgment was entered. And so my second argument is
12 based on this case and on the *Diamond* case that says that
13 if notice is required and not given of that hearing, then
14 judgment is void. So, my second separate argument is we at
15 least should have a damages hearing because the law does
16 require for unliquidated damages a hearing, and it just
17 didn't happen.

18 THE COURT: All right.

19 MR. WILSON: Thank you, Your Honor.

20 THE COURT: Thank you, sir.

21 Yes, sir, Mr. Walker.

22 MR. WALKER: Thank you, Your Honor. Drew Walker on
23 behalf of the plaintiff, WFG. Your Honor, excusable
24 neglect is, is the standard here. As your court -- as Your
25 Honor alluded to, WFG did nothing procedurally wrong. It

1 did everything procedurally right. It served its
2 registered agent in South Carolina; it served it in
3 Delaware. It served it with every single pleading, notice,
4 motion, proposed order, and it served the order once it got
5 it on the defendant. That was the only thing that it
6 actually received.

7 Everything that happened that went wrong for DataQuick
8 was because of DataQuick's inaction and its, and its
9 deficiencies in how it ran its business. It had email
10 addresses that CT Corporation forwarded everything to a
11 contact. Those were evidently improper contacts that were
12 no longer with the building. It failed to update those
13 contacts; it admits that.

14 Your Honor, we have a litany of case law interpreting
15 Rule 55 and Rule 60. As Your Honor knows, Rule 55 is a
16 lower good-cause standard. Even in those cases when
17 negligence -- which is clear and admitted here -- is
18 imputable to an agent such as an attorney or an insurer,
19 then they're still held to the negligence of their insurer
20 or attorney.

21 THE COURT: The principal.

22 MR. WALKER: Your Honor, this is direct. This is
23 first-party negligence. It is absolutely inexcusable, and
24 the reason there's no controlling case in South Carolina
25 on, on such an instance is because it's black and white. I

1 mean, that, that is *per se* failure, inexcusable neglect
2 under the Rule 60 standard.

3 As Your Honor mentioned, there were fourteen months
4 between service of the summons and complaint and an
5 appearance by DataQuick. Now, were, were there a few
6 months' delay in submitting orders? Yes, there were, but
7 that was also time that DataQuick could have spent --
8 especially when it changed its registered agent -- it could
9 have spent auditing who the registered agent at CT
10 Corporation was that was forwarding -- who their contact
11 was that was not getting all the service of process. It
12 didn't do anything during that interim of time, and that's,
13 that's why we're here today, Your Honor.

14 Speaking to the, to the District Court of South
15 Carolina cases that Mr. Wilson mentioned, they are quite
16 distinguishable. First, CT Corporation was the registered
17 agent. Here again it received notice, but it delivered
18 that notice to a security guard that was not authorized by
19 the company to accept service. Well, we -- CT Corporation
20 in our instance delivered it to the very person that
21 DataQuick wanted it delivered to. They just failed to
22 update the fact that that person was no longer associated
23 with DataQuick.

24 Secondly in that case, court found that the plaintiff
25 was not entirely innocent because it knew the location of

1 the defendant's new office. The defendant had switched
2 offices and it could have, it could have served him there.
3 That's not the case here. We served registered agents.

4 Registered agents is the type 1-A way to serve a
5 corporation in South Carolina. If we start undoing that
6 and allowing properly served defendants, even in a large
7 case, out of default and out of judgment in South Carolina
8 under our most stringent Rule 60 standard, we're opening
9 the door to, to something we don't want here, Your Honor.

10 And I, I would disagree with Mr. Wilson that good
11 faith is -- just the fact that they want to bring a
12 defense, the fact that they were not intentionally not
13 getting served, that, that is not the key ingredient. We
14 have cases that say the finality of judgments -- these
15 cases are in my brief. The finality of judgments are very
16 critical to the, to, to the way we run our court system
17 here.

18 Your Honor, I would agree. We can't let somebody out
19 two years later. It prejudices not only WFG but it -- when
20 it -- when a title agent who underwrites title policies for
21 an underwriter such as WFG and obviously incurs a lot of
22 losses, that can be computed -- and we'll get into
23 liquidated nature of it -- that can be computed, somebody's
24 got to bear those costs. It's not just WFG. It's, it's
25 the South Carolina consumer at large. That's why we

1 brought a UTPA claim. That's why we're entitled to treble
2 damages.

3 He says that there's a case that stands for no breach
4 of contract can rise to a UTPA claim. That's not what the
5 case in, in DataQuick's memo stands for. It says when the
6 public interest is not affected and it's just two
7 sophisticated commercial parties, that can't stand for
8 UTPA. But the public interest is affected here because
9 every time I go and borrow money to mortgage a new house or
10 refinance a new house, I'm required to pay my lender's
11 title insurance premium or else I can't get financing. So,
12 as a South Carolina consumer, when my rates start going up
13 because underwriters aren't shouldering the burden of the
14 loss, or if agents aren't shouldering the burden of the
15 loss for the underwriter and only the underwriter is paid,
16 guess where that cost gets passed along to? It gets passed
17 along to the South Carolina consumer.

18 They were doing business here. They had a registered
19 agent here. They submitted a personal jurisdiction here.
20 Voidness under Rule 60(b) is a jurisdictional matter. They
21 either have to show they didn't get due process, they
22 didn't -- they don't have personal jurisdiction. They
23 don't have subject-matter jurisdiction. They have not
24 argued subject-matter jurisdiction. They have not argued a
25 loss of due process. They're sitting in the court today,

1 and they were registered to do business in South Carolina
2 and duly served here. Personal jurisdiction is not an
3 issue. Your Honor, I've made all these points in my
4 memorandum.

5 As to liquidated damages, Your Honor, Rule 55 requires
6 an affidavit of debt. It requires an affidavit of debt for
7 liquidated damages without a hearing. Those have to be
8 compute -- sum certainties that can be computed. It is a
9 regular practice in South Carolina pursuant to Rule 55 to
10 allow affidavits of debt outlining the specific amounts
11 that are owed. Banks in foreclosures do it all the time.
12 They are not required to elucidate a servicing history;
13 they're not required to say whenever payment was missed,
14 every default, default payment was missed.

15 Your Honor, it is a big sum, but we did state in our
16 complaint that there were forty-seven claims that we were
17 suing under, and we also included the affidavit of debt
18 which, per the rule, can be submitted at the time that
19 motion for entry of default is submitted, Your Honor.

20 So, we took all the proper steps there. We very
21 clearly showed where we trebled our damages. We put a
22 meager amount of attorney's fees of \$4000. I've got an
23 affidavit of debt that I've submitted to the clerk of court
24 today. Current attorney's fees are at \$20,000, which is
25 greater than the amount that Your Honor awarded in the

1 order which was trebled, and if that was error, that was
2 harmless error because of where we stand today.

3 Your Honor, he argues that attorney's fees, he was not
4 give ten days to object because the order was issued four
5 days after it was submitted to Your Honor, and he should
6 have a ten-day objection period. We did put notice in the
7 proposed order that we were seeking attorney's fees, and
8 even though it was issued four days afterwards, it was
9 still served on the defendant, and the defendant within ten
10 days did not raise any objection. They had a right to, but
11 of course ---

12 THE COURT: I hope nobody holds the court responsible
13 for being efficient.

14 MR. WALKER: For what?

15 THE COURT: Being efficient.

16 MR. WALKER: Exactly, Your Honor, and, and still the
17 ten days they were served with it, they could have raised
18 an objection. Maples got it and for some reason, as they
19 concede, Maples did not -- their new, better registered
20 agent did not -- again, something that's not, that's not
21 our fault -- didn't send it to DataQuick. So, Your Honor,
22 we, we've done everything we can do here, and we'd ask that
23 the court deny the motion, and I appreciate your attention.

24 THE COURT: Thank you, sir.

25 Anything in response?

1 MR. WILSON: Yes. Thank you, Your Honor. First, on
2 the case he cited about the security guard, that was from
3 -- that was in Maine, district court in Maine. In that
4 case ---

5 THE COURT: Is that Bangor?

6 MR. WILSON: I'm sorry. What? I'm losing my hearing.
7 I apologize.

8 THE COURT: You said it was Maine, right?

9 MR. WILSON: Yes, sir.

10 THE COURT: A Maine case?

11 MR. WILSON: Maine.

12 THE COURT: M-a-i-n-e, from Maine to the Mobile Bay,
13 the same Maine?

14 MR. WILSON: The state of Maine.

15 THE COURT: Yeah.

16 MR. WILSON: And the security guard was not associated
17 with the defendant in that case. They sent it to the
18 former address of the defendant. A security guard accepted
19 it. That security guard had no association with the
20 defendant.

21 THE COURT: I'm going to do a time out.

22 (OFF THE RECORD.)

23 THE COURT: You continue your argument.

24 MR. WILSON: But, but I believe that Drew was saying
25 that that security guard just wasn't appointed as a

1 registered agent. Now, he wasn't even associated with the
2 company, so I don't think that's a way to argue that case.

3 And in addition, he said that in that case, they knew
4 where to find the defendant. In our case, the title
5 company knew that the -- our -- that DataQuick was no
6 longer their defendant. They sued the wrong defendant.
7 They -- our -- this title insurance agreement was assigned
8 to Stewart Title. It's beyond me why they sued a company
9 that they know they hadn't been dealing with since 2014
10 when the thing was transferred. So, in that sense, I would
11 say they do have some responsibility.

12 And then he also talked about the finality of
13 judgments. But, Your Honor, when a defendant appears --
14 and I've cited this out of the *Hornbook* law, that when a
15 defendant appears, that in general the policy ---

16 THE COURT: You didn't say Gilberts, did you? You
17 said *Hornbook*? What did you say?

18 MR. WILSON: Yeah. It was Wright and Miller, Wright
19 and Miller.

20 THE COURT: I'm sorry. Go ahead.

21 MR. WILSON: But in general the policy favors
22 resolution on the merits and that that policy trumps the
23 policy of finality of judgment. So, general finality of
24 judgment obviously is incredibly important, but when a
25 defendant finally ---

1 THE COURT: Let me stop both of you. I've heard
2 enough. I'm going to let y'all submit proposed orders.
3 You got ten days. Thank you.

4 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 21ST DAY OF AUGUST, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 24TH, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO.: 2016-CP-40-04718

WFG National Title Insurance Company

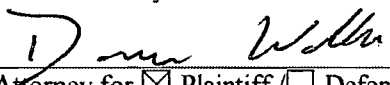
**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,

vs.

DataQuick Lending Solutions, Inc. et al.

Defendants.

Plaintiff's Attorney: Drew B. Walker, Bar No. 78271 Address: PO Box 11803, Columbia, SC 29211 Phone: 803-978-2836 Fax 803-252-3653 E-mail: dwalker@rogerslewis.com Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant	9/15/17 Date submitted
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by:  Date Filed: 9.15.17 ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

 RICHLAND COUNTY
 FILED
 2017 SEP 15 PM 12:02
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-04718

**NOTICE OF MOTION AND
MOTION FOR DEFAULT JUDGMENT
WITH ATTORNEY'S FEES**

2017 SEP 15 PM 12:02
DEANDREA GIST BENJAMIN
RICHLAND COUNTY
FILED

TO: THE DEFENDANTS ABOVE-NAMED:

PLEASE TAKE NOTICE that pursuant to Rule 55, SCRCP, the Plaintiff WFG National Title Insurance Company ("Plaintiff") moves this Court for default judgment of liquidated damages as enumerated in the accompanying proposed order. This motion is based on the Summons and Complaint ("Complaint"), Affidavit of Service, Affidavit of Amount Due, Affidavit of Attorney's Fees, the Order of Entry of Default filed herein and the South Carolina Rules of Civil Procedure, including Rule 55(b)(1).

Plaintiff seeks an order for joint and several judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC (collectively referred to as "Defendants") for amounts owed under an agency agreement. The Plaintiff instituted this proceeding against the Defendants for amounts due under the Agreement as defined in Paragraph 17 of the Complaint.

The Defendants were served with the Summons and Complaint and have not responded within thirty (30) days, as required by the South Carolina Rules of Civil Procedure. The Defendants have been entered into default by the Honorable DeAndrea Gist Benjamin as shown in the Order of Entry of Default filed herein on October 27, 2016.

Defendants are in default under the terms of the Agreement, and that liquidated sums are due and owing to the Plaintiff on the claim accounts listed in Exhibit A of the Complaint. The total liquidated amount due to Plaintiff on the accounts as of July 12, 2017, and as shown in the Affidavit of Amount Due, is One Million Two Hundred Ninety-Nine Thousand Eight Hundred Eighty-Eight and 99/100 (\$1,299,888.99) Dollars, as well as court costs and attorney's fees provided for in the Agreement as pled in Paragraph 13 of the Complaint, supported by an Attorney's Fee Affidavit attached hereto as **Exhibit A**, and as outlined below.

The liquidated damages owed in this action under the Complaint's First, Second, Third and Fourth Causes of Action against Defendants are due and owing as follows:

Amounts owed under Agreement	\$1,299,888.99
Court Costs - filing fee	\$150.00
Service of Process	\$144.50
Attorney's Fee for this action	<u>\$4,000.00</u>
Amount Due	\$1,304,183.49

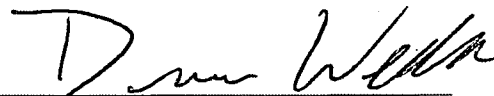
Plaintiff is entitled to treble damages under the Complaint's Fifth Cause of Action for Defendants' violations of the South Carolina Unfair Trade Practices Act, and the trebled amount of the damages awarded above shall be awarded to the Plaintiff and entered against the Defendants in the total amount of:

\$3,912,550.47

(this space left intentionally blank)

WHEREFORE, Plaintiff respectfully prays for an entry of default judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC, jointly and severally, in the amount Three Million Nine Hundred Twelve Thousand Five Hundred Fifty and 47/100 (\$3,912,550.47) Dollars.

Respectfully submitted,



Drew B. Walker (SC Bar No. 78271)
Rogers Lewis Jackson Mann & Quinn, LLC
PO Box 11803
Columbia, SC 29211
P: 803-978-2836
Attorney for Plaintiff

9/15, 2017

EXHIBIT

A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

WFG National Title Insurance Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS

IN THE MAGISTRATE'S COURT
CIVIL CASE NO.: 2016-CP-40-04718

AFFIDAVIT AS TO ATTORNEY'S FEES

RICHLAND COUNTY
FILED
2017 SEP 15 PM 12:02
JANETTE W. MCBRIDE
CLERK & C.S.

PERSONALLY APPEARED BEFORE ME, Drew B. Walker, Esquire, who first being duly sworn, deposes and states that he is a Member of the law firm of Rogers Lewis Jackson Mann & Quinn, LLC, and that he represents WFG National Title Insurance Company as the Plaintiff in the above-captioned action:

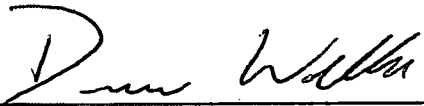
Since the inception of this action, his office has assumed responsibility for the institution of this action and has analyzed the Plaintiff's accounts, agency agreement, files and causes of action. His office has been responsible for the preparation of the following pleadings and court documents:

1. Civil Cover Sheet, Summons and Complaint;
2. Affidavit of Default and a proposed Order for Entry of Default
3. Motion for Default Judgment with Attorney's fees and accompanying Affidavits

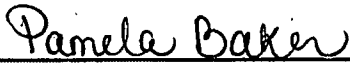
Additionally, his office has arranged for service of process on the Defendant. The attorney's fees and costs for these future actions are not included in the attorney's fees requested herein.

In light of the time and labor expended in excess of thirty-six (36) billable hours by attorneys and paralegal as of the date of the hearing, the time that will be dedicated to the matter post judgment, the novelty and difficulty of the questions raised, the skill required to properly perform the legal services rendered, the attorney's opportunity costs in pressing the instant litigation, the customary fee for like work, the attorney's expectations at the outset of the litigation, the time limitations imposed by the client or circumstances, the amount in controversy and the results obtained, the experience, reputation and ability of the attorney, the undesirability of the case within the legal community in

which the suit arose, the nature and length of the professional relationship between attorney and client, attorney's fees awards in similar cases, potential liabilities, the attendant responsibilities, the size of the debt, and the uncertainty of collection, he believes a reasonable attorney's fee would be **Four Thousand and 00/100 (\$4,000.00) Dollars.**


Drew B. Walker

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 15th day of September, 2017.


Notary Public for South Carolina
My Commission Expires: 4-1-2024

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL CASE NO.: 2016-CP-40-04718

AFFIDAVIT OF AMOUNT DUE

PERSONALLY APPEARED BEFORE ME, Jeffrey Dondanville, who being duly sworn, deposes and states:

1. I am National Claims Counsel with WFG National Title Insurance Company ("Plaintiff"). As such, I am authorized to make this Affidavit. I am over the age of eighteen years, and I have personal knowledge of the facts and matters stated herein based on my review of the business records defined below. The statements set forth in this Affidavit are true and correct, to the best of my knowledge and belief.

2. In the regular performance of my job functions, I have access to and am familiar with the business records (the "Records") relating to the Agreement as defined in Paragraph 17 of the Complaint ("Agreement") entered into by DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC (collectively referred to as "Defendants"). Further, I have access to and am familiar with the forty-seven claim accounts enumerated in Exhibit A of the Complaint, including the liquidated amounts due thereunder in the form of loss, expense, charges, attorney's fees and allocated loss adjustment expenses. I reviewed and relied upon the Records in executing this Affidavit.

3. According to the Records, the Defendants are in default for failure to pay amounts owed to Plaintiff under the Agreement. All amounts are due and owing pursuant to the terms of the Agreement.

(this space left intentionally blank)

4. The damages owed in this action against the Defendants are due and owing as follows as of July 12, 2017:

Amounts owed under Agreement	\$1,299,888.99
Court Costs - filing fee	\$150.00
Service of Process	\$144.50
Attorney's Fee for this action	\$4,000.00

Amount Due	1,304,183.49
-------------------	---------------------

Dated: Aug. 30, 2017

Jeffrey Dondanville
Affiant Name: Jeffrey Dondanville
Title: National Claims Counsel

State of _____
County of _____

The foregoing instrument was acknowledged and sworn before me this _____ day of _____, 2017, by Jeffrey Dondanville, as _____ of WFG National Insurance Company, who is personally known to me.

Notary Public for State of _____
My Commission expires: _____

CALIFORNIA JURAT
(CALIFORNIA GOVERNMENT CODE § 8202)

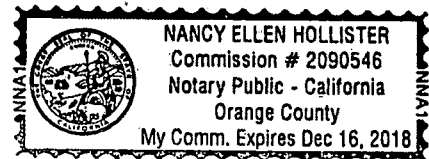
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

Subscribed and sworn to (or affirmed) before me on this 30 day of AUGUST 2017
by JEFFREY DONOVANVILLE, proved to me on the basis of
(Name of Signer(s))
satisfactory evidence to be the person(s) who appeared before me.

Nancy Ellen Hollister
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

Description of Attached Document

Title or Type of Document: AFFIDAVIT OF AMOUNT DUE Document Date: AUGUST 30, 2017
Number of Pages: _____ Signer(s) Other Than Named Above: _____
Additional Information: _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance
Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-04718

ORDER

THE CASE COMES BEFORE THE COURT pursuant to the motion of the Plaintiff, WFG National Title Insurance Company ("Plaintiff"), seeking an order for default judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC (collectively referred to as "Defendants") for the causes of action in its Complaint. Plaintiff's motion is based on the Summons and Complaint ("Complaint"), Affidavits of Service, Affidavit of Amount Due, Affidavit of Default filed and the South Carolina Rules of Civil Procedure, including Rule 55(b)(1).

The Defendants were served with the Summons and Complaint and have not responded within thirty (30) days, as required by the South Carolina Rules of Civil Procedure. The Defendants have been entered into default by the Honorable DeAndrea Gist Benjamin as shown in the Order of Entry of Default filed herein on October 27, 2016.

Plaintiff seeks an order for joint and several judgment against Defendants for amounts owed under an agency agreement. The Plaintiff instituted this proceeding against the Defendants for amounts due under the Agreement as defined in Paragraph 17 of the Complaint.

I find that Defendants are in default under the terms of the Agreement, and that liquidated sums are due and owing to the Plaintiff on the claim accounts listed in Exhibit A of the Complaint. The total liquidated amount due to Plaintiff on the accounts as of July 12, 2017, and as shown in the Affidavit of Amount Due, is One Million Two Hundred Ninety-Nine Thousand Eight Hundred Eighty-Eight and 99/100 (\$1,299,888.99) Dollars, as well as court costs and attorney's fees provided for in the Agreement as pled in Paragraph 13 of the Complaint, supported by an Attorney's Fee Affidavit filed herein, and as outlined below.

The liquidated damages owed in this action under the Complaint's First, Second, Third and Fourth Causes of Action against Defendants are due and owing as follows:

Amounts owed under Agreement	\$1,299,888.99
Court Costs - filing fee	\$150.00
Service of Process	\$144.50
Attorney's Fee for this action	<u>\$4,000.00</u>
Amount Due	\$1,304,183.49

Plaintiff is entitled to treble damages under the Complaint's Fifth Cause of Action for Defendants' violations of the South Carolina Unfair Trade Practices Act, and the trebled amount of the damages awarded above shall be awarded to the Plaintiff and entered against the Defendants in the total amount of:

\$3,912,550.47

IT IS THEREFORE ORDERED THAT:

The Plaintiff is awarded joint and several judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC in the amount of Three Million Nine Hundred Twelve Thousand Five Hundred Fifty and 47/100 (**\$3,912,550.47**) Dollars and interest at the statutory rate from the date this judgment is entered until the date paid.

AND IT IS SO ORDERED.

Circuit Court Judge

_____, 2017

_____, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

WFG National Title Company

CASE NO. 2016-CP-40-04718

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Drew B. Walker

Attorney for : ☒ Plaintiff ☐
Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
WFG National Title Insurance Company	DataQuick Lending Solutions, Inc.	\$3,912,550.47
WFG National Title Insurance Company	DataQuick Lending Solutions, LLC	\$3,912,550.47

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2016 and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 2016 to attorneys of record or
to parties (when appearing pro se) as follows:

Drew B. Walker, SC Bar # 78271

PO Box 11803

Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2016-CP-40-04718

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2017 SEP 15 PM 12:02
JANETTE MANCIBRIDE
C.C.P. & C.S.

The undersigned, of the law office of Rogers Lewis Jackson Mann & Quinn, LLC, does certify that on September 15th, 2017, she did cause to have served by U.S. Postal Service, regular mail with postage prepaid and return address clearly indicated, copies of the **NOTICE OF MOTION AND MOTION FOR DEFAULT JUDGMENT WITH ATTORNEY'S FEES; PROPOSED ORDER; AFFIDAVIT OF ATTORNEY'S FEES; AND AFFIDAVIT OF AMOUNT DUE** to the following:

DataQuick Lending Solutions, LLC
The Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

And

DataQuick Lending Solutions, LLC
Maples Fiduciary Services (Delaware) Inc.
4001 Kennett Pike, Suite 302
Wilmington, DE 19807

Defendant

DataQuick Lending Solutions, Inc.
C T Corporation System
2 Office Park Ct.
Suite 103
Columbia, SC 29223

Defendant



Paralegal

Rogers Lewis Jackson Mann & Quinn, LLC

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company

☐ Plaintiff

v.

Dataquick Lending Solutions, Inc. And Dataquick
Lending Solutions, Llc

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2016-CP-40-04718

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Drew B. Walker, Bar No. 78271 Address: Rogers Lewis, PO Box 11803, Columbia, SC 29211 phone: 803-978-2836 fax: e-mail: dwalker@rogerslewis.com other:		Defendant's Attorney: William M Wilson III, Bar No. 15808 Address: Wyche, P.A., 44 E. Camperdown Way, Greenville, SC 29601 phone: 864-242-8200 fax: 864-235-8900 e-mail: bwilson@wyche.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Defendants' Motion For New Trial, To Aler Or Amend Judgment and For Relief from Judgment			
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant		Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE	
		CODE: Date:	
CLERK'S VERIFICATION			
Collected by: <u>Mette</u> <u>10/13/17</u>		Date Filed:	

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C.A.: 2016-CP-40-04718

WFG National Title Insurance Company,

Plaintiff,

vs.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

Defendants.

DEFENDANTS' MOTION FOR NEW
TRIAL, TO ALTER OR AMEND
JUDGMENT, AND FOR RELIEF FROM
JUDGMENT

RICHLAND COUNTY
FILED
2017 SEP 23 AM 10:16
JESSIE W. MCBRIDE
& C.S.

Pursuant to Rules 5(a), 52(a), 54(c), 59(a), 59(e), and 60(b) of the South Carolina Rules of Civil Procedure and other applicable law, DataQuick Lending Solutions, LLC (formerly known as DataQuick Lending Solutions, Inc.) (collectively, "DataQuick") respectfully moves for a new trial (pursuant to Rule 59(a), SCRCPP), to alter or amend the judgment (pursuant to Rule 59(e)), and/or for relief from judgment (pursuant to Rule 60(b)). This motion is based upon the following procedural background, facts, and legal grounds.

Procedural Background:

- Plaintiff filed this suit in August 2016 and obtained an entry of default in 2016.
- Plaintiff filed a "Notice of Motion and Motion for Default Judgment with Attorney's Fees" (the "Motion") on September 15, 2017.
- The court entered an Order on September 19, 2017, in which it granted a default judgment to Plaintiff in the amount of \$3,912,550.47 ("Default Judgment").
- The Default Judgment was entered only four days following the Motion.
- No hearing on the Motion was held, and no notice of a damages hearing was given.

Facts (See Affidavit of Michael LaGatta, Esq., attached as Exhibit A):

- DataQuick originally was a corporation (DataQuick Lending Solutions, Inc.) but converted into a limited liability company (DataQuick Lending Solutions, LLC) on Dec. 23, 2014.
- DataQuick first learned of the lawsuit and Default Judgment on October 2, 2017, when it received a copy of the judgment entered on September 19, 2017, from its registered agent in Delaware, Maples Fiduciary Services (Delaware) Inc. ("Maples").
- At the time the lawsuit was filed, DataQuick's agent for service of process in both Delaware and South Carolina was CT Corporation. CT Corporation did not have correct contact information for DataQuick at the time the lawsuit was filed because DataQuick did not have active operations and failed to update this information.
- DataQuick changed its registered agent in Delaware (but not South Carolina) from CT Corp. to Maples in December 2016.
- Upon information and belief, Maples received the Motion sometime between September 15, 2017, and October 2, 2017, but failed to forward it to DataQuick.
- As a result, the first filing actually received by DataQuick in this matter was the Default Judgment, which was received from Maples on October 2, 2017.
- Prior to October 2, 2017, DataQuick had no actual knowledge of the lawsuit other than what knowledge might be imputed to it from its registered agents (who did not have correct contact information for DataQuick, with the exception of Maples beginning in December 2016).
- After it received the Default Judgment on October 2, 2017, DataQuick contacted CT Corporation and learned that CT Corporation had received service of various filings but had an invalid address for DataQuick.

Legal Grounds:

- The Default Judgment is invalid and void because it was entered without a damages hearing and without proper notice to DataQuick, all in violation of Rules 5(a) and 55(b). Further, it was entered in violation of Rules 52(a) and 54(c). As a result, DataQuick is entitled to a damages hearing.
 - The claims of Plaintiff were not for "a liquidated amount, a sum certain or a sum which can by computation be made certain." Accordingly, Rule 55(b)(2)

governed when a judgment by default could be entered. Per Rule 55(b)(2), such a judgment requires a damages hearing.

- Per Rule 5(a), “notice of any trial or hearing on unliquidated damages shall also be given to parties in default.” Such notice “shall be made by delivering a copy to him or by mailing it to him at his last known address.”
- Per Rule 55(b)(2): “Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action.”
- There is no record of notice to Defendants of any hearing on the Motion, nor was there a hearing. As a result, the mandatory requirement of a hearing was not met. Furthermore, the mandatory requirement of notice of a hearing was not given.
- In addition, even if a notice of hearing were deemed to be given (which it was not), it was not given at the last known address of the party because the address of the registered agent is different than the “last known address of such party.”
- Further, the entry of the Default Judgment violated Rule 55(b)(3), which allows a court to award attorneys’ fees—regardless of whether the case involves liquidated damages or unliquidated damages—only when there is a damages hearing under subsection (b)(2). Otherwise, the party seeking attorneys’ fees must (i) specify in its motion that it is seeking attorneys’ fees, (ii) give notice of the motion at the last known address of the defendant, and (iii) the defendant fails to file an objection within 10 days of service. Here, there was no damages hearing. Further, court records show that the plaintiff filed its Motion on September 15, 2017, but the Default Judgment was entered only 4 days later, which failed to allow for the required 10 day objection period. As a result, the Default Judgment violated Rule 55(b)(3).
- Further, the Default Judgment exceeded the amount prayed for in the demand for judgment in the Complaint in violation of Rule 54(c).
- Further, the Default Judgment trebled the damages without a finding that there was a willful or knowing violation of the South Carolina Trade Practices Act, which violates the Act and violates Rule 52(a).
- By virtue of one or more of the following, the judgment was invalid and void:

- The failure to hold a damages hearing, which is mandatory under Rules 5(a) and 55(b)(2).
 - The failure to give notice to defaulted Defendants of a damages hearing in violation of Rules 5(a) and 55(b)(2).
 - The award of attorneys' fees in violation of Rule 55(b)(3).
 - The judgment exceeded the amount prayed for in the Complaint, in violation of Rule 54(c).
 - The Default Judgment trebled the damages without a finding that there was a willful or knowing violation of the South Carolina Trade Practices Act, which violates the Act and violates Rule 52(a).
- As a result of the above violations and as a result of the judgment being invalid and void, Defendants respectfully request that the court vacate and/or amend the Default Judgment and grant a new damages hearing pursuant to Rule 52(a), Rule 59(a), and/or Rule 59(e).
- In the alternative, Defendants respectfully request relief from the Default Judgment pursuant to Rule 60(b)(4) as result of the judgment being void.
- Furthermore, DataQuick is entitled for the default to be lifted and to defend on the merits because it has a meritorious defense, it had valid reasons for not responding to the lawsuit, it acted promptly upon discovery of the lawsuit, and there would be no legal prejudice to Plaintiff.
 - DataQuick should obtain relief from the judgment pursuant to Rule 60(b)(1) due to mistake, inadvertence, surprise, or excusable neglect. It first obtained actual notice of the suit on October 2, 2017, which was ten days prior to the date of this motion. The reason it did not receive prior notice was due to the registered agents either not having a correct address or failing to forward suit papers to the correct address.
 - Pursuant to South Carolina law, judgments on the merits are favored, and default is disfavored. This is particularly true when large sums of money are involved, such as an amount in excess of \$3 Million in this case.
 - There is precedent for allowing a party to avoid an entry of default when it did not receive notice of a lawsuit because it failed to update its address with its registered agent, yet it acted promptly once it received actual notice. See *Miller v. Clear Channel Communications, Inc.*, No. 6:07-89-HMH, 2007 WL 2692180 (D.S.C. Sept. 12, 2007).
 - There is a meritorious defense that a violation of the South Carolina Unfair Trade Practices Act (SCUTPA) cannot be premised upon a breach of contract as a matter of law. The Complaint unequivocally relies upon a

breach of contract in order to establish violation of the SCUTPA. Further, there was no finding of a willful or knowing violation of the SCUTPA, which is required in order to treble damages. Further, apart from whether trebling is allowed, it is improper as a matter of law to treble attorneys' fees as part of a trebling of damages.

This motion is supported by the above-cited authority, the pleadings, the accompanying Affidavit of Michael LaGatta, Esq, and any supporting memorandum or additional affidavits that may be filed at or before the hearing on this motion.

The undersigned counsel certifies that consultation could not be timely held.

Respectfully submitted:

WYCHE, P.A.

By:


William M. Wilson III (#15808)

44 East Camperdown Way
Post Office Box 728
Greenville, South Carolina 29602
(803) 242-8200
Attorneys for Plaintiffs

Dated: October 12, 2017

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C.A.: 2016-CP-40-04718

WFG National Title Insurance Company,

Plaintiff,

vs.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

Defendants.

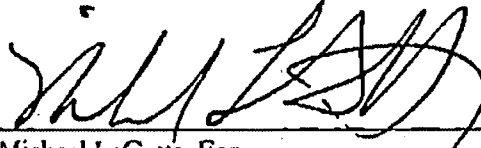
**AFFIDAVIT OF
MICHAEL LAGATTA, ESQ.**

PERSONALLY APPEARED BEFORE ME, Michael LaGatta, Esq., who being duly sworn,
deposes and says:

1. I am over the age of 18 and have personal knowledge of the contents of this affidavit.
2. I am in-house counsel for Defendants (collectively, "DataQuick").
3. DataQuick originally was a corporation (DataQuick Lending Solutions, Inc.) but converted into a limited liability company (DataQuick Lending Solutions, LLC) on Dec. 23, 2014.
4. DataQuick first learned of the lawsuit and Default Judgment on October 2, 2017, when it received a copy of the judgment entered on September 19, 2017, from its registered agent in Delaware, Maples Fiduciary Services (Delaware) Inc. ("Maples").
5. At the time the lawsuit was filed, DataQuick's agent for service of process in both Delaware and South Carolina was CT Corporation. CT Corporation did not have correct contact information for DataQuick at the time the lawsuit was filed because DataQuick did not have active operations and failed to update this information.
6. DataQuick changed its registered agent in Delaware (but not South Carolina) from CT Corp. to Maples in December 2016.
7. Upon information and belief, Maples received the Motion sometime between September 15, 2017, and October 2, 2017, but failed to forward it to DataQuick.
8. As a result, the first filing actually received by DataQuick in this matter was the Default Judgment, which was received from Maples on October 2, 2017.

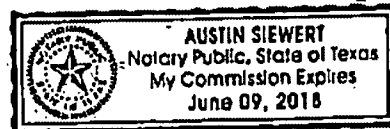
9. Prior to October 2, 2017, DataQuick had no actual knowledge of the lawsuit other than what knowledge might be imputed to it from its registered agents (who did not have correct contact information for DataQuick, with the exception of Maples beginning in December 2016).
10. After it received the Default Judgment on October 2, 2013, DataQuick contacted CT Corporation and learned that CT Corporation had received service of various filings but had an invalid address for DataQuick.

FURTHER AFFIANT SAYETH NOT.


Michael LaGatta, Esq.

SWORN to and Subscribed before me
this 12 day of October, 2017


Printed name of notary: Austin Siewert
Notary Public for Texas
My Commission Expires: June 9, 2018



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C.A.: 2016-CP-40-04718

WFG National Title Insurance Company,

Plaintiff,

vs.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

Defendants.

CERTIFICATE OF SERVICE

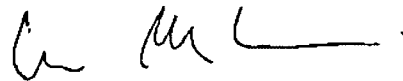
2017 OCT 13 AM 10:16
JENNIFER W. MCBRIDE
C.C.P. & C.S.

RICHLAND COUNTY
FILED

I hereby certify that copies of the **DEFENDANTS' MOTION FOR NEW TRIAL, TO ALTER OR AMEND JUDGMENT, AND FOR RELIEF FROM JUDGMENT** was served, on the date indicated below, on the Plaintiff via U.S. Mail, addressed as shown below:

Drew B. Walker
Rogers Lewis
P.O. Box 11803
Columbia, SC 29211

Respectfully submitted,



William M. Wilson, III (15808)
WYCHE, P.A.
44 East Camperdown Way
Post Office Box 728
Greenville, South Carolina 29602-0728
Telephone (864) 242-8200
Fax (864) 235-8900
Email bwilson@wyche.com

October 12, 2017

Attorney for Defendants

W Y C H E

Attorneys at Law

October 12, 2017

The Honorable Jeanette McBride
Richland County Clerk of Court
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201

Re: *WFG National Title Insurance Company v. DataQuick Lending Solutions, Inc. and Data Quick Lending Solutions, LLC*
C/N: 2016-CP-40-04718

Dear Ms. McBride:

Enclosed for filing with the court is the original and one copy of the Defendants' Motion For New Trial, To Alter Or Amend Judgment, And For Relief From Judgment along with a Motion Coversheet and \$25 check for the filing fee in the above referenced case.

Please file-stamp the copy and return it to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance with this matter.

Sincerely,



William M. Wilson
864-242-8294
bwilson@wyche.com

Enclosures

Cc: Drew B. Walker

W Y C H E
PROFESSIONAL ASSOCIATION

PO Box 728, Greenville, SC 29602-0728
p: 864.242.8200 | f: 864.235.8900
www.wyche.com

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C.A.: 2016-CP-40-04718

WFG National Title Insurance Company,

Plaintiff,

vs.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

Defendants.

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF ITS MOTION FOR NEW
TRIAL, TO ALTER OR AMEND
JUDGMENT, AND FOR RELIEF FROM
JUDGMENT**

Pursuant to Rules 5(a), 52(a), 54(c), 55(c), 59(a), 59(e), and 60(b) of the South Carolina Rules of Civil Procedure and other applicable law, DataQuick Lending Solutions, LLC (formerly known as DataQuick Lending Solutions, Inc.) (collectively, "DataQuick") respectfully submits this memorandum in support of its motion for a new trial (pursuant to Rule 59(a), SCRCPP), to alter or amend the judgment (pursuant to Rule 59(e)), and/or for relief from judgment (pursuant to Rule 60(b)).

Procedural Timeline from Online Docket and Filings

August 5, 2016	Complaint filed
October 27, 2016	Affidavit of Default filed (showing service upon CT Corporation)
October 27, 2016	Order of Entry of Default filed
September 15, 2017	Motion for Default Judgment filed (<u>served</u> by mail on 9/15/17 on CT Corporation and Maples)
September 19, 2017	Order for Default Judgment of \$3,912,550.47 (<u>served</u> by mail on 9/27/17 on CT Corporation and Maples, per Affidavit of Service filed 10/2/17)

October 12, 2017 Service of Motion for New Trial, to Alter or Amend Judgment, and
for Relief from Judgment
(filed October 13, 2017)

Factual Statement

An Order for Default Judgment was entered in this action without a hearing on September 19, 2017, without any actual knowledge by DataQuick of the lawsuit. The allegations of the Complaint indicate that Plaintiff WFG National Title Insurance Company is a title insurance company that brought suit against its title agent for unspecified underwriting failures under its title agency agreement. The Complaint fails to include any specific factual allegations and fails to outline any damages other than claiming that damages exceed \$25,000. It appears that Plaintiff brought suit against the incorrect defendant, as the title agency agreement had been sold to and assumed by Stewart Title over two years prior to the initiation of this lawsuit, and Plaintiff must have known that it no longer was dealing with DataQuick.

As detailed in the Affidavit of Adam Fliss:

1. I am over the age of 18 and have personal knowledge of the contents of this affidavit.
2. I am in-house counsel for Defendants (collectively, "DataQuick") by virtue of being employed by a corporate parent whose affiliate owns DataQuick.
3. The two Defendants are a single company. DataQuick originally was a corporation (DataQuick Lending Solutions, Inc.) but converted into a limited liability company (DataQuick Lending Solutions, LLC) on Dec. 23, 2014.
4. At the time the present lawsuit was filed on August 5, 2016, DataQuick had no business operations and had not operated for over two years.
5. DataQuick currently, and at the time the present lawsuit was filed, has no assets.
6. The assets of DataQuick, including the agency agreement between Plaintiff and DataQuick (upon which Plaintiff's claims are based) ("Agency Agreement"), were sold to Stewart Title Company ("Stewart Title") on March 26, 2014, and Stewart Title assumed the Agency Agreement and liability thereunder.

7. Upon information and belief, Plaintiff was aware of the sale and continued working with Stewart Title as the successor agent under the Agency Agreement.
8. Accordingly, DataQuick was not a party to the Agency Agreement at the time the Complaint was filed, and upon information and belief, Plaintiff was aware of this fact.
9. DataQuick has not had any business operations since the time of the sale to Stewart Title.
10. DataQuick does not have possession of the Agency Agreement, no longer has any employees, and has not had any involvement with the Agency Agreement since it was assigned to Stewart Title. As a result, it has no knowledge of the substance of Plaintiff's claims and no knowledge of the content of the Agency Agreement.
11. DataQuick first learned of the lawsuit and Default Judgment on October 2, 2017, when it received a copy of the Order entering the Default Judgment, from its registered agent in Delaware, Maples Fiduciary Services (Delaware) Inc. ("Maples").
12. At the time the lawsuit was filed, DataQuick's agent for service of process in both Delaware and South Carolina was CT Corporation. CT Corporation did not have correct contact information for DataQuick at the time the lawsuit was filed because DataQuick did not have active operations and inadvertently failed to update this information. As a result, CT Corporation sent notice to old notice addresses that no longer belonged to anyone with DataQuick.
13. DataQuick's failure to update the address was inadvertent and unintentional. It was not out of any bad faith intention to avoid the lawsuit, and all registered agents of DataQuick currently have correct addresses.
14. The notices had been forwarded by CT Corporation to James Keglovits by email at james.keglovits@decisioninsightgroup.com and to Floricia Orozco by email at Floricia.orozco@hcvr.com.
15. Mr. Keglovits was an agent for DataQuick following the sale to Stewart Title in 2014 but was no longer associated with DataQuick at the time of the filing of the Complaint in 2016.
16. Since appearing in the lawsuit in October 2017, it has been determined that Mr. Keglovits did not receive any notices from CT Corporation because the decisioninsightgroup.com domain no longer was in use by him at that time.
17. Ms. Orozco worked for an accounting firm Holthouse Carlin & Van Tright ("HCVT") that was associated with the sale to Stewart Title in 2014.

18. Since appearing in the lawsuit in October 2017, it has been determined that Ms. Orozco no longer is employed by HCVT and that HCVT was unable to determine what occurred with the notification to Ms. Orozco.
19. DataQuick ultimately did receive notice of the Default Judgment on October 2, 2017, after it changed its registered agent in Delaware (but not South Carolina) from CT Corporation to Maples in December 2016.
20. The first filing served upon Maples was the Motion for Default Judgment filed on September 15, 2017, but DataQuick did not receive a copy of this motion from Maples.
21. Maples has confirmed that it received the Motion for Default Judgment on September 18, 2017, but concedes without explanation that it has no record of forwarding it to DataQuick.
22. The Order for Default Judgment was entered on September 19, 2017, which was four days following the Motion for Default Judgment, and the online court docket shows that Plaintiff's counsel served the Order for Default Judgment upon Maples by mail on September 27, 2017.
23. As a result, the first filing actually received by DataQuick in this matter was the Default Judgment, which was received from Maples on October 2, 2017.
24. Prior to October 2, 2017, DataQuick had no actual knowledge of the lawsuit.
25. After it received the Order for Default Judgment on October 2, 2017, DataQuick contacted CT Corporation and learned that CT Corporation had received service of various filings but had forwarded the filings to invalid email addresses as noted above.
26. DataQuick acted promptly to cure the default by retaining counsel and serving the pending Motion for New Trial, to Alter or Amend Judgment, and for Relief from Judgment on October 12, 2017, which was ten days after it received notice of the Order for Default Judgment.
27. If the default were lifted and DataQuick were allowed to file an Answer and defend itself in this action, DataQuick would have several meritorious defenses, including but not limited to:
 - a) DataQuick is not a party to the Agency Agreement and therefore cannot be liable to Plaintiff for any breach.
 - b) DataQuick has placed Stewart Title (who assumed liability under the Agency Agreement with, upon information and belief, knowledge and consent of Plaintiff) on notice of a claim for indemnity and has a meritorious defense in that it would bring in Stewart Title as a Third Party Defendant under Rule 14 of the South Carolina Rules of Civil Procedure.

- c) Upon information and belief, South Carolina has no personal jurisdiction over DataQuick with respect to the allegations and/or venue in South Carolina is improper.
- d) Upon information and belief, the Agency Agreement most likely includes exculpatory language that would limit the liability of the agent and/or limit any warranties of the agent.

Legal Grounds and Argument

I. In the discretion of the Court, the default judgment may be lifted and the entry of default set aside due to mistake, inadvertence, surprise, or excusable neglect.

Pursuant to Rule 60(b)(1), SCRCP, DataQuick respectfully requests the default judgment to be lifted and the entry of default to be set aside due to mistake, inadvertence, surprise, or excusable neglect. "Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009); *see also Honorage Nursing Home of Florence, S.C., Inc. v. Florence Convalescent Ctr., Inc.*, 367 S.C. 108, 112, 623 S.E.2d 853, 855 (Ct. App. 2005) (holding that an entry of default was properly set aside following a motion under Rule 60(b)). **"The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge."** *Sundown*, 383 S.C. at 606, 681 S.E.2d at 888 (emphasis added).

"In determining whether to grant a motion under Rule 60, the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." *Micronics, Inc. v. South Carolina Department of Revenue*, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001). The Court should examine these factors in light of **"South Carolina's policy favoring the disposition of issues on their merits rather than on technicalities."** *Id.* at 511, 548 S.E.2d at 226 (emphasis added). Here, all four criteria are met.

The first criteria is the promptness with which relief is sought. As set forth in the statement of facts above, DataQuick first learned of the existence of the action and the default judgment on October 2, 2017 (Fliss Aff. ¶¶ 11, 19, 23), and served its motion for relief ten days later on October 12, 2017. In order to do so, it had to locate and retain counsel who in turn had to review the matter and prepare the motion. (Fliss Aff. ¶ 26.) This period of time of only ten days is well within the periods of time courts have held to be sufficient. *See, e.g., Williams v. Watkins*, 384 S.C. 319, 326, 681 S.E.2d 914, 917 (Ct. App. 2009) (finding 33 days from actual notice to be sufficient); *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010) (“As to the first factor, we agree with the finding of the family court that Wife’s motion for relief was timely made because it was filed within one year of the Supplemental Order.”).

The second criteria is the reasons for the failure to act promptly. Here, as outlined in the statement of facts, DataQuick did not act sooner because it was absolutely unaware of service of the Summons and Complaint until October 2, 2017. The reason is that it had ceased all operations following the sale of all of its assets to Stewart Title on March 26, 2014, and had no employees after this sale. (Fliss Aff. ¶¶ 4, 6, 9, 10.) Although CT Corporation received the process and forwarded it to the email addresses of two persons associated with DataQuick following the sale, one of these persons (James Keglovits) had been an agent for DataQuick but ceased being associated with DataQuick by the time the Complaint was filed in August 2016 and no longer used the email domain. (Fliss Aff. ¶¶ 12-16.) The other person (Floricia Orozco) worked for an accounting firm Holthouse Carlin & Van Tright (“HCVT”) that was associated with the sale to Stewart Title in 2014, and it could only be determined after DataQuick learned of the lawsuit that Ms. Orozco no longer is employed by HCVT and that HCVT was unable to determine what occurred with the notification to Ms. Orozco. (Fliss Aff. ¶¶ 17-18.)

For these reasons, DataQuick did not receive service of process and had no actual knowledge of the lawsuit until the Order for Default Judgment was received on October 2, 2017, following service upon its newly appointed registered agent in Delaware, Maples Fiduciary Services (Delaware) Inc. (“Maples”). (Fliss Aff. ¶ 11.) DataQuick fortuitously switched its registered agent from CT Corporation to Maples in December 2016, which resulted in it receiving service of the Order on October 2, 2017. (Fliss Aff. ¶¶ 11, 19.) Curiously, Maples inexplicably failed to forward to DataQuick the Motion for Default Judgment, which was served upon it on September 18, 2017. (Fliss Aff. ¶ 20.) Maples has offered no explanation for this failure but concedes that it has no record of forwarding it to DataQuick. (Fliss Aff. ¶ 21.)

DataQuick’s failure to update its address with CT Corporation was unintentional and not a result of a bad faith attempt to avoid lawsuits. (Fliss Aff. ¶ 13.) The fact that DataQuick appointed a new registered agent in Delaware that did have a correct contact address for DataQuick is powerful evidence that DataQuick was not acting in bad faith or trying to avoid being located and served with process. Indeed, good faith arguably is the most important factor in determining whether a party’s neglect is “excusable.” See 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2693 (4th ed.) (“[T]he good or bad faith of the parties may be one of the most important factors in deciding motions [for relief from default].”).

There do not appear to be any South Carolina court cases interpreting the excusable neglect standard in the circumstance where a party failed to update its address with its registered agent. However, at least two courts in federal jurisdictions have exercised discretion to find excusable neglect when a corporate entity has inadvertently failed to update its address with its registered agent. See *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) (“In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the

federal rules.”). In *Winslow Marine, Inc. v. J. Supor & Son Trucking & Rigging, Inc.*, No. 2:15-CV-312-NT, 2016 WL 7235670, at *2–3 (D. Me. Dec. 14, 2016) (copy attached hereto as Exhibit A), the defendant did not receive notice of the lawsuit “until after it learned of the default judgment because of a mistake in the delivery of service caused in part by its own failure to update its address with its registered agent.” *Id.* at *2. The court noted that “[e]xcusable neglect is an ‘elastic concept’ that requires an equitable determination that takes into account ‘all relevant circumstances surrounding the party’s omission.’” *Id.* (quoting *Pioneer Inv. Serv. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 392, 395 (1993)). The court stressed that the factors include “such things as the danger of prejudice to the non-movant, the length of the delay, the reason for the delay, and whether the movant acted in good faith.” *Id.* (internal quotations omitted). In that particular case, the process was received by CT Corporation and delivered to the company’s former office where a security guard not associated with the defendant signed for it. *Id.* Thus, CT Corporation never was put on notice that service actually was not received, which could have resulted in the matter being corrected, and so the court found that the delay in part was beyond defendant’s control. *Id.* The court also found that there was no evidence of bad faith and that the plaintiff was not entirely innocent because it knew the location of the defendant’s new offices. Thus, the court set aside the default judgment under Rule 60(b)(1) for excusable neglect. *See id.* at *3.

The same result is appropriate here where DataQuick admittedly failed to update its address with CT Corporation and where CT Corporation forwarded the notice to obsolete addresses that apparently failed to bounce back to CT Corporation as undeliverable. Further, it is evident that there was no bad faith on the part of DataQuick, yet the inference is inescapable that the Plaintiff must have known that it was no longer dealing with DataQuick as its title agent when this contact had been transferred by DataQuick to Stewart Title in 2014. (Fliss Aff. ¶ 7.)

Similarly, in *Miller v. Clear Channel Communications, Inc.*, 2007 WL 2692180 (D.S.C. Sept. 12, 2007) (copy attached hereto as Exhibit B), an entry of default was entered against a concert promoter that did not receive actual notice of an action because it had failed to update its registered agent information. Thus, the registered agent forwarded the process to an obsolete address. Once the defendant did receive actual notice of the action after the entry of default, it retained an attorney and moved to set aside the judgment under Rule 55(c), which employs a similar “excusable neglect” standard.¹ In that case, this Court held that the defendant “has demonstrated good cause and excusable neglect. Furthermore, the court finds that [defendant] acted with reasonable diligence in seeking to set aside the default and has tendered a meritorious defense.” *Id.* at *2.

Moreover, courts are likely to grant relief “when [the] defendant presents evidence that he received no actual notice of the suit in time to answer.” 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2695 (4th ed.). In sum, under the circumstances here—where DataQuick had ceased operations and sold all assets, no longer had employees, inadvertently neglected to update contact information with CT Corporation, evidenced no indications of bad faith, and appointed Maples as its registered agent prior to entry of the default judgment; where CT Corporation apparently never received notice that the obsolete addresses were invalid; and where Plaintiff must have been aware that it was not suing its title agent—DataQuick respectfully asks the Court to find that the failure to respond to the Complaint in a timely manner was the result of excusable neglect or otherwise a result of mistake, inadvertence, or surprise.

The third criteria is the existence of a meritorious defense. “To establish a meritorious defense, the party does not have to show he would prevail on the merits.” *Williams v. Watkins*, 384

¹ The “excusable neglect” standard under Rule 60(b) often is used to establish the more liberal “good cause” standard under Rule 55(c).

S.C. 319, 326, 681 S.E.2d 914, 917–18 (Ct. App. 2009). “Rather, a meritorious defense ‘need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.’” *Id.* at 326, 681 S.E.2d at 918 (quoting *McClurg v. Deaton*, 380 S.C. 563, 575, 671 S.E.2d 87, 94 (Ct.App.2008)). Here, there are several meritorious defenses established by the Statement of Facts, (*see* Fliss Aff. ¶ 27) including (1) DataQuick is not a party to the Agency Agreement because it was assumed by Stewart Title with knowledge and consent of Plaintiff, and therefore DataQuick cannot be held liable for any breach; (2) DataQuick may bring in Stewart Title as a Third Party Defendant under Rule 14 of the South Carolina Rules of Civil Procedure and seek indemnity for any liability to Plaintiff; (3) there is a lack of personal jurisdiction and/or improper venue; (4) the application of likely exculpatory language in the Agency Agreement that that would limit obligations and liability of DataQuick; (5) a violation of the South Carolina Unfair Trade Practices Act (SCUTPA) cannot be premised upon a breach of contract as a matter of law, *Ardis v. Cox*, 314 S.C. 512, 519, 431 S.E.2d 267, 271 (Ct. App. 1993), yet the Complaint unequivocally relies upon a breach of contract in order to establish violation of the SCUTPA; (6) there was no finding of a willful or knowing violation of the SCUTPA, which is required in order to treble damages, S.C. Code Ann. § 39-5-140(a); and (7) it is improper as a matter of law to treble attorneys’ fees as part of a trebling of damages, *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 489, 693 S.E.2d 27, 32 (Ct. App. 2010) (granting a Rule 60(b) motion on the amount of a default judgment because the attorneys’ fees were trebled).

The fourth criteria is the prejudice to the other party. The kind of prejudice that is at issue is *not* that the Plaintiff would have to try the case on the merits or that it would delay possible recovery. *See* 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2693 (4th

ed.). Otherwise, prejudice always would exist. Instead, “[s]omething more must be shown.” *Id.* Courts generally find that there is no prejudice the other party. *Id.*; see e.g., *Williams v. Watkins*, 384 S.C. 319, 327, 681 S.E.2d 914, 918 (Ct. App. 2009) (“Finally, we find the degree of prejudice Williams will suffer if relief is granted is not so high as to outweigh the other factors, and we note the law favors the resolution of disputes based upon all parties having their day in court.” (internal quotations omitted)). Here, there is no prejudice to Plaintiff.

Moreover, the law generally favors the exercise of discretion in favor of allowing a trial on the merits, particularly where large sums are involved:

The desire to avoid judgments by default when substantial rights are involved is paralleled by a **reluctance to permit them when large sums of money are claimed** or when injunctive relief is requested. Thus, when the defaulting party comes forward expressing a willingness to participate in the suit and offering a defense that appears meritorious, the entry of a judgment by default in those cases almost would constitute a forfeiture and the court may allow relief from the judgment to avoid that consequence.

The courts continually struggle with the conflict between the need to combat delay and disregard of the rules and their desire to do justice in the case before them. Although many judges speak of the importance of compliance with the rules, the punitive value of imposing a default often is subordinated to a **preference for a trial on the merits**. This result also is supported by the belief that a default judgment is a drastic method of effecting compliance with the rules of procedure and a recognition that the equitable powers of the court enable the fashioning of less Draconian remedies.

As a consequence, several courts have concluded that Rules 55(c) and 60(b) express a **policy of liberality** toward motions for relief from default entries and default judgments. Further, courts have ruled that on a motion for relief from the entry of a default or a default judgment, **all doubts should be resolved in favor of the party seeking relief**.

10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2693 (4th ed.) (emphasis added); see also *Indigo America, Inc. v. Big Impressions, LLC*, 597 F.3d 1, 3 (1st Cir. 2010) (noting that the fact that the amount of money involved was “a significant sum” “cut[s] in favor of” lifting the

default); *Tozer v. Charles A. Krause Milling Co.*, 189 F.2d 242, 245 (3d Cir. 1951) (“Matters involving large sums should not be determined by default judgments if it can reasonably be avoided.”); *In re Rymbsbran Continental Corp.*, 177 B.R. 163, 173 (E.D.N.Y. 1995) (“The large money judgment against Appellants confirms the appropriateness of vacating the default. Defaults are generally disfavored in matters involving large sums of money.”).

Here, there is no doubt that the amount awarded in the Court’s Order of default judgment, over \$3.9 million, is a very significant amount of money, and courts have widely expressed a desire to resolve such significant claims on the merits of the case rather than through default judgments. For these reasons, as well as the satisfaction of the four criteria discussed above, the exercise of the Court’s discretion to grant relief under Rule 60(b)(1) is appropriate in this case.

II. The Default Judgment must be set aside under Rule 60(b)(3) and/or (4) because Plaintiff’s claims are unliquidated, the Default Judgment was entered without a hearing on damages as required by Rule 55(b)(2) for unliquidated claims, and/or the Court’s award of attorneys’ fees failed to comply with Rule 55(b)(3).

Under Rule 55(b)(2), it is error to grant a default judgment on unliquidated damages without a damages hearing:

Nevertheless, relying only on the affidavit of 4 Prophets’ managing member and Rule 55(b)(1), the special referee awarded damages in the amount of \$12.5 million. **Because 4 Prophets’ theory of the measure of its damages was based solely on the value of real estate, which is not liquidated, not a sum certain, and cannot be made certain by mathematical calculation, we hold the special referee erred in awarding damages without conducting a damages hearing.** See 46 Am.Jur.2d Judgments § 298 (2006) (“In the context of a default judgment, **unliquidated damages normally are not awarded without an evidentiary hearing.** Where damages claimed are not readily ascertainable from the pleadings and record, a hearing is appropriate to determine the amount of damages.”); *Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir.1983) (holding **a judgment by default may not be entered without a hearing on damages unless the complaint indicates the amount claimed is liquidated or capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits.**).

Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC, 408 S.C. 87, 92-93, 757 S.E.2d 557, 560 (Ct. App. 2014) (emphasis added).

Here, Plaintiff's claim was unliquidated because it was not capable of computation and was not set forth in detailed affidavits. Plaintiff's assertion in the Motion for Default that the claim was liquidated is unsupportable. It relied upon Exhibit A to the Complaint as well as the Affidavit of Amount Due from the client. But Exhibit A to the Complaint lists nothing more than claim file numbers (with no damages enumerated), and the Affidavit of Amount Due similarly claims that the damages under the claims in Exhibit A are "liquidated" and then proceeds to list the total amount without explanation or any details or basis to compute the amount owed. The affidavit reinforces that the damages amount was unliquidated, as it simply declares a damages amount based upon undisclosed "business records" and asserts, without any itemization or calculation, that the total is based upon "amounts . . . in the form of loss, expense, charges, attorneys' fees and allocated loss adjustment expenses." Such a generic listing of the elements of damages without any itemization only confirms that the amount was unliquidated. Although a default effectively concedes the damages amount when the damages are liquidated, the default by DataQuick could not reasonably be construed as conceding that the amount of damages was \$1,299,888.99 because there was no way for this amount to be computed.

The affidavit contains nothing more than the Plaintiff's own pronouncement of the amount of damages, but "[t]he simple fact that a party claims a specific amount of damages does not make the claim a sum certain." *Id.* at 93, 757 S.E.2d at 560. The Court of Appeals elaborated upon the difference between a liquidated claim and unliquidated claim:

In this case, 4 Prophets' alleged loss of the value of real estate does not fit into any of the categories of damages a plaintiff may prove by affidavit or verified complaint. **A "[c]laim for ... damages is 'liquidated' in character if [the] amount thereof is fixed, has been agreed upon, or is capable of ascertainment by mathematical computation or operation of law."** Black's Law Dictionary 839 (5th ed.1979); see also *Lewis v. Congress of Racial Equality*, 275 S.C. 556, 560, 274 S.E.2d 287, 289 (1981) ("In liquidated-damages cases, the amount is usually a sum certain[,] or at least the amount is capable of ascertainment by computation."); *Beckmann Concrete Contractors, Inc. v. United Fire & Cas. Co.*, 360 S.C. 127, 131, 600 S.E.2d 76, 78 (Ct. App.2004) (**stating unliquidated damages are " '[d]amages that ... cannot be determined by a fixed formula, so they are left to the discretion of the judge or jury' "** (quoting Black's Law Dictionary 397 (7th ed.1999))). Thus, 4 Prophets' damages are not liquidated. 4 Prophets' damages are also not a sum certain and cannot be made certain by computation. See Black's Law Dictionary 204 (5th ed.1979) (defining certain as "precise; ... definitive; ... unambiguous; or, in law, capable of being identified or made known without liability to mistake or ambiguity, **from data already given**"). The valuation of real estate is a subjective determination, and thus, damages measured by loss of value in real estate are inherently uncertain. Even the statement of value upon which 4 Prophets relies in this case is, "I believe the present fair market value ... to be ... \$25 million," and is based on the hearsay recital of two appraisals, both of which were at least eighteen months old at the time 4 Prophets filed the affidavit. **The simple fact that a party claims a specific amount of damages does not make the claim a sum certain.**

Id., 408 S.C. at 92–93, 757 S.E.2d at 559-560 (emphasis added).

In the *Wells Fargo* case, the court reversed a default judgment that was entered without a damages hearing on the basis that it was unliquidated. Here, the Plaintiff's claim for damages for underwriting failures, which includes attorneys' fees, can only be viewed as subjective and not determinable by a fixed formula. Yet the Plaintiff's motion for default judgment misrepresented to the Court that the amounts were liquidated and could be entered without a damages hearing. The court then entered the default judgment four days after the filing of the motion without any damages hearing or notice of hearing to parties in default as required by Rule 55(b)(2)² and Rule 5(a)³. This

² Per Rule 55(b)(2): "Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action."

was improper and apparently occurred as a result of the incorrect representation that the claims were liquidated. As a result, pursuant to Rule 60(b)(3), the default judgment should be lifted due to a “misrepresentation,” and DataQuick should be allowed to defend on the merits. Alternatively, DataQuick at the very least is entitled to a damages hearing.

In addition, DataQuick is entitled to relief under Rule 60(b)(4) as a result of the default judgment being void for failure to hold a hearing on unliquidated damages:

We further hold the trial court should have relieved Hyman of the judgment by default. **The order entering it was void since the trial court issued the order without the required notice.** See *Superscope, Inc. v. Benjamin Company, Inc.*, 276 S.C. 231, 234, 277 S.E.2d 596, 598 (1981) (case decided before the adoption of the South Carolina Rules of Civil Procedure wherein the Supreme Court held that an “order of default, issued without notice, [is] ... void and should [be] set aside upon ... motion.”); see also *Wilson v. Moore and Associates, Inc.*, 564 F.2d 366, 369 (9th Cir.1977) (“The failure to provide 55(b)(2) notice, if notice is required, is a serious procedural irregularity that usually justifies setting aside a default judgment or reversing a failure to do so.”); 10 C. WRIGHT, A. MILLER & M. KANE, FEDERAL PRACTICE AND PROCEDURE § 2695, at 506-07 (1983) (“A failure by the party obtaining the judgment to give notice to the defaulting party may be considered as rendering the judgment void or as justifying vacation of the default judgment as a matter of law.”); 47 Am.Jur.2d Judgments § 1179, at 202 (1969) (“[A] default judgment rendered without the required notice constitutes a deprivation of due process of law and is void.”).

Dymon, Inc. v. Hyman, 305 S.C. 170, 172, 406 S.E.2d 388, 389 (Ct. App. 1991) (emphasis added).

In addition, , the entry of the Default Judgment violated Rule 55(b)(3), which allows a court to award attorneys’ fees—regardless of whether the case involves liquidated damages or unliquidated damages—only when there is a damages hearing under subsection (b)(2). Otherwise, the party seeking attorneys’ fees must (i) specify in its motion that it is seeking attorneys’ fees, (ii) give notice of the motion at the last known address of the defendant, and (iii) the defendant fails to file an

³ Per Rule 5(a), “notice of any trial or hearing on unliquidated damages shall also be given to parties in default.” Such notice “shall be made by delivering a copy to him or by mailing it to him at his last known address.”

objection within **10 days** of service. Here, there was no damages hearing. Further, court records show that the plaintiff filed its Motion on September 15, 2017, but the Default Judgment was entered only 4 days later, which failed to allow for the required 10 day objection period. As a result, the Default Judgment violated Rule 55(b)(3) and must be set aside as void.

The default judgment also is void because it consists of trebled damages without a finding that there was a willful or knowing violation of the South Carolina Trade Practices Act, which violates the Act and violates Rule 52(a). And it also is void because it improperly trebled the attorneys' fees. *See Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 489, 693 S.E.2d 27, 32 (Ct. App. 2010) (granting a Rule 60(b) motion on the amount of a default judgment because the attorneys' fees were trebled).

III. Motion for New Trial and/or to Alter or Amend Judgment

For the same reasons set forth in Parts I and II, DataQuick requests a new trial (pursuant to Rule 59(a), SCRCP), and/or to alter or amend the judgment (pursuant to Rule 59(e)),

Conclusion

DataQuick respectfully requests the Court to set aside the default judgment and entry of default and allow it to defend on the merits and file an Answer. Alternatively, Defendants are entitled to a the Default Judgment being vacated and/or amended so as to allow a damages hearing pursuant to Rule 52(a), Rule 59(a), and/or Rule 59(e).

Respectfully submitted:

WYCHE, P.A.

By: s/William M. Wilson III
William M. Wilson III (#15808)
Wyche P.A.
44 East Camperdown Way
Post Office Box 728
Greenville, South Carolina 29602
(803) 242-8200
Attorneys for Plaintiffs

Dated: July 16, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-04718

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION FOR NEW TRIAL, TO ALTER
OR AMEND JUDGMENT, AND FOR
RELIEF FROM JUDGMENT

TO: THE DEFENDANTS ABOVE-NAMED:

Plaintiff WFG National Title Insurance Company ("WFG") respectfully submits this Memorandum in Opposition to Defendant DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC's (collectively, "DataQuick") above-referenced motion ("Motion for Relief").

FACTUAL STATEMENT

DataQuick does not dispute that WFG properly served DataQuick's registered agents with every pleading, motion, proposed order and other filing in this case. See the Procedural Timeline and Factual Statement in DataQuick's Memorandum in Support of its Motion for Relief.

DataQuick concedes that it internally failed to update its points of contacts with its registered agent, CT Corporation, in South Carolina and Delaware. See Id. at ¶12 of Factual Statement. DataQuick concedes its subsequent Delaware agent, Maples, failed to forward it the properly-served Motion for Default Judgment. Id. at ¶21.

DataQuick states it has no employees currently, yet submits two affidavits from individuals on its behalf. Id. at ¶10. DataQuick has always maintained registered agents

for service of process in the State of South Carolina and Delaware during the pendency of this lawsuit. Id. at ¶¶ 11, 12. DataQuick states that it has had no business operations in recent years, yet maintains its corporate form, has updated and corrected addresses with its registered agents, and has changed registered agents during the pendency of this lawsuit. Id. at ¶¶ 4, 9, 13, 19. It also claims to have General Counsel. See Affidavit of Adam Fliss at ¶ 2, and Affidavit of Michael LaGatta at ¶ 2.

DataQuick states it has no knowledge or possession of the Agency Agreement, and has no knowledge of the substance of Plaintiff's claims. Id. at 11, 12. Nevertheless, DataQuick claims it could unilaterally assign the Agency Agreement to another corporate entity and bases its meritorious defense arguments on liberal assumptions it takes with regard to its unknown contents of the Agency Agreement. Id. at ¶¶ 6, 8, 27 (a), (b) and (d).

DataQuick Lending Solutions, Inc. was served with the Summons and Complaint through its South Carolina registered agent on August 11, 2016 as shown on the Affidavit of Service filed herein. DataQuick Lending Solutions, LLC was served with the Summons and Complaint through its Delaware registered agent on August 10, 2016 as shown on the Affidavit of Service filed herein. DataQuick did not appear in this action until October 13, 2017 when it filed its Motion for Relief, which was over fourteen (14) months after service of the Summons and Complaint. The hearing on the Motion for Default scheduled for August 20, 2018 will take place over two (2) years after WFG's statutorily-prescribed service of the Summons and Complaint on DataQuick.

LEGAL ARGUMENT

I. Rule 60, SCRC

DataQuick's argument to be relieved from judgment does not meet the criteria of Rule

60(b), SCRCP. WFG unequivocally served an agent with actual authority to accept service for DataQuick under statute and the South Carolina Rules of Civil Procedure. Rule 4(d)(3), SCRCP, states that service may be made on a corporation by “delivering a copy of the summons and complaint ... to any other agent authorized by appointment or by law to receive service of process...” Further, as a Delaware corporation registered to do business with the South Carolina Secretary of State, DataQuick was an authorized foreign corporation whose registered agent could accept service of process pursuant to S.C. Code Ann. 15-9-240. Further, WFG could properly serve DataQuick’s registered in Delaware pursuant to Rule 4(h), SCRCP.

A. Inexcusable Neglect

By serving DataQuick’s registered agents, WFG served agents with *actual* authority to accept service on DataQuick’s behalf. DataQuick’s failures to internally update who received the process within its corporation after its actual agents received the summons and complaint does not rise to the excusable neglect standard discussed in controlling South Carolina case law. DataQuick’s registered agents had actual knowledge of instant lawsuit.

DataQuick admits that “there do not appear to be any South Carolina court cases interpreting the excusable neglect standard in the circumstance where a party *failed to update its address with its registered agent*.” DataQuick Memo p.6 (emphasis added). That is because there is no excuse for this internal negligence – this is a clear-cut case of inexcusable neglect. If our courts open the door to allowing default – and much less judgments – to be lifted when plaintiffs have used the most common form of service on sophisticated, commercial corporations through their registered agents, then the door will be open to an unwanted precedent. See Raby Const., L.L.P. v. Orr, 358 S.C. 10, 19, 594 S.E.2d 478, 483

(2004) (recognizing the Court's longstanding policy towards final judgments and that "important benefits are achieved by the preservation of final judgments") (citing Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003)).

Our courts have made it clear that the Rule 60 standard for lifting judgment is more stringent than the Rule 55 "good cause" standard for lifting entry of default. See Sundown Operating Co., Inc. v Intedge Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009). However, in cases analyzed both under Rule 55 standards and Rule 60 standards, courts have refused to lift default and judgment even when the neglect was not the actual neglect of the Movant (DataQuick), but the neglect imputed to it through its insurer or attorney. Richardson v. P.V. Inc., 283 SC 610, 682 S.E.2d 263 (2009) (holding an agent with apparent authority as being properly served, that the Rule 60 standard is more rigorous than Rule 55, and denying to lift default under Rule 55(c) good cause standard even though insurance company was assumed to be at fault for Petitioner's failure to answer the complaint); see also Williams v Vanvokenburg, 312 S.C. 373, 440 S.E.2d 408 (holding Rule 55 good cause standard not met to lift default when default is due to attorney's negligent failure to file answer for client). DataQuick's direct, unimputed failures and neglect would not even rise to good cause under Rule 55 standards.

In McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (2008), the Court held Deaton to a "conclusive proof" standard under Rule 60 requiring that he show that he had not been served with the summons and complaint. Even though he alleged he had not been served in a filed Affidavit, he "failed to indicate that he resided at a different address than used for service at the time of service." His failure to provide the court with conclusive proof did not amount to excusable neglect under Rule 60(b)(1). In the instant case, the court records and

DataQuick's affidavits conclusively show that DataQuick's registered agent received service of process. Therefore, DataQuick cannot meet the excusable neglect standard in Rule 60(b)(1).

B. Lack of Promptness and Sufficient Reasoning for DataQuick's Failures; Prejudice

In turning to other legal factors under Rule 60¹, DataQuick lacked promptness and sufficient reasons for its failure to update appropriate personnel with its registered agents. As noted in the Factual Statement, over fourteen months went by between service of the Summons and Complaint and DataQuick's appearance in the case. At any point during those fourteen months, DataQuick could have audited its deficiencies and uncovered that the people it appointed to receive notices from its registered agent were no longer connected with DataQuick. DataQuick tries to point the finger at CT Corporation. However, CT Corporation actually did its job by sending notices to the individuals that DataQuick requested. Further, CT Corporation remains DataQuick's registered agent in South Carolina as of August 20, 2018. When DataQuick chose to change its Delaware agent in December 2016, it could have uncovered its failure to update the addresses and asked the obvious question to CT Corporation – have you forwarded any service of process to those people since their relationship ceased with us. This obvious question would have led to a more timely – albeit tardy (it had been in default for at least three months at that time) – discovery of its negligence. Rather, it did not appear in the case for an additional ten months. With over two years having elapsed since service of the Summons and Complaint on DataQuick and the hearing on this

¹ "In determining whether to grant a motion under Rule 60, the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." Micronics, Inc. v. South Carolina Dept. of Revenue, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001).

Motion for Relief, WFG would suffer significant prejudice due to the dilatory practices and failures of DataQuick for which it now seeks relief. As discussed in further detail below, South Carolina consumers and underwriters suffer when agents such as DataQuick fail to shoulder the losses caused by its poor title insurance underwriting.

C. Lack of Meritorious Defense

DataQuick's "facts" alleged on "information and belief" concerning its legal argument of a meritorious defense are baseless. Stating that "Stewart Title assumed the Agency Agreement *with the knowledge and consent of Plaintiff*" is a misrepresentation and is untrue. See DataQuick's Memo at p.10. DataQuick lacks personal knowledge to that effect because it is unfounded. WFG sued the party it has an Agency Agreement with, DataQuick. DataQuick remains a corporate entity to this day. It can be served. It was served. It failed to file an Answer and lost its right to conduct discovery. WFG has never seen an Asset Purchase Agreement or any other documentation to confirm that DataQuick unilaterally attempted to assign the Agency Agreement. Additionally, the suggestion that such an assignment could be done unilaterally by DataQuick when it admits that it is not familiar with the contents of the Agency Agreement creates more conjecture. A mortgagor cannot assign the obligations he owes his mortgagee to his neighbor simply because he wants to dispose of his assets. The mortgagor is still responsible for the mortgage.

Further, any indemnification DataQuick may be able to seek from Stewart is a Third Party Claim rather than a meritorious defense to its admitted liability to WFG. "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 504 S.E.2d 311. Additionally, DataQuick wrote title policies in South

Carolina and further conferred personal jurisdiction when its South Carolina registered agent was served with process, negating any unsupported defense claim of lack of personal jurisdiction or venue.² DataQuick's speculation of "likely exculpatory evidence" does not come close to rising to the meritorious defense standard required by South Carolina courts. See Id. and ¶27 of Fliss Affidavit. The McClurg Court, cited by DataQuick and in this memorandum, supra, requires "a showing of a prima facie meritorious defense" and holds "[a] party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essentially to entitle him to relief." McClurg at 575, 671 S.E.2d at 93-94 (holding that neither appellant met burden of proving prima facie case for meritorious defense).

DataQuick's analysis on the South Carolina Unfair Trade Practices Act (UTPA) is misguided. Ardis v. Cox, 314 S.C. 512, 519, 431 S.E.2d 27, 32 (Ct.App.), does not hold (as suggested by DataQuick's Memorandum) that any lawsuit with a breach of contract cause of action unequivocally causes a UTPA cause of action to fail. Rather, the Ardis court held that UTPA is "unavailable to redress private wrongs if the public interest is unaffected." Id. To wit, the Mull case cited by DataQuick grants UTPA relief concerning an oral contract between two parties and a written bill of sale. Mull v. Ridgeland Realty, LLC, 387 S.C. 479, 693 S.E.2d 27 (Ct.App. 2010). In the instant case, Plaintiff cites to 47 claims that were affected by DataQuick's actions. Critically, DataQuick's culpable actions also leads to damage to the South Carolina citizenry at large when title premiums increase due to the agents and their insurance carriers not shouldering any of the underwriter's loss. South Carolina consumers

² For these reasons, DataQuick's argument that the judgment is "void" under Rule 60 (b)(4) fails. "The definition of void under the rule (60) only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. See Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (2002). DataQuick has failed to show any of the foregoing reasons to void the Order under the Rule 60, SCRCP, standard.

completing loan transactions are typically required to purchase title insurance lender's policies in order to obtain financing, and consumers routinely make the prudent choice to purchase owner's policies to protect their own investment. When DataQuick takes culpable actions as alleged in the Complaint, consumer insurance premiums unnecessarily rise, which has a direct affect on South Carolinians. The issue here is bigger than WFG's losses – it is the public that bears the burdens of rising costs due to DataQuick's actions or lack thereof. This Court's Order does not require certain magic words as DataQuick suggests. WFG's UTPA cause of action is deemed admitted as plead and this Court's Order grants the relief requested and contemplates DataQuick's knowing and willful violation of the UTPA. Here, DataQuick has not met its burden of presenting evidence proving the facts essential to entitle it to relief.

Any error in the Order of trebling the meager attorney's fees shown by the previously filed affidavit of attorney's fees (\$4,000.00) was harmless error under Rule 61, SCRCP. As of today and pursuant to the updated Attorney's Fees Affidavit filed herein, WFG has suffered reasonable attorney's in the amount of \$20,000.00 for over ninety (90) hours of legal work by WFG's retained firm since its retention in 2016. This amount is well in excess of the \$12,000.00 (\$4,000.00 trebled) awarded in the Order.

II. Liquidated Damages and Default Judgment

WFG's damages were liquidated. The court did not have to assess the value of real estate as it did in the Wells Fargo Bank, N.A. v. Marion Amphitheater, LLC, cited in DataQuick's memorandum. 408 S.C. 87, 92-93, 757 S.E.2d 557, 560 (Ct.App. 2014). Rather, WFG had to review corporate records for each of the forty-seven (47) claims enumerated in its Complaint in order to compute sum certain amounts that had already been paid by WFG in the form of loss, expense, charges, attorney's fees and allocated loss adjustment expenses.

Although it was not argued in DataQuick's Memorandum, its Motion for Relief briefly asserts that the Default Judgment exceeded the amount prayed for in the Complaint in violation of Rule 54(c). Rule 54(c) does not require a sum certain amount be plead in the initial Complaint in order to obtain default judgment. Rule 55(b)(1) allows default judgment without hearing for liquidated amounts to be supported by an Affidavit of Debt upon motion of the party seeking default. DataQuick alleged damages exceeding \$25,000.00 and filed an Affidavit of Debt along with its Motion for Default Judgment. South Carolina practitioners routinely use Affidavits of Debt in support of default judgments at the time of application for default judgment on liquidated damages and pursuant to Rule 55(b)(1) in lieu of a verified pleading. Foreclosure complaints routinely provide amounts due as of a certain date years prior in principal only, and then generally state that costs, interest and other charges under the note and mortgage are due. More specific amounts are updated in Affidavits of Debt right before judgment. The affidavit of debt, rather than live witness testimony, is relied upon by Master In Equities and Special Referees, in issuing their default orders. Plaintiff lenders are not required to painstakingly place complete servicing records into their affidavits. DataQuick's efforts to conflate Rule 54(c) and Rule 55(b)(1) here are incongruent with South Carolina practice and its Rules of Civil Procedure.

In the alternative that a damages hearing was required rather than the Motion for Default Judgment, which WFG denies, the failure to provide a hearing was harmless error based on DataQuick's own factual statements. If WFG had issued a Notice of Default Hearing on September 15, 2017, rather than serving the Motion for Default Judgment upon DataQuick, its registered agent would not have forwarded those documents upon receipt. DataQuick states that Maples inexplicably failed to forward the properly-served notices and Motion for

Default Judgment that DataQuick's registered agent actually received. See ¶¶20, 21 its Facts and of Fliss Affidavit. Therefore, without notice of the hearing, DataQuick would not have attended the hearing and WFG's presentation of the sum certain amounts would have been unrefuted and consistent with the amounts in the Affidavit of Debt, leading to the same Order actually (and properly) issued in this case. Additionally, DataQuick did not rely on any amounts in the pleadings in choosing to not contest the action since it did not, by its own admission, know about the Order until after its entry due to its own inexcusable neglect in its business practices with its registered agents.

Again, the issuance of a meager award for attorney's fees prior to the ten days contemplated in Rule 55(b)(3) resulted in harmless error. While WFG did provide proper notice that it sought attorney's fees in its motion as contemplated in Rule 55(b)(3), the Order was entered prior to the ten-day objection period contemplated in the Rule. Nevertheless, ten days did actually go by after Maples was served with the Notice that WFG sought attorney's fees, and no objection was made during that time period concerning the attorney's fees. This resulted in harmless error under Rule 61, SCRCP.

III. Rule 59 arguments fail

Because this Court issued a default judgment without a hearing, the defaulting DataQuick did not raise any issues at a hearing that could be altered or amended pursuant to Rule 59(e), SCRCP. See Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 437,437 (Ct. App. 1995) (holding "A party cannot for the first time raise an issue by way of a Rule 59(e) motion that could have been raised at trial"). Also, because there was no "action tried without a jury", DataQuick's relief for a new trial under Rule 59(a) must also fail. For these reasons and because DataQuick's Motion for Relief was served on October 2, 2017

following service of the Order on September 27, 2017, more than ten days after service was complete³, DataQuick's Rule 59 arguments fail, including the tolling for any time to appeal under Rule 59(f).

CONCLUSION

DataQuick's protracted and inexcusable neglect with its internal procedures led the properly-ordered Default Judgment. No person or entity other than DataQuick should bear the burden of this neglect under South Carolina law. For the reasons stated herein, WFG respectfully requests that this Court deny the Motion for Relief.

Respectfully submitted,

s/Drew B. Walker

Drew B. Walker (SC Bar No. 78271)
Rogers Lewis Jackson Mann & Quinn, LLC
PO Box 11803
Columbia, SC 29211
P: 803-978-2836
Attorney for Plaintiff

August 21, 2018

³ Per Rule 5(b)(1), SCRCP, service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Case Number: 2016-CP-40-04718

Plaintiff:

WFG National Title Insurance Company

vs.

Defendant:

DataQuick Lending Solutions, Inc., et al.

For: Rogers Lewis Jackson Mann & Quinn, LLC

Received by Serve-One of SC, LLC to be served on **DataQuick Lending Solutions, LLC, 1209 Orange Street, Wilmington, DE 19801**. I, Stephen Kempski, being duly sworn, depose and say that on the 10th day of August, 2016 at 10:21 a.m., executed service by delivering a true copy of the **Civil Action Cover Sheet, Summons, Complaint, and Exhibit** in accordance with state statutes in the manner marked below:

(X) **CORPORATE SERVICE**: By serving Amy McLaren as Corporate Operations Manager a person authorized to accept service.

() **GOVERNMENT AGENCY**: By serving _____ as _____

_____ of the within named agency.

() **NON SERVICE**: Due to reasons detailed in Comments below.

COMMENTS: _____

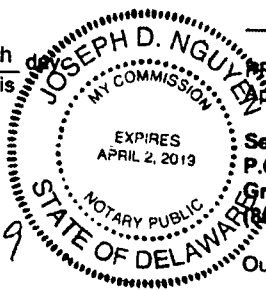
Age 42 Sex M ☒ Race White Height 5'6" Weight 130 Hair Brown Glasses Y ☒

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 24th day of August, 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires: 04/02/2019



PROCESS SERVER # 0958A
Appointed in accordance with State Statutes

Serve-One of SC, LLC
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016001422

AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Case Number: 2016-CP-40-04718

Plaintiff:

WFG National Title Insurance Company

vs.

Defendant:

DataQuick Lending Solutions, Inc., et al.

For:

Rogers Lewis Jackson Mann & Quinn, LLC
PO Box 11803
Columbia, SC 29211

Received by Serve-One of SC, LLC to be served on **DataQuick Lending Solutions, Inc., 2 Office Park Court, Columbia, SC 29223.**

I, Greg Jones, being duly sworn, depose and say that on the **11th day of August, 2016 at 1:50 pm, I:**

served a **CORPORATION** by delivering a true copy of the **Civil Action Cover Sheet, Summons, Complaint, and Exhibit** with the date and hour of service endorsed thereon by me, to: **CT Corporation as Registered Agent for DataQuick Lending Solutions, Inc.,** accepted by **Pam Johnson as Assistant Secretary** at the address of: **2 Office Park Court, Columbia, SC 29223,** and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 50, Sex: F, Race/Skin Color: White, Height: 5'4", Weight: 160, Hair: Brown, Glasses: N

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 12th day of August, 2016 by the affiant who is personally known to me.

Michelle L. Rogers
NOTARY PUBLIC

My Commission Expires: 4-25-17


Greg Jones
Process Server

Serve-One of SC, LLC
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: SJB-2016001421

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company.
PLAINTIFF,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC.

DEFENDANTS

IN THE COURT OF COMMON PLEAS

CIVIL CASE NO.: 2016-CP-40-04718

AFFIDAVIT OF DEFAULT

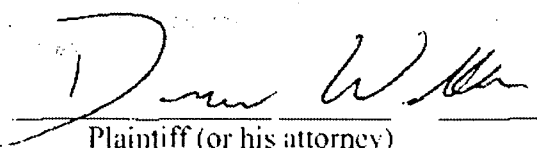
RICHLAND COUNTY
FILED
2016 OCT 27 PM 2:09
JEROME L. BARNES
C.C.R. & G.S.

Drew B. Walker, attorney for the Plaintiff, WFG National Title Insurance Company, personally appearing before me, who being duly sworn, states that a Summons and Complaint in the above actions were served on the Defendant **DataQuick Lending Solutions, Inc.** and Defendant **DataQuick Lending Solutions, LLC** according to the records of this court, which required that these Defendants answer or appear within thirty (30) days from the date of service; ~~these~~ Defendants have failed to appear or answer as required and are now in default.

Sworn to before me this
_____ day of October, 2016

Notary Public for South Carolina

My Commission expires _____


Plaintiff (or his attorney)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC.

DEFENDANTS

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2016-CP-40-04718

CERTIFICATE OF SERVICE

The undersigned, of the law office of Rogers Lewis Jackson Mann & Quinn, LLC, does certify that on **October 10**, 2016, she did cause to have served by U.S. Postal Service, regular mail with postage prepaid and return address clearly indicated, copies of the **AFFIDAVIT OF DEFAULT** to the following:

DataQuick Lending Solutions, LLC
The Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801
Defendant

DataQuick Lending Solutions, Inc.
C 1 Corporation System
2 Office Park Ct.
Suite 103
Columbia, SC 29223
Defendant

Pamela Baker

Paralegal

Rogers Lewis Jackson Mann & Quinn, LLC

ROGERS LEWIS

ATTORNEYS AT LAW

Drew B. Walker, Esq.
Direct: (803) 978-2836
dwalker@rogerslewis.com

6
October 4, 2016

Honorable Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

RE: WFG National Title Insurance Company v. DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC
Civil Action No.: 2016-CP-40-04718

Dear Ms. McBride:

Please find enclosed an original and a copy of a proposed Order for Entry of Default in the above-referenced matter. Also enclosed please find a check in the amount of \$25.00 for the filing fee. If the document meets your approval, please forward to the Judge for her signature. Also enclosed is an original and a copy of an Affidavit of Default for filing. Please file the original and return a clocked copy in the postage paid envelope.

Thank you for your assistance in this matter. Should you have any questions, please contact my office.

Sincerely,



Drew Walker

ABW/pdb
Enclosures

cc: DataQuick Lending Solutions, Inc.
DataQuick Lending Solutions, LLC

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

WFG National Title Insurance Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS

IN THE MAGISTRATE'S COURT
CIVIL CASE NO.: 2016-CP-40-04718

AFFIDAVIT AS TO ATTORNEY'S FEES

FILED
2017 SEP 15 PM 12:02
JANETTE W. MOBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, Drew B. Walker, Esquire, who first being duly sworn, deposes and states that he is a Member of the law firm of Rogers Lewis Jackson Mann & Quinn, LLC, and that he represents WFG National Title Insurance Company as the Plaintiff in the above-captioned action:

Since the inception of this action, his office has assumed responsibility for the institution of this action and has analyzed the Plaintiff's accounts, agency agreement, files and causes of action. His office has been responsible for the preparation of the following pleadings and court documents:

1. Civil Cover Sheet, Summons and Complaint;
2. Affidavit of Default and a proposed Order for Entry of Default
3. Motion for Default Judgment with Attorney's fees and accompanying Affidavits

Additionally, his office has arranged for service of process on the Defendant. The attorney's fees and costs for these future actions are not included in the attorney's fees requested herein.

In light of the time and labor expended in excess of thirty-six (36) billable hours by attorneys and paralegal as of the date of the hearing, the time that will be dedicated to the matter post judgment, the novelty and difficulty of the questions raised, the skill required to properly perform the legal services rendered, the attorney's opportunity costs in pressing the instant litigation, the customary fee for like work, the attorney's expectations at the outset of the litigation, the time limitations imposed by the client or circumstances, the amount in controversy and the results obtained, the experience, reputation and ability of the attorney, the undesirability of the case within the legal community in

which the suit arose, the nature and length of the professional relationship between attorney and client, attorney's fees awards in similar cases, potential liabilities, the attendant responsibilities, the size of the debt, and the uncertainty of collection, he believes a reasonable attorney's fee would be **Four Thousand and 00/100 (\$4,000.00) Dollars.**


Drew B. Walker

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 15th day of September, 2017.


Notary Public for South Carolina
My Commission Expires: 4-1-2024

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL CASE NO.: 2016-CP-40-04718

AFFIDAVIT OF AMOUNT DUE

RICHLAND COUNTY
FILED
2017 SEP 15 AM 9:28
JEANETTE W. MCBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, Jeffrey Dondanville, who being duly sworn, deposes and states:

1. I am National Claims Counsel with WFG National Title Insurance Company ("Plaintiff"). As such, I am authorized to make this Affidavit. I am over the age of eighteen years, and I have personal knowledge of the facts and matters stated herein based on my review of the business records defined below. The statements set forth in this Affidavit are true and correct, to the best of my knowledge and belief.

2. In the regular performance of my job functions, I have access to and am familiar with the business records (the "Records") relating to the Agreement as defined in Paragraph 17 of the Complaint ("Agreement") entered into by DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC (collectively referred to as "Defendants"). Further, I have access to and am familiar with the forty-seven claim accounts enumerated in Exhibit A of the Complaint, including the liquidated amounts due thereunder in the form of loss, expense, charges, attorney's fees and allocated loss adjustment expenses. I reviewed and relied upon the Records in executing this Affidavit.

3. According to the Records, the Defendants are in default for failure to pay amounts owed to Plaintiff under the Agreement. All amounts are due and owing pursuant to the terms of the Agreement.

(this space left intentionally blank)

4. The damages owed in this action against the Defendants are due and owing as follows as of July 12, 2017:

Amounts owed under Agreement	\$1,299,888.99
Court Costs - filing fee	\$150.00
Service of Process	\$144.50
Attorney's Fee for this action	\$4,000.00
Amount Due	1,304,183.49

Dated: Aug. 30, 2017

Jeffrey Dondanville
Affiant Name: Jeffrey Dondanville
Title: National Claims Counsel

State of _____
County of _____

The foregoing instrument was acknowledged and sworn before me this _____ day of _____, 2017, by Jeffrey Dondanville, as _____ of WFG National Insurance Company, who is personally known to me.

Notary Public for State of _____
My Commission expires: _____

CALIFORNIA JURAT
(CALIFORNIA GOVERNMENT CODE § 8202)

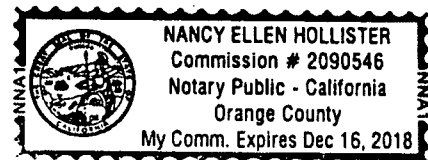
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

Subscribed and sworn to (or affirmed) before me on this 30 day of AUGUST 2017
by JEFFREY DONDANVILLE, proved to me on the basis of
(Name of Signer(s))
satisfactory evidence to be the person(s) who appeared before me.


Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

Description of Attached Document

Title or Type of Document: AFFIDAVIT OF AMOUNT DUE Document Date: AUGUST 30, 2017
Number of Pages: _____ Signer(s) Other Than Named Above: _____
Additional Information: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

C.A.: 2016-CP-40-04718

WFG National Title Insurance Company,

Plaintiff,

vs.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

Defendants.

**AFFIDAVIT OF
ADAM FLISS**

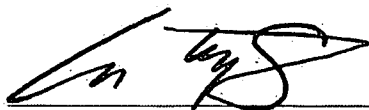
PERSONALLY APPEARED BEFORE ME, Adam Fliss., who being duly sworn, deposes and says:

1. I am over the age of 18 and have personal knowledge of the contents of this affidavit.
2. I am in-house counsel for Defendants (collectively, "DataQuick") by virtue of being employed by a corporate parent whose affiliate owns DataQuick.
3. The two Defendants are a single company. DataQuick originally was a corporation (DataQuick Lending Solutions, Inc.) but converted into a limited liability company (DataQuick Lending Solutions, LLC) on Dec. 23, 2014.
4. At the time the present lawsuit was filed on August 5, 2016, DataQuick had no business operations and had not operated for over two years.
5. DataQuick currently, and at the time the present lawsuit was filed, has no assets.
6. The assets of DataQuick, including the agency agreement between Plaintiff and DataQuick (upon which Plaintiff's claims are based) ("Agency Agreement"), were sold to Stewart Title Company ("Stewart Title") on March 26, 2014, and Stewart Title assumed the Agency Agreement and liability thereunder.
7. Upon information and belief, Plaintiff was aware of the sale and continued working with Stewart Title as the successor agent under the Agency Agreement.
8. Accordingly, DataQuick was not a party to the Agency Agreement at the time the Complaint was filed, and upon information and belief, Plaintiff was aware of this fact.
9. DataQuick has not had any business operations since the time of the sale to Stewart Title.

10. DataQuick does not have possession of the Agency Agreement, no longer has any employees, and has not had any involvement with the Agency Agreement since it was assigned to Stewart Title. As a result, it has no knowledge of the substance of Plaintiff's claims and no knowledge of the content of the Agency Agreement.
11. DataQuick first learned of the lawsuit and Default Judgment on October 2, 2017, when it received a copy of the Order entering the Default Judgment, from its registered agent in Delaware, Maples Fiduciary Services (Delaware) Inc. ("Maples").
12. At the time the lawsuit was filed, DataQuick's agent for service of process in both Delaware and South Carolina was CT Corporation. CT Corporation did not have correct contact information for DataQuick at the time the lawsuit was filed because DataQuick did not have active operations and inadvertently failed to update this information. As a result, CT Corporation sent notice to old notice addresses that no longer belonged to anyone with DataQuick.
13. DataQuick's failure to update the address was inadvertent and unintentional. It was not out of any bad faith intention to avoid the lawsuit, and all registered agents of DataQuick currently have correct addresses.
14. The notices had been forwarded by CT Corporation to James Keglovits by email at james.keglovits@decisioninsightgroup.com and to Floricia Orozco by email at Floricia.orozco@hcvvt.com.
15. Mr. Keglovits was an agent for DataQuick following the sale to Stewart Title in 2014 but was no longer associated with DataQuick at the time of the filing of the Complaint in 2016.
16. Since appearing in the lawsuit in October 2017, it has been determined that Mr. Keglovits did not receive any notices from CT Corporation because the decisioninsightgroup.com domain no longer was in use by him at that time.
17. Ms. Orozco worked for an accounting firm Holthouse Carlin & Van Tright ("HCVT") that was associated with the sale to Stewart Title in 2014.
18. Since appearing in the lawsuit in October 2017, it has been determined that Ms. Orozco no longer is employed by HCVT and that HCVT was unable to determine what occurred with the notification to Ms. Orozco.
19. DataQuick ultimately did receive notice of the Default Judgment on October 2, 2017, after it changed its registered agent in Delaware (but not South Carolina) from CT Corporation to Maples in December 2016.
20. The first filing served upon Maples was the Motion for Default Judgment filed on September 15, 2017, but DataQuick did not receive a copy of this motion from Maples.
21. Maples has confirmed that it received the Motion for Default Judgment on September 18, 2017, but concedes without explanation that it has no record of forwarding it to DataQuick.

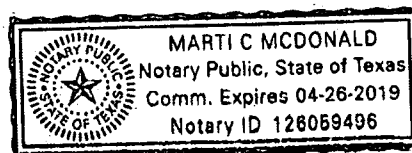
22. The Order for Default Judgment was entered on September 19, 2017, which was four days following the Motion for Default Judgment, and the online court docket shows that Plaintiff's counsel served the Order for Default Judgment upon Maples by mail on September 27, 2017.
23. As a result, the first filing actually received by DataQuick in this matter was the Default Judgment, which was received from Maples on October 2, 2017.
24. Prior to October 2, 2017, DataQuick had no actual knowledge of the lawsuit.
25. After it received the Order for Default Judgment on October 2, 2017, DataQuick contacted CT Corporation and learned that CT Corporation had received service of various filings but had forwarded the filings to invalid email addresses as noted above.
26. DataQuick acted promptly to cure the default by retaining counsel and serving the pending Motion for New Trial, to Alter or Amend Judgment, and for Relief from Judgment on October 12, 2013, which was ten days after it received notice of the Order for Default Judgment.
27. If the default were lifted and DataQuick were allowed to file an Answer and defend itself in this action, DataQuick would have several meritorious defenses, including but not limited to:
 - a) DataQuick is not a party to the Agency Agreement and therefore cannot be liable to Plaintiff for any breach.
 - b) DataQuick has placed Stewart Title (who assumed liability under the Agency Agreement with, upon information and belief, knowledge and consent of Plaintiff) on notice of a claim for indemnity and has a meritorious defense in that it would bring in Stewart Title as a Third Party Defendant under Rule 14 of the South Carolina Rules of Civil Procedure.
 - c) Upon information and belief, South Carolina has no personal jurisdiction over DataQuick with respect to the allegations and/or venue in South Carolina is improper.
 - d) Upon information and belief, the Agency Agreement most likely includes exculpatory language that would limit the liability of the agent and/or limit any warranties of the agent.

FURTHER AFFIANT SAYETH NOT.


Adam Fliss

SWORN to and Subscribed before me
this 16 day of July, 2018

Printed name of notary: Marti C. McDonald
Notary Public for Texas



My Commission Expires: 04/26/2019

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS

IN THE MAGISTRATE'S COURT

CIVIL CASE NO.: 2016-CP-40-04718

AFFIDAVIT AS TO ATTORNEYS FEES

PERSONALLY APPEARED BEFORE ME, Drew B. Walker, Esquire, who first being duly sworn, deposes and states that he is a Member of the law firm of Rogers Lewis Jackson Mann & Quinn, LLC, and that he represents WFG National Title Insurance Company as the Plaintiff in the above-captioned action:

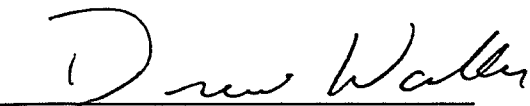
Since the inception of this action, his office has assumed responsibility for the institution of this action and has analyzed the Plaintiff's accounts, agency agreement, files and causes of action. His office has been responsible for the preparation of the following pleadings and court documents:

1. Civil Cover Sheet, Summons and Complaint;
2. Affidavit of Default and a proposed Order for Entry of Default
3. Motion for Default Judgment with Attorney's fees and accompanying Affidavits
4. Execution with the Sheriff's Office
5. Memorandum in Opposition to Plaintiff's Motion to Lift Default Judgment

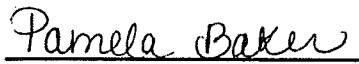
Additionally, his office has arranged for service of process on the Defendant. The attorney's fees and costs for these future actions are not included in the attorney's fees requested herein.

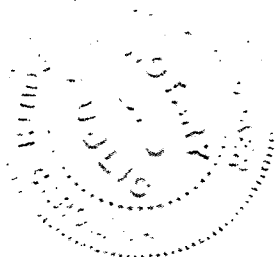
In light of the time and labor expended in excess of ninety (90) billable hours by attorneys and paralegal as of the date of the hearing, the time that will be dedicated to the matter post judgment, the novelty and difficulty of the questions raised, the skill required to properly perform the legal services rendered, the attorney's opportunity costs in pressing the instant litigation, the customary fee for like work, the attorney's expectations at the outset of the litigation, the time limitations imposed by the client or circumstances, the amount in controversy and the results obtained, the experience,

reputation and ability of the attorney, the undesirability of the case within the legal community in which the suit arose, the nature and length of the professional relationship between attorney and client, attorney's fees awards in similar cases, potential liabilities, the attendant responsibilities, the size of the debt, and the uncertainty of collection, he believes a reasonable attorney's fee would be **Twenty Thousand and 00/100 (\$20,000.00) Dollars.**


Drew B. Walker

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 21st day of August, 2018.


Notary Public for South Carolina
My Commission Expires: 4-1-2024



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2016-CP-40-04718

CERTIFICATE OF SERVICE

2017 OCT -2 PM 00:30
JEANETTE H. McBRIDE
RICHLAND COUNTY
FILED

The undersigned, of the law office of Rogers Lewis Jackson Mann & Quinn, LLC, does certify that on September 27, 2017, she did cause to have served by U.S. Postal Service, regular mail with postage prepaid and return address clearly indicated, copies of the **ORDER** to the following:

DataQuick Lending Solutions, LLC
The Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

And

DataQuick Lending Solutions, LLC
Maples Fiduciary Services (Delaware) Inc.
4001 Kennett Pike, Suite 302
Wilmington, DE 19807

Defendant

DataQuick Lending Solutions, Inc.
C T Corporation System
2 Office Park Ct.
Suite 103
Columbia, SC 29223

Defendant

Pamela Baker

Paralegal

Rogers Lewis Jackson Mann & Quinn, LLC

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance
Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-04718

ORDER

RICHLAND COUNTY
FILED
2017 SEP 19 AM 9:23
JEANETTE W. McBRIDE
C.C.P. & G.S.

THE CASE COMES BEFORE THE COURT pursuant to the motion of the Plaintiff, WFG National Title Insurance Company ("Plaintiff"), seeking an order for default judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC (collectively referred to as "Defendants") for the causes of action in its Complaint. Plaintiff's motion is based on the Summons and Complaint ("Complaint"), Affidavits of Service, Affidavit of Amount Due, Affidavit of Default filed and the South Carolina Rules of Civil Procedure, including Rule 55(b)(1).

The Defendants were served with the Summons and Complaint and have not responded within thirty (30) days, as required by the South Carolina Rules of Civil Procedure. The Defendants have been entered into default by the Honorable DeAndrea Gist Benjamin as shown in the Order of Entry of Default filed herein on October 27, 2016.

Plaintiff seeks an order for joint and several judgment against Defendants for amounts owed under an agency agreement. The Plaintiff instituted this proceeding against the Defendants for amounts due under the Agreement as defined in Paragraph 17 of the Complaint.

I find that Defendants are in default under the terms of the Agreement, and that liquidated sums are due and owing to the Plaintiff on the claim accounts listed in Exhibit A of the Complaint. The total liquidated amount due to Plaintiff on the accounts as of July 12, 2017, and as shown in the Affidavit of Amount Due, is One Million Two Hundred Ninety-Nine Thousand Eight Hundred Eighty-Eight and 99/100 (\$1,299,888.99) Dollars, as well as court costs and attorney's fees provided for in the Agreement as pled in Paragraph 13 of the Complaint, supported by an Attorney's Fee Affidavit filed herein, and as outlined below.

The liquidated damages owed in this action under the Complaint's First, Second, Third and Fourth Causes of Action against Defendants are due and owing as follows:

Amounts owed under Agreement	\$1,299,888.99
Court Costs - filing fee	\$150.00
Service of Process	\$144.50
Attorney's Fee for this action	<u>\$4,000.00</u>
Amount Due	\$1,304,183.49

Plaintiff is entitled to treble damages under the Complaint's Fifth Cause of Action for Defendants' violations of the South Carolina Unfair Trade Practices Act, and the trebled amount of the damages awarded above shall be awarded to the Plaintiff and entered against the Defendants in the total amount of:

\$3,912,550.47

IT IS THEREFORE ORDERED THAT:

The Plaintiff is awarded joint and several judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC in the amount of Three Million Nine Hundred Twelve Thousand Five Hundred Fifty and 47/100 (\$3,912,550.47) Dollars and interest at the statutory rate from the date this judgment is entered until the date paid.

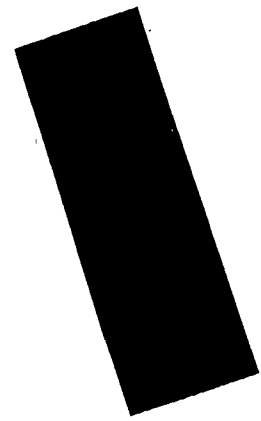
AND IT IS SO ORDERED.

S/L. Casey Manning

Circuit Court Judge

Sept 18, 2017

Cola, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

FORM 4

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS
WFG National Title Company

CASE NO. 2016-CP-40-04718
DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Drew B. Walker

Attorney for : ☒ Plaintiff ☐
Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
WFG National Title Insurance Company	DataQuick Lending Solutions, Inc.	\$3,912,550.47
WFG National Title Insurance Company	DataQuick Lending Solutions, LLC	\$3,912,550.47

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 19 day of Sept, ²⁰¹⁷~~2016~~ and a copy mailed first class or placed in the appropriate attorney's box on this 19 day of Sept, ²⁰¹⁷~~2016~~ to attorneys of record or to parties (when appearing pro se) as follows:

Drew B. Walker, SC Bar # 78271

PO Box 11803

Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jeanette W. McAnide
CLERK OF COURT

Court Reporter:

ROGERS LEWIS

ATTORNEYS AT LAW

Drew B. Walker, Esq.
Direct: (803) 978-2836
dwalker@rogerslewis.com

September 27, 2017

Honorable Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

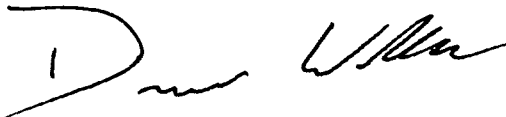
RE: WFG National Title Insurance Company v. DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC
Civil Action No.: 2016-CP-40-04718

Dear Ms. McBride:

Enclosed please find a Certificate of Service for filing in the referenced matter. By copy of this letter, I am serving all parties with a copy of the enclosed Order that was previously filed with your office on September 19, 2017.

Thank you for your assistance with this matter.

Sincerely,



Drew Walker

ABW/pdb
Enclosures

cc: DataQuick Lending Solutions, Inc.
DataQuick Lending Solutions, LLC

W Y C H E

Attorneys at Law

October 16, 2017

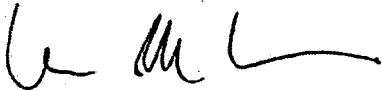
The Honorable L. Casey Manning
Chief Administrative Judge
Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202

RE: *WFG National Title Insurance Company v. DataQuick Lending Solutions, Inc. and Data Quick Lending Solutions, LLC*
Civil Action: 2016-CP-40-04718

Dear Judge Manning,

As required by Rule 52(d) and Rule 59(g), please find enclosed a copy of *Defendants' Motion for New Trial, to Alter or Amend Judgment, and for Relief from Judgment* that was filed with the Court on October 13, 2017.

Sincerely,



William M. Wilson
864-242-8294
bwilson@wyche.com

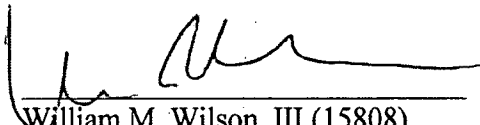
Enclosures

Cc: Drew B. Walker

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
WFG National Title Insurance Company, Plaintiffs, vs. DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC, Defendants.	C.A. No.: 2016-CP-40-04718 NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant's **MOTION FOR NEW TRIAL, TO ALTER OR AMEND JUDGEMENT, AND FOR RELIEF FROM JUDGEMENT** in the above case is scheduled for a hearing before the Honorable L. Casey Manning on **Wednesday, July 18, 2018, at 10:00 a.m.** at the Richland County Judicial Center, 1701 Main Street, Columbia, SC 29201. Please note that Judge Manning requires that Briefs and/or Memorandums be submitted as soon as possible before the hearing.

Respectfully submitted,



William M. Wilson, III (15808)

WYCHE, P.A.

44 East Camperdown Way

Post Office Box 728

Greenville, South Carolina 29602-0728

Telephone (864) 242-8200

Fax (864) 235-8900

Email bwilson@wyche.com

Attorney for Defendants

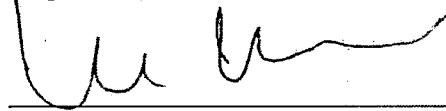
June 21, 2018

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
WFG National Title Insurance Company, Plaintiffs, vs. DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC, Defendants.	C.A. No.: 2016-CP-40-04718 CERTIFICATE OF SERVICE

I hereby certify that copies of the **NOTICE OF HEARING** was served, on the date indicated below, on the Plaintiff via U.S. Mail, addressed as shown below:

Drew B. Walker
Rogers Lewis
P.O. Box 11803
Columbia, SC 29211

Respectfully submitted,



William M. Wilson, III (15808)
WYCHE, P.A.
44 East Camperdown Way
Post Office Box 728
Greenville, South Carolina 29602-0728
Telephone (864) 242-8200
Fax (864) 235-8900
Email bwilson@wyche.com
Attorney for Defendants

June 21, 2018

From: Drew Walker <dwalker@rogerslewis.com>
Sent: Friday, August 31, 2018 1:51 PM
To: Manning, L. Casey Law Clerk (Carmen Jackson); William M. Wilson III; Pamela Baker; Manning, L. Casey
Cc: CManningSC@sccourts.org
Subject: RE: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718
Attachments: Order Denying Motion for Relief from Judgment.docx

Judge Manning,

Good afternoon. Please find attached the proposed Order concerning the Motion that was heard by Your Honor last Tuesday in the referenced matter. If you would like my office to deliver a hard copy to your office, please let me know and we will courier it early next week. If I can be of further assistance, please let me know. Have a great weekend.

Sincerely,
Drew Walker

Drew Walker
Member
Rogers Lewis Jackson Mann & Quinn, LLC
1330 Lady St., Suite 400
803-978-2836 (direct)
Columbia, SC 29201
P.O. Box 11803 (29211)
www.rogerslewis.com

From: Manning, L. Casey Law Clerk (Carmen Jackson)
Sent: Tuesday, August 21, 2018 8:28 AM
To: William M. Wilson III ; Drew Walker ; Pamela Baker ; Manning, L. Casey ; Hood, Robert E. Law Clerk (Catherine Ortmann)
Subject: RE: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718

Good Morning,

Judge Manning has been assigned to courtroom 2A for today's hearing.

Best,

From: William M. Wilson III <bwilson@wyche.com>
Sent: Monday, August 20, 2018 6:53 PM
To: Drew Walker <dwalker@rogerslewis.com>; Pamela Baker <pbaker@rogerslewis.com>; Manning, L. Casey <CManningJ@sccourts.org>; Hood, Robert E. Law Clerk (Catherine Ortmann) <rhoodlc@sccourts.org>; Manning, L. Casey Law Clerk (Carmen Jackson) <CManningLC@sccourts.org>
Subject: Re: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718

All:

Will tomorrow's hearing be in a particular room at the Richland County Courthouse?

Sincerely,

Bill

Sent from my iPhone

On Jul 19, 2018, at 10:24 AM, Drew Walker <dwalker@rogerslewis.com> wrote:

Ms. Jefferson,

I received your email. Thank you very much and we'll look forward to seeing everyone on the 21st at 10:00.

Sincerely,
Drew

Drew Walker
Member
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main St., Suite 1200
Columbia, SC 29201
P.O. Box 11803 (29211)
803-978-2836 (direct)
www.rogerslewis.com



From: Manning, L. Casey Secretary (Raye J. Jefferson) <CManningSC@sccourts.org> **On Behalf Of** Manning, L. Casey
Sent: Thursday, July 19, 2018 10:03 AM
To: Drew Walker <dwalker@rogerslewis.com>; Manning, L. Casey Law Clerk (Jonathan Pierce) <CManningLC@sccourts.org>; Manning, L. Casey <CManningJ@sccourts.org>
Cc: Pamela Baker <pbaker@rogerslewis.com>; William M. Wilson III <bwilson@wyche.com>; Hood, Robert E. Law Clerk (Bailey Davis) <rhoodlc@sccourts.org>
Subject: RE: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718

Good Morning Mr. Walker,

Judge Manning will hear this on August 21st @ 10:00 a.m. in Richland County.

Will everyone please confirm they have received this email.

Thank you,

Raye J. Jefferson
Administrative Assistant to The Honorable L. Casey Manning
Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street, Room 214
Columbia, SC 29201
Office: (803) 576-1773
Fax: (803) 576-1744

From: Drew Walker <dwalker@rogerslewis.com>
Sent: Wednesday, July 18, 2018 4:28 PM
To: Manning, L. Casey Law Clerk (Jonathan Pierce) <CManningLC@sccourts.org>; Manning, L. Casey <CManningJ@sccourts.org>
Cc: Pamela Baker <pbaker@rogerslewis.com>; William M. Wilson III <bwilson@wyche.com>; Hood, Robert E. Law Clerk (Bailey Davis) <rhoodlc@sccourts.org>
Subject: RE: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718

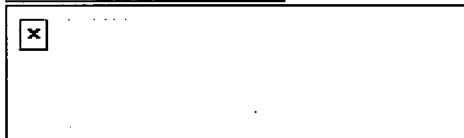
Judge Manning,

I consulted with Mr. Wilson concerning a new hearing date on his motion discussed below. The following dates are available in August for Mr. Wilson and me: August 3, 21, 22 (11:00 or after), 24, and 29 (afternoon).

Please let us know if and when a hearing may be noticed on one of these dates for Your Honor to hear.

Sincerely,
Drew Walker

Drew Walker
Member
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main St., Suite 1200
Columbia, SC 29201
P.O. Box 11803 (29211)
803-978-2836 (direct)
www.rogerslewis.com



From: Manning, L. Casey Law Clerk (Jonathan Pierce) <CManningLC@sccourts.org>
Sent: Thursday, June 14, 2018 2:11 PM

To: Drew Walker <dwalker@rogerslewis.com>
Cc: Pamela Baker <pbaker@rogerslewis.com>; William M. Wilson III <bwilson@wyche.com>; Hood, Robert E. Law Clerk (Bailey Davis) <rhoodlc@sccourts.org>
Subject: RE: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718

Judge Manning is setting this for Wednesday, July 18th at 10:00am.

J. Scott Pierce
Law Clerk to the Honorable L. Casey Manning
Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street, Room 214
Columbia, SC 29201
Office: (803) 576-1774
Fax: (803) 576-1744

From: Drew Walker [<mailto:dwalker@rogerslewis.com>]
Sent: Thursday, June 14, 2018 1:58 PM
To: Manning, L. Casey Law Clerk (Jonathan Pierce) <CManningLC@sccourts.org>
Cc: Pamela Baker <pbaker@rogerslewis.com>; William M. Wilson III <bwilson@wyche.com>
Subject: RE: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718

Mr. Pierce:

Please advise us as to Judge Manning's availability on the following dates to hold a hearing on this motion: July 9-11, 18, 20, 23-26, and 31. Thank you very much.

Sincerely,
Drew Walker

Drew Walker
Member
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main St., Suite 1200
Columbia, SC 29201
P.O. Box 11803 (29211)
803-978-2836 (direct)
www.rogerslewis.com



From: Hood, Robert E. <rhoodj@sccourts.org>
Sent: Thursday, June 14, 2018 1:29 PM
To: Drew Walker <dwalker@rogerslewis.com>

Cc: Hood, Robert E. Law Clerk (Bailey Davis) <rhoodlc@sccourts.org>; Manning, L. Casey Law Clerk (Jonathan Pierce) <CManningLC@sccourts.org>; Pamela Baker <pbaker@rogerslewis.com>; William M. Wilson III <bwilson@wyche.com>

Subject: RE: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718

This hearing needs to go before Judge Manning. His clerk is copied on this email chain. Please coordinate with Judge Manning's clerk on getting the hearing scheduled. Thank you, REH

From: Drew Walker <dwalker@rogerslewis.com>

Sent: Thursday, June 14, 2018 1:07 PM

To: Hood, Robert E. <rhoodj@sccourts.org>

Cc: Hood, Robert E. Law Clerk (Bailey Davis) <rhoodlc@sccourts.org>; Manning, L. Casey Law Clerk (Jonathan Pierce) <CManningLC@sccourts.org>; Pamela Baker <pbaker@rogerslewis.com>; William M. Wilson III <bwilson@wyche.com>

Subject: RE: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718

Dear Judge Hood:

The Defendants filed the motion pursuant to Rules 5(a), 52(a), 54(c), 59(a), 59(e), and 60(b). However, because the Court issued a default judgment without a hearing, the defaulting Defendants did not raise any issues at a hearing that could be altered or amended pursuant to Rule 59(e). See Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 437,437 (Ct. App. 1995)(holding "A party cannot for the first time raise an issue by way of a Rule 59(e) motion that could have been raised at trial). I will certainly invite the Defendants to weigh in if they feel differently, but I believe the focus of their motion and supporting affidavit is Rule 5(a), 52(a), 54(c), 59(a) and 60(b).

Sincerely,
Drew

Drew Walker
Member
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main St., Suite 1200
Columbia, SC 29201
P.O. Box 11803 (29211)
803-978-2836 (direct)
www.rogerslewis.com



From: Hood, Robert E. <rhoodj@sccourts.org>

Sent: Thursday, June 14, 2018 12:23 PM

To: Drew Walker <dwalker@rogerslewis.com>

Cc: Hood, Robert E. Law Clerk (Bailey Davis) <rhoodlc@sccourts.org>; Manning, L. Casey Law Clerk

(Jonathan Pierce) <CManningLC@sccourts.org>; Pamela Baker <pbaker@rogerslewis.com>; William M. Wilson III <bwilson@wyche.com>
Subject: RE: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718

The clerk's office is telling me this is a Rule 59e motion, is that correct???

From: Drew Walker <dwalker@rogerslewis.com>
Sent: Thursday, June 14, 2018 11:24 AM
To: Hood, Robert E. <rhoodj@sccourts.org>
Cc: Hood, Robert E. Law Clerk (Bailey Davis) <rhoodlc@sccourts.org>; Manning, L. Casey Law Clerk (Jonathan Pierce) <CManningLC@sccourts.org>; Pamela Baker <pbaker@rogerslewis.com>; William M. Wilson III <bwilson@wyche.com>
Subject: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718

Dear Judge Hood:

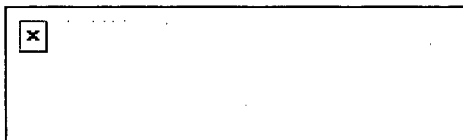
I represent the Plaintiff WFG National Title Ins. Co. in the referenced matter. Judge Manning ordered judgment in my client's favor against Defendants DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC in the amount of \$3,912,550.47 on September 18, 2017. I have attached the Order for your reference. Following the entry of judgment, DataQuick retained counsel, Bill Wilson, copied here. Mr. Wilson's office filed the attached Motion that was served on October 12, 2017.

The Motion filed in October 2017 has yet to be scheduled for hearing. My client wishes to move forward with opposing the motion at a hearing. I have copied all counsel of record on this email, as well your law clerk and Judge Manning's law clerk. Please let me know if I may be of assistance in having this matter scheduled.

Respectfully,
Drew Walker

Drew Walker
Member

dwalker@rogerslewis.com
(803) 978-2836 Direct Dial
(803) 252-3653 Fax



1901 Main St., Suite 1200, Columbia, South Carolina 29201
PO Box 11803 (29211)

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Thank you.  
-----

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,  
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and  
DataQuick Lending Solutions, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-04718

**ORDER**

**BACKGROUND**

On August 21, 2018, a hearing was held before this Court (hereinafter, the “Hearing”) regarding the Defendant DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC’s (collectively, “DataQuick”) Motion for New Trial, to Alter or Amend Judgment, and for Relief from Judgment (hereinafter, the “Motion”), filed with this Court. Present at the hearing were Drew B. Walker as counsel for the Plaintiff WFG National Title Insurance Company (“WFG”), of Rogers Lewis Jackson Mann & Quinn, and Defendant DataQuick, represented by William Wilson, III, of Wyche, PA.

DataQuick, with the filing of its Motion, attempts to set aside an entry of default and subsequent default judgment against DataQuick (the “Default Judgment”), and seeks to file an Answer in this action. Alternatively, DataQuick sought to have the Default Judgment vacated and/or amended so as to allow a damages hearing pursuant to Rule 52(a), Rule 59(a), and/or Rule 59(e). Based on the testimony presented at the Hearing, and for the reasons set forth herein, the relief sought by DataQuick in its Motion is Denied.

**UNDISPUTED FACTS AND PROCEDURE**

The Parties do not dispute that WFG properly served DataQuick’s registered agents

with every pleading, motion, proposed order, and other filing in this case. See the Procedural Timeline and Factual Statement in DataQuick's Memorandum in Support of its Motion for Relief.

DataQuick concedes that it internally failed to update its points of contacts with its registered agent, CT Corporation, in South Carolina and Delaware. See Id. at ¶12 of Factual Statement. DataQuick concedes its subsequent Delaware agent, Maples, failed to forward it the properly-served Motion for Default Judgment. Id. at ¶21 of Factual Statement.

DataQuick states it has no employees currently, yet submits two affidavits from individuals on its behalf. Id. at ¶10. DataQuick has always maintained registered agents for service of process in the State of South Carolina and Delaware during the pendency of this lawsuit. Id. at ¶¶ 11, 12. DataQuick states that it has had no business operations in recent years, yet maintains its corporate form, has updated and corrected addresses with its registered agents, and has changed registered agents during the pendency of this lawsuit. Id. at ¶¶ 4, 9, 13, 19. It also claims to have General Counsel. See Affidavit of Adam Fliss at ¶ 2, and Affidavit of Michael LaGatta at ¶ 2.

DataQuick states it has no knowledge or possession of the Agency Agreement between WFG and DataQuick, (upon which WFG's claims are based) (the "Agency Agreement"), and has no knowledge of the substance of Plaintiff's claims. Id. at 11, 12. Nevertheless, DataQuick claims it has defenses, and also that it could unilaterally assign the Agency Agreement to another corporate entity and bases its meritorious defense arguments on liberal assumptions it takes with regard to its unknown contents of the Agency Agreement. Id. at ¶¶ 6, 8, 27 (a), (b) and (d).

DataQuick Lending Solutions, Inc. was served with the Summons and Complaint through its South Carolina registered agent on August 11, 2016 as shown on the Affidavit of Service filed with this Court. DataQuick Lending Solutions, LLC was served with the Summons and Complaint through its Delaware registered agent on August 10, 2016 as shown on the Affidavit of Service filed with this Court. DataQuick did not appear in this action until October 13, 2017 when it filed its Motion, which was over fourteen (14) months after service of the Summons and Complaint. Additionally, the Hearing on the Motion took place over two (2) years after WFG's statutorily-prescribed service of the Summons and Complaint on DataQuick.

### **LEGAL FINDINGS**

#### **I. The Entry of Default Should Not be Set Aside per Rule 60, SCRPC**

DataQuick's argument to be relieved from the Default Judgment does not meet the criteria of Rule 60(b), SCRPC. WFG unequivocally served an agent with actual authority to accept service for DataQuick under statute and the South Carolina Rules of Civil Procedure. Rule 4(d)(3), SCRPC, states that service may be made on a corporation by "delivering a copy of the summons and complaint ... to any other agent authorized by appointment or by law to receive service of process..." Further, as a Delaware corporation registered to do business with the South Carolina Secretary of State, DataQuick was an authorized foreign corporation whose registered agent could accept service of process pursuant to S.C. Code Ann. 15-9-240. Finally, WFG properly served DataQuick's registered agent in Delaware pursuant to Rule 4(h), SCRPC.

#### **A. DataQuick has Not Shown Excusable Neglect**

The Rule 60 standard for lifting judgment is more stringent than the Rule 55 "good

cause” standard for lifting entry of default. See Sundown Operating Co., Inc. v Intedge Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009). In cases analyzed both under Rule 55 standards and Rule 60 standards, courts have refused to lift default and judgment even when the neglect was not the actual neglect of the Movant (in this instance, DataQuick), but the neglect was imputed to it through its insurer or attorney. Richardson v. P.V. Inc., 283 SC 610, 682 S.E.2d 263 (2009) (holding an agent with apparent authority as being properly served, that the Rule 60 standard is more rigorous than Rule 55, and denying to lift default under the Rule 55(c) “good cause” standard even though the insurance company was assumed to be at fault for Petitioner’s failure to answer the complaint); see also Williams v Vanvokenburg, 312 S.C. 373, 440 S.E.2d 408 (1994) (holding Rule 55 “good cause” standard was not met to lift default when default is due to attorney’s negligent failure to file answer for client). DataQuick’s direct, unimputed failures and neglect does not rise to good cause under Rule 55 standards and therefore, does not meet the more stringent standard for Rule 60.

In the instant case, by serving DataQuick’s registered agents, WFG served agents with actual authority to accept service on DataQuick’s behalf. DataQuick’s failures to internally update who received the process within its corporation after its actual agents received the summons and complaint do not rise to the excusable neglect standard discussed in controlling South Carolina case law. DataQuick’s registered agents had actual knowledge of instant lawsuit and DataQuick presented no excuse for this internal negligence.

Furthermore, the court’s records and DataQuick’s affidavits conclusively show that DataQuick’s registered agent received service of process. DataQuick has failed to provide the Court with conclusive proof to meet the excusable neglect standard provided by Rule 60. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (2008) (the Court holding Defendant to a

“conclusive proof” standard under Rule 60, requiring that he show that he had not been served with the summons and complaint). Therefore, DataQuick cannot meet the excusable neglect standard of Rule 60 and is not entitled to the relief it seeks in its Motion.

**B. Lack of Promptness and Sufficient Reasoning for DataQuick’s Failures; Prejudice**

“In determining whether to grant a motion under Rule 60, the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party.” Micronics, Inc. v. South Carolina Dept. of Revenue, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001). This Court finds that DataQuick lacked promptness and sufficient reasons for its failure to update appropriate personnel with its registered agents. As noted in the Factual Statement, over fourteen months went by between service of the Summons and Complaint and DataQuick’s appearance in the case. At any point during those fourteen months, DataQuick could have audited its deficiencies and uncovered that the people it appointed to receive notices from its registered agent were no longer associated with DataQuick.

DataQuick cannot shift the blame to CT Corporation as CT Corporation sent notices to the individuals that DataQuick requested. Further, CT Corporation remains DataQuick’s registered agent in South Carolina at the present time. When DataQuick chose to change its Delaware agent in December 2016, it could have uncovered its failure to update the addresses and asked the obvious question to CT Corporation – have you forwarded any service of process to those people since their relationship ceased with us. Rather, it did not appear in the case for an additional ten months. With over two years having elapsed since service of the Summons and Complaint on DataQuick and the Hearing on this Motion for Relief, WFG

would suffer significant prejudice due to the dilatory practices and failures of DataQuick and, as such, DataQuick is not entitled to the relief it seeks in its Motion.

**C. WFG's UTPA Claim**

DataQuick's analysis on the South Carolina Unfair Trade Practices Act ("UTPA") is misguided. Ardis v. Cox, 314 S.C. 512, 519, 431 S.E.2d 27, 32 (Ct.App.), does not hold that any lawsuit with a breach of contract cause of action unequivocally causes a UTPA cause of action to fail. Rather, the Ardis court held that UTPA is "unavailable to redress private wrongs if the public interest is unaffected." Id. In the instant case, WFG cites to 47 claims that were affected by DataQuick's actions. Critically, DataQuick's culpable actions have lead to damage to the South Carolina citizenry at large when title premiums increase due to the agents and their insurance carriers not shouldering any of the underwriter's loss. South Carolina consumers completing loan transactions are typically required to purchase title insurance lender's policies in order to obtain financing, and consumers routinely make the prudent choice to purchase owner's policies to protect their own investment. When DataQuick takes culpable actions as alleged in the Complaint, consumer insurance premiums unnecessarily rise, which has a direct effect on South Carolinians. Thus, it is the public that bears the burdens of rising costs due to DataQuick's actions or lack thereof. WFG's allegations in its UTPA cause of action is deemed admitted as plead and the Default Judgment grants the relief requested and contemplates DataQuick's knowing and willful violation of the UTPA and, as such, the judgment should not be set aside.

**D. Lack of Meritorious Defense**

DataQuick's allegations concerning its legal argument of a meritorious defense are fail. WFG sued the party it has an Agency Agreement with, DataQuick. DataQuick remains

a corporate entity to this day. It can be served. It was served. It failed to file an Answer and lost its right to conduct discovery. The records do not support the suggestion of any assignment of an Agency Agreement. Additionally, the suggestion that such an assignment could be done unilaterally by DataQuick when it admits that it is not familiar with the contents of the Agency Agreement creates more conjecture.

Further, any indemnification DataQuick may be able to seek from Stewart is a Third Party Claim, rather than a meritorious defense to its admitted liability to WFG, and is not considered by this Court. “It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff’s allegations and to have conceded liability.” Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998).

Finally, DataQuick’s argument that the judgment is “void” under Rule 60 (b)(4) fails. “The definition of void under the rule (60) only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. See Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (2002). DataQuick wrote title policies in South Carolina which conferred personal jurisdiction when its South Carolina registered agent was served with process, negating any unsupported defense claim of lack of personal jurisdiction or venue.

For these reasons, DataQuick has failed to show any reason to void the Order under the Rule 60, SCRCP, standard. DataQuick’s speculation of “likely exculpatory evidence” does not rise to the meritorious defense standard required by South Carolina courts. See Id. and ¶27 of Fliss Affidavit. The McClurg Court, cited by DataQuick, requires “a showing of a prima facie meritorious defense” and holds “[a] party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essentially to entitle him to relief.”

McClurg at 575, 671 S.E.2d at 93-94 (holding that neither appellant met burden of proving prima facie case for meritorious defense). Here, DataQuick has shown no meritorious defense and presented no evidence that would entitle it to relief.

**II. The Damages in the Order are Liquidated and Should Not be Set Aside under Rule 60, SCRPC**

In the instant action, WFG's damages are liquidated. WFG reviewed corporate records for each of the forty-seven (47) claims enumerated in its Complaint in order to compute sum certain amounts that had already been paid by WFG in the form of loss, expense, charges, attorney's fees and allocated loss adjustment expenses.

DataQuick assertion that the Default Judgment exceeded the amount prayed for in the Complaint in violation of Rule 54(c) is without merit. Rule 54(c) does not require a sum certain amount be plead in the initial Complaint in order to obtain default judgment. Rule 55(b)(1) allows default judgment without hearing for liquidated amounts to be supported by an Affidavit of Debt, upon motion of the party seeking default. In its Complaint, WFG alleged damages exceeding \$25,000.00 and filed an Affidavit of Debt along with its Motion for Default Judgment. South Carolina courts allow the use of Affidavits of Debt in support of default judgments at the time of application for default judgment on liquidated damages and pursuant to Rule 55(b)(1) in lieu of a verified pleading. DataQuick's efforts to conflate Rule 54(c) and Rule 55(b)(1) are incongruent with South Carolina practice and its Rules of Civil Procedure.

Further, this Court finds that any error in the Order of trebling the meager attorney's fees shown by the previously filed affidavit of attorney's fees (\$4,000.00) was harmless error under Rule 61, SCRPC. As shown by the updated Attorney's Fees Affidavit filed with this Court on August 21, 2018, WFG has suffered reasonable attorney's in the amount of

\$20,000.00 for over ninety (90) hours of legal work by WFG's retained firm since its retention in 2016. This amount is well in excess of the \$12,000.00 (\$4,000.00 trebled) awarded in the Order.

Additionally, the issuance of an award for attorney's fees prior to the ten days contemplated in Rule 55(b)(3) resulted in harmless error. While WFG did provide proper notice that it sought attorney's fees in its motion for default judgment as contemplated in Rule 55(b)(3), the Order was entered prior to the ten-day objection period contemplated in the Rule. Nevertheless, ten days did actually go by after Maples was served with the Notice that WFG sought attorney's fees, and no objection was made during that time period concerning the attorney's fees. This resulted in harmless error under Rule 61, SCRCP, and any award of attorney's fees in the Default Judgment should not be set aside.

**III. DataQuick is not Entitled to Relief under either Rule 59(a) or Rule 59(e), SCRCP**

Because this Court issued a default judgment without a hearing, the defaulting DataQuick did not raise any issues at a hearing that could be altered or amended pursuant to Rule 59(e), SCRCP. See Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 437,437 (Ct. App. 1995) (holding "A party cannot for the first time raise an issue by way of a Rule 59(e) motion that could have been raised at trial"). Also, because there was no "action tried without a jury", DataQuick's relief for a new trial under Rule 59(a) fails. For these reasons, and because DataQuick's Motion for Relief was served on October 2, 2017, following service of the Order on September 27, 2017, more than ten days after service was complete, DataQuick's Rule 59 arguments fail, including the tolling for any time to appeal under Rule 59(f). This Court finds that DataQuick is not entitled to the relief it seeks in its Motion as relate to Rule 59(a) and Rule 59(e).

**CONCLUSIONS OF LAW**

WHEREAS, for the reasons set forth above, this Court finds that the Motion should be denied.

NOW, THEREFORE, the Motion is DENIED.

IT IS HEREBY ORDERED.

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The Honorable L. Casey Manning  
Fifth Judicial Circuit

Columbia, South Carolina  
\_\_\_\_\_, 2018

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**From:** William M. Wilson III  
**Sent:** Friday, August 31, 2018 4:14 PM  
**To:** 'Manning, L. Casey'; 'Manning, L. Casey Law Clerk (Carmen Jackson)'  
**Cc:** 'Drew Walker'; 'Pamela Baker'; 'CManningSC@sccourts.org'  
**Subject:** RE: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718  
**Attachments:** ORDER granting relief from default judgment with leave to file Answer - WFG v. DataQuick (00925706x9F4BC).docx; ORDER granting relief from default judgment and damages hearing - WFG v. DataQuick (00925725x9F4BC).docx

Dear Judge Manning:

Please see attached two proposed orders granting DataQuick's motion for relief from judgment. The first proposed order grants the motion on the basis of excusable neglect under Rule 60(b)(1) and allows DataQuick to file an Answer within ten days. The second proposed order grants the motion on the limited basis of requiring a damages hearing (but not allowing for an Answer to be filed). I am providing two orders because the motion requested relief on both bases, but it would be inconsistent to grant relief on both bases. Of course, we prefer the first order that allows DataQuick to file an Answer. Please let me know if I can provide anything else. Thank you for your consideration of this matter.

Sincerely,

Bill



**William M. Wilson III | Wyche**

44 East Camperdown Way | Greenville, SC 29601-3512

Phone: (864) 242-8294 | Fax: (864) 298-3941

[bwilson@wyche.com](mailto:bwilson@wyche.com) | [www.wyche.com/bwilson](http://www.wyche.com/bwilson) | [vCard](#)

A Lex Mundi Member Firm

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**From:** Drew Walker [mailto:[dwalker@rogerslewis.com](mailto:dwalker@rogerslewis.com)]  
**Sent:** Friday, August 31, 2018 1:51 PM  
**To:** Manning, L. Casey Law Clerk (Carmen Jackson) ; William M. Wilson III ; Pamela Baker ; Manning, L. Casey  
**Cc:** CManningSC@sccourts.org  
**Subject:** RE: WFG National Title Ins. Co. v. DataQuick Lending Solutions, Inc., et. al.; C/A 2016-CP-40-04718

Judge Manning,

Good afternoon. Please find attached the proposed Order concerning the Motion that was heard by Your Honor last Tuesday in the referenced matter. If you would like my office to deliver a hard copy to your office, please let me know and we will courier it early next week. If I can be of further assistance, please let me know. Have a great weekend.

Sincerely,  
Drew Walker

Drew Walker

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C.A.: 2016-CP-40-04718

WFG National Title Insurance Company,

Plaintiff,

vs.

DataQuick Lending Solutions, Inc. and  
DataQuick Lending Solutions, LLC,

Defendants.

**ORDER  
FOR RELIEF FROM DEFAULT  
JUDGMENT WITH LEAVE TO FILE  
ANSWER**

This matter is before me on the motion of Defendants DataQuick Lending Solutions, LLC (formerly known as DataQuick Lending Solutions, Inc.) (collectively, "DataQuick") for relief from a default judgment and leave to file an Answer. A hearing on this matter was held on August 21, 2018, and the parties each submitted a memorandum. Based upon the motion, memoranda, arguments of counsel, and the reasons below, the motion is granted.

**A. Findings of Fact**

The court makes the following findings of fact.

1. The Complaint against DataQuick was filed on August 6, 2016. (Docket).
2. The allegations of the Complaint indicate that Plaintiff WFG National Title Insurance Company is a title insurance company that brought suit against its title agent for unspecified underwriting failures under its title agency agreement ("Agency Agreement"). (Compl. ¶ 15.)
3. DataQuick sold all of its assets in 2014 (including the sale of the subject Agency Agreement to Stewart Title on March 26, 2014) and ceased operations. (Fliss Aff. ¶¶ 4, 6.)
4. An Order of Entry of Default was filed on October 27, 2016. (Docket.)

5. Although DataQuick's agent for service of process (CT Corporation) received service of the Complaint and Order of Entry of Default, the contact information it had for DataQuick was obsolete, and so DataQuick did not receive actual notice of the lawsuit or of the default from CT Corporation. (Fliss Aff. ¶ 12.)
6. DataQuick inadvertently failed to update its address with CT Corporation as a result of it having no employees or business operations since 2014. (Fliss Aff. ¶¶ 4, 9, 12.)
7. Between October 2016, when Plaintiff obtained an entry of default, and September 2017, when Plaintiff moved for and obtained a default judgment, Plaintiff took no action in the case. (Docket.)
8. In December 2016—two months after the entry of default but nine months prior to the entry of a default judgment—DataQuick changed its registered agent in Delaware from CT Corporation to Maples Fiduciary Services (Delaware) Inc. ("Maples"). (Fliss Aff. ¶ 19.)
9. Maples was given correct contact information for DataQuick. (Fliss Aff. ¶¶ 11, 23.)
10. On September 15, 2017, Plaintiff filed a motion for default judgment, and the Court entered an Order for Default Judgment of \$3,912,550.47 on September 19, 2017. (Docket.)
11. On October 2, 2017, DataQuick for the first time received actual notice of the lawsuit when it received the Default Judgment from Maples. (Fliss Aff. ¶¶ 11, 19.)
12. DataQuick's failure to update the address with CT Corporation was inadvertent and unintentional and not out of any bad faith intention to avoid a lawsuit. (Fliss Aff. ¶¶ 13.)
13. Prior to October 2, 2017, DataQuick had no actual knowledge of the lawsuit. (Fliss Aff. ¶ 24.)
14. On October 12, 2017, DataQuick filed a Motion for New Trial, to Alter or Amend Judgment, and for Relief from Judgment. (Fliss Aff. ¶ 26.)
15. DataQuick asserts that it has several meritorious defenses, including (a) it will bring in a third party defendant to indemnify it under Rule 14 of the South Carolina Rules of Civil Procedure (as it assigned the Agency Agreement to Stewart Title who assumed liability thereunder and agreed to indemnify DataQuick from claims such as the one brought by Plaintiff); (b) it is not a party to the Agency Agreement and therefore cannot be liable to Plaintiff for any breach; (c) lack of personal jurisdiction; (d) contractual defenses; (e) a violation of the South Carolina Unfair Trade Practices Act (SCUTPA) cannot be premised upon a breach of contract as a matter of law under *Ardis v. Cox*, 314 S.C. 512, 519, 431 S.E.2d 267, 271 (Ct. App. 1993), yet the Complaint unequivocally relies upon a

breach of contract in order to establish violation of the SCUTPA; (f) there was no finding of a willful or knowing violation of the SCUTPA, which is required in order to treble damages, S.C. Code Ann. § 39-5-140(a); and (g) it is improper as a matter of law to treble attorneys' fees as part of a trebling of damages under *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 489, 693 S.E.2d 27, 32 (Ct. App. 2010) (granting a Rule 60(b) motion on the amount of a default judgment because the attorneys' fees were trebled). (Def. Mem. at 10; Fliss Aff. ¶¶ 6, 27.)

## **B. Conclusions of Law**

Pursuant to Rule 60(b)(1), SCRCP, the court may exercise its discretion to grant relief from the default judgment and set aside the entry of default due to mistake, inadvertence, surprise, or excusable neglect. "Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009); *see also Honorage Nursing Home of Florence, S.C., Inc. v. Florence Convalescent Ctr., Inc.*, 367 S.C. 108, 112, 623 S.E.2d 853, 855 (Ct. App. 2005) (holding that an entry of default was properly set aside following a motion under Rule 60(b)). "The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge." *Sundown*, 383 S.C. at 606, 681 S.E.2d at 888.

"In determining whether to grant a motion under Rule 60, the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." *Micronics, Inc. v. South Carolina Department of Revenue*, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001). The Court should examine these factors in light of "South Carolina's policy favoring the disposition of issues on their merits rather than on technicalities." *Id.* at 511, 548 S.E.2d at 226 (emphasis added). Here, all four criteria are met.

The first criteria is the promptness with which relief is sought. As set forth in the Findings of Fact above, DataQuick first learned of the existence of the action and the default

judgment on October 2, 2017 (Fliss Aff. ¶¶ 11, 19, 23), and served its motion for relief ten days later on October 12, 2017. In order to do so, it had to locate and retain counsel who in turn had to review the matter and prepare the motion. (Fliss Aff. ¶ 26.) This period of time of only ten days is well within the periods of time courts have held to be sufficient. *See, e.g., Williams v. Watkins*, 384 S.C. 319, 326, 681 S.E.2d 914, 917 (Ct. App. 2009) (finding 33 days from actual notice to be sufficient); *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010) (“As to the first factor, we agree with the finding of the family court that Wife’s motion for relief was timely made because it was filed within one year of the Supplemental Order.”).

The second criteria is the reasons for the failure to act promptly. Here, as outlined in the statement of facts, DataQuick did not act sooner because it was unaware of service of the Summons and Complaint until October 2, 2017. The reason is that it had ceased all operations following the sale of all of its assets to Stewart Title on March 26, 2014, and had no employees after this sale. (Fliss Aff. ¶¶ 4, 6, 9, 10.) For these reasons, DataQuick did not receive service of process and had no actual knowledge of the lawsuit until the Order for Default Judgment was received on October 2, 2017, following service upon its newly appointed registered agent in Delaware, Maples Fiduciary Services (Delaware) Inc. (“Maples”). (Fliss Aff. ¶ 11.) DataQuick switched its registered agent from CT Corporation to Maples in December 2016, which resulted in it receiving service of the Order on October 2, 2017. (Fliss Aff. ¶¶ 11, 19.) DataQuick’s failure to update its address with CT Corporation was unintentional and not a result of a bad faith attempt to avoid lawsuits. (Fliss Aff. ¶ 13.) The fact that DataQuick appointed a new registered agent in Delaware that did have a correct contact address for DataQuick is powerful evidence that DataQuick was not acting in bad faith or trying to avoid being located and served with

process. Good faith is an important factor in determining whether a party's neglect is "excusable." See 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2693 (4th ed.) ("[T]he good or bad faith of the parties may be one of the most important factors in deciding motions [for relief from default].").

At least two courts in federal jurisdictions<sup>1</sup> have exercised discretion to find excusable neglect when a corporate entity has inadvertently failed to update its address with its registered agent. In *Winslow Marine, Inc. v. J. Supor & Son Trucking & Rigging, Inc.*, No. 2:15-CV-312-NT, 2016 WL 7235670, at \*2–3 (D. Me. Dec. 14, 2016), the defendant did not receive notice of the lawsuit "until after it learned of the default judgment because of a mistake in the delivery of service caused in part by its own failure to update its address with its registered agent." *Id.* at \*2. The process was received by CT Corporation and delivered to the company's former office where a security guard not associated with the defendant signed for it. *Id.* Thus, CT Corporation never was put on notice that service actually was not received, which could have resulted in the matter being corrected, and so the court found that the delay in part was beyond defendant's control. *Id.* The court also found that there was no evidence of bad faith and that the plaintiff was not entirely innocent because it knew the location of the defendant's new offices. Thus, the court set aside the default judgment under Rule 60(b)(1) for excusable neglect. See *id.* at \*3.

Similarly, in *Miller v. Clear Channel Communications, Inc.*, 2007 WL 2692180 (D.S.C. Sept. 12, 2007), an entry of default was entered against a concert promoter that did not receive actual notice of an action because it had failed to update its registered agent information. Thus,

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<sup>1</sup> "In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules." *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016).

the registered agent forwarded the process to an obsolete address. Once the defendant did receive actual notice of the action after the entry of default, it retained an attorney and moved to set aside the judgment under Rule 55(c), which employs a similar “excusable neglect” standard.<sup>2</sup> In that case, this Court held that the defendant “has demonstrated good cause and excusable neglect. Furthermore, the court finds that [defendant] acted with reasonable diligence in seeking to set aside the default and has tendered a meritorious defense.” *Id.* at \*2.

In sum, under the circumstances here—where DataQuick had ceased operations and sold all assets, no longer had employees, inadvertently neglected to update contact information with CT Corporation, evidenced no indications of bad faith, and appointed Maples as its registered agent prior to entry of the default judgment—DataQuick has offered an adequate explanation as to the reasons why it did not act more promptly and can claim “mistake, inadvertence, surprise, or excusable neglect.”

The third criteria is the existence of a meritorious defense. “To establish a meritorious defense, the party does not have to show he would prevail on the merits.” *Williams v. Watkins*, 384 S.C. 319, 326, 681 S.E.2d 914, 917–18 (Ct. App. 2009). “Rather, a meritorious defense ‘need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.’” *Id.* at 326, 681 S.E.2d at 918 (quoting *McClurg v. Deaton*, 380 S.C. 563, 575, 671 S.E.2d 87, 94 (Ct.App.2008)). Here, there are seven defenses asserted by DataQuick as set forth in Finding of Fact # 15. The Court concludes that one or more of these potential defenses are meritorious given that they raise a question of law deserving

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<sup>2</sup> The “excusable neglect” standard under Rule 60(b) often is used to establish the more liberal “good cause” standard under Rule 55(c).

of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.

The fourth criteria is the prejudice to the other party. The kind of prejudice that is at issue is *not* that the Plaintiff would have to try the case on the merits or that it would delay possible recovery. See 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2693 (4th ed). Otherwise, prejudice always would exist. Instead, “[s]omething more must be shown.” *Id.* Courts generally find that there is no prejudice the other party. *Id.*; see e.g., *Williams v. Watkins*, 384 S.C. 319, 327, 681 S.E.2d 914, 918 (Ct. App. 2009) (“Finally, we find the degree of prejudice Williams will suffer if relief is granted is not so high as to outweigh the other factors, and we note the law favors the resolution of disputes based upon all parties having their day in court.” (internal quotations omitted)).

Here, Plaintiff has not identified any prejudice other than delay. To the extent there has been delay, it was largely the result of Plaintiff waiting over one year after filing the Complaint before it moved for a default judgment, and DataQuick promptly sought relief shortly thereafter. The court concludes that even if there were prejudice, it is outweighed by the other factors and the policy in favor of resolving disputes on their merits.

In conclusion, the Court exercises its discretion to conclude, after consideration of the four factors and in light of the policy of South Carolina that disputes should be resolved on their merits rather than on technicalities, that DataQuick satisfied the standard for “mistake, inadvertence, surprise, or excusable neglect” under Rule 60(b)(1). Accordingly, the Court grants DataQuick’s motion.

WHEREFORE, for the foregoing reasons, the motion of DataQuick is **GRANTED**, the default judgment is vacated, the entry of default is set aside, and DataQuick is directed to file an Answer in response to the Complaint within ten (10) days.

**IT IS SO ORDERED.**

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The Honorable L. Casey Manning  
Fifth Judicial Circuit

Columbia, South Carolina  
\_\_\_\_\_, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C.A.: 2016-CP-40-04718

WFG National Title Insurance Company,

Plaintiff,

vs.

DataQuick Lending Solutions, Inc. and  
DataQuick Lending Solutions, LLC,

Defendants.

**ORDER  
FOR RELIEF FROM DEFAULT  
JUDGMENT AND ORDERING  
DAMAGES HEARING**

This matter is before me on the motion of Defendants DataQuick Lending Solutions, LLC (formerly known as DataQuick Lending Solutions, Inc.) (collectively, "DataQuick") for relief from a default judgment. A hearing on this matter was held on August 21, 2018, and the parties each submitted a memorandum. Based upon the motion, memoranda, arguments of counsel, and the reasons below, the motion is granted in part, and a damages hearing must be held.

**A. Findings of Fact**

The court makes the following findings of fact.

1. The Complaint against DataQuick was filed on August 6, 2016. (Docket).
2. The allegations of the Complaint indicate that Plaintiff WFG National Title Insurance Company is a title insurance company that brought suit against its title agent for unspecified underwriting failures under its title agency agreement ("Agency Agreement"). (Compl. ¶ 15.)
3. The Complaint fails to include any specific factual allegations and fails to outline any damages other than claiming that damages exceed \$25,000. (Compl. ¶¶ 17, 25, 40.)

4. DataQuick sold all of its assets in 2014 (including the sale of the subject Agency Agreement to Stewart Title on March 26, 2014) and ceased operations. (Fliss Aff. ¶¶ 4, 6.)
5. An Order of Entry of Default was filed on October 27, 2016. (Docket.)
6. On September 15, 2017, Plaintiff filed a Motion for Default Judgment, asserting that damages were liquidated and seeking treble damages. (Pl. Mot. Def. J. at 2.)
7. On September 15, 2017, Plaintiff filed an Affidavit of Amount Due setting forth, without calculations, that the 47 claims at issue in the Complaint included “liquidated amounts due thereunder in the form of loss, expense, charges, attorney’s fees and allocated loss adjustment expenses” and that based upon a review of business records (not included with the affidavit) that the total amount due was \$1,299,888.99. (Aff. Amount Due ¶¶ 2, 4.)
8. The Affidavit of Amount Due also set forth court costs of \$150, service of process of \$144.50, and attorneys’ fees for the present action of \$4,000.
9. The Motion for Default Judgment sought trebled damages for all of the amounts set forth in Findings of Fact #7 and #8, for a total alleged liquidated damages amount of \$3,912,550.47. (Pl. Mot. Def. J. at 2.)
10. The Court entered an Order for Default Judgment of \$3,912,550.47 on September 19, 2017. (Docket.)
11. On October 2, 2017, DataQuick for the first time received actual notice of the lawsuit when it received the Default Judgment from Maples and had no prior knowledge of the lawsuit. (Fliss Aff. ¶¶ 11, 19, 24.)
12. On October 12, 2017, DataQuick filed a Motion for New Trial, to Alter or Amend Judgment, and for Relief from Judgment. (Fliss Aff. ¶ 26.)

## **B. Conclusions of Law**

Under Rule 55(b)(2), it is error to grant a default judgment on unliquidated damages without a damages hearing:

Nevertheless, relying only on the affidavit of 4 Prophets’ managing member and Rule 55(b)(1), the special referee awarded damages in the amount of \$12.5 million. **Because 4 Prophets’ theory of the measure of its damages was based solely on the value of real estate, which is not liquidated, not a sum certain, and cannot be made certain by mathematical calculation, we hold the special referee erred in awarding damages without conducting a damages**

hearing. See 46 Am.Jur.2d Judgments § 298 (2006) (“In the context of a default judgment, unliquidated damages normally are not awarded without an evidentiary hearing. Where damages claimed are not readily ascertainable from the pleadings and record, a hearing is appropriate to determine the amount of damages.”); *Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir.1983) (holding a judgment by default may not be entered without a hearing on damages unless the complaint indicates the amount claimed is liquidated or capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits).

*Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 92-93, 757 S.E.2d 557, 560 (Ct. App. 2014) (emphasis added). In the present case, Plaintiff’s claim was unliquidated because it was not “capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits.” *Id.* As a result, DataQuick is entitled to a default hearing.

Plaintiff’s assertion in its Motion for Default that the claim was liquidated is unsupportable. It relied upon Exhibit A to the Complaint as well as the Affidavit of Amount Due from the client. But Exhibit A to the Complaint lists nothing more than claim file numbers (with no damages enumerated), and the Affidavit of Amount Due similarly claims that the damages under the claims in Exhibit A are “liquidated” and then proceeds to list the total amount without explanation or any details or basis to compute the amount owed. The affidavit reinforces that the damages amount was unliquidated, as it simply declares a damages amount based upon undisclosed “business records” and asserts, without any itemization or calculation, that the total is based upon “amounts . . . in the form of loss, expense, charges, attorneys’ fees and allocated loss adjustment expenses.” Such a generic listing of the elements of damages without any itemization only confirms that the amount was unliquidated. Although a default effectively concedes

the damages amount when the damages are liquidated, the default by DataQuick could not reasonably be construed as conceding that the amount of damages was \$1,299,888.99 because there was no way for this amount to be computed.

The affidavit contains nothing more than the Plaintiff's own pronouncement of the amount of damages, but "[t]he simple fact that a party claims a specific amount of damages does not make the claim a sum certain." *Id.* at 93, 757 S.E.2d at 560. The Court of Appeals elaborated upon the difference between a liquidated claim and unliquidated claim:

In this case, 4 Prophets' alleged loss of the value of real estate does not fit into any of the categories of damages a plaintiff may prove by affidavit or verified complaint. A "[c]laim for ... damages is 'liquidated' in character if [the] amount thereof is fixed, has been agreed upon, or is capable of ascertainment by mathematical computation or operation of law." Black's Law Dictionary 839 (5th ed.1979); see also *Lewis v. Congress of Racial Equality*, 275 S.C. 556, 560, 274 S.E.2d 287, 289 (1981) ("In liquidated-damages cases, the amount is usually a sum certain[,] or at least the amount is capable of ascertainment by computation."); *Beckmann Concrete Contractors, Inc. v. United Fire & Cas. Co.*, 360 S.C. 127, 131, 600 S.E.2d 76, 78 (Ct. App.2004) (stating unliquidated damages are " '[d]amages that ... cannot be determined by a fixed formula, so they are left to the discretion of the judge or jury' " (quoting Black's Law Dictionary 397 (7th ed.1999))). Thus, 4 Prophets' damages are not liquidated. 4 Prophets' damages are also not a sum certain and cannot be made certain by computation. See Black's Law Dictionary 204 (5th ed.1979) (defining certain as "precise; ... definitive; ... unambiguous; or, in law, capable of being identified or made known without liability to mistake or ambiguity, from data already given"). The valuation of real estate is a subjective determination, and thus, damages measured by loss of value in real estate are inherently uncertain. Even the statement of value upon which 4 Prophets relies in this case is, "I believe the present fair market value ... to be ... \$25 million," and is based on the hearsay recital of two appraisals, both of which were at least eighteen months old at the time 4 Prophets filed the affidavit. The simple fact that a party claims a specific amount of damages does not make the claim a sum certain.

*Id.*, 408 S.C. at 92-93, 757 S.E.2d at 559-560 (emphasis added).

Here, the claim was unliquidated, and so a damages hearing is required. In addition, an order for a default judgment is void when it is entered without the required notice as was the case here:

We further hold the trial court should have relieved Hyman of the judgment by default. **The order entering it was void since the trial court issued the order without the required notice.** See *Superscope, Inc. v. Benjamin Company, Inc.*, 276 S.C. 231, 234, 277 S.E.2d 596, 598 (1981) (case decided before the adoption of the South Carolina Rules of Civil Procedure wherein the Supreme Court held that an “order of default, issued without notice, [is] ... void and should [be] set aside upon ... motion.”); see also *Wilson v. Moore and Associates, Inc.*, 564 F.2d 366, 369 (9th Cir.1977) (“The failure to provide 55(b)(2) notice, if notice is required, is a serious procedural irregularity that usually justifies setting aside a default judgment or reversing a failure to do so.”); 10 C. WRIGHT, A. MILLER & M. KANE, FEDERAL PRACTICE AND PROCEDURE § 2695, at 506-07 (1983) (“A failure by the party obtaining the judgment to give notice to the defaulting party may be considered as rendering the judgment void or as justifying vacation of the default judgment as a matter of law.”); 47 Am.Jur.2d Judgments § 1179, at 202 (1969) (“[A] default judgment rendered without the required notice constitutes a deprivation of due process of law and is void.”).

*Dymon, Inc. v. Hyman*, 305 S.C. 170, 172, 406 S.E.2d 388, 389 (Ct. App. 1991) (emphasis added).<sup>1</sup>

Here, the Plaintiff’s claim for damages for underwriting failures, which includes attorneys’ fees, can only be viewed as subjective and not determinable by a fixed formula. Yet the Plaintiff’s motion for default judgment indicated to the Court that the amounts were

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<sup>1</sup> In addition, the entry of the Default Judgment violated Rule 55(b)(3), which allows a court to award attorneys’ fees—regardless of whether the case involves liquidated damages or unliquidated damages—only when there is a damages hearing under subsection (b)(2). Otherwise, the party seeking attorneys’ fees must (i) specify in its motion that it is seeking attorneys’ fees, (ii) give notice of the motion at the last known address of the defendant, and (iii) the defendant fails to file an objection within 10 days of service. Here, there was no damages hearing. Further, court records show that the plaintiff filed its Motion on September 15, 2017, but the Default Judgment was entered only four days later, which failed to allow for the required ten day objection period. As a result, the Default Judgment must be set aside as void under Rule 55(b)(3).

The default judgment also is void because it consists of trebled damages without a finding that there was a willful or knowing violation of the South Carolina Trade Practices Act, which violates the Act and violates Rule 52(a). And it also is void because it improperly trebled the attorneys’ fees. See *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 489, 693 S.E.2d 27, 32 (Ct. App. 2010) (granting a Rule 60(b) motion on the amount of a default judgment because the attorneys’ fees were trebled).

liquidated and could be entered without a damages hearing. The court then entered the default judgment four days after the filing of the motion without any damages hearing or notice of hearing to parties in default as required by Rule 55(b)(2)<sup>2</sup> and Rule 5(a)<sup>3</sup>. This was improper, and so DataQuick is entitled to a damages hearing under Rules 5(a), 55(b)(2), 60(b)(3) (misrepresentation) and/or 60(b)(4) (void).

In conclusion, because the damages at issue are unliquidated, DataQuick is entitled to a damages hearing before a default judgment may be entered.

WHEREFORE, for the foregoing reasons, the motion of DataQuick is **GRANTED** in part,<sup>4</sup> the default judgment is vacated, and a damages hearing is ordered. Plaintiff and DataQuick are directed to confer with one another and contact the undersigned's Chambers within ten (10) days to schedule the damages hearing.

**IT IS SO ORDERED.**

\_\_\_\_\_  
The Honorable L. Casey Manning  
Fifth Judicial Circuit

Columbia, South Carolina  
\_\_\_\_\_, 2018

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<sup>2</sup> Per Rule 55(b)(2): "Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action."

<sup>3</sup> Per Rule 5(a), "notice of any trial or hearing on unliquidated damages shall also be given to parties in default." Such notice "shall be made by delivering a copy to him or by mailing it to him at his last known address."

<sup>4</sup> The court declines to exercise its discretion to lift the default judgment and the entry of default under Rule 60(b)(1).

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
L. Casey Manning, Circuit Court Judge

Lower Case No. 2016-CP-40-04718

**RECEIVED**  
OCT 12 2018  
SC Court of Appeals

WFG National Title Insurance Company .....Respondent,  
v.

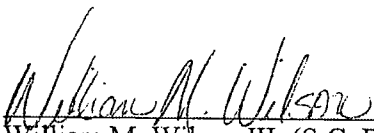
DataQuick Lending Solutions, Inc. and DataQuick Lending  
Solutions, LLC ..... Appellants.

**NOTICE OF APPEAL**

Appellants DataQuick Lending Solutions, LLC formerly known as DataQuick Lending Solutions, Inc. (collectively "DataQuick") hereby appeal from (1) the Order of Judge L. Casey Manning entered September 19, 2017, granting Respondent's Motion for Default Judgment with Attorney's Fees and (2) the Order of Judge L. Casey Manning entered September 19, 2018, denying DataQuick's Motion for New Trial, to Alter or Amend Judgment, and for Relief from Judgment. DataQuick first received written notice of the entry of the order granting default judgment on October 2, 2017, when it received a copy of the order from its registered agent, which received a copy of the order on September 27, 2017. On October 12, 2017, DataQuick served a Motion for New Trial, to Alter or Amend Judgment, and for Relief from Judgment. DataQuick first received written notice of the entry of the order denying this motion on

September 19, 2018, and this Notice of Appeal was timely served within thirty days of receipt.

Copies of the Orders are attached.

  
William M. Wilson III (S.C. Bar No. 15808)  
Wyche, P.A.  
Post Office Box 728  
Greenville, S.C. 29602-0728  
(864) 242-8200

October 12, 2018

*Attorneys for Appellants*

Counsel of Record:

Andrew Bryant Walker, Esq. (SC BAR No. 78271)  
Rogers Lewis Jackson Mann & Quinn, LLC  
PO Box 11803  
Columbia, SC 29211  
(803) 978-2836  
*Attorneys for WFG National Title Insurance Company*

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Lower Case No. 2016-CP-40-04718

RECEIVED  
OCT 12 2018  
SC Court of Appeals

WFG National Title Insurance Company .....Respondent,

v.

DataQuick Lending Solutions, Inc. and DataQuick Lending  
Solutions, LLC ..... Appellants.

PROOF OF SERVICE

The undersigned certifies that the foregoing **NOTICE OF APPEAL** was served upon counsel of record for Respondents by causing a copy of the same to be deposited in the United States mail, postage prepaid, addressed as follows:

Andrew Bryant Walker, Esq. (SC BAR No. 78271)  
Rogers Lewis Jackson Mann & Quinn, LLC  
PO Box 11803  
Columbia, SC 29211  
(803) 978-2836  
Attorneys for WFG National Title Insurance Company

This 12<sup>th</sup> day of October, 2018.

  
William M. Wilson III

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

FORM 4

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS  
WFG National Title CompanyCASE NO. 2016-CP-40-04718  
DataQuick Lending Solutions, Inc. and  
DataQuick Lending Solutions, LLC  
DEFENDANT(S)

|                              |                                                                                                                                                                |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| PLAINTIFF(S)                 | DEFENDANT(S)                                                                                                                                                   |
| Submitted by: Drew B. Walker | Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/><br>Defendant<br>or<br><input type="checkbox"/> Self-Represented Litigant |

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 4(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

| INFORMATION FOR THE PUBLIC INDEX                                                                                                                                                                             |                                          |                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                             |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
| WFG National Title Insurance Company                                                                                                                                                                         | DataQuick Lending Solutions, Inc.        | \$3,912,550.47                                              |
| WFG National Title Insurance Company                                                                                                                                                                         | DataQuick Lending Solutions, LLC         | \$3,912,550.47                                              |
|                                                                                                                                                                                                              |                                          |                                                             |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                          |                                                             |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.  
Note: Title abstractors and escrow agents should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 19 day of Sept, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 19 day of Sept, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Drew B. Walker, SC Bar # 78271

PO Box 11803

Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

*Jeanette W. McBride*

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

C/A NO.: 2016-CP-40-04718

WFG National Title Insurance  
Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and  
DataQuick Lending Solutions, LLC,

DEFENDANTS

ORDER

**RECEIVED**

OCT 12 2018

SC Court of Appeals

RICHLAND COUNTY  
FILED  
2017 SEP 19 AM 9:22  
JEANETTE W. LINDRICE  
C.C.P. & G.S.

THE CASE COMES BEFORE THE COURT pursuant to the motion of the Plaintiff, WFG National Title Insurance Company ("Plaintiff"), seeking an order for default judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC (collectively referred to as "Defendants") for the causes of action in its Complaint. Plaintiff's motion is based on the Summons and Complaint ("Complaint"), Affidavits of Service, Affidavit of Amount Due, Affidavit of Default filed and the South Carolina Rules of Civil Procedure, including Rule 55(b)(1).

The Defendants were served with the Summons and Complaint and have not responded within thirty (30) days, as required by the South Carolina Rules of Civil Procedure. The Defendants have been entered into default by the Honorable DeAndrea Gist Benjamin as shown in the Order of Entry of Default filed herein on October 27, 2016.

Plaintiff seeks an order for joint and several judgment against Defendants for amounts owed under an agency agreement. The Plaintiff instituted this proceeding against the Defendants for amounts due under the Agreement as defined in Paragraph 17 of the Complaint.

I find that Defendants are in default under the terms of the Agreement, and that liquidated sums are due and owing to the Plaintiff on the claim accounts listed in Exhibit A of the Complaint. The total liquidated amount due to Plaintiff on the accounts as of July 12, 2017, and as shown in the Affidavit of Amount Due, is One Million Two Hundred Ninety-Nine Thousand Eight Hundred Eighty-Eight and 99/100 (\$1,299,888.99) Dollars, as well as court costs and attorney's fees provided for in the Agreement as pled in Paragraph 13 of the Complaint, supported by an Attorney's Fee Affidavit filed herein, and as outlined below.

The liquidated damages owed in this action under the Complaint's First, Second, Third and Fourth Causes of Action against Defendants are due and owing as follows:

|                                |                       |
|--------------------------------|-----------------------|
| Amounts owed under Agreement   | \$1,299,888.99        |
| Court Costs - filing fee       | \$150.00              |
| Service of Process             | \$144.50              |
| Attorney's Fee for this action | <u>\$4,000.00</u>     |
| <b>Amount Due</b>              | <b>\$1,304,183.49</b> |

Plaintiff is entitled to treble damages under the Complaint's Fifth Cause of Action for Defendants' violations of the South Carolina Unfair Trade Practices Act, and the trebled amount of the damages awarded above shall be awarded to the Plaintiff and entered against the Defendants in the total amount of:

**\$3,912,550.47**

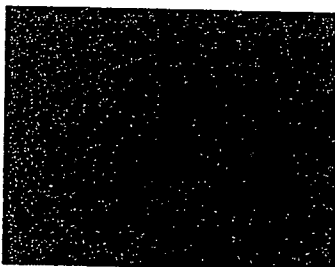
**IT IS THEREFORE ORDERED THAT:**

The Plaintiff is awarded joint and several judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC in the amount of Three Million Nine Hundred Twelve Thousand Five Hundred Fifty and 47/100 (**\$3,912,550.47**) Dollars and interest at the statutory rate from the date this judgment is entered until the date paid.

AND IT IS SO ORDERED.

*L. Lucy Manning*  
Circuit Court Judge

*Sept. 18*, 2017  
*Cola* South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,  
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and  
DataQuick Lending Solutions, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-04718

ORDER

**RECEIVED**

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SC Court of Appeals

BACKGROUND

On August 21, 2018, a hearing was held before this Court hereinafter, the "Hearing") regarding the Defendant DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC's (collectively, "DataQuick") Motion for New Trial, to Alter or Amend Judgment, and for Relief from Judgment (hereinafter, the "Motion"), filed with this Court. Present at the hearing were Drew B. Walker as counsel for the Plaintiff WFG National Title Insurance Company ("WFG"), of Rogers Lewis Jackson Mann & Quinn, and Defendant DataQuick, represented by William Wilson, III, of Wyche, PA.

DataQuick, with the filing of its Motion, attempts to set aside an entry of default and subsequent default judgment against DataQuick (the "Default Judgment"), and seeks to file an Answer in this action. Alternatively, DataQuick sought to have the Default Judgment vacated and/or amended so as to allow a damages hearing pursuant to Rule 52(a), Rule 59(a), and/or Rule 59(e). Based on the testimony presented at the Hearing, and for the reasons set forth herein, the relief sought by DataQuick in its Motion is Denied.

UNDISPUTED FACTS AND PROCEDURE

The Parties do not dispute that WFG properly served DataQuick's registered agents

with every pleading, motion, proposed order, and other filing in this case. See the Procedural Timeline and Factual Statement in DataQuick's Memorandum in Support of its Motion for Relief.

DataQuick concedes that it internally failed to update its points of contacts with its registered agent, CT Corporation, in South Carolina and Delaware. See Id. at ¶12 of Factual Statement. DataQuick concedes its subsequent Delaware agent, Maples, failed to forward it the properly-served Motion for Default Judgment. Id. at ¶21 of Factual Statement.

DataQuick states it has no employees currently, yet submits two affidavits from individuals on its behalf. Id. at ¶10. DataQuick has always maintained registered agents for service of process in the State of South Carolina and Delaware during the pendency of this lawsuit. Id. at ¶¶ 11, 12. DataQuick states that it has had no business operations in recent years, yet maintains its corporate form, has updated and corrected addresses with its registered agents, and has changed registered agents during the pendency of this lawsuit. Id. at ¶¶ 4, 9, 13, 19. It also claims to have General Counsel. See Affidavit of Adam Fliss at ¶ 2, and Affidavit of Michael LaGatta at ¶ 2.

DataQuick states it has no knowledge or possession of the Agency Agreement between WFG and DataQuick, (upon which WFG's claims are based) (the "Agency Agreement"), and has no knowledge of the substance of Plaintiff's claims. Id. at 11, 12. Nevertheless, DataQuick claims it has defenses, and also that it could unilaterally assign the Agency Agreement to another corporate entity and bases its meritorious defense arguments on liberal assumptions it takes with regard to its unknown contents of the Agency Agreement. Id. at ¶¶ 6, 8, 27 (a), (b) and (d).

- DataQuick Lending Solutions, Inc. was served with the Summons and Complaint through its South Carolina registered agent on August 11, 2016 as shown on the Affidavit of Service filed with this Court. DataQuick Lending Solutions, LLC was served with the Summons and Complaint through its Delaware registered agent on August 10, 2016 as shown on the Affidavit of Service filed with this Court. DataQuick did not appear in this action until October 13, 2017 when it filed its Motion, which was over fourteen (14) months after service of the Summons and Complaint. Additionally, the Hearing on the Motion took place over two (2) years after WFG's statutorily-prescribed service of the Summons and Complaint on DataQuick.

### **LEGAL FINDINGS**

#### **I. The Entry of Default Should Not be Set Aside per Rule 60, SCRPC**

DataQuick's argument to be relieved from the Default Judgment does not meet the criteria of Rule 60(b), SCRPC. WFG unequivocally served an agent with actual authority to accept service for DataQuick under statute and the South Carolina Rules of Civil Procedure. Rule 4(d)(3), SCRPC, states that service may be made on a corporation by "delivering a copy of the summons and complaint ... to any other agent authorized by appointment or by law to receive service of process..." Further, as a Delaware corporation registered to do business with the South Carolina Secretary of State, DataQuick was an authorized foreign corporation whose registered agent could accept service of process pursuant to S.C. Code Ann. 15-9-240. Finally, WFG properly served DataQuick's registered agent in Delaware pursuant to Rule 4(h), SCRPC.

#### **A. DataQuick has Not Shown Excusable Neglect**

The Rule 60 standard for lifting judgment is more stringent than the Rule 55 "good

cause” standard for lifting entry of default. See Sundown Operating Co., Inc. v Intedge Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009). In cases analyzed both under Rule 55 standards and Rule 60 standards, courts have refused to lift default and judgment even when the neglect was not the actual neglect of the Movant (in this instance, DataQuick), but the neglect was imputed to it through its insurer or attorney. Richardson v. P.V. Inc., 283 SC 610, 682 S.E.2d 263 (2009) (holding an agent with apparent authority as being properly served, that the Rule 60 standard is more rigorous than Rule 55, and denying to lift default under the Rule 55(c) “good cause” standard even though the insurance company was assumed to be at fault for Petitioner’s failure to answer the complaint); see also Williams v Vanvokenburg, 312 S.C. 373, 440 S.E.2d 408 (1994) (holding Rule 55 “good cause” standard was not met to lift default when default is due to attorney’s negligent failure to file answer for client). DataQuick’s direct, unimputed failures and neglect does not rise to good cause under Rule 55 standards and therefore, does not meet the more stringent standard for Rule 60.

In the instant case, by serving DataQuick’s registered agents, WFG served agents with actual authority to accept service on DataQuick’s behalf. DataQuick’s failures to internally update who received the process within its corporation after its actual agents received the summons and complaint do not rise to the excusable neglect standard discussed in controlling South Carolina case law. DataQuick’s registered agents had actual knowledge of instant lawsuit and DataQuick presented no excuse for this internal negligence.

Furthermore, the court’s records and DataQuick’s affidavits conclusively show that DataQuick’s registered agent received service of process. DataQuick has failed to provide the Court with conclusive proof to meet the excusable neglect standard provided by Rule 60. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (2008) (the Court holding Defendant to a

“conclusive proof” standard under Rule 60, requiring that he show that he had not been served with the summons and complaint). Therefore, DataQuick cannot meet the excusable neglect standard of Rule 60 and is not entitled to the relief it seeks in its Motion.

**B. Lack of Promptness and Sufficient Reasoning for DataQuick’s Failures; Prejudice**

“In determining whether to grant a motion under Rule 60, the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party.” Micronics, Inc. v. South Carolina Dept. of Revenue, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001). This Court finds that DataQuick lacked promptness and sufficient reasons for its failure to update appropriate personnel with its registered agents. As noted in the Factual Statement, over fourteen months went by between service of the Summons and Complaint and DataQuick’s appearance in the case. At any point during those fourteen months, DataQuick could have audited its deficiencies and uncovered that the people it appointed to receive notices from its registered agent were no longer associated with DataQuick.

DataQuick cannot shift the blame to CT Corporation as CT Corporation sent notices to the individuals that DataQuick requested. Further, CT Corporation remains DataQuick’s registered agent in South Carolina at the present time. When DataQuick chose to change its Delaware agent in December 2016, it could have uncovered its failure to update the addresses and asked the obvious question to CT Corporation – have you forwarded any service of process to those people since their relationship ceased with us. Rather, it did not appear in the case for an additional ten months. With over two years having elapsed since service of the Summons and Complaint on DataQuick and the Hearing on this Motion for Relief, WFG

would suffer significant prejudice due to the dilatory practices and failures of DataQuick and, as such, DataQuick is not entitled to the relief it seeks in its Motion.

**C. WFG's UTPA Claim**

DataQuick's analysis on the South Carolina Unfair Trade Practices Act ("UTPA") is misguided. Ardis v. Cox, 314 S.C. 512, 519, 431 S.E.2d 27, 32 (Ct.App.), does not hold that any lawsuit with a breach of contract cause of action unequivocally causes a UTPA cause of action to fail. Rather, the Ardis court held that UTPA is "unavailable to redress private wrongs if the public interest is unaffected." Id. In the instant case, WFG cites to 47 claims that were affected by DataQuick's actions. Critically, DataQuick's culpable actions have lead to damage to the South Carolina citizenry at large when title premiums increase due to the agents and their insurance carriers not shouldering any of the underwriter's loss. South Carolina consumers completing loan transactions are typically required to purchase title insurance lender's policies in order to obtain financing, and consumers routinely make the prudent choice to purchase owner's policies to protect their own investment. When DataQuick takes culpable actions as alleged in the Complaint, consumer insurance premiums unnecessarily rise, which has a direct effect on South Carolinians. Thus, it is the public that bears the burdens of rising costs due to DataQuick's actions or lack thereof. WFG's allegations in its UTPA cause of action is deemed admitted as plead and the Default Judgment grants the relief requested and contemplates DataQuick's knowing and willful violation of the UTPA and, as such, the judgment should not be set aside.

**D. Lack of Meritorious Defense**

DataQuick's allegations concerning its legal argument of a meritorious defense are fail. WFG sued the party it has an Agency Agreement with, DataQuick. DataQuick remains

a corporate entity to this day. It can be served. It was served. It failed to file an Answer and lost its right to conduct discovery. The records do not support the suggestion of any assignment of an Agency Agreement. Additionally, the suggestion that such an assignment could be done unilaterally by DataQuick when it admits that it is not familiar with the contents of the Agency Agreement creates more conjecture.

Further, any indemnification DataQuick may be able to seek from Stewart is a Third Party Claim, rather than a meritorious defense to its admitted liability to WFG, and is not considered by this Court. "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998).

Finally, DataQuick's argument that the judgment is "void" under Rule 60 (b)(4) fails. "The definition of void under the rule (60) only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. See Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (2002). DataQuick wrote title policies in South Carolina which conferred personal jurisdiction when its South Carolina registered agent was served with process, negating any unsupported defense claim of lack of personal jurisdiction or venue.

For these reasons, DataQuick has failed to show any reason to void the Order under the Rule 60, SCRCF, standard. DataQuick's speculation of "likely exculpatory evidence" does not rise to the meritorious defense standard required by South Carolina courts. See Id. and ¶27 of Fliss Affidavit. The McClurg Court, cited by DataQuick, requires "a showing of a prima facie meritorious defense" and holds "[a] party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essentially to entitle him to relief."

McClurg at 575, 671 S.E.2d at 93-94 (holding that neither appellant met burden of proving prima facie case for meritorious defense). Here, DataQuick has shown no meritorious defense and presented no evidence that would entitle it to relief.

**II. The Damages in the Order are Liquidated and Should Not be Set Aside under Rule 60, SCRCP**

In the instant action, WFG's damages are liquidated. WFG reviewed corporate records for each of the forty-seven (47) claims enumerated in its Complaint in order to compute sum certain amounts that had already been paid by WFG in the form of loss, expense, charges, attorney's fees and allocated loss adjustment expenses.

DataQuick assertion that the Default Judgment exceeded the amount prayed for in the Complaint in violation of Rule 54(c) is without merit. Rule 54(c) does not require a sum certain amount be plead in the initial Complaint in order to obtain default judgment. Rule 55(b)(1) allows default judgment without hearing for liquidated amounts to be supported by an Affidavit of Debt, upon motion of the party seeking default. In its Complaint, WFG alleged damages exceeding \$25,000.00 and filed an Affidavit of Debt along with its Motion for Default Judgment. South Carolina courts allow the use of Affidavits of Debt in support of default judgments at the time of application for default judgment on liquidated damages and pursuant to Rule 55(b)(1) in lieu of a verified pleading. DataQuick's efforts to conflate Rule 54(c) and Rule 55(b)(1) are incongruent with South Carolina practice and its Rules of Civil Procedure.

Further, this Court finds that any error in the Order of trebling the meager attorney's fees shown by the previously filed affidavit of attorney's fees (\$4,000.00) was harmless error under Rule 61, SCRCP. As shown by the updated Attorney's Fees Affidavit filed with this Court on August 21, 2018, WFG has suffered reasonable attorney's in the amount of

\$20,000.00 for over ninety (90) hours of legal work by WFG's retained firm since its retention in 2016. This amount is well in excess of the \$12,000.00 (\$4,000.00 trebled) awarded in the Order.

Additionally, the issuance of an award for attorney's fees prior to the ten days contemplated in Rule 55(b)(3) resulted in harmless error. While WFG did provide proper notice that it sought attorney's fees in its motion for default judgment as contemplated in Rule 55(b)(3), the Order was entered prior to the ten-day objection period contemplated in the Rule. Nevertheless, ten days did actually go by after Maples was served with the Notice that WFG sought attorney's fees, and no objection was made during that time period concerning the attorney's fees. This resulted in harmless error under Rule 61, SCRCP, and any award of attorney's fees in the Default Judgment should not be set aside.

**III. DataQuick is not Entitled to Relief under either Rule 59(a) or Rule 59(e), SCRCP**

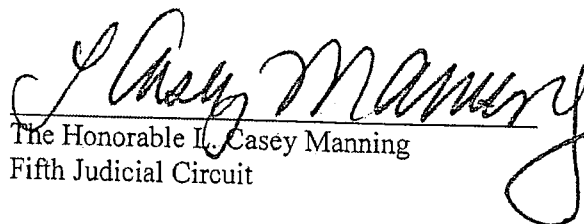
Because this Court issued a default judgment without a hearing, the defaulting DataQuick did not raise any issues at a hearing that could be altered or amended pursuant to Rule 59(e), SCRCP. See Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 437,437 (Ct. App. 1995) (holding "A party cannot for the first time raise an issue by way of a Rule 59(e) motion that could have been raised at trial"). Also, because there was no "action tried without a jury", DataQuick's relief for a new trial under Rule 59(a) fails. For these reasons, and because DataQuick's Motion for Relief was served on October 2, 2017, following service of the Order on September 27, 2017, more than ten days after service was complete, DataQuick's Rule 59 arguments fail, including the tolling for any time to appeal under Rule 59(f). This Court finds that DataQuick is not entitled to the relief it seeks in its Motion as relate to Rule 59(a) and Rule 59(e).

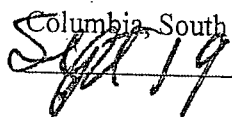
CONCLUSIONS OF LAW

WHEREAS, for the reasons set forth above, this Court finds that the Motion should be denied.

NOW, THEREFORE, the Motion is DENIED.

IT IS HEREBY ORDERED.

  
The Honorable L. Casey Manning  
Fifth Judicial Circuit

Columbia, South Carolina  
 2018

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2018-001845

RECEIVED  
JUL 19 2019  
SC Court of Appeals

WFG National Title Insurance Company .....Respondent,

v.

DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC..... Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

*William M. Wilson*

William M. Wilson III (S.C. Bar Id. 15808)  
Wyche, P.A.  
PO Box 728  
Greenville, SC 29602-0728  
(864) 242-8200

*Attorneys for Appellants*

July 19, 2019