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**UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF NEW YORK**

| | |
|---|---|
| Jennifer L. Wilson,<br><br>Plaintiff,<br><br>*v.*<br><br>Residential Capital, LLC, et al.<br><br>Defendants. | Adv. Proc. 12-01936 (MG) |
| In re<br><br>RESIDENTIAL CAPITAL, LLC, *et al.*,<br><br>Debtors | Case No. 12-12020 (MG)<br><br>Chapter 11<br><br>Jointly Administered |

**DEBTORS' MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)**



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Defendants Residential Capital, LLC ("ResCap") and Residential Funding Company, LLC ("RFC" and, together with ResCap, the "Debtor Defendants"), each a debtor and debtor in possession in the above-captioned chapter 11 cases (collectively with all affiliated debtors and debtors in possession, the "Debtors"), submit this motion (the "Motion") to dismiss the above-referenced adversary proceeding (the "Adversary Proceeding") commenced by *pro se* plaintiff Jennifer L. Wilson ("Plaintiff") for failure to state a claim upon which relief can be granted and lack of subject-matter jurisdiction due to application of the Rooker-Feldman doctrine or, in the alternative, requesting that the Court exercise its discretion to abstain from exercising jurisdiction over the Adversary Proceeding. In support hereof, the Debtor Defendants submit the Declaration of Jennifer Scoliard, dated January 7, 2013 (the "Scoliard Decl."), annexed hereto as Exhibit 1, and respectfully represent:

## JURISDICTION AND VENUE

1. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 (a) and 1334(b). Venue is proper under 28 U.S.C. § 1409. This is a non-core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2). Nonetheless, pursuant to Local Bankruptcy Rule 7012-1, the Debtor Defendants consent to entry of a final order or judgment by this Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

## BACKGROUND

### A. General Bankruptcy Case Background

2. On May 14, 2012 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in this Court.

3. The Debtors are a leading residential real estate finance company indirectly owned by Ally Financial Inc., which is not a Debtor. As of the Petition Date, the Debtors and their non-debtor affiliates operated the fifth largest mortgage servicing business and the tenth largest mortgage origination business in the United States.

4. The Debtors are managing and operating their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. Their chapter 11 cases (collectively, the "Bankruptcy Case") are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). No trustee has been appointed in the Bankruptcy Case.

5. On May 16, 2012, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed a nine member official committee of unsecured creditors. (Case No. 12-12020, ECF No. 102). On July 3, 2012, the U.S. Trustee appointed the Honorable Arthur T. Gonzalez, former Chief Judge of this Court, as examiner (the "Examiner"). (Case No. 12-12020, ECF No. 665).

6. On November 7, 2012, the Court entered an order extending the deadline for general creditors to file proofs of claim in the Debtors' bankruptcy cases to November 16, 2012, but maintaining November 30, 2012 as the deadline for governmental entities to file proofs of claim in the Debtors' bankruptcy cases (the "Bar Date").[1] (Case No. 12-12020, ECF No. 2093).

[1] The original order established November 9, 2012 as the deadline for general creditors to file proofs of claim in the Debtors' cases.

7. The Debtors served Plaintiff with a notice of the Bar Date on or before October 4, 2012.[2] To the best of the Debtors' knowledge, Plaintiff has not filed a proof of claim in any of the Debtors' cases.

**B. Factual Background**

**(i) Plaintiff's Loan and Foreclosure**

8. On January 18, 2007, Plaintiff executed a note in favor of SunTrust Mortgage, Inc. d/b/a Sun America Mortgage ("SunTrust") in the amount of $296,000.00 (the "Note"). The Note was secured by real property located at 7801 Pinecroft Court, Harrisburg, North Carolina (the "Property") pursuant to a deed of trust recorded in book 7295, pages 122-140 of the Cabarrus County Registry, executed contemporaneously with the Note (the "Deed of Trust"). (Scoliard Decl., ¶ 5.) The Note was endorsed from SunTrust Mortgage, Inc. d/b/a Sun America Mortgage to blank and transferred to the RALI 2007 Series QS5 Trust, for which Deutsche Bank Trust Company Americas was the trustee and RFC was the master servicer. (Scoliard Decl., ¶ 5.)

9. SunTrust acted as the sub-servicer of Plaintiff's mortgage loan, and Debtor RFC was the master servicer for Plaintiff's mortgage loan. (Scoliard Decl., ¶ 6.)

10. In June 2009, Wilson ceased making any payments on the loan. See Affidavit Pursuant to NCGS 45-21.16(d) and 45-21.16C(a), executed by Annette Holman-Foreman on October 27, 2009, annexed hereto as Exhibit 3. On October 21, 2009, Substitute Services, Inc. was appointed as substitute trustee under the Deed of Trust. (Scoliard Decl., ¶ 6.) The Deed of Trust was then assigned by SunTrust to SunTrust Bank on November 18, 2009

[2] A copy of the affidavit of service is annexed hereto as Exhibit 2.

(effective March 1, 2007). See Assignment of Note and Deed of Trust, annexed hereto as Exhibit 4.

11. On December 1, 2009, a foreclosure proceeding was commenced by Substitute Services, Inc. before the Assistant Clerk of Superior Court of Cabarrus County (the "Clerk") by means of a special proceeding bearing file number 09-SP-1613 (the "Foreclosure"). (Scoliard Decl., ¶ 7.)

12. On January 25, 2010, the Clerk entered an order allowing the foreclosure sale to proceed pursuant to N.C. Gen. Stat. § 45-21.16 (the "Order"). The Clerk found "[t]hat SunTrust Bank is the holder of the note sought to be foreclosed and it evidences that this is a valid debt owned by Jennifer L. Wilson." The Clerk also found that "the debtors [Plaintiff] have shown no valid reason why foreclosure should not commence." See Order, dated as of January 25, 2010, File No. 09 SP 1613, annexed hereto as Exhibit 5.

13. Wilson did not appeal the Clerk's Order or file any judicial action to enjoin the Foreclosure. (See Scoliard Decl., ¶ 8). On November 15, 2010, Substitute Services, Inc. held the Foreclosure sale and SunTrust Bank was the highest bidder at the sale. See Report of Foreclosure Sale, dated November 15, 2010, annexed hereto as Exhibit 6. Thereafter, on November 30, 2010, Substitute Services, Inc. executed a Trustee's Deed in favor of Deutsche Bank Trust Company Americas, as Trustee RALI 2007-QS5 (Scoliard Decl., ¶ 9.) RFC now services the Property as an REO. Nearly two years after the Foreclosure sale, Wilson is still in possession of the Property. (Scoliard Decl., ¶ 9.)

**(ii) Plaintiff's Bankruptcy Case**

14. Prior to the foreclosure sale of the Property, Plaintiff filed a voluntary petition on May 4, 2010 for chapter 13 protection in the Bankruptcy Court for the Western District of North Carolina (the "North Carolina Bankruptcy Court"), Case No. 10-31255

("Plaintiff's Bankruptcy Case"). See Voluntary Petition, annexed hereto as Exhibit 7. Plaintiff did not file any schedules or statements in Plaintiff's Bankruptcy Case. See Orders Granting Motion To Extend Time to file Missing Schedules and Statements, annexed hereto as Exhibits 8 and 9.

15. On May 17, 2012, SunTrust filed a proof of claim in Plaintiff's Bankruptcy Case. See Proof of Claim, annexed hereto as Exhibit 10.

16. On July 2, 2010, Plaintiff submitted a letter to the North Carolina Bankruptcy Court requesting a dismissal of Plaintiff's Bankruptcy Case without prejudice. See Letter, annexed hereto as Exhibit 11. Accordingly, the North Carolina Bankruptcy Court entered an order of voluntary dismissal on July 6, 2010 and a final decree closing the case on August 11, 2010. See Notice and Order of Voluntary Dismissal, copies of which are annexed hereto as Exhibits 12 and 13, respectively.

**(iii) Plaintiff's Prior Litigation**

**(a) The WDNC Action**

17. On November 12, 2010, Plaintiff filed a complaint in the District Court for the Western District of North Carolina (the "WDNC Court"), Case No. 10-CV-573 (the "WDNC Action"), against SunTrust Bank and Does 1-10 inclusively, along with a motion for a temporary restraining order seeking a stay of the Foreclosure sale (the "Request for TRO"). See Complaint and Emergency Motion for Temporary Restraining Order, copies of which are annexed hereto as Exhibits 14 and 15, respectively. The WDNC Court denied that Request for TRO on November 15, 2010. See Order, annexed hereto as Exhibit 16.

18. On March 17, 2011, Plaintiff filed an amended complaint (the "Amended WDNC Complaint"), adding multiple defendants, including Debtor RFC. See Amended Complaint, annexed hereto as Exhibit 17. The WDNC Complaint sought both monetary

damages and equitable relief, including an order "directing [RFC] to record a rescission of the Deed of Trust and all recorded foreclosing documents, registered with the Register of Deeds for North Carolina Cabarrus County." See Amended Complaint at ¶ 85. Plaintiff did not properly serve RFC in the WDNC Action, and RFC did not submit a response to the Amended WDNC Complaint. (Scoliard Decl., ¶ 10.)

19. On May 26, 2011, the WDNC Court dismissed the WDNC Action without prejudice on the basis that venue in the Western District of North Carolina was improper. See Order, annexed hereto as Exhibit 18.

**(b) The MDNC Action**

20. On May 16, 2011, Plaintiff filed a complaint (the "MDNC Complaint") against SunTrust, Sun Trust Bank, Debtor RFC, and others in the United States District Court for the Middle District of North Carolina (the "MDNC Court"), Case No. 11-CV-390 (the "MDNC Action") seeking damages related to the Foreclosure, an order setting aside the Clerk's order allowing the Foreclosure sale, and an order "directing [RFC] to record a rescission of the Deed of Trust and all recorded foreclosing documents, registered with the Register of Deeds for North Carolina Cabarrus County." See Complaint, annexed hereto as Exhibit 19.

21. On June 9, 2011, RFC filed an answer to the MDNC Complaint. See Answer, annexed hereto as Exhibit 20. On September 11, 2012, SunTrust, SunTrust Bank Inc., and RFC filed a motion to dismiss the MDNC Action. In addition, on September 11, 2012, RFC also filed a motion for judgment on the pleadings. See SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC's Motion to Dismiss for Lack of Subject Matter Jurisdiction, annexed hereto as Exhibit 21, Residential Funding Company, LLC's Motion for Judgment on the Pleadings, annexed hereto as Exhibit 22, and Memorandum in Support of the

Motion to Dismiss for Lack of Subject Matter Jurisdiction and Motion for Judgment on the Pleadings, annexed hereto as Exhibit 23.

22. Plaintiff responded to the motion to dismiss on October 4, 2012 and the motion for judgment on the pleadings on October 15, 2012. See Response in Opposition to Motion to Dismiss for Lack of Subject Matter Jurisdiction, annexed hereto as Exhibit 24, and related Memorandum of Law, annexed hereto as Exhibit 25. See also Response in Opposition to Motion for Judgment on the Pleadings, annexed hereto as Exhibit 26, and related Memorandum of Law, annexed hereto as Exhibit 27.

23. RFC filed a reply in support of the motion for judgment on the pleadings on November 1, 2012. See Reply in Support of Motion for Judgment on the Pleadings, annexed hereto as Exhibit 28. The MDNC Court has yet to rule on these motions.[3]

**(iv) The Adversary Proceeding**

24. On November 9, 2012, Plaintiff filed the instant complaint (the "Complaint") initiating the Adversary Proceeding. (ECF No. 1). An amended summons and notice of pretrial conference (the "Summons") was issued on November 15, 2012. (ECF No. 3). Subsequently, the Debtors and Plaintiff agreed to waive service of the Summons, extend the Debtors' response deadline to January 7, 2012, and reschedule the pre-trial conference to January 10, 2013.

25. The Complaint asserts claims and requests for relief against the Debtor Defendants that are similar to the claims made against SunTrust, SunTrust Bank, and the other

[3] As the loan was subserviced for RFC by SunTrust prior to the Petition Date, RFC tendered defense of the MDNC Action to SunTrust. Counsel was unaware of RFC's bankruptcy filing and therefore notice of RFC's bankruptcy, along with a copy of the Supplemental Servicing Order, have not been filed in the MDNC Court. A notice of bankruptcy will be filed shortly identifying which counts may proceed under the Supplemental Servicing Order.

defendants in the MDNC Complaint. Specifically, Plaintiff requests "[t]hat defendants take nothing by way of their foreclosure sale" and further requests that this Court "'ORDER' defendants, [ResCap and RFC] surrender the Genuine 'NOTE' dated January 18, 2007…." (Complaint at ¶ 104.) Plaintiff also requests actual, compensatory, consequential, general restitution, punitive and treble damages, as well as attorneys' fees. Id.

**ARGUMENT**

**C. The Adversary Proceeding Is Duplicative of the Debtors' Claims Resolution Process**

26. The Adversary Proceeding should be dismissed because it is duplicative of the claims resolution process. At a minimum, those counts of the Complaint that seek monetary damages should be dismissed. Plaintiff's alleged claims (including any claim for injunctive relief) all arise prepetition and should be addressed as part of the claims resolution process together with all of the thousands of prepetition claims asserted against these estates. See Binford v. First Magnus Fin. Corp. (In re First Magnus Fin. Corp.), 403 B.R. 659, 664 (D. Ariz. 2009) (affirming the bankruptcy court's dismissal of an adversary proceeding where "the Bankruptcy Court found that the adversarial process was duplicative of the normal bankruptcy claims procedure"); Mondragon v. Circuit City Stores, Inc., No. 09-03073, 2010 Bankr. LEXIS 80, *2 (Bankr. E.D. Va. Jan. 7, 2010) (dismissing adversary proceeding and holding that plaintiffs' claim arose prepetition "[t]herefore, the plaintiffs [sic] claim should properly be administered through the bankruptcy claims resolution procedure and should not go forward as an adversary proceeding.").

27. Courts in this district have held that "the only appropriate way to assert a claim against a debtor's estate is through the timely filing of a properly executed proof of claim. To permit persons who fail to file proofs of claim to maintain an adversary proceeding to assert

their claims against the debtor would be fundamentally unfair to those creditors who have complied with the filing requirements of the Code and the Rules." Dade County Sch. Dist. v. Johns-Manville Corp. (In re Johns-Manville Corp.), 53 B.R. 346, 354 (Bankr. S.D.N.Y. 1985). See also In re Ephedra Prods. Liab. Litig., 329 B.R. 1, 7 (S.D.N.Y. 2005) ("In bankruptcy, 'the only appropriate way to assert a claim against a debtor's estate is through the timely filing of a properly executed proof of claim' and not through an adversary proceeding.") (quotations omitted).[4]

**D. The Adversary Proceeding Should Be Dismissed Pursuant to Bankruptcy Rule 7012, FRCP 12(b)(1), and the Rooker-Feldman Doctrine**

28. Bankruptcy Rule 7012 incorporates by reference Rule 12(b)-12(i) of the Federal Rules of Civil Procedure ("FRCP"). FRCP 12(b) provides that a party may assert specified defenses by motion, including lack of subject matter jurisdiction, insufficient service of process, and failure to state a claim upon which relief can be granted, and that a motion asserting any of these defenses may be made before pleading. The Adversary Proceeding should be dismissed pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(1) because Plaintiff has failed to demonstrate that the Bankruptcy Court has subject-matter jurisdiction to hear these matters. Specifically, Plaintiff's Complaint is an attempt to re-litigate issues that have already been judicially determined by the North Carolina state court and consequently should be dismissed under the Rooker-Feldman doctrine.

29. The Rooker-Feldman doctrine is premised upon two United States Supreme Court decisions; Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of

[4] Based on the diligence conducted by the Debtors' advisors, it appears that Plaintiff has not filed a proof of claim in the Debtors' cases. Plaintiff's failure to do so should not somehow serve as grounds to avoid the dismissal of this Adversary Proceeding.

Columbia Court Appeals v. Feldman, 460 U.S. 462 (1983). The doctrine bars the exercise of federal court jurisdiction where the claims are "inextricably intertwined" with the claims adjudicated in a state court. Feldman, 460 U.S. at 483, n.16. According to Rooker, Feldman, and their progeny, this Court cannot sit in the place of a court of appeal reviewing facts or determinations made by North Carolina state courts, particularly where there is a means of appeal expressly provided under state law. See Washington v. Wilmore, 407 F.3d 274, n. 3 (4th Cir. 2005); Holliday Amusement Co. of Charleston, Inc. v. State of South Carolina, 401 F.3d 534, **6-7 (4th Cir. 2005), cert. denied, 126 S.Ct. 357. See also Memorandum Opinion and Recommendation at 12-13, Brumby v. Deutsche Bank Nat'l Trust Co., No. 09-144, at 12-13 (Feb. 17, 2010 M.D.N.C.), ECF No. 43. (Plaintiff's claims based on state court foreclosure barred by Rooker-Feldman doctrine because "the state court foreclosure order expressly found that Deutsche Bank was the holder of the Note and that Plaintiff had shown no valid reason why the foreclosure should not proceed.") (a copy of the Brumby case is annexed hereto as Exhibit 29).

30. In 2005, the United States Supreme Court squarely addressed the principals of the Rooker-Feldman doctrine for the first time since the Feldman decision. Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 287 (2005). In Exxon Mobil, the Court set forth the following rule of application for the doctrine: "The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Id. at 284. The Exxon Mobil test for the application of the Rooker-Feldman doctrine can be divided into the following four elements: "[1] cases brought by state-court losers [2] complaining of injuries caused by state-court judgments [3] rendered before the

district court proceedings commenced and [4] inviting district court review and rejection of those judgments." Id.

31. Plaintiff's purported claims in the Adversary Proceeding satisfy all four elements in that Plaintiff is complaining of the state court Foreclosure, which was completed prior to Plaintiff initiating this action, and is seeking an order from this Court allowing her relief based on the determination that SunTrust Bank was not the holder of the Note at the time of the Foreclosure in direct contrast to the state court ruling.

32. North Carolina statutes set forth the procedure for state clerks of court to determine the validity of a debt subject to foreclosure and specifically provide that "the act of the clerk in so finding or refusing to find is a judicial act." N.C. Gen. Stat. § 45-21.16(d1). On January 25, 2010, the Clerk entered an order allowing the Foreclosure and determined that SunTrust Bank was the holder of the Note sought to be foreclosed. (See Order, 09 SP 1613, dated as of January 25, 2010, annexed hereto as Exhibit 5.) Accordingly, the issue of whether SunTrust Bank was the holder of the Note has already been judicially established pursuant to N.C. Gen. Stat. § 45-21.16.

33. Moreover, Chapter 45 of the North Carolina General Statutes provides a means for appeal of an order by a clerk of superior court that permits a foreclosure sale to move forward. See N.C. Gen. Stat. § 45-21.16(d1). Such an appeal must be made within ten (10) days of the clerk's order allowing foreclosure and the appeal must be filed in the superior court division of the county where the foreclosure is occurring. See N.C. Gen. Stat. § 45-21.16(e). Plaintiff did not pursue the means of appeal provided for under North Carolina law and cannot now attempt to appeal the Order in this forum.

34. North Carolina statutes also provide a means for seeking an injunction to restrain foreclosure proceedings where equitable grounds exist to stop the foreclosure. See N.C. Gen. Stat. § 45-21.34. Such an injunction may be granted by a judge of the state superior court division upon any "equitable ground which the court may deem sufficient" but any such injunction must be sought before the rights of the parties become "fixed." Id. The rights of the parties become fixed "upon either the expiration of the period for filing an upset bid, the provision of injunctive relief precluding the consummation of the foreclosure sale, or the occurrence of some similar event." Goad v. Chase Home Finance, LLC, 704 S.E.2d 1, **4 (N.C. App. 2010).

35. Each of Plaintiff's claims in the Adversary Proceeding relate to the ownership of the note—an issue that has already been determined by the Clerk's Order in the Foreclosure proceeding. In a similar case, the Bankruptcy Court for the Eastern District of North Carolina recently dismissed several claims brought by borrowers in an adversary proceeding based on the Rooker-Feldman doctrine, holding that "[t]o grant the plaintiffs' requested relief, the court would have to reverse the Clerk's finding in the state court foreclosure proceeding that BAC was the holder of the note and had the authority to foreclose on the note. The Rooker-Feldman doctrine prevents this court from readjudicating those issues." Hinson v. Countrywide Home Loans, Inc. (In re Hinson), 481 B.R. 364 (Bankr. E.D.N.C. 2012).

36. Here, Plaintiff did not pursue the means available to her under North Carolina law for enjoining and appealing the Foreclosure and has attempted instead to use this Court, in addition to the North Carolina federal district courts, as a means for obtaining relief, despite the issue being moot because the sale has already occurred and the rights of the parties

have become fixed. This is precisely the kind of litigation that is intended to be barred under Rooker-Feldman, and accordingly, the Complaint should be dismissed.

**E. The Adversary Proceeding Should Be Dismissed Pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(6)**

37. In addition to dismissal for lack of subject matter jurisdiction for the reasons set forth above, the Adversary Proceeding should be dismissed pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(6) because Plaintiff has failed to state a claim upon which relief can be granted.

**(i) Legal Standard**

38. Plaintiff's Complaint should be dismissed on the ground that Plaintiff has failed to plead sufficient facts to establish her claims against the Debtor Defendants.

39. FRCP 12(b)(6) permits dismissal of an action for failure to state a claim upon which relief can be granted. On a motion to dismiss under FRCP 12(b)(6), a court must accept the plaintiff's factual allegations as true, drawing all reasonable inferences in the plaintiff's favor. Bernheim v. Litt, 79 F.3d 318, 321 n.1 (2d Cir. 1996).

40. The Court's review on a motion to dismiss pursuant to FRCP 12(b)(6) is generally limited to "the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir. 2007). In addition, the Court may also consider "matters of which judicial notice may be taken" and "documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit." Brass v. Am. Film Techs., Inc., 987 F.2d 142, 150 (2d Cir. 1993). See also, Fed. R. Evid. 201(b), (d) (A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of

accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. A court shall take judicial notice if requested by a party and supplied with the necessary information.); Norris v. Hearst Trust, 500 F.3d 454, 461 n.9 (5th Cir. 2007), ("[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record."); Hirsch v. Arthur Andersen & Co., 72 F.3d 1085, 1088, 1092 (2d Cir. 1995) (noting that, in connection with a motion to dismiss, a court may consider all papers appended to the complaint as well as matters of judicial notice).

**(ii) Plaintiff's Claims Are Supported By Insufficient Facts To Be Plausible**

41. To survive a motion to dismiss pursuant to FRCP 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The sole issue raised by a motion to dismiss pursuant to FRCP 12(b)(6) is whether the facts pleaded, if established, would support a claim for relief. Neitzke v. Williams, 490 U.S. 319, 326-27 (1989). If as a matter of law "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," a claim must be dismissed. Id. at 327.

42. "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp., 550 U.S. at 555 (citations omitted). A plaintiff must allege a factual predicate concrete enough to warrant further proceedings. See, e.g., DM Research v. College of Am. Pathologists, 170 F.3d 53, 55-56 (1st Cir. 1999). See also Conley v. Gibson, 355 U.S. 41, 47 (U.S. 1957) (plaintiffs are required to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests").

43. Moreover, while facts must be accepted as alleged, this does not automatically extend to bald assertions, subjective characterizations, or legal conclusions, which are not entitled to the assumption of truth. Hirsch, 72 F.3d at 1088, 1092. A court considering a motion to dismiss can disregard conclusory allegations and judge the complaint only on well-pleaded factual allegations. Starr v. Sony BMG Music Entm't, 592 F.3d 314, 321 (2d Cir. 2010). See also Papasan v. Allain, 478 U.S. 265, 286 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation").

44. Although complaints drafted by *pro se* plaintiffs are to be "construed liberally," claims asserted by pro se plaintiffs must nonetheless be supported by specific and detailed factual allegations sufficient to provide the court and the defendant with "a fair understanding of what the plaintiff is complaining about and . . . whether there is a legal basis for recovery." Iwachiw v. N.Y. City Bd. of Elections, 126 Fed. Appx. 27, 29 (2d Cir. 2005) (citations omitted). Plaintiff's Complaint fails to satisfy this *de minimis* standard.

**(a) Breach of Contract Claim**

45. Plaintiff's breach of contract claim fails to state a claim upon which relief can be granted. Plaintiff asserts that the Notice of Acceleration, the execution of the Appointment of Substitute Trustee, and the Assignment of Note and Deed of Trust breached the terms of the Note and Deed of Trust and that her reliance on these documents resulted in the loss of her home. Yet Plaintiff fails to show how her alleged reliance on the foregoing documents resulted in the loss of her home. The fact is that Plaintiff failed to make her monthly mortgage payments as contractually required under the Note. Plaintiff's reliance claims are nothing more than a *red herring*. Indeed, nowhere in the Complaint does Plaintiff assert that she was current on her monthly mortgage payments or otherwise dispute that she was in default under the Note. Plaintiff fails to acknowledge that she is equally bound by the terms of the Note and Deed of

Trust and that she failed to perform her obligations under the same. It was Plaintiff's undisputed failure to make her monthly mortgage payments that resulted in the foreclosure on the Property.

**(b) Violation of Unfair and Deceptive Trade Practices Act**

46. Plaintiff also has failed to allege facts that support her request for damages resulting from a violation of North Carolina General Statutes § 75-1.1.

47. North Carolina General Statute § 75.1-1 provides, in pertinent part, that

> (a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices *in or affecting commerce*, are declared unlawful.
>
> (b) For purposes of this section, "commerce" includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession.

N.C. Gen. Stat. § 75-1.1 (emphasis added).[5]

48. Thus, "in order to establish a violation of N.C. Gen. Stat. § 75-1.1, a plaintiff must show: (1) an unfair or deceptive act or practice, (2) in or affecting commerce, and (3) which proximately caused injury to plaintiffs." Gray v. N.C. Ins. Underwriting Ass'n, 529 S.E.2d 676, 681 (N.C. 2000). "Some type of *egregious* or *aggravating* circumstances must be alleged and proved before the [Act's] provisions may [take effect]." Allied Distribs., Inv. v. Latrobe Brewing Co., 847 F.Supp. 376, 379 (E.D.N.C. 1993) (emphasis added). The North Carolina General Assembly declared its legislative intent in passing N.C. Gen. Stat. § 75.1.1:

> The purpose of this section is to declare, and to provide civil legal means to maintain, ethical standards of dealings between persons engaged in business, and between persons engaged in business and the consuming public within this State, to the end that good faith and fair dealings *between buyers and sellers* at all levels of commerce be had in this State.

[5] N.C. Gen. Stat. § 75-8 provides: "Where the things prohibited in this Chapter are continuous, then in such event, after the first violation of any of the provisions hereof, each week that the violation of such provision shall continue shall be a separate offense."

Edmisten v. J.C. Penney Co., 233 S.E.2d 895, 899 (N.C. 1977).

49. Plaintiff alleges that SunTrust had no interest or title in the Note and Deed of Trust at the time the proof of claim was filed and that the Debtor Defendants had knowledge of the foregoing. Based upon the foregoing, Plaintiff asserts that the Debtor Defendants violated N.C. Gen. Stat. § 75-1.1. Plaintiff, fails to allege any facts, however, that support a violation of the statute.

50. First, Plaintiff has failed to make any allegation that the Debtor Defendants have acted at all. In Count 4 of the Complaint, Plaintiff alleges that The Law Firm of Hutchens, Senter & Britton, P.A. prepared and executed a proof of claim in Plaintiff's Bankrutpcy Case and filed it on behalf of SunTrust. Plaintiff cannot support a claim for unfair and deceptive trade acts or practices against the Debtor Defendants when Plaintiff does not allege that the Debtor Defendants took any action in Plaintiff's Bankruptcy Case whatsoever.

51. Second, Plaintiff fails to show how the filing of the proof of claim resulted in her losing her home and/or caused her any other injury. Plaintiff did not even file an objection to the proof of claim in her own bankruptcy case. Third, as SunTrust was found to be the holder of the Note by the Superior Court of Cabarrus County, it could enforce the Note and Deed of Trust and therefore file a proof of claim.

52. For the reasons set forth above, the Adversary Proceeding should be dismissed in its entirety for failure to state a claim upon which relief can be granted pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(6).

**F. The Court Should Abstain from Exercising Jurisdiction Over the Adversary Proceeding**

53. In the alternative, the Court should abstain from exercising jurisdiction pursuant to 28 U.S.C. § 1334(c)(1). Notwithstanding the presence of "related to" jurisdiction, a

district court may abstain from exercising that jurisdiction on "any equitable ground," including "the interest of justice, or in the interest of comity with State courts or respect for State law." 28 U.S.C. § 1334(c)(1). Courts consider one or more—though not necessarily all—of the following factors when determining whether to exercise permissive abstention under § 1334(c):

> (1) the effect or lack thereof on the efficient administration of the estate if a [c]ourt recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable state law, (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the court's] docket, (10) the likelihood that the commencement of the proceeding in a bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of non-debtor parties.

Allstate Ins. Co. v. CitiMortgage, Inc., No. 11-cv-1927, 2012 U.S. Dist. LEXIS 39616, *17-18 (S.D.N.Y. Mar. 13, 2012) (citing Cody, Inc. v. County of Orange (In re Cody, Inc.), 281 B.R. 182 (S.D.N.Y. 2002), aff'd in part and appeal dismissed in part, 338 F.3d 89 (2d Cir. 2003) (citation and internal quotation marks omitted); Baker v. Simpson, 413 B.R. 38, 45 (E.D.N.Y. 2009), aff'd, 613 F.3d 346 (2d Cir. 2010)).

54. Almost all of those factors (to the extent applicable) weigh in favor of this Court's abstention from exercising jurisdiction over the Adversary Proceeding. Specifically, the Court's abstention from the Adversary Proceeding, which involves the validity of a foreclosure with respect to a single loan owned by the Debtors, will have virtually no effect on the administration of the Debtors' estates. Conversely, however, exercising jurisdiction will likely encourage many other similarly-situated parties to initiate non-core adversary proceedings before this Court, potentially saturating the Court's docket and distracting both the Court and the Debtors' professionals from the critical issues affecting the Debtors' restructuring efforts.

55. The Adversary Proceeding raises issues concerning the validity of the Foreclosure, whether the Debtor Defendants violated contracts that are subject to North Carolina state law, and whether the Debtor Defendants violated North Carolina state statutes. These are purely state law questions and are wholly unrelated to the administration of the Debtors' bankruptcy cases. Accordingly, they should be left to judges sitting in North Carolina to decide. There is no reason for this Court to evaluate Plaintiffs' state law claims—this Adversary Proceeding is a clear example of forum shopping by Plaintiff.

56. To the extent Plaintiff believes she has monetary claims against the Debtor Defendants, she should have filed a proof of claim in the Debtors' bankruptcy cases. To the extent she wishes to further litigate issues related to the Property itself, however, the proper venue for their adjudication is North Carolina, as there is no jurisdictional basis for Plaintiff to prosecute her claims in this District other than under 28 U.S.C. § 1334. Plaintiff currently is pursuing a similar action against SunTrust, SunTrust Bank, the Debtor Defendants and others in the MDNC Court. To the extent Plaintiff wishes to pursue any non-monetary relief in the MDNC Action against the Debtor Defendants, Plaintiff can request relief from the automatic stay to pursue the Debtor Defendants in that venue. Further, to the extent Plaintiff has any remaining valid claims and defenses to the Foreclosure of the Property, relief from the automatic stay enjoining actions against the Debtors has already been granted pursuant to the Supplemental Servicing Order[6] previously entered by this Court.

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[6] The term "Supplemental Servicing Order" refers to the *Final Supplemental Order Under Bankruptcy Code Sections 105(a), 362, 363, 502, 1107(a), And 1108 And Bankruptcy Rule 9019 (I) Authorizing The Debtors To Continue Implementing Loss Mitigation Programs; (II) Approving Procedures For Compromise And Settlement Of Certain Claims, Litigations And Causes Of Action; (III) Granting Limited Stay Relief To Permit Foreclosure And Eviction Proceedings, Borrower Bankruptcy Cases, And Title Disputes To Proceed; And (IV) Authorizing And Directing The Debtors To Pay Securitization Trustee Fees And Expenses* [Dkt. No. 774], which was entered on July 13, 2012.

57. As discussed above, the proper forum for Plaintiff's claims and defenses to be litigated is in North Carolina, not before this Court. Plaintiff's attempts to circumvent the proper forum for her claims should not be countenanced. Substantially all of the applicable factors weigh heavily in favor of this Court's abstention from asserting jurisdiction over the Adversary Proceeding. As such, the Debtor Defendants respectfully request that the Court decline to exercise jurisdiction and dismiss the Adversary Proceeding.

**CONCLUSION**

Accordingly, for the reasons set forth herein the Debtor Defendants respectfully requests that the Court dismiss the Adversary Proceeding with prejudice and grant such other and further relief as it deems just and proper.

Dated: January 7, 2013
New York, New York

/s/ Norman S. Rosenbaum

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Stefan W. Engelhardt
Samantha Martin
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*Counsel for the Debtors and Debtors in Possession*

**Hearing Date and Time: February 28, 2013 at 10:00 a.m. (EST)**
**Response Deadline: February 21, 2013 at 4:00 p.m. (EST)**

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*Counsel for the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF NEW YORK**

| | |
|---|---|
| Jennifer L. Wilson,<br><br>Plaintiff,<br><br>*v.*<br><br>Residential Capital, LLC, et al.<br><br>Defendants. | Adv. Proc. 12-01936 (MG) |
| In re<br><br>RESIDENTIAL CAPITAL, LLC, *et al.*,<br><br>Debtors | Case No. 12-12020 (MG)<br><br>Chapter 11<br><br>Jointly Administered |

**NOTICE OF DEBTORS' MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)**

**PLEASE TAKE NOTICE** that on January 7, 2013, Defendants Residential Capital, LLC ("**ResCap**") and Residential Funding Company, LLC ("**RFC**" and, together with ResCap, the "**Debtor Defendants**"), each a debtor and debtor in possession in the above-captioned chapter 11 cases (collectively with all affiliated debtors and debtors in possession, the "**Debtors**"), filed the *Debtors' Motion for Dismissal of Adversary Proceeding Pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(1) and 12(b)(6) Or, in the Alternative, Permissive Abstention Pursuant to 28 U.S.C. § 1334(c)(1)* (the "**Motion**") with the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"). A hearing to consider the Motion is scheduled for **February 28, 2013 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Martin Glenn, United States Bankruptcy Judge, in Courtroom 501 at the Bankruptcy Court, One Bowling Green, New York, New York 10004.

**PLEASE TAKE FURTHER NOTICE** that any objection to the Motion must be in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court's electronic case filing system, and be served, so as to be received no later than **February 21, 2013 at 4:00 p.m. (prevailing Eastern Time)**, upon (a) counsel for the Debtors, Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attn: Norman S. Rosenbaum, Stefan W. Engelhardt and Samantha L. Martin); (b) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, NY 10004 (Attn: Tracy Hope Davis, Linda A. Riffkin, and Brian S. Masumoto); (c) the Office of the United States Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001 (Attn: US Attorney General, Eric

H. Holder, Jr.); (d) Office of the New York State Attorney General, The Capitol, Albany, NY 12224-0341 (Attn: Nancy Lord, Esq. and Enid N. Stuart, Esq.); (e) Office of the U.S. Attorney for the Southern District of New York, One St. Andrews Plaza, New York, NY 10007 (Attn: Joseph N. Cordaro, Esq.); (f) counsel for Ally Financial Inc., Kirkland & Ellis LLP, 153 East 53rd Street, New York, NY 10022 (Attn: Richard M. Cieri); (g) counsel to Barclays Bank PLC, as administrative agent for the DIP lenders, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036 (Attn: Ken Ziman & Jonathan H. Hofer); (h) counsel for the committee of unsecured creditors, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attn: Kenneth Eckstein & Greg Horowitz); (i) counsel for Ocwen Loan Servicing, LLC, Clifford Chance US LLP, 31 West 52nd Street, New York, NY 10019 (Attn: Jennifer C. DeMarco and Adam Lesman); (j) counsel for Berkshire Hathaway Inc., Munger, Tolles & Olson LLP, 355 South Grand Avenue, Los Angeles, CA 90071 (Attention: Thomas Walper and Seth Goldman); (k) Internal Revenue Service, P.O. Box 7346, Philadelphia, PA 19101-7346 (if by overnight mail, to 2970 Market Street, Mail Stop 5-Q30.133, Philadelphia, PA 19104-5016); and (l) Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281-1022 (Attn: George S. Canellos, Regional Director).

**PLEASE TAKE FURTHER NOTICE** that if an objection to the Motion is not timely filed and served, the Bankruptcy Court may enter an order granting the relief requested in the Motion without further notice or opportunity to be heard afforded to any party.

Dated: January 7, 2013
New York, New York

/s/ Norman S. Rosenbaum

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Stefan W. Engelhardt
Samantha L. Martin
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*Counsel for the Debtors and Debtors in Possession*

**Exhibit 1**

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**UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| Jennifer L. Wilson,<br><br>Plaintiff,<br><br>*v.*<br><br>Residential Capital, LLC, et al.<br><br>Defendants. | : | Adv. Proc. 12-01936 (MG) |
| In re<br><br>RESIDENTIAL CAPITAL, LLC, *et al.*,<br><br>Debtors | : | Case No. 12-12020 (MG)<br><br>Chapter 11<br><br>Jointly Administered |

**DECLARATION OF JENNIFER SCOLIARD, IN-HOUSE SENIOR BANKRUPTCY COUNSEL AT RESIDENTIAL CAPITAL, LLC, IN SUPPORT OF DEBTORS' MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)**

I, Jennifer Scoliard, declare as follows:

**A. Background and Qualifications**

1. I serve as In-House Senior Bankruptcy Counsel in the legal department (the "Legal Department") at Residential Capital, LLC ("ResCap"), a limited liability company organized under the laws of the state of Delaware and the parent of the other debtors and debtors in possession in the above-captioned Chapter 11 cases (collectively, the "Debtors"). I joined ResCap in January 2008 and have been ResCap's In-House Bankruptcy counsel since September 2010.

2. In my role as In-House Senior Bankruptcy Counsel at ResCap, I am responsible for the management of all non-routine bankruptcy litigation nationwide, including contested bankruptcy matters.

3. I am authorized to submit this declaration (the "Declaration") in support of the *Debtors' Motion For Dismissal Of Adversary Proceeding Pursuant To Bankruptcy Rule 7012(b) FRCP 12(b)(6) Or, In The Alternative, Permissive Abstention Pursuant To 28 U.S.C. §1334(c)(1)*, dated November 12, 2012 (the "Motion").[1]

4. In my capacity as In-House Senior Bankruptcy Counsel, I am generally familiar with the Debtors' litigation matters, including the prior and pending litigation involving Plaintiff. Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge; information supplied or verified by personnel in departments within the Debtors' various business units; my review of the Debtors' litigation case files, books and records as well as other relevant documents; my discussions with other members of the Legal Department; information supplied by the Debtors' consultants; or my opinion based upon

[1] Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Objection.

experience, expertise, and knowledge of the Debtors' litigation matters, financial condition and/or history. In making my statements based on my review of the Debtors' litigation case files, books and records, relevant documents, and other information prepared or collected by the Debtors' employees or consultants, I have relied upon these employees and consultants accurately recording, preparing, collecting, or verifying any such documentation and other information. If I were called to testify as a witness in this matter, I would testify competently to the facts set forth herein.

**B. Events Giving Rise to the Adversary Proceeding**

**(i) Plaintiff's Loan and Foreclosure**

5. On January 18, 2007, Plaintiff executed a note in favor of SunTrust Mortgage, Inc. d/b/a Sun America Mortgage ("SunTrust") in the amount of $296,000.00 (the "Note"). The Note was secured by real property located at 7801 Pinecroft Court, Harrisburg, North Carolina (the "Property") pursuant to a deed of trust recorded in book 7295, pages 122-140 of the Cabarrus County Registry, executed contemporaneously with the Note (the "Deed of Trust"). See Note, annexed hereto as **Exhibit A**, and Deed of Trust, annexed hereto as **Exhibit B**. The Note was endorsed from SunTrust Mortgage, Inc. d/b/a Sun America Mortgage to blank and transferred to the RALI 2007 Series QS5 Trust, for which Deutsche Bank Trust Company Americas was the trustee and RFC was the master servicer.

6. SunTrust acted as the sub-servicer of Plaintiff's mortgage loan and Debtor RFC was the master servicer for Plaintiff's mortgage loan. On October 21, 2009, Substitute Services, Inc. was appointed as substitute trustee under the Deed of Trust. The Deed of Trust was then assigned by SunTrust to SunTrust Bank on November 18, 2009 (effective March 1, 2007).

7. On December 1, 2009, a foreclosure proceeding was commenced by Substitute Services, Inc. before the Assistant Clerk of Superior Court of Cabarrus County (the "Clerk") by means of a special proceeding bearing file number 09-SP-1613 (the "Foreclosure").

8. On January 25, 2010, the Clerk entered an order allowing the foreclosure sale to proceed pursuant to N.C. Gen. Stat. § 45-21.16 (the "Order"). Wilson did not appeal from the Clerk's Order or file any judicial action to enjoin the Foreclosure.

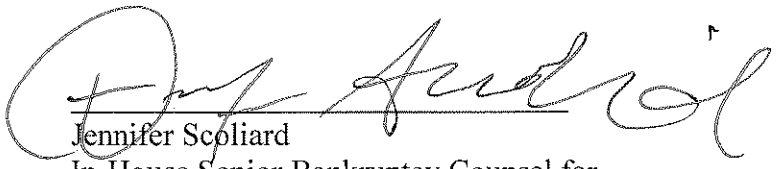
9. On November 15, 2010, Substitute Services, Inc. held the Foreclosure sale and SunTrust Bank was the highest bidder at the sale. Thereafter, on November 30, 2010, Substitute Services, Inc. executed a Trustee's Deed in favor of Deutsche Bank Trust Company Americas, as Trustee RALI 2007-QS5. RFC now services the Property as an REO. Nearly two years after the Foreclosure sale, Wilson is still in possession of the Property.

**(ii) The WDNC Action**

10. On November 12, 2010, Plaintiff filed a complaint in the District Court for the Western District of North Carolina (the "WDNC Court"), Case No. 10-CV-573 (the "WDNC Action"), against SunTrust Bank and Does 1-10 inclusively, along with a motion for a temporary restraining order seeking a stay of the Foreclosure sale (the "Request for TRO"). On March 17, 2011, Plaintiff filed an amended complaint (the "Amended WDNC Complaint"), adding multiple defendants, including Debtor RFC. Plaintiff did not properly serve RFC in the WDNC Action and RFC did not submit a response to the Amended WDNC Complaint.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 7, 2013



Jennifer Scoliard
In-House Senior Bankruptcy Counsel for
Residential Capital, LLC

**Exhibit A**

WILSON

AP#[redacted]
LN#
MIN:

# NOTE

January 18, 2007 [Date] | Atlanta [City] | Georgia [State]

7801 PINECROFT COURT ,HARRISBURG,NC 28075
[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. $ 296,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is

SunTrust Mortgage, Inc. d/b/a Sun America Mortgage,
a Virginia Corporation

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.7500 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on March 1, 2007 . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on February 1, 2037 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at SunTrust Mortgage, Inc., P.O. Box 79041, Baltimore, MD 21279-0041 or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. $ 1,919.85

**4. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

AP# [redacted]
LN#

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 4.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.



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**10. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

_____ (Seal) -Borrower

Jennifer L Wilson (Seal) -Borrower
JENNIFER L WILSON

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

**Without Recourse**
**PAY TO THE ORDER OF**

**SunTrust Mortgage, Inc.**
**d/b/a SunAmerica Mortgage**

*[Sign Original Only]*

**BY:** Brenda Bernard
**Brenda Bernard**
**Asst. Vice President**

**Exhibit B**

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2953

CABARRUS COUNTY
FILED
01/25/2007 10:38 AM
LINDA F. MCABEE
Register Of Deeds
By. _____ Deputy/Asst.

# DEED OF TRUST

Return To: Suntrust Mortgage
(addressbelow)

Prepared By: HEATHER AUCELLO
SunTrust Mortgage, Inc. d/b/a Sun America Mortgage
5775C Glenridge Dr., Suite 200
Atlanta, GA 30328

AP#: [redacted]
LN#:

MIN [redacted]

19/08

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) **"Security Instrument"** means this document, which is dated January 18, 2007, together with all Riders to this document.

(B) **"Borrower"** is
JENNIFER L WILSON (married)

Borrower is the trustor under this Security Instrument.

(C) **"Lender"** is SunTrust Mortgage, Inc. d/b/a Sun America Mortgage

Lender is a Virginia Corporation
organized and existing under the laws of the State of Virginia

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Lender's address is 901 Semmes Avenue, Richmond, VA 23224

(D) "Trustee" is State Street Title Group, LLC

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated January 18, 2007. The Note states that Borrower owes Lender Two Hundred Ninety Six Thousand and no/100 Dollars (U.S. $ 296,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than February 1, 2037.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

| | | |
|---|---|---|
| ☐ Adjustable Rate Rider | ☐ Condominium Rider | ☐ Second Home Rider |
| ☐ Balloon Rider | ☒ Planned Unit Development Rider | ☐ 1-4 Family Rider |
| ☐ VA Rider | ☐ Biweekly Payment Rider | ☐ Other(s) [specify] |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard

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to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

**(R) "Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee and Trustee's successors and assigns, in trust, with power of sale, the following described property located in the

Office of Records of Cabarrus :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

See Attached legal description

Parcel ID Number: 01-022C-0129.000 which currently has the address of
7801 PINECROFT COURT [Street]
HARRISBURG [City], North Carolina 28075 [Zip Code]
("Property Address"):

TO HAVE AND TO HOLD this property unto Trustee and Trustee's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. If Borrower has breached any covenant or agreement in this Security Instrument and Lender has accelerated the obligations of Borrower hereunder pursuant to Section 22 the Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and

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assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to

prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any

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interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

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reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage *is* not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve, if permitted under Applicable Law, *in lieu of* Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve, if permitted under Applicable Law. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, if permitted under Applicable Law, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement

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provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

**(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.**

**(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.**

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material

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impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time.

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Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects

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Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.**

**If Lender invokes the power of sale, and if it is determined in a hearing held in accordance with Applicable Law that Trustee can proceed to sale, Trustee shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.**

**Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of** 5.000 **% of the gross sale price; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The interest rate set forth in the Note shall apply whether before or after any judgment on the indebtedness evidenced by the Note.**

**23. Release.** Upon payment of all sums secured by this Security Instrument, Lender or Trustee shall cancel this Security Instrument. If Trustee is requested to release this Security Instrument, all notes evidencing debt secured by this Security Instrument shall be surrendered to Trustee. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Substitute Trustee.** Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

**25. Attorneys' Fees.** Attorneys' fees must be reasonable.

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**STATE OF NORTH CAROLINA,** Mecklenburg **County ss:**

I, Teresa G.Dagenhart
a Notary Public of the County of Mecklenburg, State of North Carolina, do hereby certify that

Jennifer L. Wilson

who is/are known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day, each acknowledging to me that he/she/they voluntarily signed the foregoing instrument for the purpose stated therein, and in the capacity indicated.

Witness my hand and official seal this 18th day of January, 2007.

My Commission Expires:
July 2, 2010

TERESA G. DAGENHART NOTARY PUBLIC MECKLENBURG COUNTY, N. C.

Notary Public
Teresa G. Dagenhart

**STATE OF NORTH CAROLINA,** **County ss:**

The foregoing certificate of
a Notary Public of the County of , State of
is certified to be correct.
This day of

Registrar of Deeds

By _____
Deputy Assistant

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# PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 18th day of January, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

SunTrust Mortgage, Inc. d/b/a Sun America Mortgage ,
a Virginia Corporation
(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

7801 PINECROFT COURT ,HARRISBURG,NC 28075
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in an instrument recorded in Book 4998, page 25, as amended and/or supplemented, said Registry,

(the "Declaration"). The Property is a part of a planned unit development known as HEATHERSTONE

[Name of Planned Unit Development]
(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

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**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

| | |
|---|---|
| _____ (Seal) -Borrower | Jennifer L Wilson (Seal) JENNIFER L WILSON -Borrower |
| _____ (Seal) -Borrower | _____ (Seal) -Borrower |
| _____ (Seal) -Borrower | _____ (Seal) -Borrower |
| _____ (Seal) -Borrower | _____ (Seal) -Borrower |

**Exhibit 2**

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| **In re** | : | **Chapter 11** |
| **RESIDENTIAL CAPITAL, LLC, et al.,** [1] | : | **Case No. 12-12020 (MG)** |
| | : | **(Jointly Administered)** |
| **Debtors.** | : | |

## AFFIDAVIT OF SERVICE

I, Clarissa D. Cu, depose and say that I am employed by Kurtzman Carson Consultants LLC (KCC), the claims and noticing agent for the Debtors.

A. On or before October 5, 2012, at my direction and under my supervision, employees of KCC caused the following document to be served via First Class Mail on the Individual Borrowers whose loans are serviced by the Debtors (Due to the voluminous and confidential nature of this list, the Exhibits are not attached hereto and are on file with KCC):

1. Notice of Deadlines for Filing Proofs of Claim, dated August 29, 2012, attached hereto as **Exhibit A**

Dated: November 14, 2012

Clarissa D. Cu

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 14th of November, 2012, by Clarissa D. Cu, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: _____

LYDIA PASTOR NINO
Commission # 1960751
Notary Public - California
Los Angeles County
My Comm. Expires Nov 18, 2015

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Residential Capital, LLC (0738); ditech, LLC (7228); DOA Holding Properties, LLC (4257); DOA Properties IX (Lots-Other), LLC (3274); EPRE LLC (7974); Equity Investment I, LLC (2797); ETS of Virginia, Inc. (1445); ETS of Washington, Inc. (0665); Executive Trustee Services, LLC (8943); GMAC Model Home Finance I, LLC (8469); GMAC Mortgage USA Corporation (6930); GMAC Mortgage, LLC (4840); GMAC Residential Holding Company, LLC (2190); GMAC RH Settlement Services, LLC (6156); GMACM Borrower LLC (4887); GMACM REO LLC (2043); GMACR Mortgage Products, LLC (6369); GMAC-RFC Holding Company, LLC (3763); HFN REO Sub II, LLC (N/A); Home Connects Lending Services, LLC (9412); Homecomings Financial Real Estate Holdings, LLC (6869); Homecomings Financial, LLC (9458); Ladue Associates, Inc. (3048); Passive Asset Transactions, LLC (4130); PATI A, LLC (2729); PATI B, LLC (2937); PATI Real Estate Holdings, LLC (5201); RAHI A, LLC (3321); RAHI B, LLC (3553); RAHI Real Estate Holdings, LLC (5287); RCSFJV204, LLC (2722); Residential Accredit Loans, Inc. (8240); Residential Asset Mortgage Products, Inc. (5181); Residential Asset Securities Corporation (2653); Residential Consumer Services of Alabama, LLC (5449); Residential Consumer Services of Ohio, LLC (4796); Residential Consumer Services of Texas, LLC (0515); Residential Consumer Services, LLC (2167); Residential Funding Company, LLC (1336); Residential Funding Mortgage Exchange, LLC (4247); Residential Funding Mortgage Securities I, Inc. (6294); Residential Funding Mortgage Securities II, Inc. (8858); Residential Funding Real Estate Holdings, LLC (6505); Residential Mortgage Real Estate Holdings, LLC (7180); RFC Asset Holdings II, LLC (4034); RFC Asset Management, LLC (4678); RFC Borrower LLC (5558); RFC Constructing Funding, LLC (5730); RFC REO LLC (2407); RFC SFJV-2002, LLC (4670); RFC-GSAP Servicer Advance, LLC (0289)

# EXHIBIT A

**If you have any questions related to this notice, please call (888) 926-3479**

MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Gary S. Lee
Lorenzo Marinuzzi

*Counsel for the Debtors and*
*Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| In re: | ) | Case No. 12-12020 (MG) |
| RESIDENTIAL CAPITAL, LLC, et al., | ) | Chapter 11 |
| Debtors. | ) | Jointly Administered |

## NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIM

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST RESIDENTIAL CAPITAL, LLC OR ITS AFFILIATED ENTITIES THAT ARE ALSO DEBTORS AND DEBTORS IN POSSESSION:

On August 29, 2012, the United States Bankruptcy Court for the Southern District of New York (the U.S. Bankruptcy Court") entered an order (the "Bar Date Order") establishing **November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time)** (the "General Bar Date") as the last date and time for each person or entity (including individuals, partnerships, corporations, joint ventures, corporations, estates, trusts, and governmental units) to file a proof of claim against Residential Capital, LLC its affiliates that are also debtors and debtors in possession in those proceedings (collectively, the "Debtors"). Solely as to governmental units the Bar Date Order established **November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time)** as the last date and time for each such governmental unit to file a proof of claim against the Debtors (the "Governmental Bar Date," and, together with the General Bar Date, the "Bar Dates").

The Bar Dates and the procedures set forth below for filing proofs of claim apply to all claims against the Debtors that arose before May 14, 2012, the date on which the Debtors commenced cases under Chapter 11 of the United States Bankruptcy Code (the "Petition Date"), except for those holders of the claims listed in section 4 below that are specifically excluded from the General Bar Date filing requirement.

## 1. WHO MUST FILE A PROOF OF CLAIM

You **MUST** file a proof of claim to vote on a Chapter 11 plan filed by the Debtors or to share in distributions from the Debtors' bankruptcy estates if you have a claim that arose before the filing of the Debtors' Chapter 11 petitions on the Petition Date and it is not one of the types of claims described in section 4 below. Claims based on acts or omissions of the Debtors that occurred before the Petition Date must be filed on or before the applicable Bar Date, even if such claims are not now fixed, liquidated or certain or did not mature or become fixed, liquidated or certain before the Petition Date.

Under section 101(5) of the Bankruptcy Code and as used in this Notice, the word "claim" means: (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

## 2. WHAT TO FILE

Each filed proof of claim must conform substantially to the Proof of Claim Form (as defined in the Bar Date Order). Copies of the Proof of Claim Form may be obtained at http://www.kccllc.net/rescap. Each proof of claim must be **signed** by the claimant or by an authorized agent of the claimant. Each proof of claim must be written in English and be denominated in United States currency. You should attach to each completed proof of claim any documents on which the claim is based (if voluminous, attach a summary) or an explanation as to why the documents are not available.

Any holder of a claim against more than one Debtor must file a separate proof of claim with respect to each such Debtor and all holders of claims must identify on their proof of claim the specific Debtor against which their claim is asserted. A list of the names of the Debtors and their respective case numbers is attached to the Proof of Claim Form.

Under the Bar Date Order, the filing of a Proof of Claim Form shall be deemed to satisfy the procedural requirements for the assertion of administrative priority claims under section 503(b)(9) of the Bankruptcy Code.

## 3. WHEN AND WHERE TO FILE

Except as provided for herein, all proofs of claim must be filed so as to be actually received **on or before November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time), or solely as to governmental units on or before November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time),** at:

(i) **If by mail or overnight courier**:

**ResCap Claims Processing Center, c/o KCC**
**PO Box 5004**
**Hawthorne, CA 90250**

(ii) if by hand delivery:

United States Bankruptcy Court for the Southern District of New York
One Bowling Green, Room 534
New York, New York 10004

or

ResCap Claims Processing Center, c/o KCC
2335 Alaska Ave
El Segundo, CA 90245

Proofs of claim will be deemed timely filed only if **actually received** at the ResCap Claims Processing Center or hand delivered to the U.S. Bankruptcy Court on or before 5:00 p.m. (Prevailing Eastern Time) on the applicable Bar Date. Proofs of claim **may not** be delivered by facsimile, or electronic mail.

## 4. WHO NEED NOT FILE A PROOF OF CLAIM

You do not need to file a proof of claim on or before the General Bar Date if you are:

(a) Any person or entity that has **already** properly filed a proof of claim against the applicable Debtor or Debtors with the Clerk of the Bankruptcy Court for the Southern District of New York in a form substantially similar to the Proof of Claim Form;

(b) Any person or entity whose claim is listed on the Debtors' schedules of assets and liabilities and/or schedules of executory contracts and unexpired leases (collectively, the "Schedules"), **provided that**: (i) the claim is **not** scheduled as "disputed," "contingent" or "unliquidated"; **and** (ii) the claimant agrees with the amount, nature and priority of the claim as set forth in the Schedules; **and** (iii) the claimant agrees that the claim is an obligation of the specific Debtor against which the claim is listed on the Schedules;

(c) Any person or entity that holds a claim that has been allowed by an order of the Court entered on or before the applicable Bar Date;

(d) Any person or entity whose claim has been paid in full by any of the Debtors;

(e) Any person or entity that holds a claim for which specific deadlines have been fixed by an order of the Court entered on or before the applicable Bar Date;

(f) Any person or entity that holds a claim allowable under sections 503(b) and 507(a) of the Bankruptcy Code as an expense of administration (other than any claim allowable under section 503(b)(9) of the Bankruptcy Code);

(g) Any Debtor having a claim against another Debtor or any of the non-debtor subsidiaries of Residential Capital, LLC having a claim against any of the Debtors;

(h) Any person or entity that holds an interest in any of the Debtors, which interest is based exclusively upon the ownership of common stock, membership interests, partnership interests, or warrants or rights to purchase, sell or subscribe to such a security or interest; provided, however, that interest holders that wish to assert claims (as opposed to ownership interests) against any of the Debtors that arise out of or relate to the ownership or purchase of an interest, including claims arising out of or relating to the sale, issuance, or distribution of the interest, must file Proofs of Claim on or before the applicable Bar Date, unless another exception identified herein applies;

(i) Any person or entity whose claim is limited exclusively to the repayment of principal, interest, and/or other applicable fees and charges (a "Debt Claim") on or under any bond or note issued or guaranteed by the Debtors pursuant to an indenture (the "Debt Instruments"); **provided**, **however**, that (i) the foregoing exclusion in this subparagraph shall not apply to the Indenture Trustee under the applicable Debt Instruments (an "Indenture Trustee"), (ii) the Indenture Trustee shall be required to file one Proof of Claim, on or before the General Bar Date, with respect to all of the Debt Claims on or under each of the applicable Debt Instruments, and (iii) any holder of a Debt Claim wishing to assert a claim, other than a Debt Claim, arising out of or relating to a Debt Instrument shall be required to file a Proof of Claim on or before the Bar Date, unless another exception in this paragraph applies;

(j) Any person or entity holding a claim for principal, interest and other fees and expenses under the Debtors' secured financing facilities (the "Financing Facilities")[1] to the extent of, and only for such claims relating to the Financing Facilities; or

[1] "Financing Facilities" as used herein shall mean the Debtors' financing facilities that are exempt from filing a Proof of Claim Form as previously ordered by the Court [Docket Nos. 471, 490 and 491].

(k) Any person or entity that holds a claim against a securitization trust (each a "Trust") that is based exclusively upon the ownership of a note, bond and/or certificate backed by mortgage loans held by the Trust; provided, however, that holders of such notes, bonds and/or certificates that wish to assert claims against the Debtors (as opposed to claims against the applicable Trust) must file Proofs of Claim on or before the applicable Bar Date, unless another exception identified herein applies.

This Notice is being sent to many persons and entities that have had some relationship with or have done business with the Debtors but may not have an unpaid claim against the Debtors. Receipt of this Notice does not mean that you have a claim or that the Debtors or the Court believe that you have a claim against the Debtors.

## 5. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

If you have a claim arising out of the rejection of an executory contract or unexpired lease, you must file a proof of claim by the later of (a) the applicable Bar Date and (b) thirty (30) days after the date of entry of an order of rejection (unless the order of rejection provides otherwise).

## 6. CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE BAR DATE

**ANY HOLDER OF A CLAIM THAT IS NOT EXCEPTED FROM THE REQUIREMENTS OF THE BAR DATE ORDER, AS DESCRIBED IN SECTION 4 ABOVE, AND THAT FAILS TO TIMELY FILE A PROOF OF CLAIM IN THE APPROPRIATE FORM WILL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST THE DEBTORS, THEIR SUCCESSORS, THEIR CHAPTER 11 ESTATES AND THEIR RESPECTIVE PROPERTY OR FILING A PROOF OF CLAIM WITH RESPECT TO SUCH CLAIM, FROM VOTING ON ANY PLAN OF REORGANIZATION FILED IN THESE CASES AND FROM PARTICIPATING IN ANY DISTRIBUTION IN THE DEBTORS' CASES ON ACCOUNT OF SUCH CLAIM OR RECEIVING FURTHER NOTICES REGARDING SUCH CLAIM.**

## 7. THE DEBTORS' SCHEDULES AND ACCESS THERETO

You may be listed as the holder of a claim against one or more of the Debtors in the Debtors' Schedules. If you rely on the Debtors' Schedules, it is your responsibility to determine that your claim is accurately listed on the Schedules. If you agree with the nature, amount and status of your claim as listed on the Debtors' Schedules, and if you do not dispute that your claim is against only the specified Debtor, and if your claim is not described as "disputed," "contingent," or "unliquidated," you need not file a proof of claim. Otherwise, or if you decide to file a proof of claim, you must do so before the applicable Bar Date in accordance with the procedures set forth in this Notice.

Copies of the Debtors' Schedules are available for inspection on the Court's internet website at www.nysb.uscourts.gov and on the independent website maintained by the Debtors, http://www.kccllc.net/rescap. A login and password to the Court's Public Access to Electronic Court Records ("PACER") are required to access www.nysb.uscourts.gov and can be obtained through the PACER Service Center at www.pacer.psc.uscourts.gov. Copies of the Schedules may also be examined between the hours of 9:00 a.m. and 4:30 p.m. (Prevailing Eastern Time), Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, One Bowling Green, Room 511, New York, New York 10004-1408.

Copies of the Debtors' Schedules may also be obtained by written request to the Debtors' claims agent at the address set forth below:

**ResCap Claims Processing Center**
**c/o KCC**
**PO Box 5004**
**Hawthorne, CA 90250**

## 8. RESERVATION OF RIGHTS

The Debtors reserve their right to object to any proof of claim, whether filed or scheduled, on any grounds. The Debtors reserve their right to dispute or to assert offsets or defenses to any claim reflected on the Schedules or any amendments thereto, as to amount, liability, classification or otherwise, and to subsequently designate any claim as disputed, contingent, unliquidated or undetermined.

**A holder of a possible claim against the Debtors should consult an attorney regarding matters in connection with this Notice, such as whether the holder should file a Proof of Claim.**

Dated: New York, New York
August 29, 2012

BY ORDER OF THE COURT

Gary S. Lee
Lorenzo Marinuzzi
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104

*Counsel for the Debtors and*
*Debtors in Possession*

**If you have any questions related to this notice, please call (888) 926-3479**

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| **In re** | : | **Chapter 11** |
| **RESIDENTIAL CAPITAL, LLC, et al.,** [1] | : | **Case No. 12-12020 (MG)** |
| | : | **(Jointly Administered)** |
| **Debtors.** | : | |

## AFFIDAVIT OF SERVICE

I, Alison M. Tearnen Schepper, depose and say that I am employed by Kurtzman Carson Consultants LLC (KCC), the claims and noticing agent for the Debtors.

A. On or before October 5, 2012, at my direction and under my supervision, employees of KCC caused the following document to be served via First Class Mail on **Jennifer L. Wilson at 7801 Pinecroft Ct., Harrisburg NC 28075**:

1. Notice of Deadlines for Filing Proofs of Claim

Dated: January 7, 2013

Alison M. Tearnen Schepper

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 7th of January, 2013, by Alison M. Tearnen Schpper, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: _____

ELIZABETH MARIE BARNETT
Commission # 1867869
Notary Public - California
Los Angeles County
My Comm. Expires Oct 10, 2013

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Residential Capital, LLC (0738); ditech, LLC (7228); DOA Holding Properties, LLC (4257); DOA Properties IX (Lots-Other), LLC (3274), EPRE LLC (7974); Equity Investment I, LLC (2797); ETS of Virginia, Inc. (1445); ETS of Washington, Inc. (0665); Executive Trustee Services, LLC (8943); GMAC Model Home Finance I, LLC (8469); GMAC Mortgage USA Corporation (6930); GMAC Mortgage, LLC (4840); GMAC Residential Holding Company, LLC (2190); GMAC RH Settlement Services, LLC (6156); GMACM Borrower LLC (4887); GMACM REO LLC (2043); GMACR Mortgage Products, LLC (6369); GMAC-RFC Holding Company, LLC (3763); HFN REO Sub II, LLC (N/A); Home Connects Lending Services, LLC (9412); Homecomings Financial Real Estate Holdings, LLC (6869); Homecomings Financial, LLC (9458); Ladue Associates, Inc. (3048); Passive Asset Transactions, LLC (4130); PATI A, LLC (2729); PATI B, LLC (2937); PATI Real Estate Holdings, LLC (5201); RAHI A, LLC (3321); RAHI B, LLC (3553); RAHI Real Estate Holdings, LLC (5287); RCSFJV204, LLC (2722); Residential Accredit Loans, Inc. (8240); Residential Asset Mortgage Products, Inc. (5181); Residential Asset Securities Corporation (2653); Residential Consumer Services of Alabama, LLC (5449); Residential Consumer Services of Ohio, LLC (4796); Residential Consumer Services of Texas, LLC (0515); Residential Consumer Services, LLC (2167); Residential Funding Company, LLC (1336); Residential Funding Mortgage Exchange, LLC (4247); Residential Funding Mortgage Securities I, Inc. (6294); Residential Funding Mortgage Securities II, Inc. (8858); Residential Funding Real Estate Holdings, LLC (6505); Residential Mortgage Real Estate Holdings, LLC (7180); RFC Asset Holdings II, LLC (4034); RFC Asset Management, LLC (4678); RFC Borrower LLC (5558); RFC Constructing Funding, LLC (5730); RFC REO LLC (2407); RFC SFJV-2002, LLC (4670); RFC-GSAP Servicer Advance, LLC (0289)

**Exhibit 3**

095P1613

Case No: 1020910 (FC.FAY)

[redacted]

**AFFIDAVIT PURSUANT TO NCGS 45-21.16(d) AND 45-21.16C(a)**

STATE OF Virginia
CITY OF Richmond

The undersigned, Annette Holman-Foreman, first being duly sworn, does hereby depose and say:

He/She is Vice President *(title/officer)* of SunTrust Mortgage, Inc, a corporation, and in his/her capacity as Vice President *(title/officer)* he/she is familiar with the account described below.

SunTrust Mortgage, Inc is servicer of the loan account evidenced by a note signed by Jennifer L. Wilson and Deed of Trust signed by Jennifer L. Wilson, dated January 18, 2007 in the original sum of $296,000.00. The Deed of Trust is recorded in Book 7295, Page 122, in the office of the Register of Deeds of Cabarrus County, North Carolina, and the street address of the property described therein is: 7801 Pinecroft Court, Harrisburg, NC 28075.

The holder of the Note and indebtedness is: SunTrust Bank, c/o SunTrust Mortgage, Inc., P.O. Box 27767, Richmond, VA 23261.

There has been a default in the payment of the indebtedness evidenced by said Note, the last payment made having been for the period ending June 1, 2009. The monthly payments thereafter are in arrears.

Because of said default, the holder of said Note and indebtedness secured by said Deed of Trust at its option and pursuant to the terms thereof has accelerated and declared the balance of said indebtedness to be immediately due and payable, the current principal balance being $288,294.97 plus interest thereon at the rate of 6.75 percent per annum from June 1, 2009, together with accrued advances, costs and charges as permitted under the Note and Deed of Trust.

Contact with the debtor(s), including written communications, has been made in a good faith effort to resolve the delinquency voluntarily. Forbearance, modification and other resolution plans have been considered. The delinquency has not been resolved.

Said holder of said Note and indebtedness has demanded foreclosure of the Deed of Trust securing the same for the purpose of satisfying the indebtedness according to the terms of the Note and Deed of Trust and has authorized Substitute Trustee Services, Inc. to act on its behalf as Substitute Trustee pursuant to the mortgage documents and applicable law in this foreclosure proceeding.

This 27 day of October, 2009.

Annette Holman-Foreman, Vice President

Sworn to and subscribed before me
This 27 day of October, 2009.

JONATHAN A. LEISKI
Notary Public
Commonwealth of Virginia
7103187
My Commission Expires Apr 30, 2012

Official Signature of Notary

Jonathan A. Leiski, Notary Public
Notary Public printed or typed name

My Commission Expires: 4.30.2012

*(Official Seal)*

A TRUE COPY
CLERK OF SUPERIOR COURT
CABARRUS COUNTY
By Maria Bowman

**Exhibit 4**

09SP1613

[redacted]

2009 JAN 25 P 4:12

C.S.C.

**ASSIGNMENT OF NOTE AND DEED OF TRUST**

This instrument prepared by
The Law Firm of Hutchens, Senter & Britton, P.A.

STATE OF NORTH CAROLINA

HSB Case No: 1020910

COUNTY OF CABARRUS

FOR AND IN CONSIDERATION of the sum of One Dollar ($1.00) and other valuable consideration, the receipt of which is hereby acknowledged, SUNTRUST MORTGAGE, INC DBA SUN AMERICA MORTGAGE, assignor, does hereby, bargain, sell, give, grant, convey, transfer, set over, and assign to SUNTRUST BANK, a Virginia corporation, assignee, its successors and assigns, all of assignor's rights, title and interest in and to that certain deed of trust executed on the 18th day of January, 2007, by Jennifer L. Wilson to STATE STREET TITLE GROUP, LLC, Trustee, recorded in Book 7295, Page 122, in the office of the Register of Deeds for Cabarrus County, North Carolina, on the 25th day of January, 2007, given to secure an indebtedness in the original principal sum of Two Hundred Ninety-Six Thousand Dollars and No Cents ($296,000.00), as evidenced by a promissory note executed on the 18th day of January, 2007, and secured by the real property described in the above deed of trust. The undersigned, SUNTRUST MORTGAGE, INC DBA SUN AMERICA MORTGAGE, does also sell, assign, transfer and set over unto the said SUNTRUST BANK all of its right, title and interest in and to the said note secured by said deed of trust.

IN WITNESS WHEREOF, said SUNTRUST MORTGAGE, INC DBA SUN AMERICA MORTGAGE has caused this instrument to be signed by its duly authorized officers this the 18 day of November, 2009.*

*This assignment is effective (03/01/2007).

BY: Jackie W. Ballos Vice President

A TRUE COPY
CLERK OF SUPERIOR COURT
CABARRUS COUNTY
By Maria Bauman
Assistant, Deputy, Clerk Superior Court

Jennifer L. Wilson

[redacted]

STATE OF VIRGINIA

CITY OF RICHMOND

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

_____.
*Name(s) of Principal(s)*

Date: NOV 1 3 2009 _____
*Official Signature of Notary*

Sheena M. Wyatt, Notary Public
*Notary Public printed or typed name*

*(Official Seal)* My commission expires: _____

SHEENA M. WYATT
Notary Public
Commonwealth of Virginia
7285056
My Commission Expires May 31, 2013

A TRUE COPY
CLERK OF SUPERIOR COURT
CABARRUS COUNTY
By Maria Bauman
Assistant, Deputy, Clerk Superior Court

Jennifer L. Wilson

**Exhibit 5**

[redacted]

NORTH CAROLINA

CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE

BEFORE THE CLERK

In the Matter of the foreclosure of a Deed of Trust executed by Jennifer L. Wilson in the original amount of $296,000.00 dated January 18, 2007, recorded in Book 7295, Page 122, Cabarrus County Registry Substitute Trustee Services, Inc., Substitute Trustee

**ORDER**
09 SP 1613

**THIS CAUSE** coming on to be heard before the undersigned Honorable Asst., Clerk of Superi Court of Cabarrus County and having heard the evidence and examined the appropriate affidavits and certified copies documents, makes the following findings of fact:

1. That SunTrust Bank is the holder of the note sought to be foreclosed and it evidences that this is a val debt owed by Jennifer L. Wilson.

2. That said note is now in default and the instrument securing said debt gives the note holder the right to foreclose under a power of sale.

3. That notice of this hearing has been served on the record owners of the real estate and to all other persons against whom the note holder intends to assert liability for the debt.

4. That the debtors have shown no valid legal reason why foreclosure should not commence.

5 ☒ That the underlying mortgage debt is not a subprime loan as defined in G.S. 45-101(4)

OR

☐ The loan is a subprime loan under G.S. 45-101(4) and that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed.

**NOW, THEREFORE,** I find that the Substitute Trustee can proceed to foreclose under the terms of the above described Deed of Trust and give notice of and conduct a foreclosure sale as by statute provided.

This 25th day of June, 2010.

Asst. Clerk of Superior Court

Case No: 1020910

**Exhibit 6**

**STATE OF NORTH CAROLINA**

CABARRUS COUNTY

FILED

2010 NOV 15 P 1:30

CABARRUS COUNTY, C.S.C.

BY MB

File No.
09 SP 1613

In the General Court of Justice
Superior Court Division
Before the Clerk

Mortgagors-Grantors: Jennifer L. Wilson

Mortgagee-Trustee: State Street Title Group, LLC

Deed of Trust-Book And Page No.
Book 7295, Page 122,

# REPORT OF FORECLOSURE SALE/RESALE

G.S. 45-21.26

If Not Recorded, Description Of Property

Owners Of Record, If Not Original Mortgagors: Melissa Reel

☒ Report of Sale

By authority of the power of sale contained in the above Mortgage or Deed of Trust and by authorization of the Clerk of Superior Court, there having been default under the terms of the obligation secured, the undersigned offered for sale at public auction, and sold the real property described above:

☐ Report of Resale

As directed by Order of Resale by the Clerk of Superior Court issued upon the default of the successful bidder in this foreclosure proceeding, the undersigned offered for resale at public auction, after due and lawful advertisement and sold the real property described in the Mortgage or Deed of Trust described above:

Name And Address of Purchaser And Highest Bidder
SunTrust Bank
c/o SunTrust Mortgage, Inc.; P.O. Box 27767
Richmond, VA 23261

Amount Bid
$ 245,000.00

Place Of Sale
Concord, North Carolina

Date
November 15, 2010

Time Of Sale
12:00 AM ☐ AM ☐ PM

Date Of Report
November 15, 2010

Name Of Mortgagee-Trustee, Attorney-Agent
Substitute Trustee Services, Inc., Substitute Trustee

Signature Of Mortgagee-Trustee (Attorney) Agent

*For Clerk's Use*

Last Date For Upset Bid 11-29-10

Minimum Amount Of Next Upset Bid
$ 257,250.00

Amount Of Deposit Required To Upset Bid
$ 12,862.50

NORTH CAROLINA

CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE

FILED

BEFORE THE CLERK

2010 DEC -9 A 9:18

CABARRUS COUNTY, C.S.C.

BY

In the Matter of the foreclosure of a Deed of Trust executed by Jennifer L. Wilson (PRESENT RECORD OWNER(S): Melissa Reel) in the original amount of $296,000.00 dated January 18, 2007, recorded in Book 7295, Page 122, Cabarrus County Registry Substitute Trustee Services, Inc., Substitute Trustee

ASSIGNMENT OF BID

09 SP 1613

Under and by virtue of the authority duly granted the undersigned in an agreement recorded in Book 08966, Page 0122, Cabarrus County Registry, North Carolina, this bid is hereby assigned from SunTrust Bank to Deutsche Bank Trust Company Americas as Trustee Residential Funding Company, LLC fka Residential Funding Corporation Attorney in Fact.

This the 30th day of November, 2010.

SUBSTITUTE TRUSTEE SERVICES, INC.
SUBSTITUTE TRUSTEE

BY: _____
NATASHA M. BARONE
Attorney at Law
The Law Firm of Hutchens, Senter & Britton, P.A.
Attorneys for Substitute Trustee Services, Inc.

NORTH CAROLINA - CUMBERLAND COUNTY

I, Julie T. Webb, a Notary Public of Cumberland County, North Carolina, do hereby certify that NATASHA M. BARONE, Attorney at Law personally came before me this day and acknowledged that he/she is an Attorney at Law for Substitute Trustee Services, Inc., a North Carolina Corporation, Substitute Trustee, and that he/she as an Attorney at Law, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my Hand and Official Seal, this the 30th day of November, 2010.

_____
Notary Public

JULIE T. WEBB NOTARY PUBLIC CUMBERLAND COUNTY, N.C.

My Commission Expires: December 24, 2012

HSB Case No. 1020910 (FC)

JSB
ECR

STATE OF NORTH CAROLINA

COPY

File No. 09 SP 1613

CABARRUS COUNTY

FILED

2010 DEC -9 A 9:17

CLERK C.S.C.

In the General Court of Justice
Superior Court Division
Before the Clerk

Mortgagors - Grantors: Jennifer L. Wilson

Mortgagee - Trustee: State Street Title Group, LLC

Deed of Trust - Book and Page No.: Book 7295, Page 122

Owners of Record if not Original Mortgagors: MelissaReel

# FINAL REPORT AND ACCOUNT OF FORECLOSURE SALE

G.S 45-21.33,31

All of the property referred to in the mortgage or deed of trust indicated above was sold as a whole and the entire amount of the secured obligation was not satisfied.

If facts are otherwise, explain: A deficit remains. The note holders preserve the right to seek a deficiency judgment.

SUBSTITUTE TRUSTEE SERVICES, INC., SUBSTITUTE TRUSTEE

Name of Purchaser: Deutsche Bank Trust Company Americas as Trustee Residential Funding Company, LLC fka Residential Funding Corporation Attorney in Fact

| DATE | ITEM | DISBURSEMENTS | RECEIPTS |
|---|---|---|---|
| | Proceeds of Sale | | 245,000.00 |
| | Court Costs | 150.00 | |
| | Cost of publication of notice of sale | 1,514.84 | |
| | Commissions | 1,600.00 | |
| | Register of Deeds - Record Sub. Tr. Agreement | 17.00 | |
| | Documentary stamps | 490.00 | |
| | Secured Obligations | 240,659.10 | |
| | Register of Deeds: Record Notice of Foreclosure | 12.00 | |
| | Certified Mail | 27.06 | |
| | Cabarrus County Sheriff's Dept - Serve Notice | 30.00 | |
| | Clerk of Superior Court Fee | 500.00 | |
| | Surplus sale proceeds paid to CSC* | | |
| | TOTALS | 245,000.00 | 245,000.00 |

*List reason paid to CSC

I hereby certify that the above is a true and complete account of my receipts and disbursements and the notices of hearing, sale and resale were served upon all parties entitled to such notice by statute.

Date Audited and Recorded 12/9/10

Date of Report November 30, 2010

Signature

Substitute Trustee Services, Inc., Substitute Trustee

☒ Assistant CSC ☐ Clerk of Superior Court

By: Attorney at Law
The Law Firm of Hutchens, Senter & Britton, P.A.
Attorneys for Substitute Trustee Services, Inc.
Case HSB No. 1020910 (FC)

9472
0349

FILED
CABARRUS COUNTY NC
LINDA F. McABEE
REGISTER OF DEEDS

| | |
|---|---|
| FILED | Feb 07, 2011 |
| AT | 02:40 pm |
| BOOK | 09472 |
| START PAGE | 0349 |
| END PAGE | 0350 |
| INSTRUMENT # | 03050 |
| EXCISE TAX | $490.00 |

EBO

**TRUSTEE'S DEED**

**NORTH CAROLINA**

**CABARRUS COUNTY**

**REVENUE: $490.00**

**TAX ID: 01022C0129.00**

**Prepared by/Return to:**
**The Law Firm of Hutchens, Senter & Britton, P.A.**
**P.O. Box 1028, Fayetteville, NC 28302**
**HSB Case No: 1020910 (FC)**

**Not the primary residence of the Grantor herein**

THIS TRUSTEE'S DEED, made this 30th day of November, 2010, by Substitute Trustee Services, Inc., Substitute Trustee, of the County of Cumberland, and State of North Carolina, P.O. Box 1028, Fayetteville, NC, 28302, party of the first part, to Deutsche Bank Trust Company Americas as Trustee RALI 2007-QS5, c/o SunTrust Mortgage, Inc., P.O. Box 27767, Richmond, VA 23261, party of the second part;

WITNESSETH:

THAT WHEREAS, on the 18th day of January, 2007, Jennifer L. Wilson, executed and delivered to State Street Title Group, LLC, Trustee, a certain Deed of Trust, which is recorded in Book 7295, Page 122, in the Office of the Register of Deeds of Cabarrus County, North Carolina; and,

WHEREAS, the undersigned, Substitute Trustee Services, Inc., having been substituted as Trustee in said Deed of Trust by an instrument duly recorded in Book 08966, Page 0122, Cabarrus County Registry; and,

WHEREAS, in Special Proceeding Number 09 SP 1613, under and by virtue of the authority conferred by the said Deed of Trust, and in accordance with the terms and stipulations of the same, and after due advertisement as in said Deed of Trust prescribed and by law provided, the said Substitute Trustee did on the 15th day of November, 2010, at the Courthouse Door, in the City of Concord, North Carolina, expose to public sale the lands hereinafter described, where and when, SunTrust Bank, a corporation organized and existing under the laws of the United States of America, became the last and highest bidder for the sum of Two Hundred Forty-Five Thousand Dollars and 00/100 ($245,000.00); and,

WHEREAS, SunTrust Bank requested transfer and assignment of its bid to the party of the second part and whereas, under and by virtue of the authority contained in that certain Appointment of Substitute Trustee, recorded in Book 08966, Page 0122, the said Substitute Trustee assigned said bid to Deutsche Bank Trust Company Americas as Trustee RALI 2007-QS5, its successors and assigns, party of the second part;

WHEREAS, said sale was duly reported to the Office of the Clerk of Superior Court, Cabarrus County, North Carolina and no increased bid has been filed within the time allowed therefore by law;

NOW, THEREFORE, in consideration of the premises and the sum of Two Hundred Forty-Five Thousand Dollars and 00/100 ($245,000.00), paid to the said party of the first part by said party of the second part, the receipt of which is hereby acknowledged and under and by virtue of the power and authority by said Deed of Trust conferred, the said Substitute Trustee, as aforesaid, does hereby bargain, sell and convey unto Deutsche Bank Trust Company Americas as Trustee RALI 2007-QS5, its successors and assigns, all that certain parcel, lot or tract of land lying and being in the County of Cabarrus, State of North Carolina, and being more particularly described as follows:

BEING all of Lot 129 of HEATHERSTONE, Phase 2, Map 3, as shown on map thereof recorded in Map Book 44, Page 47, in the Office of the Register of Deeds of Cabarrus County, North Carolina. Together with improvements located thereon; said property being located at 7801 Pinecroft Court, Harrisburg, North Carolina.

SUBJECT, HOWEVER, to all taxes, special assessments and prior liens or encumbrances of record against said property and any recorded releases.

2/28

9472
0350

TO HAVE AND TO HOLD said lands and premises and all privileges and appurtenances thereto belonging unto the said Deutsche Bank Trust Company Americas as Trustee RALI 2007-QS5, its successors and assigns, forever, in as full and ample a manner as the said Substitute Trustee, as aforesaid, is authorized and empowered to convey the same.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its corporate name by its duly authorized officers, the day and year first above written.

SUBSTITUTE TRUSTEE SERVICES, INC.
SUBSTITUTE TRUSTEE

BY: Palmer Maas

Palmer Maas Vice President

NORTH CAROLINA - CUMBERLAND COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Palmer Maas Vice President.

Date: November 30, 2010

Lorri J Dove
*Official Notary Signature*

LORRI J DOVE NOTARY PUBLIC CUMBERLAND COUNTY, N. C.

*Official Seal*

Lorri J. Dove Notary Public
*Notary Public printed typed name*

My Commission Expires: December 1, 2013

NORTH CAROLINA - CABARRUS COUNTY

The foregoing certificate of Lorri J. Dove, a Notary Public, is certified to be correct. This instrument was presented for registration and recorded in this Office at Book ____, Page ____, this the ____ day of _____, 2011 at ____ O'clock __.M.

REGISTER OF DEEDS

BY: _____
Assistant/Deputy

RETURN TO:
The Law Firm of Hutchens, Senter & Britton, P.A.
P.O. Box 1028
Fayetteville, NC 28302
Telephone: (910) 864-3068

**Exhibit 7**

B1 (Official Form 1) (4/10)

| UNITED STATES BANKRUPTCY COURT Western ~~Middle~~ District of North Carolina | VOLUNTARY PETITION |
|---|---|

| Name of Debtor (if individual, enter Last, First, Middle): | Name of Joint Debtor (Spouse) (Last, First, Middle): |
|---|---|
| Wilson, Jennifer L | |
| All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): | All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names): |
| Jennifer L. Rivera | |
| Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all): | Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all): |
| 8009 | |
| Street Address of Debtor (No. and Street, City, and State): | Street Address of Joint Debtor (No. and Street, City, and State): |
| 7801 Pinecroft Court<br>Harrisburg, NC 28075 | |
| ZIP CODE | ZIP CODE |
| County of Residence or of the Principal Place of Business: | County of Residence or of the Principal Place of Business: |
| Cabarrus | |
| Mailing Address of Debtor (if different from street address): | Mailing Address of Joint Debtor (if different from street address): |
| ZIP CODE | ZIP CODE |
| Location of Principal Assets of Business Debtor (if different from street address above): | |
| | ZIP CODE |

**Type of Debtor** (Form of Organization) (Check one box.)

- ☑ Individual (includes Joint Debtors) *See Exhibit D on page 2 of this form.*
- ☐ Corporation (includes LLC and LLP)
- ☐ Partnership
- ☐ Other (If debtor is not one of the above entities, check this box and state type of entity below.)

**Nature of Business** (Check one box.)

- ☐ Health Care Business
- ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101(51B)
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank
- ☐ Other

**Tax-Exempt Entity** (Check box, if applicable.)

- ☐ Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).

**Chapter of Bankruptcy Code Under Which the Petition is Filed** (Check one box.)

- ☐ Chapter 7
- ☐ Chapter 9
- ☐ Chapter 11
- ☐ Chapter 12
- ☑ Chapter 13
- ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding
- ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

**Nature of Debts** (Check one box.)

- ☑ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
- ☐ Debts are primarily business debts.

**Filing Fee** (Check one box.)

- ☐ Full Filing Fee attached.
- ☑ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.
- ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.

**Chapter 11 Debtors**

Check one box:
- ☐ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).
- ☐ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).

Check if:
- ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,343,300 (*amount subject to adjustment on 4/01/13 and every three years thereafter*).

Check all applicable boxes:
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

**Statistical/Administrative Information**

- ☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☑ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

| Estimated Number of Creditors | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| ☑ 1-49 | ☐ 50-99 | ☐ 100-199 | ☐ 200-999 | ☐ 1,000-5,000 | ☐ 5,001-10,000 | ☐ 10,001-25,000 | ☐ 25,001-50,000 | ☐ 50,001-100,000 | ☐ Over 100,000 |

| Estimated Assets | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| ☐ $0 to $50,000 | ☐ $50,001 to $100,000 | ☐ $100,001 to $500,000 | ☑ $500,001 to $1 million | ☐ $1,000,001 to $10 million | ☐ $10,000,001 to $50 million | ☐ $50,000,001 to $100 million | ☐ $100,000,001 to $500 million | ☐ $500,000,001 to $1 billion | ☐ More than $1 billion |

| Estimated Liabilities | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| ☐ $0 to $50,000 | ☐ $50,001 to $100,000 | ☐ $100,001 to $500,000 | ☑ $500,001 to $1 million | ☐ $1,000,001 to $10 million | ☐ $10,000,001 to $50 million | ☐ $50,000,001 to $100 million | ☐ $100,000,001 to $500 million | ☐ $500,000,001 to $1 billion | ☐ More than $1 billion |

U.S. BANKRUPTCY COURT
WESTERN DIST. OF NC
2013 JAN 7 A 11:15
CLERK
BY DEP. CLK

B1 (Official Form 1) (4/10) Page 2

| **Voluntary Petition** *(This page must be completed and filed in every case.)* | Name of Debtor(s): wilson, Jennifer L |
|---|---|

**All Prior Bankruptcy Cases Filed Within Last 8 Years** (If more than two, attach additional sheet.)

| Location Where Filed: | Case Number: | Date Filed: |
|---|---|---|
| Location Where Filed: | Case Number: | Date Filed: |

**Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor** (If more than one, attach additional sheet.)

| Name of Debtor: | Case Number: | Date Filed: |
|---|---|---|
| District: ~~Middle~~ Western District of North Carolina | Relationship: | Judge: |

**Exhibit A**

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

**Exhibit B**

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).

X _____
Signature of Attorney for Debtor(s) (Date)

**Exhibit C**

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

☑ No.

**Exhibit D**

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☐ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

**Information Regarding the Debtor - Venue**
(Check any applicable box.)

☑ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

**Certification by a Debtor Who Resides as a Tenant of Residential Property**
(Check all applicable boxes.)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

_____
(Name of landlord that obtained judgment)

_____
(Address of landlord)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

| **Voluntary Petition** *(This page must be completed and filed in every case.)* | Name of Debtor(s): Wilson, Jennifer L |
|---|---|

**Signatures**

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X Jennifer L. Wilson
Signature of Debtor

X
Signature of Joint Debtor

704-455-7274
Telephone Number (if not represented by attorney)

05/03/2010
Date

**Signature of a Foreign Representative**

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X
(Signature of Foreign Representative)

(Printed Name of Foreign Representative)

Date

**Signature of Attorney***

X
Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

**Signature of Non-Attorney Bankruptcy Petition Preparer**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

B 201A (Form 201A) (12/09)

**WARNING: Effective December 1, 2009, the 15-day deadline to file schedules and certain other documents under Bankruptcy Rule 1007(c) is shortened to 14 days. For further information, see note at bottom of page 2**

# UNITED STATES BANKRUPTCY COURT

## NOTICE TO CONSUMER DEBTOR(S) UNDER §342(b) OF THE BANKRUPTCY CODE

In accordance with § 342(b) of the Bankruptcy Code, this notice to individuals with primarily consumer debts: (1) Describes briefly the services available from credit counseling services; (2) Describes briefly the purposes, benefits and costs of the four types of bankruptcy proceedings you may commence; and (3) Informs you about bankruptcy crimes and notifies you that the Attorney General may examine all information you supply in connection with a bankruptcy case.

You are cautioned that bankruptcy law is complicated and not easily described. Thus, you may wish to seek the advice of an attorney to learn of your rights and responsibilities should you decide to file a petition. Court employees cannot give you legal advice.

Notices from the bankruptcy court are sent to the mailing address you list on your bankruptcy petition. In order to ensure that you receive information about events concerning your case, Bankruptcy Rule 4002 requires that you notify the court of any changes in your address. If you are filing a **joint case** (a single bankruptcy case for two individuals married to each other), and each spouse lists the same mailing address on the bankruptcy petition, you and your spouse will generally receive a single copy of each notice mailed from the bankruptcy court in a jointly-addressed envelope, unless you file a statement with the court requesting that each spouse receive a separate copy of all notices.

### 1. Services Available from Credit Counseling Agencies

**With limited exceptions, § 109(h) of the Bankruptcy Code requires that all individual debtors who file for bankruptcy relief on or after October 17, 2005, receive a briefing that outlines the available opportunities for credit counseling and provides assistance in performing a budget analysis.** The briefing must be given within 180 days before the bankruptcy filing. The briefing may be provided individually or in a group (including briefings conducted by telephone or on the Internet) and must be provided by a nonprofit budget and credit counseling agency approved by the United States trustee or bankruptcy administrator. The clerk of the bankruptcy court has a list that you may consult of the approved budget and credit counseling agencies. Each debtor in a joint case must complete the briefing.

**In addition, after filing a bankruptcy case, an individual debtor generally must complete a financial management instructional course before he or she can receive a discharge.** The clerk also has a list of approved financial management instructional courses. Each debtor in a joint case must complete the course.

### 2. The Four Chapters of the Bankruptcy Code Available to Individual Consumer Debtors

**Chapter 7: Liquidation ($245 filing fee, $39 administrative fee, $15 trustee surcharge: Total fee $299)**

Chapter 7 is designed for debtors in financial difficulty who do not have the ability to pay their existing debts. Debtors whose debts are primarily consumer debts are subject to a "means test" designed to determine whether the case should be permitted to proceed under chapter 7. If your income is greater than the median income for your state of residence and family size, in some cases, the United States trustee (or bankruptcy administrator), the trustee, or creditors have the right to file a motion requesting that the court dismiss your case under § 707(b) of the Code. It is up to the court to decide whether the case should be dismissed.

Under chapter 7, you may claim certain of your property as exempt under governing law. A trustee may have the right to take possession of and sell the remaining property that is not exempt and use the sale proceeds to pay your creditors.

The purpose of filing a chapter 7 case is to obtain a discharge of your existing debts. If, however, you are

found to have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge and, if it does, the purpose for which you filed the bankruptcy petition will be defeated.

Even if you receive a general discharge, some particular debts are not discharged under the law. Therefore, you may still be responsible for most taxes and student loans; debts incurred to pay nondischargeable taxes; domestic support and property settlement obligations; most fines, penalties, forfeitures, and criminal restitution obligations; certain debts which are not properly listed in your bankruptcy papers; and debts for death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs. Also, if a creditor can prove that a debt arose from fraud, breach of fiduciary duty, or theft, or from a willful and malicious injury, the bankruptcy court may determine that the debt is not discharged.

**Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income ($235 filing fee, $39 administrative fee: Total fee $274)**

Chapter 13 is designed for individuals with regular income who would like to pay all or part of their debts in installments over a period of time. You are only eligible for chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.

Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, using your future earnings. The period allowed by the court to repay your debts may be three years or five years, depending upon your income and other factors. The court must approve your plan before it can take effect.

After completing the payments under your plan, your debts are generally discharged except for domestic support obligations; most student loans; certain taxes; most criminal fines and restitution obligations; certain debts which are not properly listed in your bankruptcy papers; certain debts for acts that caused death or personal injury; and certain long term secured obligations.

**Chapter 11: Reorganization ($1000 filing fee, $39 administrative fee: Total fee $1039)**

Chapter 11 is designed for the reorganization of a business but is also available to consumer debtors. Its provisions are quite complicated, and any decision by an individual to file a chapter 11 petition should be reviewed with an attorney.

**Chapter 12: Family Farmer or Fisherman ($200 filing fee, $39 administrative fee: Total fee $239)**

Chapter 12 is designed to permit family farmers and fishermen to repay their debts over a period of time from future earnings and is similar to chapter 13. The eligibility requirements are restrictive, limiting its use to those whose income arises primarily from a family-owned farm or commercial fishing operation.

**3. Bankruptcy Crimes and Availability of Bankruptcy Papers to Law Enforcement Officials**

A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury, either orally or in writing, in connection with a bankruptcy case is subject to a fine, imprisonment, or both. All information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the United States Trustee, the Office of the United States Attorney, and other components and employees of the Department of Justice.

**WARNING:** Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information regarding your creditors, assets, liabilities, income, expenses and general financial condition. Your bankruptcy case may be dismissed if this information is not filed with the court within the time deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court. The documents and the deadlines for filing them are listed on Form B200, which is posted at http://www.uscourts.gov/bkforms/bankruptcy_forms.html#procedure.

**Many filing deadlines change on December 1, 2009. Of special note, 12 rules that set 15 days to act are amended to require action within 14 days, including Rule 1007(c), filing the initial case papers; Rule 3015(b), filing a chapter 13 plan; Rule 8009(a), filing appellate briefs; and Rules 1019, 1020, 2015, 2015.1, 2016, 4001, 4002, 6004, and 6007.**

B 201B (Form 201B) (12/09)

# UNITED STATES BANKRUPTCY COURT

In re Jennifer L Wilson
Debtor

Case No. _____

Chapter 13

## CERTIFICATION OF NOTICE TO CONSUMER DEBTOR(S) UNDER § 342(b) OF THE BANKRUPTCY CODE

**Certification of [Non-Attorney] Bankruptcy Petition Preparer**

I, the [non-attorney] bankruptcy petition preparer signing the debtor's petition, hereby certify that I delivered to the debtor the attached notice, as required by § 342(b) of the Bankruptcy Code.

Printed name and title, if any, of Bankruptcy Petition Preparer
Address:

Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

X_____

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

**Certification of the Debtor**

I (We), the debtor(s), affirm that I (we) have received and read the attached notice, as required by § 342(b) of the Bankruptcy Code.

Jennifer L. Wilson
Printed Name(s) of Debtor(s)

Case No. (if known) _____

X Jennifer L Wilson 5/3/10
Signature of Debtor Date

X_____
Signature of Joint Debtor (if any) Date

---

**Instructions:** Attach a copy of Form B 201A, Notice to Consumer Debtor(s) Under § 342(b) of the Bankruptcy Code.

Use this form to certify that the debtor has received the notice required by 11 U.S.C. § 342(b) **only** if the certification has **NOT** been made on the Voluntary Petition, Official Form B1. Exhibit B on page 2 of Form B1 contains a certification by the debtor's attorney that the attorney has given the notice to the debtor. The Declarations made by debtors and bankruptcy petition preparers on page 3 of Form B1 also include this certification.

**Exhibit 8**

FILED & JUDGMENT ENTERED
David E. Weich

May 18 2010

Clerk, U.S. Bankruptcy Court
Western District of North Carolina

George R. Hodges
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

| | | |
|---|---|---|
| In Re: | ) | |
| | ) | Case No. 10-31255 |
| **JENNIFER L. WILSON**, | ) | Chapter 13 |
| | ) | |
| Debtor. | ) | |
| | ) | |

**ORDER**

This matter comes before the court upon the debtor's motion for extension of time to file missing schedules and statements. For good cause shown, the court **GRANTS** the debtor an extension of time until Friday, June 4, 2010, to file her missing schedules and statements as referenced in the court's May 4, 2010, Notice of Deficient Filing. Failure to file the necessary documents by that date will result in this case being dismissed without further notice.

**This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order**

**United States Bankruptcy Court**

**Exhibit 9**

FILED & JUDGMENT ENTERED
David E. Weich

Jun 10 2010

Clerk, U.S. Bankruptcy Court
Western District of North Carolina

George R. Hodges
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

| | | |
|---|---|---|
| In Re: | ) | |
| | ) | Case No. 10-31255 |
| **JENNIFER L. WILSON**, | ) | Chapter 13 |
| | ) | |
| Debtor. | ) | |
| | ) | |

**ORDER**

This matter comes before the court upon the debtor's second motion for extension of time to file missing schedules and statements. In her motion, the debtor indicates that she is seeking to hire an attorney and, therefore, seeks an additional 21 days in which to file her missing schedules and statements. For good cause shown, the court **GRANTS** the debtor an additional extension of time until Friday, July 2, 2010, to file her missing schedules and statements as referenced in the court's May 4, 2010, Notice of Deficient Filing. The court will not entertain additional requests for an extension of time to file the missing schedules and statements and failure to file the

necessary documents by July 2, 2010, will result in this case being dismissed without further notice.

**This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order**

**United States Bankruptcy Court**

**Exhibit 10**

FORM B10 (Official Form 10) (12/08)

| United States Bankruptcy Court Western District of North Carolina | PROOF OF CLAIM |
|---|---|
| Name of Debtor: Jennifer Wilson | Case Number: 10-31255 |

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property):
SunTrust Mortgage, Inc.

☐ Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:
P.O. Box 27767
Richmond, VA 23261-7767

Sarah D. Miranda
PO Box 2505
Fayetteville, NC 28302

Telephone number: 800-443-1032

**Court Claim Number:** _____ *(If known)*

Filed on: _____

Name and address where payment should be sent *(if different from above)*:

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

**1. Amount of Claim as of Date Case Filed:** $ 312775.01

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

**2. Basis for Claim:** Money Loaned
*(See instruction #2)*

**3. Last four digits of any number by which creditor identifies debtor:** 1983

**3a. Debtor may have scheduled account as:** _____
*(See instruction #3a)*

**4. Secured Claim** *(See instruction #4)*
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☑ Real Estate ☐ Motor Vehicle ☐ Other
Describe: _____

Value of Property: $ 0.00 Annual Interest Rate: 6.75%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $ 29732.05 Basis for perfection: _____

**Amount of Secured Claim:** $ 312775.01 **Amount Unsecnred:** $ 0.00

**5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.**

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $10,950*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. § 507(a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. § 507(a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507(a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(_).

**Amount entitled to priority**
$ _____

** Amounts are subject to adjustment on 4/1/2010 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

**6. Credits:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

**7. Documents:** Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of mnning accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. *(See definition of "redacted" on reverse side.)*

FOR COURT USE ONLY

FILED
U.S. Bankruptcy Court
Western District of NC
5/17/2010
David E. Weich, Clerk

| Date | Print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): |
|---|---|
| 5/17/2010 | Filing a proof of claim electronically deems the claim signed by the creditor or authorized person |

*Penalty for presenting fraudulent claim:* Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

ADDENDUM TO PROOF OF CLAIM FOR: Jennifer L. Wilson
aka Jennifer L. Rivera

BANKRUPTCY CASE NUMBER: 10-31255
LOAN NUMBER: 1983

ARREARAGES:

| | | |
|---|---|---|
| 8 Payment(s) @ 2,267.82 | (07/09 - 02/10) | $18,142.56 |
| 3 Payment(s) @ 2,215.69 | (03/10 - 05/10) | $6,647.07 |
| Accrued Late Charges | | 797.90 |
| Property Inspection | | 90.00 |
| Foreclosure Fees and Expenses | | 3,555.16 |
| Escrow Shortage | | 169.36 |
| Appraisal Fee | | 180.00 |
| Legal Fee for Case Review, POC Preparation and Review | | 150.00 |
| TOTAL ARREARAGE: | | $29,732.05 |

TOTAL INDEBTEDNESS:

| | |
|---|---|
| Principal Balance | $288,294.97 |
| Interest through May 4, 2010 | 17,998.20 |
| Accrued Late Charges | 767.90 |
| Property Inspection | 90.00 |
| Foreclosure Fees & Expenses | 3,555.16 |
| Appraisal Fee | 180.00 |
| Escrow Advance | 1,738.78 |
| Legal Fee for Case Review, POC Preparation and Review | 150.00 |
| TOTAL INDEBTEDNESS: | $312,775.01 |

**Effective June 1, 2010, the monthly mortgage payment amount is $2,215.69.**
**The interest rate is 6.750%.**

**Please forward all payments to:**

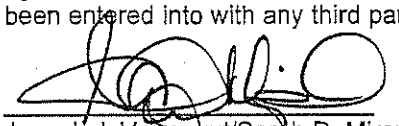
**SunTrust Mortgage, Inc.**
**P.O. Box 27767**
**Richmond, VA 23261-7767**

**Please forward all correspondence and court pleadings to:**

**The Law Firm of Hutchens, Senter & Britton, P.A.**
**Post Office Box 2505**
**Fayetteville, NC 28302**

**Loan No: 1983**
**Property Address:**
**7801 Pinecroft Court**
**Harrisburg, NC 28075**

I am duly admitted to practice law before this Court, was retained by the Real Property Creditor or its duly designated agent and that no part of the fee has been shared with any third party and no agreement to share any part of the fee has been entered into with any third party.



Joseph J. Vonnegut/Sarah D. Miranda
THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A.
N.C. Bar No.: 32974/29354

**ADDENDUM TO CHAPTER 13 PROOF OF CLAIM FOR REAL PROPERTY CREDITOR**

*As Amended For Cases Filed On or After March 1, 2010*

**Creditor Information**

Name of Creditor: SunTrust Mortgage, Inc. Contact Person: _____

Telephone# 800-443-1032 Fax# _____ Email Address: _____

Address to Which Payments Should be Sent: SunTrust Mortgage, Inc.

P.O. Box 27767, Richmond, VA 23261-7767

Address to Which Correspondence Should be Sent: The Law Firm of Hutchens, Senter & Britton, P.A.

Post Office Box 2505, Fayetteville, NC 28302

Creditor Attorney Name/Address The Law Firm of Hutchens, Senter & Britton, P.A.

Telephone# (910) 864-3068 Fax# (910) 864-6177 Email Address: hsbbkydept@hutchensandsenter.com

**Loan Information**

Post-Petition Monthly Payment Amount: 2,215.69 Date Payment Is Due: June 1, 2010

Type of Loan [check one] Fixed [X] Adjustable [ ]

Last Adjustment Date _____

Next Adjustment Date _____

Post-Petition Interest Rate 6.750%

**Post-Petition Payment Information**

Principal and Interest $1,919.85 ; Monthly Taxes $237.01 ; Monthly Insurance $58.83

Other _____ $ _____ ; Other _____ $ _____

Total Monthly Payment Amount $2,215.69

AP# [redacted]
LN# [redacted]
MIN: [redacted]

# NOTE

January 18, 2007 [Date] | Atlanta [City] | Georgia [State]

7801 PINECROFT COURT ,HARRISBURG,NC 28075
[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. $ 296,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is

SunTrust Mortgage, Inc. d/b/a Sun America Mortgage,
a Virginia Corporation

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.7500 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on March 1, 2007 . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on February 1, 2037 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at SunTrust Mortgage, Inc., P.O. Box 79041, Baltimore, MD 21279-0041 or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. $ 1,919.85 .

**4. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

AP# [redacted]
LN# [redacted]

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 4.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

AP# [redacted]
LN# [redacted]

**10. [redacted] NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

| | |
|---|---|
| _____ (Seal) -Borrower | _____ (Seal) JENNIFER L WILSON -Borrower |
| _____ (Seal) -Borrower | _____ (Seal) -Borrower |
| _____ (Seal) -Borrower | _____ (Seal) -Borrower |
| _____ (Seal) -Borrower | _____ (Seal) -Borrower |

*[Sign Original Only]*

SUNTRUST MORTGAGE

AP# [redacted]
LN#

# NAME AFFIDAVIT

**STATE OF**
**COUNTY OF**

Before me, the undersigned, a Notary Public in and for said County and State, on this day, personally appeared JENNIFER L WILSON who, after being by me first duly sworn, under oath does depose and say:

That, JENNIFER L WILSON as the name appears on the Note and Security Instrument in connection with the purchase of the property known as: 7801 PINECROFT COURT HARRISBURG, NC 28075 is one and the same person as: JENNIFER L WILSON.

as the name appears on the various documents that have been presented in conjunction with the loan request.

Borrower JENNIFER L WILSON

**STATE OF** NC
**COUNTY OF** Mecklenburg

The foregoing instrument was acknowledged before me the undersigned by JENNIFER L WILSON who is personally known to me or who has produced NC DL as identification.

TERESA G. DAGENHART NOTARY PUBLIC MECKLENBURG COUNTY, N.C.

Notary Public
Serial Number:

**My Commission Expires July 2, 2010**

**MW-NAME AFFIDAVIT CFM**
600857 (11/02)

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2953

CABARRUS COUNTY
FILED
01/25/2007 10:38 AM
LINDA F. MCABEE
Register Of Deeds
By. _____ Deputy/Asst.

# DEED OF TRUST

Return To: Suntrust Mortgage
(addressbelow)

Prepared By: HEATHER AUCELLO
SunTrust Mortgage, Inc. d/b/a Sun America Mortgage
5775C Glenridge Dr., Suite 200
Atlanta, GA 30328

AP#: [redacted] MIN [redacted]
LN#: [redacted]

19/08

DEFINITIONS
Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.
(A) **"Security Instrument"** means this document, which is dated January 18, 2007 , together with all Riders to this document.
(B) **"Borrower"** is
JENNIFER L WILSON (married)

Borrower is the trustor under this Security Instrument.
(C) **"Lender"** is SunTrust Mortgage, Inc. d/b/a Sun America Mortgage

Lender is a Virginia Corporation
organized and existing under the laws of the State of Virginia

68

AP#: [redacted]
LN#: [redacted]

BOOK 7235 PAGE 123

Lender's address is 901 Semmes Avenue, Richmond, VA 23224

(D) "Trustee" is State Street Title Group, LLC

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated January 18, 2007
The Note states that Borrower owes Lender Two Hundred Ninety Six Thousand and no/100 Dollars
(U.S. $ 296,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than February 1, 2037.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

| | | |
|---|---|---|
| ☐ Adjustable Rate Rider | ☐ Condominium Rider | ☐ Second Home Rider |
| ☐ Balloon Rider | ☒ Planned Unit Development Rider | ☐ 1-4 Family Rider |
| ☐ VA Rider | ☐ Biweekly Payment Rider | ☐ Other(s) [specify] |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 *et seq.*) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard

Initials:

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AP#: [redacted]
LN#: [redacted]

to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

**(R) "Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee and Trustee's successors and assigns, in trust, with power of sale, the following described property located in the Office of Records of Cabarrus :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

See Attached legal description

Parcel ID Number: 01-022C-0129.000 which currently has the address of
7801 PINECROFT COURT [Street]
HARRISBURG [City], North Carolina 28075 [Zip Code]
("Property Address"):

TO HAVE AND TO HOLD this property unto Trustee and Trustee's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

Initials:

AP#: [redacted]
LN#: [redacted]

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THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. If Borrower has breached any covenant or agreement in this Security Instrument and Lender has accelerated the obligations of Borrower hereunder pursuant to Section 22 the Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and

AP#: [redacted]
LN#: [redacted]

assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to

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prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any

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interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

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reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve, if permitted under Applicable Law, *in lieu* of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve, if permitted under Applicable Law. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, if permitted under Applicable Law, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement

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provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

**(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.**

**(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.**

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material

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impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time.

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Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects

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Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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LN#: [redacted]

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.**

**If Lender invokes the power of sale, and if it is determined in a hearing held in accordance with Applicable Law that Trustee can proceed to sale, Trustee shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.**

**Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of** 5.000 **% of the gross sale price; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The interest rate set forth in the Note shall apply whether before or after any judgment on the indebtedness evidenced by the Note.**

**23. Release.** Upon payment of all sums secured by this Security Instrument, Lender or Trustee shall cancel this Security Instrument. If Trustee is requested to release this Security Instrument, all notes evidencing debt secured by this Security Instrument shall be surrendered to Trustee. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Substitute Trustee.** Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

**25. Attorneys' Fees.** Attorneys' fees must be reasonable.

Initials: [signature]

BOOK 7295 PAGE 136

AP#: [redacted]
LN#: [redacted]

**STATE OF NORTH CAROLINA,** Mecklenburg **County ss:**

I, Teresa G.Dagenhart
a Notary Public of the County of Mecklenburg , State of North Carolina, do hereby certify that

Jennifer L. Wilson

who is/are known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day, each acknowledging to me that he/she/they voluntarily signed the foregoing instrument for the purpose stated therein, and in the capacity indicated.

Witness my hand and official seal this 18th day of January, 2007.

My Commission Expires:
July 2, 2010

TERESA G. DAGENHART NOTARY PUBLIC MECKLENBURG COUNTY, N. C.

Notary Public
Teresa G. Dagenhart

**STATE OF NORTH CAROLINA,** **County ss:**

The foregoing certificate of
a Notary Public of the County of , State of
is certified to be correct.
This day of

Registrar of Deeds

By _____
Deputy Assistant

BOOK 7295 PAGE 138

AP# [redacted]
LN# [redacted]

# PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 18th day of January, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

SunTrust Mortgage, Inc. d/b/a Sun America Mortgage .
a Virginia Corporation
(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

7801 PINECROFT COURT ,HARRISBURG,NC 28075
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in an instrument recorded in Book 4998, page 25, as amended and/or supplemented, said Registry,

(the "Declaration"). The Property is a part of a planned unit development known as HEATHERSTONE

[Name of Planned Unit Development]
(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

BOOK 7295 PAGE 139

AP# [redacted]
LN# [redacted]

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

Initials: [signature]

BOOK 7295 PAGE 140

AP# [redacted]
LN# [redacted]

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

_____ (Seal) -Borrower

Jennifer L Wilson (Seal) -Borrower
JENNIFER L WILSON

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

**Exhibit 11**

July 2, 2010

FILED
U.S. Bankruptcy Court
Western District of NC

JUL - 6 2010

David E. Weich, Clerk
Charlotte Division
BLF

David E. Weich
Clerk Of Court
United States Bankruptcy Court
Western District of North Carolina
P.O. Box 34189
Charlotte, NC 28234-4189

RE: Case No. 10-31255, Chapter 13

Dear Mr. Weich:

After seeking counsel, it has been determined that bankruptcy is not the best course of action for me at this time. I respectfully request that my bankruptcy be dismissed without prejudice.

Best Regards,

Jennifer L. Wilson
aka Jennifer L. Rivera
7801 Pinecroft Court
Harrisburg, NC 28075
Social Security No.: xxx-xx-8009
704-773-1712

**Exhibit 12**

**UNITED STATES BANKRUPTCY COURT**
**Western District of North Carolina**
**Charlotte Division**

Case No. 10−31255
Chapter 13

---

In Re: Debtor(s) (name(s) used in the last 8 years, including married, maiden, trade, and address):
Jennifer L. Wilson
aka Jennifer L. Rivera
7801 Pinecroft Court
Harrisburg, NC 28075
Social Security No.: xxx−xx−8009

---

# NOTICE AND ORDER OF VOLUNTARY DISMISSAL

**TAKE NOTICE** that the above−referenced debtor filed a notice or motion seeking to be dismissed from this case, and it appears that this case has not been converted previously under 11 U.S.C. § 706, § 1112, or § 1208.

**NOTICE IS FURTHER GIVEN AND IT IS ORDERED** that the above−referenced debtor is hereby **DISMISSED**.

Dated: July 6, 2010

BY THE COURT

George R. Hodges
United States Bankruptcy Judge

Electronically filed and signed (7/6/10)

**Exhibit 13**

**UNITED STATES BANKRUPTCY COURT**
**Western District of North Carolina**
**Charlotte Division**

Case No. 10−31255
Chapter 13

---

In Re: Debtor(s) (name(s) used in the last 8 years, including married, maiden, trade, and address):
Jennifer L. Wilson
aka Jennifer L. Rivera
7801 Pinecroft Court
Harrisburg, NC 28075
Social Security No.: xxx−xx−8009

---

# FINAL DECREE

The estate of the above named debtor has been fully administered.

IT IS ORDERED THAT:

- Warren L. Tadlock is discharged as trustee of the estate of the above named debtor and the bond is cancelled.
- The chapter 13 case of the above named debtor is closed.

Dated: August 11, 2010

BY THE COURT

George R. Hodges
United States Bankruptcy Judge

Electronically filed and signed (8/11/10)

**Exhibit 14**

FILED
CHARLOTTE, NC
NOV 12 2010
U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

Jennifer Lynn Wilson©
7801 Pinecroft Court
Harrisburg, NC 28075
Ph.: 704-773-1712
Pro Se

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

JENNIFER L. WILSON,

Plaintiff,

v.

SUNTRUST BANK, incorporated in Georgia; and Does 1 – 10 inclusively,

Defendants.

Case No.: 3:10cv573

**VERIFIED COMPLAINT**

(1) Breach of contract; declaratory/injunctive relief

(2) Wrongful foreclosure; rescission of all recorded non-judicial foreclosure documents

(3) Lack of standing; declaratory/ injunctive relief barring defendant from any future non-judicial foreclosure proceedings.

[Assigned for all purposes to Honorable Judge _____ ]

Dept.: _____

# VERIFIED COMPLAINT



Case 3:10-cv-00573-FDW-DCK Document 1 Filed 11/12/10 Page 1 of 11

## PARTIES

1. Plaintiff, JENNIFER L. WILSON ("Plaintiff") is at all times relevant herein, an individual residing in the County of Cabarrus, State of North Carolina, and is the owner of the following described real property (the "Property"): A single family residence located at 7801 Pinecroft Court, Harrisburg, in the County of Cabarrus, State of North Carolina.

2. Defendant, SUNTRUST BANK ("Defendant"), an alleged holder of the note, is at all times relevant herein is a federal savings bank chartered under the law of the United States of America and the State of Georgia with its principal offices located in Atlanta, Georgia.

## JURISDICTION

3. This Court has jurisdiction under Title 28 section 1331 as this case involves a federal question.

4. Venue is proper as the closing of the subject property was done by STATE STREET TITLE GROUP, LLC whose office is located within the District of the Court.

## FIRST CAUSE OF ACTION
## (Wrongful Foreclosure)

5. The Plaintiff is unaware of all the true names and lawful capacities of the Defendant(s) and/or agents for the Defendant(s) sued herein as DOES 1 through 10, inclusive, but is informed and believes and thereon alleges that additional defendants may be responsible in some manner for the acts alleged herein and/or discovered at some future date and/or purports to hold or claims to hold a legal or equitable right, title, estate, lien or other interest in the Property, which is subsequent to and subject to Plaintiff.

6. Plaintiff therefore sues said defendant(s) by such fictitious names and will seek leave of the Court to amend this Complaint to their true names, capacities and add any additional causes of actions that have been ascertained.

7. Plaintiff alleges, upon information and belief, the basis for said information and belief being the Deed of Trust (hereafter "DEED"), the documents in the public record, the private documents provided to Plaintiff, and the law that Defendant WRONGFULLY and ILLEGALLY FORECLOSED on Plaintiff's property commonly known as 7801 PINECROFT COURT, HARRISBURG, NC 28075, and is about to sell the same on November 15, 2010.

8. The contract "NOTE" (hereafter "CONTRACT"), is specific in that pursuant to numbered paragraph one (1) "***Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the 'Note Holder***'" (emphasis added).

9. Upon information and belief, Plaintiff alleges SunTrust Bank is not the "Note Holder" pursuant to the terms and conditions set forth in the CONTRACT.

10. The CONTRACT, pursuant to numbered paragraph three (3), is specific in that all payments due the "**Note Holder**" will be made "***at SunTrust Mortgage, Inc., P.O. Box 79041, Baltimore, MD 21279-0041 or at a different place if required by the Note Holder***"(emphasis added).

11. SunTrust Mortgage, Inc. did not notify Plaintiff of any change with respect to this provision of the CONTRACT. Therefore Plaintiff, upon information and belief alleges, SunTrust Bank is not the "**Note Holder**."

12. On October 20, 2009 Hutchens, Senter, & Brittion, P.A. (hereafter "FIRM") caused a letter to be sent to Plaintiff informing Plaintiff that, "***This firm represents SunTrust Bank (the "note holder"), the holder of your mortgage loan (the "Note")***" (emphasis added).

13. On October 21, 2009 the FIRM caused a letter to be sent to Plaintiff informing Plaintiff that, "***This law firm represents SunTrust Mortgage, Inc. in connection with the above-captioned mortgage loan***" (emphasis added).

14. There may only be one "Note Holder" under the terms of the CONTRACT and in as much as no evidence to the contrary that SunTrust Mortgage, Inc., the named "Lender" in the CONTRACT is the present "Note Holder."

15. Plaintiff, upon information and belief, alleges that SunTrust Bank is not the "Note Holder."

16. On October 21, 2009, a Substitution of Trustee was executed by Rebecca W. Shaia claiming the capacity of Vice President for SunTrust Bank.

17. Numbered paragraph "24" of the DEED, in relevant part, states, "***Substitute Trustee.*** ***Lender*** *may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded*" (emphasis added).

18. SunTrust Bank is not the "Lender" under the CONTRACT or DEED.

19. SunTrust Bank had no right to substitute the original or other trustee since it is not the "Lender" of the CONTRACT or DEED.

20. SunTrust Bank is not the "Lender" under the CONTRACT and DEED; therefore, the execution and recordation of "Substitute Trustee Services, Inc." as Trustee is **VOID**.

21. Even though it is alleged by the FIRM, no evidence exists that would indicate SunTrust Bank is the "Note Holder."

22. Absent evidence to the contrary the execution and recordation of "Substitute Trustee Services, Inc." as Trustee by Rebecca W. Shaia claiming the capacity of Vice President for SunTrust Bank renders this recordation of Substitute Trustee **VOID**.

23. Plaintiff alleges, upon information and belief, that the assignment of Substitute Trustee Services, Inc. is fraudulent and VOID and without force and effect of law.

24. The CONTRACT, pursuant to lettered paragraph "(J) Applicable Law means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions."

25. Since the DEED is an incident to the CONTRACT, the courts have made clear the separation of the CONTRACT from the DEED voids the DEED and it no longer

has the force and effect of law.

26. Plaintiff alleges, upon information and belief, that the DEED has been separated from the CONTRACT as there is no proof known to Plaintiff of an Assignment of the DEED to SunTrust Bank, privately or publicly.

27. Plaintiff, upon information and belief, alleges that the DEED is a void and a nullity (*See Carpenter v. Longan,* 16 Wall. 271, 83 U.S. 271, 21 L.Ed. 313 (1872)).

28. WHEREFORE Plaintiff seeks declaratory/injunctive and other relief as follows:

a. Declare the rights of the parties under this Cause of Action;

b. Court order for Defendant, SunTrust Bank, to record a rescission of all recorded foreclosing documents, recorded in the Office of the County Recorder pursuant to North Carolina General Statute Chapter 45 et seq.;

c. Court order for SunTrust Mortgage, Inc., the alleged contractually obligated party, to record a rescission of the Deed of Trust in the Office of the County Recorder; and

d. Such other relief as this Honorable Court deems just and proper.

**SECOND CAUSE OF ACTION**

**(Quiet Title)**

29. Plaintiff incorporates paragraphs 1 through 24 herein by reference as though fully set forth.

30. The sale scheduled to take place on November 15, 2010, will be fraudulent because Defendant, SunTrust Bank, knows or should know, that it is not in actual possession of the legally valid and ***original*** "NOTE" and duly perfected assignment of the DEED with delivery of the ***original*** DEED, the Security Instrument, required to have standing to foreclose.

31. Plaintiff alleges, upon information and belief, that without the title documents in possession (i.e., the originals) pursuant to a valid transfer (CONTRACT) and a valid assignment (DEED), SunTrust Bank did not have a valid "claim" or "right" to

foreclose on Plaintiff's property.

32. Plaintiff alleges, upon information and belief, that SunTrust Bank lacks **prudential standing** to execute or cause its agent to execute a Trustee's Sale.

33. If Plaintiff's property is sold by Defendant, Plaintiff, upon information and belief, alleges any trustee sale by Defendant and/or its agent acting on its behalf, under the guise of the DEED shall be fraudulent, as SunTrust Bank lacks prudential standing.

34. Pursuant to the terms and conditions of the DEED, Defendant further lacks prudential standing to act through the alleged Substitute Trustee; Defendant's actions to date are a trespass of the DEED (see ¶ 24 of the DEED – only the "Lender" can substitute the trustee).

35. The cumulative effect of the DEED containing small and hidden and/or disguised provisions that were not explained to Plaintiff and do not show acknowledgement of understanding and acceptance from Plaintiff have caused Plaintiff to unknowingly and unintelligently waive her rights to possession of property and accept adverse confession of judgment against herself without legal recourse, and caused said DEED to operate as an **illegal** cognovit note that is contrary to the Unites States Supreme Court precedent in ***Overmyer Co Inc. of Ohio v. Frick Company***, 405 U.S. 174 (1972).

36. WHEREFORE Plaintiff seeks declaratory/injunctive and other relief as follows:

a. Declare the rights of the parties under this Cause of Action;
b. Court Order for SunTrust Mortgage, Inc., alleged servicer of SunTrust Bank and "Lender" under the CONTRACT and DEED, or any other proper party, to record in the Office of the County Recorder a Full Satisfaction of the NOTE;
c. Court order for SunTrust Mortgage, Inc., the contractually obligated party, to record a rescission of the Deed of Trust in the Office of the County Recorder; and
d. Such other relief as this Honorable Court deems just and proper.

## THIRD CAUSE OF ACTON
## (Lack of Standing to Foreclose)

37. Every mortgage loan is composed of two documents – the note instrument (Promissory Note) and the mortgage instrument (Deed of Trust).

38. No matter how much the mortgage instrument is acclaimed as the basis of the agreement, the note instrument is the essence of the debt.

39. Plaintiff is entitled to invoke the jurisdiction of this Honorable Court as Defendant and/or its agent lacks federal constitutional standing to execute non-judicial foreclosure proceedings.

40. Defendant has not proved upon any record that it possesses legal standing to commence a non-judicial foreclosure.

41. The standing requirement is "an essential and unchanging part of the case-or-controversy requirement of Article III."[1]

42. This constitutional doctrine requires that Defendant must present an actual or imminent injury that is fairly traceable to the Plaintiff's conduct and redressable by a favorable ruling.[2]

43. The standing question is a threshold issue, **required** before a court may entertain a suit (non-judicial foreclosure).[3]

44. The real party in interest inquiry is one of the prudential considerations the judiciary self-imposes to limit the role of courts in democratic society.[4]

45. Thus, if a lender cannot prove standing it has no authority to commence a non-judicial foreclosure.

46. Prudential requirements also require that a party bringing a suit be the real party in interest. Parties to a suit must adhere to F.R.Civ.P. 17 et seq. in order to invoke

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[1] Constitution for the United States of America; Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).
[2] Davis v. Federal Election Commission, 128 S.Ct. 2759 (2008).
[3] Warth v. Seldin, 422 U.S. 490, 495 (1975).
[4] In re Village Rathskeller, 147 B.R. 665, 668 (Bankr. S.D.N.Y. 1992).

the jurisdiction of the court to seek relief. F.R.Civ.P. 17(a)(1) requires "[a]n action must be prosecuted in the name of the real party in interest."[5]

47. The purpose is to ensure the party bringing forth the action is the party who "possesses the substantive right being asserted under the law."[6]

48. Plaintiff alleges, upon information and belief, that Defendant is not the real party in interest with the right to receive the payments and lacks both Article III and prudential standing to commence a non-judicial foreclosure pursuant to North Carolina General Statutes Chapter 45 et seq.

49. WHEREFORE Plaintiff seeks declaratory/injunctive and other relief as follows:

a. Declare the rights of the parties under this Cause of Action;
b. Plaintiff move the Court to issue an immediate Cease and Desist Order barring Defendant from proceeding with any non-judicial foreclosure and sale until such time as Defendant proves on the record of this Honorable Court its lawful and proper constitutional standing; and
c. Such other relief and as this Honorable Court deems just and proper.

WHEREFORE Plaintiff request judgment as set forth below:

**ON THE FIRST CAUSE OF ACTION**

1. WHEREFORE Plaintiff seeks:

a. Declare the rights of the parties under this Cause of Action;
b. Court order for Defendant, SunTrust Bank, to record a rescission of all recorded foreclosing documents, recorded in the Office of the County Recorder, pursuant to North Carolina General Statute Chapter 45 et seq.; and

[5] Title 28 U.S.C. Appendix § 17(a); North Carolina General Statutes Chapter 1 Article 6 § 1-57.
[6] 6A Wright, Miller & Kane, Federal Practice and Procedure § 1541 (Westlaw current through 2009 update).

c. Such other relief as this Honorable Court deems just and proper.

**ON THE SECOND CAUSE OF ACTION**

2. WHEREFORE Plaintiff seeks:

a. Quiet title;

b. Declare the rights of the parties under this Cause of Action;

c. Court Order for SunTrust Mortgage, Inc., alleged servicer of SunTrust Bank and "Lender" under the CONTRACT and DEED, or any other proper party, to record in the Office of the County Recorder a Full Reconveyance of the NOTE;

d. Court order for SunTrust Mortgage, Inc., the contractually obligated party, to record a rescission of the Deed of Trust in the Office of the County Recorder; and

e. Such other relief as this Honorable Court deems just and proper.

**ON THE THIRD CAUSE OF ACTION**

3. WHEREFORE Plaintiff seeks:

a. Declare the rights of the parties under this Cause of Action;

b. Plaintiff move the Court to issue an immediate Cease and Desist Order barring Defendant from proceeding with any non-judicial foreclosure and sale until such time as Defendant proves on the record of this Honorable Court its lawful and proper constitutional standing; and

c. Such other relief and as this Honorable Court deems just and proper.

**ON ALL CAUSES OF ACTION**

4. That Defendant takes nothing by way of their non-judicial foreclosure proceeding;

5. That, by Order of the Court, all SunTrust Bank non-judicial proceedings are

barred/stayed until such time as Defendant proves upon the record of this Honorable Court that they are the real party in interest, i.e., the "Note Holder" via a valid transfer, and that Defendant is entitled to receive the payments and to foreclose;

6. That the Court find for the Plaintiff and issue a Court order for Defendant to record in the Office of the Cabarras County Recorder a Full Satisfaction of the Note;

7. For compensatory and punitive damages;

8. For costs, disbursements, and attorney, expert witness and other fees incurred herein according to proof; and

9. That Plaintiff be awarded such other and further relief as this Court deems just and proper.

## VERIFICATION

Jennifer Lynn Wilson©, the only authorized signatory for JENNIFER L WILSON, hereby states, declares, verifies and affirms under penalty of perjury, under the laws of the united States of America, that Jennifer Lynn Wilson© read the foregoing and knows the contents thereof; that the same, regarding the facts advanced herein, are true and correct based on the undersigned's own knowledge to the best of the undersigned's current information, knowledge and belief pursuant to 28 U.S.C. § 1746(1) and is admissible as evidence, except as to those matters that are therein made upon information and belief, and as to those claims or facts, the undersigned believes them to be true and admissible as evidence, and if called upon as a witness, Jennifer Lynn Wilson© will testify to the veracity of her statements.

Executed: November 12, 2010

JENNIFER L WILSON

By: Jennifer Lynn Wilson©
Jennifer Lynn Wilson©, Creditor, Settlor, Private Banker and Authorized Signatory, for JENNIFER L WILSON, ARTIFICIAL ENTITY, U.S. CORPORATE VESSEL, PRIVATE CITIZEN, TRUST, and PRIVATE BANKING ENTITY.

**Exhibit 15**

FILED
CHARLOTTE, NC
NOV 12 2010
U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

Jennifer Lynn Wilson©
7801 Pinecroft Court
Harrisburg, NC 28075
Ph.: 704-773-1712
Pro Se

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

JENNIFER L. WILSON,

Plaintiff,

v.

SUNTRUST BANK, incorporated in Georgia; and Does 1 – 10 inclusively,

Defendants.

Case No.: 3:10CV573

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

[Filed concurrently with [PROPOSED ORDER] ORDER; and AFFIDAVIT IN SUPPORT]

[Assigned for all purposes to Honorable Judge _____ ]

Dept.: _____

Date: _____

Time: _____

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on _____, 2010, at _____, or as soon as thereafter as the matter may be heard in ROOM _____, of the above entitled Court located at 401 W. Trade Street in Charlotte, North Carolina, Jennifer L. Wilson, Plaintiff,

will move the court for an order to STAY the Trustee's Sale of Plaintiff's primary residence commonly identified as 7801 Pinecroft Court, Harrisburg, North Carolina .

This Motion is made pursuant to F.R.Civ.P. 65(b(1).

Plaintiff request Oral Argument pursuant to F.R.Civ.P. 78(a).

All grounds for issuance of a Court Order to STAY the Trustee's Sale is set forth in the Plaintiff's accompanying Affidavit.

**RELIEF REQUEST**

WHEREFORE, Appellant seeks an Order of the Court to STAY the November 15, 2010 Trustee's Sale of Plaintiff's primary residence commonly known and identified as 7801 Pinecroft Court, Harrisburg, North Carolina until the determination of the Verified Complaint;

The Court Order for STAY of the Trustee's Sale should issue to SunTrust Bank and its agent, Substitute Trustee Services, Inc., of Hutchens, Senter, & Brittion, P.A.;

The Court Order for STAY of the Trustee's Sale should issue no later than 10:00 a.m. on November 15, 2010, since the illegal sale is at 12:00 a.m.; and

For such other Relief as this Honorable Court deems just and proper.

DATED: November 12, 2010

JENNIFER L WILSON

By: _____
Jennifer Lynn Wilson©, Affiant, Creditor, Settlor, Private Banker and Authorized Signatory, for JENNIFER L WILSON, ARTIFICIAL ENTITY, U.S. CORPORATE VESSEL, PRIVATE CITIZEN, TRUST, and PRIVATE BANKING ENTITY.

Jennifer Lynn Wilson©
7801 Pinecroft Court
Harrisburg, NC 28075
Ph.: 704-773-1712
Pro Se

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

JENNIFER L. WILSON,

Plaintiff,

v.

SUNTRUST BANK, incorporated in Georgia; and Does 1 – 10 inclusively,

Defendants.

Case No.: _____

**AFFIDAVIT IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

[Filed concurrently with [PROPOSED] ORDER; and EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER]

[Assigned for all purposes to Honorable Judge _____ ]

Dept.: _____

Date: _____

Time: _____

# AFFIDAVIT IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

1. Plaintiff makes this affidavit in support of the EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER (hereafter "TRO").

2. Defendant is about to sell Plaintiff's home on November 15, 2010.

3. Plaintiff submits that Defendant WRONGFULLY and ILLEGALLY foreclosed on her home for the preliminary reasons advanced in the Verified Complaint.

4. Simply stated, loss of house would force Plaintiff onto the street.

5. Plaintiff's business is situated in the home as a home-based business, therefore should Plaintiff lose the home through WRONGFUL FORECLOSURE Plaintiff would not only suffer the loss of the home but very likely the loss of Plaintiff's business that is the backbone of Plaintiff's support for her family.

6. Plaintiff relies on the business as the primary support vehicle for Plaintiff's children ages 6 and 13.

7. Defendant shall not suffer injury as Defendant, SunTrust Bank, is not the real party in interest in the non-judicial foreclosure action that is the subject of this motion.

## A. DEFENDANT DOES NOT HAVE CONSTITUTIONAL STANDING TO FORECLOSE FOR THE FOLLOWING REASONS:

8. Defendant is not the Note Holder in this matter (see Verified Complaint, ¶¶ 4-12; see also Exhibit "1" [the Note]).

9. Defendant is not the "Lender" authorized by the Deed of Trust (hereafter "DEED") to assign the Substitute Trustee (see Verified Complaint, ¶¶ 13-16; see also Exhibit "2" [relevant page from the DEED]).

10. The substitution of trustee is **wholly invalid and void** pursuant to the terms and conditions in the DEED that are controlling in this matter.

11. The **Appointment of Substitute Trustee** in this matter (see annexed Exhibit "C": (a) **was not** executed and acknowledged by "**Lender**"; and (b) **did not** contain the name of the original "**Lender**"; and (c) **is outside of** the procedure for substitution of trustee govern by the DEED to the exclusion of any other provision for

substitution, including any statute. Statutes and a Court cannot override the valid legal terms and conditions of the DEED. The DEED is the law of this matter regarding substitution of trustee and foreclosure.

12. SUBSTITUTE TRUSTEE SERVICES, INC. was not the trustee assigned by the "**Lender**", per the expressed terms of the DOT (see Exhibit "2" ¶ 22).

13. Hence, SUBSTITUTE TRUSTEE SERVICES, INC. is not a VALID substitute trustee in this matter, and its participation to foreclose on Defendant's behalf renders the foreclosure VOID.

14. Defendant allegedly invoked standing based on fraudulent public filings, all of which established that the foreclosure ***was not conducted by the trustee of the Lender***, per the expressed terms of the DEED (see Exhibit "2" ¶ 24).

15. Former trustees and all others who are not the properly appointed and serving trustee at the time of the step taken will be unable to convey title and the sale will be "void" and not just "voidable."

16. Per the terms of the DEED in this matter, only the "Lender" can invoke foreclosure via the power of sale (see Exhibit "2" ¶ 22).

17. The foreclosure was not invoked by the "Lender"; and Defendant is not the "Lender" in the DEED.

18. Defendant has not validated or verified the alleged debt and Plaintiff states that there is no debt in this matter.

19. Via a private administrative process, Defendant failed to validated its alleged claim pursuant to North Carolina G.S. § 25-9-210. There can be no lawful foreclosure sale in this matter until the alleged debt is established and validated. For Defendant to proceed with the foreclosure and sale would be utter fraud.

20. Defendant and its agents violated the following statutes: 18 U.S.C. § 241, 18 U.S.C. § 242, 18 U.S.C. § 656, 18 USC § 876, 18 U.S.C. § 880, 18 U.S.C. § 1001, 18 U.S.C. § 1005, 18 USC § 1341, 18 USC § 1951, 18 USC § 1957, 18 USC § 1961, 18 USC § 1962, 18 USC § 1963, 18 USC § 1986.

21. Plaintiff is the Originator, Issuer, Maker of the NOTE and the only one who can assert a valid claim or defense under G.S. § 25-3-305, G.S. § 25-3-306, and G.S. § 25-3-307.

22. Defendant had no legal standing to enforce the NOTE and foreclose in this matter.

23. Consequently, Defendant is NOT a holder in due course of the NOTE since SUNTRUST MORTGAGE, INC. was not the Maker, Issuer, Originator and did not/do not have attachment, enforceability, secured interest or priority as these terms are defined in G.S. §§ 25-9-203(a)(b), 25-9-301 and 25-9-317.

24. G.S. § 25-3-302(c) states: "… a person does not acquire rights of holder-in-due-course of an instrument taken (i) by legal process or by purchase in an execution …"

25. Defendant did not have lawful standing to commence a non-judicial foreclosure proceeding.

26. The standing requirement is an "essential and unchanging part of the case-or-controversy (non-judicial foreclosure) requirement of Article III." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992).

27. A party has standing when he or she has a sufficient stake in a justiciable controversy. *Sierra Club v. Morton*, 405 U.S. 727, 731 (1972).

28. To establish standing it must be shown that the party suffered injury in fact (economic or otherwise) for which relief is likely to be redressed and, in non-constitutional situations, that the interest sought to be protected falls within a statutory or constitutional guarantee. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471 (1982); *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970). The injury must be distinct and palpable. *Warth v. Seldin*, 422 U.S. 490, 501 (1975). It may not be abstract, conjectural or hypothetical. *Allen v. Wright*, 468 U.S. 737, 741 (1984).

29. Defendant cannot present an actual or imminent injury that is fairly traceable to the Plaintiff's conduct and redressable by (non-judicial foreclosure) a favorable ruling. *Davis v. Fed Election Comm'n,* 128 S.Ct. 2759 (2008).

30. The standing question is a threshold issue, required before a court may entertain a suit (removal of this injunction). *Warth v. Seldin,* 422 U.S. 490, 495 (1975).

31. Consequently, standing consists of two absolutely essential elements (**THAT ARE MISSING FROM THE INSTANT CASE**): (A) violation of a legal right, and (B) personal injury caused by Plaintiff. Defendant has not claimed either in this matter. There is no law, statute, code or rule that will give Defendant a right to foreclose without proper and lawful standing to do so via the terms and conditions of the DEED.

## B. PRELIMINARY MORTGAGE SECURITIZATION FINDINGS FOR JENNIFER L. WILSON

32. Plaintiff has ordered a securitization audit for this matter; it is not complete.

33. However, Linda Zimmerman, a Certified Forensic Loan Auditor, has provided a Preliminary Mortgage Securitization Findings for Plaintiff (see Exhibit "3"; hereafter "Preliminary Report").

34. Ms. Zimmerman has determined that the "loan" in question has been securitized and is in a trust (Exhibit "3"; Preliminary Report, ¶ 3). This is another salient fact ***against*** Defendant as being the "Note Holder" with holder-in-due-course rights to enforce the Note.

35. Ms. Zimmerman likewise has revealed that the APPOINTMENT OF SUBSTITUTE TRUSTEE appears to be fraudulent on several fronts:

a. "Based on my personal experience, I am rather familiar with Rebecca W. Shaia. She appears to fit the classification of a "Robo-Signer," as noted in the media. I have seen her name as a trustee for MERS, a trustee for SunTrust Mortgage, Inc., as a Vice President of SunTrust Bank, and Trustee for Crestar Mortgage Corp" (Exhibit "3"; Preliminary Report, ¶ 11).

b. "The APPOINTMENT OF SUBSTITUTE TRUSTEE appears to be fraudulent. As stated, without exception in the PSA, the sale of the mortgage and note closed "on or about May 15, 2007." The Trustee as

of that time was HSBC Bank USA, NA. None of the documents filed for foreclosure reflect that protocol, but rather have been executed and filed for the sole purpose of foreclosure, which most courts in the UNITED STATES deem fraudulent" (Exhibit "3"; Preliminary Report, ¶ 13).

c. Based on the PSA and the public record, there is no proof of how SunTrust Bank became a beneficiary and obtained holder-in-due-course statue if the "loan" was in a trust. ¶ Based on my experience, and I have seen this on a frequent basis, I respectfully submit that I am of the opinion that SunTrust Bank is not the holder in due course and owner of the note and is not the legal beneficiary in this matter. ¶ This is consistent with the many news media reports of the mass creation of fraudulent documents nationwide to facilitate foreclosures, which has caused the Congress of the UNITED STATES to act (Exhibit "3"; Preliminary Report, ¶¶ 14-16).

36. Accordingly, based on the facts in the complaint, in Ms. Zimmerman's Preliminary Report and herein, Defendant did not remotely have a right to foreclose in this matter and has trespassed against the Deed of Trust. [1]

37. Hence, Plaintiff has a substantial likelihood of success on the merits of underlying case, i.e., the cause for which Plaintiff seeks an injunction is likely to be proven. Simply stated, Defendant never had standing to foreclose.

38. There is an imminent likelihood of irreparable harm, as noted above, if a temporary injunction is not issued.

39. There is an unavailability of adequate remedy at law, i.e., an award of money damages alone will not restore Plaintiff's threatened loss of home and business.

40. The threatened harm to Plaintiff clearly outweighs any possible harm to Defendant, particularly since Defendant ***is not*** the real party in interest to foreclose in the first instance.

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[1] If Plaintiff had more time, the undersigned could have supplied more issues that moreover warrant the issuance of the TRO, particularly the issue of the illegal cognovits note (Deed of Trust) that renders the whole instrument void on the face.

41. The Court granting the TRO injunction will not contravene the public interest. Actually, it is in the public interest that Plaintiff and her family not become homeless and become a stress to the County's resources.

42. Plaintiff realizes that the granting of a preliminary injunction is an extraordinary remedy that should be granted only sparingly upon presentation of adequate proof of the essential elements. Said elements have been fulfilled in this matter. Consequently, this Court should issue the TRO forthwith.

## C. NOTICE TO PARTIES OF LAWSUIT

43. On November 5, 2010, Plaintiff has informed Defendant via a VERIFIED *NOTICE* OF INTENT TO SUE of Plaintiff's intent sue for injunctive relief, damages and other relief.

44. Plaintiff will by phone, facsimile and/or email, upon notification of the Court of the date and time for the hearing, notify Defendant and counsel for Defendant, if known, of the date and time of the hearing for the EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER.

## D. CLAIM OF RIGHTS AND JUDICIAL NOTICE

45. The undersigned, as American Citizens, hereby invokes the powers and protections of the Constitution and Bill of Rights of the State of North Carolina and the Constitution and Bill of Rights of the united States of America.

46. The undersigned places the court on notice and is entitled to the due process and equal protection provisions thereof via the ***Full Faith and Credit Clause*** of Article IV, Section 1 of the United States Constitution, in this moving document.

47. The undersigned hereby invokes Judicial NOTICE that this Court accord the public statues of the United States and of every state and jurisdiction of the United States and judicial judgments/decisions of the United States and of various states and jurisdictions of the United States cited herein the full faith and credit that Article IV,

Section I of the united State Constitution commands; that the undersigned claims the due process and equal protection under those favorable statutes and judicial decisions outside of California.

48. **COPYRIGHT NOTICE**: The undersigned quoted citations "as purported in" context to copyrighted case law, statutes, rules of court and court decision material as found in books published with Federal or State funding supplied by the Citizens of the united States of America and intended for use by attorneys, and does so under the provisions of the Fair Use clause of the copyright laws of the United States (*see* 17 USC § 107).

49. All parties and officers of the court are hereby placed on NOTICE under authority of the supremacy, due process and equal protection clauses of the United States Constitution and the common law authorities of ***Hughes v. Rowe***, 449 U.S. 5 (1980); ***Haines v. Kerner***, 404 U.S. 519 (1972); ***Platsky v. C.I.A.*** 953 F.2d. 26 (2nd Cir. 1991); ***Anastasoff v. United States,*** 223 F.3d 898 (8th Cir. 2000); and ***Trinsey v. Pagliaro***, 229 F. Supp. 647, 649 (D.C. Pa. 1964) and similar cases noted herein.

50. ***Rowe*** and ***Haines*** collectively states that courts ***must not*** hold *pro se* litigants to the same standards as a lawyer of the bar regarding procedure, etc.; that courts are to "liberally construe" *pro se* litigant's submissions and to make "reasonable allowances" due to their lack of legal training. Accordingly, if there are any defects in the undersigned's moving papers, the undersigned respectfully requests that the Court interpret said defects and render a proper and just decision, or point out the defects for correction and grant permission and provide sufficient time to re-file said paperwork rather than penalizing my motion for procedure or other errors due to the undersigned's lack of legal training.

51. In ***Platsky***: a court errs if the court dismisses the *pro se* litigant without instruction of how pleadings are deficient and how to repair pleadings.

52. Regarding ***Anastasoff***: The undersigned hereby invokes the powers and protections of ***Anastasoff***, Part II and Part III of the decision especially, wherein it speaks to the historical underpinnings of the Doctrine of Precedence. Litigants' constitutional

rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a right to have their claims adjudicated according the rule of precedent.

53. **PLEASE TAKE NOTICE: An attorney cannot testify or authenticate evidence for its client**: An attorney's affirmation or testimony generally cannot advance substantive proof. Moreover, counsel for Plaintiff cannot testify or plea for its client[2] nor can counsel authenticate any document in this case regarding the alleged mortgage transaction since counsel has no personal knowledge of any alleged transaction in this matter. See, e.g., ***Key Bank of Me. v. Lisi***, 225 AD2d 669, 669 (2d Dept 1996) ("affirmation of . . . attorney who had no personal knowledge of the facts . . . did not constitute proof in admissible form and it [is] without evidentiary value")).

54. The Court must strike any alleged fact advanced by counsel that is not supported by an affidavit or other authenticated document(s) from Plaintiff or by Plaintiff's corporate representative that is a competent fact witness with personal knowledge of the claims, facts and documents (to authenticate) employed by Plaintiff in this matter. substantive proof. Moreover, counsel for Plaintiff cannot testify or plea for its client[3] nor can counsel authenticate any document in this case regarding the alleged

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[2] It is well established that statements of counsel of alleged facts are not sufficient to establish facts or evidence in the case for its client. See ***Trinsey v. Pagliaro***, 229 F. Supp. 647, 649 (D.C. Pa. 1964) ("The defendants' motion to dismiss for failure to state a claim unsupported by affidavits or depositions is incomplete because it requests this Court to consider facts outside the record which have not been presented in the form required by Rules 12(b) (6) and 56(c). *Statements of counsel in their briefs or argument while enlightening to the Court are not sufficient for purposes of granting a motion to dismiss or summary judgment.*" [emphasis added]); see also, ***Loomis, In re***, 587 N.W.2d 427, 438 (S.D., 1998) ("Attorneys cannot testify on behalf of their clients"); ***Estes v. Millea***, 464 N.W.2d 616, 619 (S.D. 1990) ("[A]n attorney cannot testify on behalf of his client [citations omitted]. Further, the communication with the circuit court was not in the form of an affidavit nor under oath. It was merely argument in a trial brief. *This is clearly not evidence* and, thus, Williams' interrogatory answer stands uncontradicted. ..." [emphasis added]); ***Amos v. Cohen***, 2004-Ohio-1265, ¶7 ("Because the roles of advocate and witness are inconsistent, it is generally inappropriate for a trial attorney to testify on behalf of the client").

[3] It is well established that statements of counsel of alleged facts are not sufficient to establish facts or evidence in the case for its client. See ***Trinsey v. Pagliaro***, 229 F. Supp. 647, 649 (D.C. Pa. 1964) ("The defendants' motion to dismiss for failure to state a claim unsupported by affidavits or depositions is incomplete because it requests this Court to consider facts outside the record which have not been presented in the form required by Rules 12(b) (6) and 56(c). *Statements of counsel in their briefs or argument while enlightening to the Court are not sufficient for purposes of granting a motion to dismiss or summary judgment.*" [emphasis added]); see also, ***Loomis, In re***, 587 N.W.2d 427, 438 (S.D., 1998) ("Attorneys cannot testify on behalf of their clients"); ***Estes v. Millea***, 464 N.W.2d 616, 619 (S.D. 1990) ("[A]n attorney cannot testify on behalf of his client [citations omitted]. Further, the communication with the circuit court was not in the form of an affidavit nor under oath. It was merely argument in a

mortgage transaction since counsel has no personal knowledge of any alleged transaction in this matter. See, e.g., ***Key Bank of Me. v. Lisi***, 225 AD2d 669, 669 (2d Dept 1996) ("affirmation of . . . attorney who had no personal knowledge of the facts . . . did not constitute proof in admissible form and it [is] without evidentiary value")).

55. The Court must strike any alleged fact advanced by counsel that is not supported by an affidavit or other authenticated document(s) from Defendant or by Defendant's corporate representative that is a competent fact witness with personal knowledge of the claims, facts and documents (to authenticate) employed by Defendant in this matter.

56. The undersigned hereby claims all of their rights at all times and waives none of them at any time for any cause or reason.

57. The undersigned expressively disavows all waivers of any rights that were not made upon previous actual notice in the matters at hand.

58. That any verified declarations made by the undersigned under oath are admissible into the *evidence record in this matter and shall only be refuted by a rebuttal affidavit,* verified declarations *or by testimony in court under oath by Plaintiff or its representative with personal knowledge of the matters.*

59. Plaintiff, who is fictitious, **did not** authenticate the most crucial documents in the Complaint: The Promissory Note and the Deed-of-Trust, **which are now unlawful securities**. Accordingly, at bar, there is absolutely no valid proof before the Court to establish a valid controversy; hence, the Court is without proper constitutional subject-matter jurisdiction.

60. The undersigned hereby claims and invokes the powers, protections and benefits of the Statute of Frauds, especially where it speaks to the fact that in order to sue and receive a judgment, a claim of debt MUST BE PROVEN. The only way to prove the

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trial brief. *This is clearly not evidence* and, thus, Williams' interrogatory answer stands uncontradicted. ..." [emphasis added]); ***Amos v. Cohen***, 2004-Ohio-1265, ¶7 ("Because the roles of advocate and witness are inconsistent, it is generally inappropriate for a trial attorney to testify on behalf of the client").

existence of a debt is by evidence, in open court on the record, through the testimony, under oath, of a competent fact witness with firsthand knowledge and subject to cross examination. The alleged creditor must prove, with original documentation, that it is the Holder In Due Course and that the alleged debtor signed the document.

61. The undersigned hereby objects to any alleged/perceived claim of jurisdiction, and the undersigned dispels and disavows any and all adverse ***presumptions*** in this matter.

62. The undersigned hereby claims the Due Process right to have Findings of Fact and Conclusion of Law included and in support of any Order of this Court denying this motion. The United States Supreme Court in ***Federal Maritime Commission v. South Carolina States Ports Authority,*** 535 U.S. 743 (2002) has held, "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record" (citing ***Butz v. Economou,*** 438 U.S. 478 [1978]).

**WHEREFORE**, based on all the foregoing, Plaintiff moves the court to grant the TRO forthwith, and for such other and further relief as the Court may deem fair and just.

## VERIFICATION

Jennifer Lynn Wilson©, the only authorized signatory for JENNIFER L WILSON, hereby states, declares, verifies and affirms under penalty of perjury, under the laws of the united States of America, that Jennifer Lynn Wilson© read the foregoing and knows the contents thereof; that the same, regarding the facts advanced herein, are true and correct based on the undersigned's own knowledge to the best of the undersigned's current information, knowledge and belief pursuant to 28 U.S.C. § 1746(1) and is admissible as evidence, except as to those matters that are therein made upon information and belief, and as to those claims or facts, the undersigned believes them to be true and admissible as evidence, and if called upon as a witness, Jennifer Lynn Wilson© will testify to the veracity of her statements.

Executed: November 12, 2010

JENNIFER L WILSON

By: Jennifer Lynn Wilson©
Jennifer Lynn Wilson©, Affiant, Creditor, Settlor, Private Banker and Authorized Signatory, for JENNIFER L WILSON, ARTIFICIAL ENTITY, U.S. CORPORATE VESSEL, PRIVATE CITIZEN, TRUST, and PRIVATE BANKING ENTITY.

# EXHIBIT 1

# PROMISSORY NOTE

# EXHIBIT 1

[illegible]
LAN [illegible]
FHA [illegible]

# NOTE

January 18, 2007 | Atlanta | Georgia
[Date] | [City] | [State]

7501 PINECLIFF COURT, HARRISBURG, NC 28075
[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. $ 236,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is
SunTrust Mortgage, Inc. d/b/a Sun American Mortgage.
a Virginia Corporation
I will make all payments under this Note in the form of cash, check or money order.
I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.1500 %.
The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.
I will make my monthly payment on the 1st day of each month beginning on March 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If on February 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."
I will make my monthly payments at SunTrust Mortgage, Inc., P.O. Box 79061, Baltimore, MD 21279-0061
or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. $ 1,510.35.

**4. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.
I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under the Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

IMPORTANT: THIS NOTE WITH [illegible] CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT

[illegible]
Wachovia Mortgage Financial Services
VMP-6A(GA) (0002).01
Page 1 of 2
Form 3200 1/01
Initials: [illegible]

[illegible]
[illegible]

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 4.00 % of any overdue payment of principal and interest. I will pay the late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

[illegible]

APN# WILS00039041983
LN# 0039041983

**10. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

> If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.
>
> If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

| | |
|---|---|
| _____________________ (Seal) -Borrower | JENNIFER L WILSON (Seal) -Borrower |
| _____________________ (Seal) -Borrower | _____________________ (Seal) -Borrower |
| _____________________ (Seal) -Borrower | _____________________ (Seal) -Borrower |
| _____________________ (Seal) -Borrower | _____________________ (Seal) -Borrower |

*[Sign Original Only]*

# EXHIBIT 2

# PAGE 13 OF DEED OF TRUST

# EXHIBIT 2

BOOK 7295 PAGE 134

AP#: WILS00039041983
LN#: 0039041983

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.**

**If Lender invokes the power of sale, and if it is determined in a hearing held in accordance with Applicable Law that Trustee can proceed to sale, Trustee shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.**

**Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of** 5.000 **% of the gross sale price; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The interest rate set forth in the Note shall apply whether before or after any judgment on the indebtedness evidenced by the Note.**

**23. Release.** Upon payment of all sums secured by this Security Instrument, Lender or Trustee shall cancel this Security Instrument. If Trustee is requested to release this Security Instrument, all notes evidencing debt secured by this Security Instrument shall be surrendered to Trustee. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Substitute Trustee.** Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

**25. Attorneys' Fees.** Attorneys' fees must be reasonable.

Initials:

# EXHIBIT 3

# PRELIMINARY MORTGAGE SECURITIZATION FINDINGS FOR JENNIFER L. WILSON

EXHIBIT 3

# AFFIDAVIT OF LINDA ZIMMERMAN
# CERTIFIED FORENSIC LOAN AUDITOR

STATE OF FLORIDA )
) AS.:
COUNTY OF PALM BEACH )

I, Linda Zimmerman, a Certified Forensic Loan Auditor, makes this affidavit in support of my examination/summary for **Jennifer L. Wilson, 7801 Pinecroft Court, Harrisburg, NC 28075** (hereafter "the client") based on personal knowledge of matters set forth herein, being competent in mind and body to testify, do hereby declare, verify and affirm that the facts stated herein are true, correct, and complete in all material fact, not misrepresented based on my own knowledge to the best of my current information, knowledge and belief under the penalty of perjury, and is admissible as expert opinion evidence in a court of law or equity, except as to those matters that are therein made upon information and belief, and as to those claims or facts, I believe them to be true and admissible as expert opinion evidence, and if called upon as a witness, I will testify as to the veracity of my statements, to wit:

1. I submit the attached summary along with supporting exhibits.
2. Documents for review and verification have been supplied to me by the client and/or retrieved from public record.
3. I have, to the best of my ability, examined the documents, questioned authorization of signatories and their legal right to sign pertinent documents.
4. I have included pertinent State Laws, Federal Laws, Civil Rules of Procedure, SEC Prospectus, Trust Indenture, and all necessary documents to support the validation of all the documents that I have examined.
5. My recommendations are in no way legal advice.
6. I do strongly admonish any client to seek legal counsel in the presentation of the discovered evidence.
7. I have been active in foreclosure and mortgage documentation examination for the past three (3) years. During that time, I have met with the Florida Attorney General's local offices, Miami White Collar Crime Unit, HUD Fraud Specialists, local Post Master Generals and the then Federal Attorney for South Florida, Alexander Acosta. I have personally

turned over documents (to who), which have resulted in three open investigations.

8. I have personal knowledge and experience to render opinions on the topics of broken chain of title, notary fraud and fraud regarding foreclosure documents such as the Deed of Trust, Mortgages, Promissory Notes, Assignment of Deed of Trust, Substitution of Trustee, Notice of Default and Election to Sell under Deed of Trust, Notice of Trustee's Sale and securitization documents.
9. I became a certified forensic auditor in February 2010.
10. My certification is filed with the ***National Association of Mortgage Underwriters***, # 1451465.
11. My examinations have been relied upon by attorneys and courts around the country.
12. I submit my findings of fact and conclusions, without prejudice, and the same based are on recorded fact.
13. I will be available for telephonic interview/testimony by the Court upon sufficient notice, if necessary.

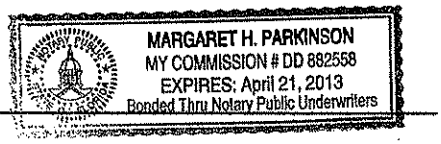
By: Linda Zimmerman

Linda Zimmerman, Certified Forensic Loan Auditor
Phone: 561-305-1543
Email: lzunlimitedsolutions@gmail.com

STATE OF FLORIDA )
) SS.: ACKNOWLEDGEMENT/JURAT
COUNTY OF PALM BEACH )

On November 9th, 2010 before me, Margaret H. Parkinson
(**Print** name of Notary)
personally appeared **Linda Zimmerman**, who proved to me on the basis of satisfactory evidence to be the ~~man~~ / woman whose name is subscribed to the within instrument and acknowledged to me that ~~he~~ / she executed the same in ~~his~~ / her authorized capacities, and that by ~~his~~ / her signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument under the penalty of perjury.
WITNESS my hand and official seal.

Signature Margaret H. Parkinson (Seal)

My commission Expires 

# PRELIMINARY MORTGAGE SECURITIZATION FINDINGS FOR JENNIFER L. WILSON

**RE:** Client: Jennifer Lynn Wilson©
Subject Property: 7801 PINECROFT COURT, HARRISBURG, NC 28075
Trustee Sale No.: 09-SP-1613
AP No.: WILSO0039041983
MIN No.: 1000104-0039041983-4
SUNTRUST MORTGAGE, INC. Account No.: 0039041983

**DISCLAIMER TO CLIENT:** The content of this report is for informational purposes only and is not to be construed as giving "legal advice." The client is strongly advised to seek legal consultation from a competent legal professional in connection with the content of this report and how to properly use it.

I, Linda Zimmerman, a Certified Forensic Loan Auditor, have commenced my examination of the pertinent documents and have the following points of fact as listed below regarding SUNTRUST MORTGAGE, INC. Account No.: 0039041983.

1. I started by an examination of the securitization issue. I was able to determine that SunTrust Mortgage, Inc. does indeed securitize its loans. This is substantiated by the fact that it is listed on MERS. See Exhibit "A."
2. Referring to the MERS ID Servicer, the homeowner is often able to see the "Investor" or Trustee of their loan. Unfortunately the Trustee has chosen not to reveal itself on the MERS website. See Exhibit "B."
3. I have been able to determine, by the identifying factors/markers, that the Trust for this loan is: **"SunTrust Acquisition Closed-End Second Trust, Series 2007-1."** See Exhibit "C."
4. Verification of the exact Trust will take up to 30 days to complete, however, the Master Trust is used in all like Trusts, and is essentially the same.
5. The important parts of the 300-plus page filing is the ***Pooling and Service Agreement*** (hereafter "PSA "). The PSA here identifies the parties in this securitization. See Exhibit "D". The flow chart filed helps to understand just how many parties are involved in this sale to a Trust. See Exhibit "E."
6. The "Assignment of the Mortgage Loans" states that "Assignment" takes place on the closing date, on or about May 15, 2007, and in the order defined. See Exhibit "F."
7. According to the entire PSA, the assignments would be as follows:
    a. Originator to Sponsor
    b. Sponsor to Depositor
    c. Depositor to Trust

    ***THUS, the parties are***

d. SunTrust Mortgage Inc. (Originator ) to SunTrust Asset Funding, LLC (Sponsor)
e. SunTrust Asset Funding, LLC (Sponsor) to ACE Securities Corp. (Depositor)
f. ACE Securities Corp. (Depositor) to SunTrust Acquisition Closed-End Seconds Trust, Series 2007-1 (Trust)

8. This is an important point/feature, as it is proof positive that ANY assignment of the mortgage or endorsement on the note ***must*** be in that order and with the parties listed. Any assignment or endorsement made AFTER that date OR not in the order shown is FRAUDULENT.
9. In addition to this, the PSA makes two interesting statements, both showing that default is expected because of the state, and federal violations of lending laws. See Exhibits "G and "H".

**PRELIMINARY EXAMINATION OF FILED DOCUMENTS**

10. Regarding the APPOINTMENT OF SUBSTITUTE TRUSTEE, I have not been able to verify the position of the signer, Rebecca W. Shaia, allegedly of SunTrust Bank. See Exhibit "I."
11. Based on my personal experience, I am rather familiar with Rebecca W. Shaia. She appears to fit the classification of a "Robo-Signer," as noted in the media. I have seen her name as a trustee for MERS, a trustee for SunTrust Mortgage, Inc., as a Vice President of SunTrust Bank, and Trustee for Crestar Mortgage Corp. I will provide the proof of my memory in the final report.
12. Preliminarily, there appears to be a conflict of interest regarding the law firm of THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A. and the Substitute Trustee, SUBSTITUTE TRUSTEE SERVICES, INC., both of which have the same address of 4317 RAMSEY STREET, FAYETTEVILLE, NC 28311.
13. The APPOINTMENT OF SUBSTITUTE TRUSTEE appears to be fraudulent. As stated, without exception in the PSA, the sale of the mortgage and note closed "on or about May 15, 2007." The Trustee as of that time was HSBC Bank USA, NA. None of the documents filed for foreclosure reflect that protocol, but rather have been executed and filed for the sole purpose of foreclosure, which most courts in the UNITED STATES deem fraudulent.
14. Based on the PSA and the public record, there is no proof of how SunTrust Bank became a beneficiary and obtained holder-in-due-course statue if the "loan" was in a trust.
15. Based on my experience, and I have seen this on a frequent basis, I respectfully submit that I am of the opinion that SunTrust Bank is not the holder in due course and owner of the note and is not the legal beneficiary in this matter.
16. This is consistent with the many news media reports of the mass creation of fraudulent documents nationwide to facilitate foreclosures, which has caused the Congress of the UNITED STATES to act.

17. I have enclosed documentation of the action being taken by the State Attorney Generals in all 50 states, and I also included a sample of the investigation opened against a leading foreclosure firm in Florida.
18. As an underwriter, it is my obligation to report the client's case to the North Carolina State Attorney's Office as one of these examples of Fraud.
19. My verification process ***has not*** been completed. In lieu of the full report, I submit this preliminary report of my findings that convinces me that SunTrust Bank is not the real party in interest to foreclose on the client's property. Due to the pressing time constraints and circumstances of the client to attempt to stop an eviction, I will submit such information as I receive it to produce a full report.

By: Linda Zimmerman

Linda Zimmerman, Certified Forensic Loan Auditor
Phone: 561-305-1543
Email: lzunlimitedsolutions@gmail.com

| | |
|---|---|
| Corporate Name: | SunTrust Mortgage, Inc. |
| Address: | 1001 Semmes Avenue |
| City,State,Zip: | Richmond, VA 23224-2270 |
| Toll Free Number: | |
| Direct Number: | (800) 634-7928 |
| Fax Number: | (804) 291-0115 |
| Primary Contact: | Doyle L Mitchell |
| Website: | http://www.suntrustmortgage.com |
| Member Org ID: | 1000104 |
| Lines Of Business: | Originator, Servicer, Subservicer, Investor, Document Custodian, MERS 1-2-3 |
| eRegistry Participant: | No |
| eDelivery Participant: | No |

Back To Member Search

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Exhibit "A"

MERS ServicerID
www.mers-servicerid.org
Process Loans, Not Paperwork™

# 1 record matched your search:

Need help?

MIN:1000104-0039041983-4 Note Date:01/18/2007 MIN Status:Active

Servicer: SunTrust Mortgage, Inc. Phone:(800) 634-7928

Richmond, VA

Investor: This investor has chosen not to display their information. For assistance, please contact the servicer.

Return to Search

For more information about MERS please go to www.mersinc.org

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Exhibit "B"

U.S. Securities and Exchange Commission

Search the Next-Generation EDGAR System

Search Results

- SEC Home »
- Search the Next-Generation EDGAR System »
- Company Search »
- Current Page

Mailing Address 6525 MORRISON BLVD SUITE 318 CHARLOTTE NC 28211
Business Address 6525 MORRISON BLVD SUITE 318 CHARLOTTE NC 28211 7043650569
SunTrust Acquisition Closed-End Security Trust, Series 2007-1 CIK#: (000) 397976 (see all company filings)

SIC: 6189 - ASSET-BACKED SECURITIES
State location: NC | State of Inc.: DE | Fiscal Year End: 1231
(Assistant Director Office No 5)

Filter Results: | Filing Type: | Prior to: (YYYYMMDD) | Ownership? include exclude only | Limit Results Per Page: 40 Entries | Search | Show All

Items 1 - 22 RSS Feed

| Filings | Format | Description | Filing Date | File/Film Number |
|---|---|---|---|---|
| 10-K | Documents | Annual report [Section 13 and 15(d), not S-K Item 405] Acc-no: 0001056404-08-001115 (34 Act) Size: 140 KB | 2008-03-31 | 333-131727-30 08722703 |
| 15-15D | Documents | Suspension of duty to report [Section 13 and 15(d)] Acc-no: 0001056404-08-000393 (34 Act) Size: 4 KB | 2008-01-25 | 333-141008-02 08550450 |
| 10-D | Documents | Asset-Backed Issuer Distribution Report [Section 13 or 15(d) of the Securities Exchange Act of 1934] Acc-no: 0001056404-08-000199 (34 Act) Size: 124 KB | 2008-01-07 | 333-131727-30 08515892 |

| | | | | |
|---|---|---|---|---|
| 10-D | Documents | Asset-Backed Issuer Distribution Report [Section 13 or 15(d) of the Securities Exchange Act of 1934] Acc-no: 0001056404-07-004039 (34 Act) Size: 123 KB | 2007-12-10 | 333-131727-30 071295198 |
| 10-D | Documents | Asset-Backed Issuer Distribution Report [Section 13 or 15(d) of the Securities Exchange Act of 1934] Acc-no: 0001056404-07-003537 (34 Act) Size: 100 KB | 2007-11-06 | 333-131727-30 071217265 |
| 10-D | Documents | Asset-Backed Issuer Distribution Report [Section 13 or 15(d) of the Securities Exchange Act of 1934] Acc-no: 0001056404-07-003304 (34 Act) Size: 86 KB | 2007-10-05 | 333-131727-30 071160277 |
| 10-D | Documents | Asset-Backed Issuer Distribution Report [Section 13 or 15(d) of the Securities Exchange Act of 1934] Acc-no: 0001056404-07-002828 (34 Act) Size: 92 KB | 2007-09-06 | 333-131727-30 071101474 |
| 8-K | Documents | Current report, items 2.01 and 9.01 Acc-no: 0001144204-07-046115 (34 Act) Size: 5 MB | 2007-08-23 | 333-131727-30 071075965 |
| 10-D | Documents | Asset-Backed Issuer Distribution Report [Section 13 or 15(d) of the Securities Exchange Act of 1934] Acc-no: 0001056404-07-002592 (34 Act) Size: 92 KB | 2007-08-07 | 333-131727-30 071030772 |
| 10-D | Documents | Asset-Backed Issuer Distribution Report [Section 13 or 15(d) of the Securities Exchange Act of 1934] Acc-no: 0001056404-07-002317 (34 Act) Size: 90 KB | 2007-07-05 | 333-131727-30 07963935 |
| 10-D/A | Documents | **[Amend]**Asset-Backed Issuer Distribution Report [Section 13 or 15(d) of the Securities Exchange Act of 1934] Acc-no: 0001056404-07-002165 (34 Act) Size: 66 KB | 2007-06-21 | 333-131727-30 07933126 |
| 10-D | Documents | Asset-Backed Issuer Distribution Report [Section 13 or 15(d) of the Securities Exchange Act of 1934] Acc-no: 0001056404-07-002088 (34 Act) Size: 66 KB | 2007-06-07 | 333-131727-30 07906811 |
| 424B5 | Documents | Prospectus [Rule 424(b)(5)] | 2007- | 333-141008-02 |

| | | | | | |
|---|---|---|---|---|---|
| | | Acc-no: 0001144204-07-030469 (33 Act) Size: 4 MB | | 06-06 | 07902917 |
| 424B5 | Documents | Prospectus [Rule 424(b)(5)] Acc-no: 0001144204-07-026161 (33 Act) Size: 4 MB | | 2007-05-16 | 333-141008-02 07855638 |
| 8-K | Documents | Current report, item 9.01 Acc-no: 0001144204-07-026065 (34 Act) Size: 84 KB | | 2007-05-15 | 333-131727-30 07854983 |
| 424B2 | Documents | Prospectus [Rule 424(b)(2)] Acc-no: 0001144204-07-024588 (33 Act) Size: 4 MB | | 2007-05-11 | 333-141008-02 07843188 |
| 8-K | Documents | Current report, items 8.01 and 9.01 Acc-no: 0001144204-07-024585 (34 Act) Size: 50 KB | | 2007-05-11 | 333-131727-30 07843156 |
| 8-K | Documents | Current report, items 6.01, 8.01, and 9.01 Acc-no: 0001144204-07-024581 (34 Act) Size: 19 MB | | 2007-05-11 | 333-131727-30 07843133 |
| 8-K | Documents | Current report, items 6.01, 8.01, and 9.01 Acc-no: 0001144204-07-024580 (34 Act) Size: 430 KB | | 2007-05-11 | 333-131727-30 07843095 |
| 8-K | Documents | Current report, items 6.01 and 9.01 Acc-no: 0001144204-07-022859 (34 Act) Size: 19 MB | | 2007-05-04 | 333-131727-30 07820820 |
| 8-K | Documents | Current report, items 6.01, 8.01, and 9.01 Acc-no: 0001144204-07-022029 (34 Act) Size: 431 KB | | 2007-05-02 | 333-131727-30 07808062 |
| FWP | Documents | Filing under Securities Act Rules 163/433 of free writing prospectuses Acc-no: 0001144204-07-021716 (34 Act) Size: 196 KB | | 2007-05-01 | 333-131727-30 07803016 |

http://www.sec.gov/cgi-bin/browse-edgar

## SUMMARY OF PROSPECTUS SUPPLEMENT

The following summary is a brief discussion of the important features of the certificates offered by this prospectus supplement and the accompanying prospectus but does not contain all of the information that you should consider in making your investment decision. To understand the terms of the Offered Certificates, carefully read this entire prospectus supplement and the entire accompanying prospectus.

| | |
|---|---|
| Issuing Entity | SunTrust Acquisition Closed-End Seconds Trust, Series 2007-1. |
| Title of Series | SunTrust Acquisition Closed-End Seconds Trust, Series 2007-1 Asset Backed Pass-Through Certificates. |
| Cut-off Date | April 1, 2007. |
| Closing Date | On or about May 15, 2007. |
| Depositor | ACE Securities Corp., a Delaware corporation. *See "The Depositor" in this prospectus supplement.* |
| Originators | American Home Mortgage Corp., a New York corporation, originated or acquired approximately 67.81% of the mortgage loans and New Century Mortgage Corporation, a California corporation, originated or acquired approximately 10.29% of the mortgage loans, in each case, by aggregate principal balance as of the Cut-off Date. The remainder of the mortgage loans were originated or acquired by various originators, none of which have originated more than 10% of the mortgage loans. *See "The Originators" in this prospectus supplement.* |
| Sponsor | SunTrust Asset Funding, LLC, a Delaware limited liability company. *See "The Sponsor" in this prospectus supplement.* |
| Master Servicer | Wells Fargo Bank, National Association, a national banking association. *See "The Securities Administrator and The Master Servicer" in this prospectus supplement.* |
| Servicer and Interim Seller | GMAC Mortgage, LLC, a Delaware limited liability company. *See "Servicing of the Mortgage Loans" in this prospectus supplement.* |
| Trustee | HSBC Bank USA, National Association, a national banking association, will be the trustee of the trust and the supplemental interest trust. *See "The Trustee" in this prospectus supplement.* |
| Securities Administrator | Wells Fargo Bank, National Association. *See "The Securities Administrator and The Master Servicer" in this prospectus supplement.* |



| | |
|---|---|
| Custodian | Deutsche Bank National Trust Company. *See "The Custodian" in this prospectus supplement.* |



Exhibit "D"

424B2 1 v074486_424b2.htm

The information in this preliminary prospectus supplement is not complete and may be changed. This preliminary prospectus supplement is not an offer to sell these securities and it is not a solicitation of an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED MAY 9, 2007

Preliminary Prospectus Supplement dated May 9, 2007 (to Prospectus dated May 9, 2007)

**$350,637,000 (Approximate)**

**SunTrust Acquisition Closed-End Seconds Trust, Series 2007-1**
Asset Backed Pass-Through Certificates

**SunTrust Acquisition Closed-End Seconds Trust, Series 2007-1**
Issuing Entity

**SunTrust Asset Funding, LLC**
Sponsor

**ACE Securities Corp.**
Depositor

**GMAC Mortgage, LLC**
Servicer

**Wells Fargo Bank, National Association**
Master Servicer and Securities Administrator

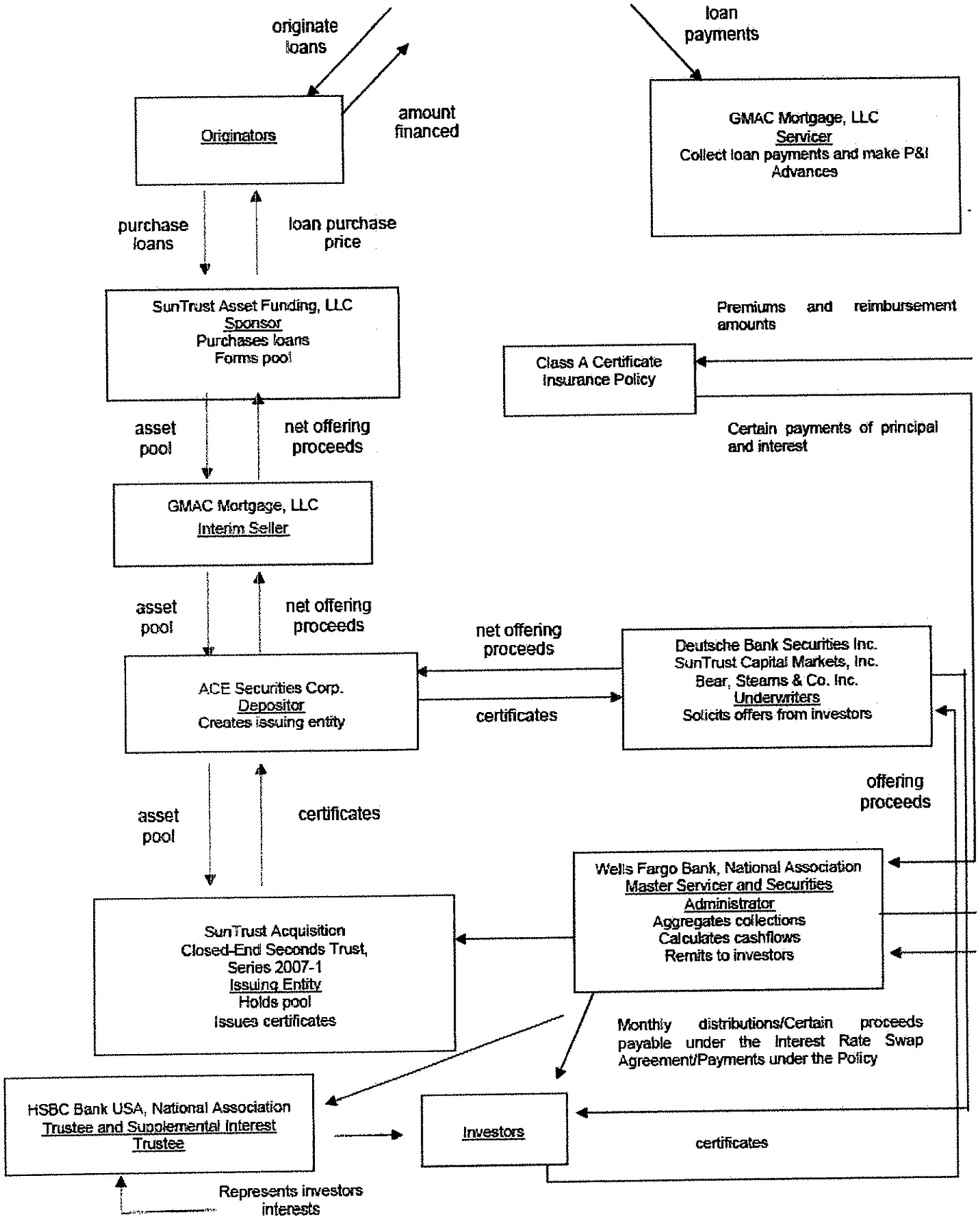

originate loans
amount financed
Originators
loan payments
GMAC Mortgage, LLC
Servicer
Collect loan payments and make P&I Advances
purchase loans
loan purchase price
SunTrust Asset Funding, LLC
Sponsor
Purchases loans
Forms pool
Premiums and reimbursement amounts
Class A Certificate Insurance Policy
Certain payments of principal and interest
asset pool
net offering proceeds
GMAC Mortgage, LLC
Interim Seller
asset pool
net offering proceeds
net offering proceeds
certificates
ACE Securities Corp.
Depositor
Creates issuing entity
Deutsche Bank Securities Inc.
SunTrust Capital Markets, Inc.
Bear, Stearns & Co. Inc.
Underwriters
Solicits offers from investors
offering proceeds
asset pool
certificates
Wells Fargo Bank, National Association
Master Servicer and Securities Administrator
Aggregates collections
Calculates cashflows
Remits to investors
SunTrust Acquisition
Closed-End Seconds Trust, Series 2007-1
Issuing Entity
Holds pool
Issues certificates
Monthly distributions/Certain proceeds payable under the Interest Rate Swap Agreement/Payments under the Policy
HSBC Bank USA, National Association
Trustee and Supplemental Interest Trustee
Investors
certificates
Represents investors interests



Exhibit "E"

**Assignment of the Mortgage Loans**

On the Closing Date, the Depositor will transfer to the trust all of its right, title and interest in and to each Mortgage Loan, the related mortgage note, mortgage, assignment of mortgage in recordable form in blank and other related documents (collectively, the "Related Documents"), including all scheduled payments with respect to each such Mortgage Loan due after the Cut-off Date. The Trustee, concurrently with such transfer, will deliver the certificates to the Depositor. Each Mortgage Loan transferred to the trust will be identified on a schedule (the "Mortgage Loan Schedule") delivered to the Trustee and the Servicer pursuant to the Pooling and Servicing Agreement. The Mortgage Loan Schedule will include information such as the principal balance of each Mortgage Loan as of the Cut-off Date, its Mortgage Rate as well as other information with respect to each Mortgage Loan.

Exhibit "F"

**Violation of consumer protection laws may result in losses on the mortgage loans, the contracts and your securities.**

Applicable state laws generally regulate interest rates and other charges, require certain disclosure, and require licensing of the originators. In addition, other state laws, public policy and general principles of equity relating to the protection of consumers, unfair and deceptive practices and debt collection practices may apply to the origination, servicing and collection of the mortgage loans and contracts.

The mortgage loans are also subject to federal laws, including:

□□ the Federal Truth-in-Lending Act and Regulation Z promulgated thereunder, which require certain disclosures to the mortgagors regarding the terms of the mortgage loans or contracts;

□□ the Equal Credit Opportunity Act and Regulation B promulgated thereunder, which prohibit discrimination on the basis of age, race, color, sex, religion, marital status, national origin, receipt of public assistance or the exercise of any right under the Consumer Credit Protection Act, in the extension of credit;

□□ the Fair Credit Reporting Act, which regulates the use and reporting of information related to the mortgagor's credit experience; and

□□ the Depository Institutions Deregulation and Monetary Control Act of 1980, which preempts certain state usury laws.

Violations of certain provisions of these federal and state laws may limit the ability of the servicer to collect all or part of the principal of or interest on the related mortgage loans or contracts and in addition could subject the trust to damages and administrative enforcement. In particular, the failure of the originators to comply with certain requirements of the Federal Truth-in-Lending Act, as implemented by Regulation Z, could subject the trust to monetary penalties, and result in the mortgagors' rescinding the mortgage loans or contracts against the issuing entity. In addition to federal law, some states have enacted, or may enact, laws or regulations that prohibit inclusion of some provisions in mortgage loans or contracts that have interest rates or origination costs in excess of prescribed levels, and require that mortgagors be given certain disclosures prior to the consummation of the mortgage loans or contracts and restrict the servicer's ability to foreclose in response to mortgagor defaults. The failure of the originators to comply with these laws could subject the trust to significant monetary penalties, could result in the mortgagors rescinding the mortgage loans or contracts against the trust and/or limit the servicer's ability to foreclose upon the related mortgaged properties in the event of mortgagor defaults.



The sponsor will represent that each mortgage loan is in compliance with applicable federal and state laws and regulations. In the event of a breach of such representation, the sponsor will be obligated to cure such breach or repurchase or replace the affected mortgage loan in the manner described in the prospectus. If the sponsor is unable or otherwise fails to satisfy such obligations, the yield on the may be materially and adversely affected.

Exhibit "G"

**The Mortgage Loans were underwritten to standards which do not conform to the standards of Fannie Mae or Freddie Mac.**

The underwriting standards of the originators are intended to assess the ability and willingness of the mortgagor to repay the debt and to evaluate the adequacy of the property as collateral for the mortgage loan. The originators consider, among other things, a mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the value, type and use of the mortgaged property. As further described in this prospectus supplement, the underwriting standards of the originators do not conform to Fannie Mae and Freddie Mac guidelines.

In addition, mortgage loans originated by the originators generally bear higher rates of interest than mortgage loans originated in accordance with Fannie Mae and Freddie Mac guidelines and may experience rates of delinquency, foreclosure and bankruptcy that are higher, and that may be substantially higher, than those experienced by mortgage loans underwritten in accordance with Fannie Mae and Freddie Mac guidelines.

Furthermore, changes in the values of mortgaged properties may have a greater effect on the delinquency, foreclosure, bankruptcy and loss experience of the Mortgage Loans than on mortgage loans originated in accordance with Fannie Mae and Freddie Mac guidelines. No assurance can be given that the values of the related mortgaged properties have remained or will remain at the levels in effect on the dates of origination of the related Mortgage Loans. *See "The Mortgage Pool---Underwriting Standards"* in this prospectus supplement.



Exhibit "H"

8966
0122

FILED
CABARRUS COUNTY NC
LINDA F. McABEE
REGISTER OF DEEDS

| | |
|---|---|
| FILED | Nov 18, 2009 |
| AT | 10:17 am |
| BOOK | 08966 |
| START PAGE | 0122 |
| END PAGE | 0123 |
| INSTRUMENT # | 28743 |
| EXCISE TAX | $0.00 |

**NORTH CAROLINA**

**CABARRUS COUNTY**

**APPOINTMENT OF SUBSTITUTE TRUSTEE**

Prepared by: The Law Firm of Hutchens, Senter & Britton, P.A.
Mail To: P.O. Box 1028
Fayetteville, NC 28302

HSB No: FC-1020910

TAKE NOTICE THAT WHEREAS, Jennifer L. Wilson, on the 18th day of January, 2007, executed a Promissory Note and to secure the note Jennifer L. Wilson executed a Deed of Trust to State Street Title Group, LLC, Trustee(s) (the "Original Trustee"), which Deed of Trust was recorded in Book 7295, Page 122, Cabarrus County Registry, North Carolina; and

WHEREAS, SunTrust Bank is the holder of the Note evidencing the entire indebtedness secured by the aforesaid Deed of Trust and desires to substitute Substitute Trustee Services, Inc., or its successor in interest, as Trustee pursuant to the authority granted by N.C.G.S. 45-10 and as provided for by the Deed of Trust.

NOW, THEREFORE, the original Trustee and any successive Trustee, if any, are hereby removed as Trustee and Substitute Trustee Services, Inc., or its successor in interest, is hereby substituted and appointed as Substitute Trustee in the place and stead of the Original Trustee or any successive Trustee previously appointed as provided for by N.C.G.S. 45-10 and the Deed of Trust. Substitute Trustee Services, Inc., or its successor in interest, is hereby vested with all of the rights, powers and privileges of the Original Trustee.

In the event the Note Holder becomes the last and highest bidder at the foreclosure sale, the Substitute Trustee is hereby authorized, appointed and directed to transfer and assign the bid and to convey title to the property, which is foreclosed upon, to the Secretary of Veterans Affairs, the Secretary of Housing and Urban Development, or to whomsoever the undersigned Note Holder shall authorize and direct. The Substitute Trustee shall recite in the Trustee's Deed that the undersigned Note Holder has requested that the bid be assigned to the Grantee and such recital shall be conclusive and sufficient evidence of the Substitute Trustee's authorization to assign the bid which may be relied upon by the assignee or any other party.

Exhibit "I"

8966
0123

IN WITNESS WHEREOF, SunTrust Bank has caused this instrument to be executed by its duly authorized officers the 21 day of October, 2009.

SUNTRUST BANK

BY: _____
Name: Rebecca W. Shaia
Title: Vice President

**********

STATE OF VIRGINIA

CITY OF RICHMOND

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Rebecca W. Shaia, Vice President
*Name(s) of Principal(s)*

Date: October 21, 2009

_____
*Official Signature of Notary*
Ashley N. Bennett

_____, Notary Public
*Notary Public printed or typed name*

*(Official Seal)*

My commission expires: Jul. 31, 2013

ASHLEY N. BENNETT
Notary Public
Commonwealth of Virginia
7285058
My Commission Expires Jul 31, 2013

# Officials In 50 States Launch Foreclosure Probe

by The Associated Press

October 13, 2010

Officials in 50 states and the District of Columbia have launched a joint investigation into allegations that mortgage companies mishandled documents and broke laws in foreclosing on hundreds of thousands of homeowners.

The states' attorneys general and bank regulators will examine whether mortgage company employees made false statements or prepared documents improperly.

Alabama initially did not sign on to the investigation. It reversed course after the joint statement was released.

Attorneys general have taken the lead in responding to a nationwide scandal that's called into question the accuracy and legitimacy of documents that lenders relied on to evict people from the homes. Employees of four large lenders have acknowledged in depositions that they signed off on foreclosure documents without reading them.

The allegations raise the possibility that foreclosure proceedings nationwide could be subject to legal challenge. Some foreclosures could be overturned. More than 2.5 million homes have been lost to foreclosure since the recession started in December 2007, according to RealtyTrac Inc.

The state officials said they intend to use their investigation to fix the problems that surfaced in the mortgage industry.

"This is not simply about a glitch in paperwork," said Iowa Attorney General Tom Miller, who is leading the probe. "It's also about some companies violating the law and many people losing their homes."

Ally Financial Inc.'s GMAC Mortgage Unit, Bank of America and JPMorgan Chase & Co. already have halted some questionable foreclosures. Other banks, including Citigroup Inc. and Wells Fargo & Co. have not stopped processing foreclosures, saying they did nothing wrong.

In a joint statement, the officials said they would review evidence that legal documents were signed by mortgage company employees who "did not have personal knowledge of the facts asserted in the documents. They also said that many of those documents appear to have been signed without a notary public witnessing that signature - a violation of most state laws.

"What we have seen are not mere technicalities," said Ohio Attorney General Richard Cordray. "This is about the private property rights of homeowners facing foreclosure and the integrity of our court system, which cannot enter judgments based on fraudulent evidence."

**STATE OF FLORIDA**
**OFFICE OF THE ATTORNEY GENERAL**
**DEPARTMENT OF LEGAL AFFAIRS**

---

**ECONOMIC CRIMES**
**INVESTIGATIVE SUBPOENA DUCES TECUM**

---

IN THE INVESTIGATION OF: **Law Offices of David J. Stern**
900 S. Pine Island Road
Suite 400
Plantation, Florida 33324

TO: **Attention: REGISTERED AGENT and RECORDS CUSTODIAN**
**David J. Stern**
900 S. Pine Island Road
Suite 400
Plantation, Florida 33324

(or any other lawful address of service)

This investigative Subpoena Duces Tecum is issued pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, in the course and authority of an official investigation. The general purpose and scope of this investigation extends to possible unfair and deceptive trade practices which involve the advertising and marketing practices of the above named recipient. Your attention is directed to Sections 501.204 and 501.206, Florida Statutes, printed at the back of this document.

**YOU ARE HEREBY COMMANDED** to produce all documentary material and other tangible evidence as described herein, that is in your possession, custody or control, or in the possession custody or control of your agents or employees, and to make it available for inspection and copying or reproduction before Assistant Attorney Generals, June M. Clarkson and Theresa B. Edwards and/or their designated representative on **Wednesday August 25, 2010 at 1:00 pm** at the following location:

DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
Attention: David J. Stern
110 S.E. 6th Street, 10th Floor
Fort Lauderdale, Florida 33301

**Alternatively, deliver copies of the same on Wednesday August 25, 2010 by Federal Express or other overnight courier by, with your cover letter itemizing all enclosures.**

ANY PERSON OR ARTIFICIAL ENTITY FAILING TO RESPOND WILL BE SUBJECT TO LEGAL ACTION.

ALL DOCUMENTS TO BE DELIVERED IN ELECTRONIC FORM.

## DEFINITIONS AND INSTRUCTIONS

"You" or "Your" as used herein means any of the respondents, their agents and employees or any "affiliate" of the aforementioned entities, as that term is herein defined. Your agents include but are not limited to your officers, directors, attorneys, accountants, CPA's, advertising consultants, or advertising account representatives. Any document in the possession of you, your affiliates, your agents or your employees is deemed to be within your possession or control. You have the affirmative duty to contact your agents, affiliates and employees and to obtain documentation from them, if such documentation is responsive to this subpoena.

B. Unless otherwise indicated, documents to be produced pursuant to this subpoena should include all original documents prepared, sent, dated, received, in effect, or which otherwise came into existence at any time. If your "original" is a photocopy, then the photocopy would be and should be produced as the original.

C. This subpoena duces tecum calls for the production of all responsive documents in your possession, custody or control without regard to the physical location of said documents.

D. "And" and "or" are used as terms of inclusion, not exclusion.

E. The documents to be produced pursuant to each request should be segregated and specifically identified to indicate clearly the particular numbered request to which they are responsive.

F. In the event that you seek to withhold any document on the basis that is properly entitled to some privilege or limitation, please provide the following information:

1. A list identifying each document for which you believe a limitation exists;

2. The name of each author, writer, sender or initiator of such document or thing, if any;

3. The name of each recipient, addressee or party for whom such document or thing was intended, if any;

4. The date of such document, if any, or an estimate thereof so indicated if no date appears on the document;

5. The general subject matter as described in such document, or, if no such description appears, then such other description sufficient to identify said document; and

6. The claimed grounds for withholding the document, including, but not limited to, the nature of any claimed privilege and grounds in support thereof.

G. For each request, or part thereof, which is not fully responded to pursuant to a privilege, the nature of the privilege and grounds in support thereof should be fully stated.

H. If you possess, control or have custody of no documents responsive to any of the numbered requests set forth below, state this fact in your response to said request.

I. For purposes of responding to this subpoena, the term "document" shall mean all writings or stored data or information of any kind, in any form, including the originals and all non-identical copies, whether different from the originals by reason of any notation(s) made on such copies or otherwise, including, without limitation: correspondence, notes, letters, telegrams, minutes, certificates, diplomas, contracts, franchise agreements and other agreements, brochures, pamphlets, forms, scripts, reports, studies, statistics, inter-office and intra-office communications, training materials, analyses, memoranda, statements,

summaries, graphs, charts, tests, plans, arrangements, tabulations, bulletins, newsletters, advertisements, computer printouts, teletype, telefax, microfilm, e-mail, electronically stored data, price books and lists, invoices, receipts, inventories, regularly kept summaries or compilations of business records, notations of any type of conversations, meetings, telephone or other communications, audio and videotapes; electronic, mechanical or electrical records or representations of any kind (including without limitation tapes, cassettes, discs, magnetic tapes, hard drives and recordings – to include each document translated, if necessary, through detection devices into reasonably usable form).

J. For purposes of responding to this subpoena, the term "affiliate" shall mean: a corporation, partnership, business trust, joint venture or other artificial entity which effectively controls, or is effectively controlled by you, or which is related to you as a parent or subsidiary or sibling entity. "Affiliate" shall also mean any entity in which there is a mutual identity of any officer or director. "Effectively controls" shall mean having the status of owner, investor (if 5% or more of voting stock), partner, member, officer, director, shareholder, manager, settlor, trustee, beneficiary or ultimate equitable owner as defined in Section 607.0505(11)(e), Florida Statutes.

K. The term "Florida affiliates" shall mean those of your affiliates which do business in Florida or which are licensed to do business in Florida.

L. If production of documents or other items required by this subpoena would be, in whole or in part, unduly burdensome, or if the response to an individual request for production may be aided by clarification of the request, contact the Assistant Attorney General who

issued this subpoena to discuss possible amendments or modifications of the subpoena, within five (5) days of receipt of same.

M. Unless otherwise specified, the pertinent time period is January 1, 2008 to the present date (hereinafter "pertinent time period") and all questions pertain solely to that narrow time period.

N. Documents maintained in electronic form must be produced in their native electronic form with all metadata intact. Data must be produced in the data format in which it is typically used and maintained. Moreover, to the extent that a responsive Document has been electronically scanned (for any purpose), that Document must be produced in an Optical Character Recognition (OCR) format and an opportunity provided to review the original Document. In addition, documents that have been electronically scanned must be in black and white and should be produced in a Group IV TIFF Format (TIF image format), with a Summation format load file (dii extension). DII Coded data should be received in a **(Comma-Separated Values) CSV format with a pipe (|) used for multi-value fields.** Images should be single page TIFFs, meaning one TIFF file for each page of the Document, not one .tiff for each Document. If there is no text for a text file, the following should be inserted in that text file: "Page Intentionally Left Blank." Moreover, this Subpoena requires all objective coding for the production, to the extent it exists.

For electronic mail systems using Microsoft Outlook or LotusNotes, provide all responsive emails and, if applicable, email attachments and any related Documents, in their native file format (i.e., .pst for Outlook personal folder, .nsf for LotusNotes). For

all other email systems, provide all responsive emails and, if applicable, email attachments and any related Documents in OCR and TIFF formats as described above.

**YOU ARE HEREBY COMMANDED** to produce at said time and place all documents, as defined above, relating to the following subjects:

1. A list of all employees, independent contractors and/or subcontractors of the Law Offices of David J. Stern (DJS) for the past 5 years (former and current employees, independent contractors and/or subcontractors) including their job title(s), their duties and responsibilities and the length of their employment with DJS, including any contracts DJS has or had with them.
2. For the past five years, the names and addresses of any and all lawyers and/or law firms that DJS hires/uses throughout the State to represent their clients in foreclosure cases and in what capacity said lawyers/law firms serve DJS, including any contracts between DJS and the lawyer(s) and/or law firm(s).
3. The names and addresses of the lending institutions that DJS has represented in foreclosure cases over the past 5 years, including any contracts between DJS and said institutions.
4. The names and addresses of any and all companies used by DJS to draft and/or execute Assignments of Mortgage or Affidavits for the past 5 years, including any contracts between the lending institutions and DJS allowing for the use of the companies to draft and/or execute said Assignments of Mortgage.
5. The names and addresses of any and all persons and/or companies hired and/or used by DJS to perfect service of process on foreclosure defendants for the past 5 years,

including their relationship to DJS and/or David J. Stern, individually including any and all contracts between the person or persons and/or company and DJS.

6. The names and addresses of any and all servicing companies DJS represents or represented for the past 5 years.

7. For the past 5 years, the names and addresses of any corporations, companies, partnerships or associations that David J. Stern and/or DJS has any interest in, including any foreign corporations, and detail what the business does and what type of interest is held by Stern and/or DJS.

8. Copies of all documents that are NOT attorney client privileged, in DJS's files for the following foreclosures:

   - Ernesto Diaz and Hayne Murcia
   - Ernest E. Harpster
   - William and Trisha Martin
   - Jorge Porter
   - Janice Epps
   - John Hewett
   - Marianela Hernandez
   - Marie G. Charles
   - Claire Nesbeth
   - Ticiane Andrade and Fabio Rodrigues
   - Weston Walrond
   - Barry and Shirley Staley

9. List all notaries for the past 5 years that worked or works for DJS who notarized Affidavits as to fee and Assignments of Mortgage, include their names and addresses.

10. Copies of all non-disclosure agreements that DJS has or had over the past 5 years with any and all of its employees, subcontractor or independent contractors.

11. Copies of all checks and/or evidence of any other form of payment(s) from the plaintiffs that DJS represents in court in foreclosure cases to DJS and/or any of DJS's affiliates and/or subsidiaries for services rendered in foreclosure cases.

12. Documents, including emails, that evidence what the pay scales, pay grades and/or bonuses paid by DJS to employees, subcontractors or independent contractors for completion of foreclosure cases within a certain time period.

13. Documents, including emails, that evidence what the pay scales, pay grades and/or bonuses paid by lenders to DJS or its employees, subcontractors or independent contractors for completion of foreclosure cases within a certain time period

**WITNESS** the FLORIDA OFFICE OF THE ATTORNEY GENERAL in Fort Lauderdale, Florida, this _____day of _____, 2010.

_____
June M. Clarkson
Assistant Attorney General
Florida Bar Number: 785709

_____
Theresa B. Edwards
Assistant Attorney General
Florida Bar Number: 252794

OFFICE OF THE ATTORNEY GENERAL
110 S.E. 6th Street, 10th Floor
Fort Lauderdale, Florida 33301
Telephone: 954-712-4600
Facsimile: 954-712-4658

**NOTE**: In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact George Rudd, Assistant Attorney General at (954) 712-4600 no later than seven days prior to the proceedings. If hearing impaired, contact the Florida Relay Service 1-800-955-8771 (TDD); or 1-800-955-8770 (Voice), for assistance.

## AUTHORITY
Florida Statute 501.206

**501.206 Investigative powers of enforcing authority.—**

(1) If, by his own inquiry or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates this part, he may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 5 days excluding weekends and legal holidays, after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which he resides or in which he transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available under this chapter or upon service of such subpoena in a civil action. The subpoena shall inform the party served of his rights under this subsection.

(2) If matter that the enforcing authority seeks to obtain by subpoena is located outside the state, the person subpoenaed may make it available to the enforcing authority or his representative to examine the matter at the place where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his behalf, and he may respond to similar requests from officials of other states.

(3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the circuit court for an order compelling compliance.

(4) The enforcing authority may request that the individual who refuses to comply with a subpoena on the ground that testimony or matter may incriminate him be ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-

incrimination to which he is entitled by law shall not have the testimony or matter so provided, or evidence derived there from, received against him in any criminal investigation proceeding.

(5) Any person upon whom a subpoena is served pursuant to this section shall comply with the terms thereof unless otherwise provided by order of the court. Any person who fails to appear with the intent to avoid, evade, or prevent compliance in whole or in part with any investigation under this part or who removes, destroys, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject to any such subpoena, or knowingly conceals any relevant information with the intent to avoid, evade, or prevent compliance shall be liable for a civil penalty of not more than $5,000, reasonable attorney's fees, and costs.

**Affidavit of Service Attached**

Jennifer Lynn Wilson©
7801 Pinecroft Court
Harrisburg, NC 28075
Ph.: 704-773-1712
Pro Se

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

Jennifer L. Wilson,

Plaintiff,

v.

SunTrust Bank, incorporated in Georgia; and Does 1 – 10 inclusively,

Defendants.

Case No.: _____

**[PROPOSED] ORDER GRANTING EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

[Lodged concurrently with [EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER; and AFFIDAVIT IN SUPPORT]

[Assigned for all purposes to Honorable Judge _____ ]

Dept.: _____

Date: _____

Time: _____

On November ____, 2010, at __:____ __.m., Jennifer L. Wilson ("Moving Party"), EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER, came on for hearing before this Court.

Having considered the moving papers of the Moving Party, as well as the Opposition of Defendants, if any, and the Reply of the Moving Party, and good cause appearing, the Court determines sufficient cause exist and grants Moving Party motion.

IT IS HEREBY ORDERED that SunTrust Bank and its agent Substitute Trustee Services, Inc., of Hutchens, Senter, & Brittion, P.A., immediately cease and desist the scheduled Trustee's Sale scheduled for 12:00 a.m. on November 15, 2010 of that property commonly known as 7801 Pinecroft Court, Harrisburg, North Carolina.

IT IS FURTHER ORDERED that Plaintiff notice Defendant, SunTrust Bank and its agent Substitute Trustee Services, Inc., by no later than ___:___ _.m. Monday, November 15, 2010 and that proof of service of the notice to Defendant be filed with the Clerk of the Court by no later than 9:00 a.m. Tuesday, November 16, 2010.

DONE IN OPEN COURT this _____ day of November 2010.

_____

, United States District Judge

**Exhibit 16**

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF NORTH CAROLINA**
**CHARLOTTE DIVISION**
**DOCKET NO. 3:10-CV-573-FDW-DCK**

| | | |
|---|---|---|
| **JENNIFER L. WILSON,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| | ) | |
| **vs.** | ) | **ORDER** |
| | ) | |
| **SUNTRUST BANK, INC., and JOHN DOES (1-10),** | ) | |
| | ) | |
| | ) | |
| **Defendants.** | ) | |

THIS MATTER is before the Court on *pro se* Plaintiff's Emergency Motion for Temporary Restraining Order ("Motion for TRO"). (Doc. No. 3). Because this Court lacks subject-matter jurisdiction, Plaintiff's Motion for TRO is DENIED.[1]

Plaintiff's Complaint alleges that subject matter jurisdiction exists pursuant to 28 U.S.C. § 1331, commonly referred to as federal question jurisdiction.[2] (Compl. ¶ 3). However, the well-pleaded complaint rule requires that the federal question appear on the face of a properly-pleaded complaint, otherwise jurisdiction is lacking. Columbia Gas Transmission Corp. v. Drain, 237 F.3d 366, 370 (4th Cir. 2001) (citing Merrell Dow Pharm., Inc. v. Thompson, 478 U.S. 804, 808 (1986)). "To establish federal question jurisdiction, [plaintiffs] bear the burden of demonstrating that a

[1] This Court is obligated to determine *sua sponte* whether it has jurisdiction. See, e.g., Grupo Dataflux v. Atlas Global Group, L.P., 541 U.S. 567, 593 (2004).

[2] In an abundance of caution, the Court also notes that it lacks diversity jurisdiction pursuant to 28 U.S.C. § 1332. Although Plaintiff has not asserted diversity jurisdiction, as the party invoking the Court's jurisdiction, Plaintiff bears the burden of demonstrating that diversity jurisdiction exists. Hertz Corp. v. Friend, ___ U.S. ___, 130 S. Ct. 1181, 1194 (2010). By naming ten Does as Defendants, but then failing to provide any information of their citizenship, Plaintiff has not satisfied the complete-diversity requirement. See Exxon Mobil Corp. v. Allapattah Serv., Inc., 545 U.S. 546, 553-54 (2005); Fifty Assoc. v. Prudential Ins. Co. of America, 446 F.2d 1187, 1191 (9th Cir. 1970) ("In the federal courts 'John Doe' casts no magical spell on a complaint otherwise lacking in diversity jurisdiction"). Additionally, Plaintiff has provided no allegation that the amount-in-controversy exceeds $75,000. 28 U.S.C. § 1332.

substantial question of federal law is raised by their complaint.." Scott v. Wells Fargo Home Mortg. Inc., 326 F. Supp. 2d 709, 719 (E.D.Va. 2003) (citing Mulcahey v. Columbia Organic Chems. Co., 29 F.3d 148 (4th Cir. 1994)).

Here, Plaintiff has failed to raise a substantial question of federal law. Plaintiff's Complaint seeks relief for three purported causes of action. The first two causes of action, for wrongful foreclosure and to quiet title, respectively, arise under state common law. Although it is well-established that federal courts enjoy federal question jurisdiction over some state law claims, the scope of jurisdiction has been limited to those claims that "'really and substantially involv[e] a dispute or controversy respecting the validity, construction, or effect of [federal] law.'" Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 313 (2005) (quoting Shulthis v. McDougal, 225 U.S. 561, 569 (1912)). Plaintiff's state-law claims do not involve a question of federal law, but instead turn on the validity of a mortgage note and a deed of trust, (Compl. ¶¶ 7-36) – issues governed by state law. See, e.g., In re American Appliance, 272 B.R. 587, 596 (Bankr. D.N.J. 2002) (citing Butner v. United States, 440 U.S. 48 (1979)).

Plaintiff's third purported cause of action challenges Defendants' standing to initiate non-judicial foreclosure proceedings. Plaintiff apparently attacks Defendants' standing to foreclose on Plaintiff's home on the grounds that Defendants do not hold a valid note, (Compl. ¶ 37), and thus Plaintiff's standing challenge merges with her wrongful foreclosure action and fails to invoke a substantial federal question. To the extent Plaintiff's standing challenge invokes the federal Constitution, (Compl. ¶ 41), Plaintiff appears to misconstrue the nature of the federal standing requirement, which is to enforce the Article III case-or-controversy requirement. See, e.g., DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342 (2006). The standing requirement thus applies only to federal judicial actions, see id., not a "non-judicial foreclosure proceeding." (Compl. ¶ 39).

Furthermore, to the extent Plaintiff appears to be challenging Defendants' standing before this Court, (Compl. ¶¶ 42, 49(b)), Plaintiff misunderstands the standing requirement, which places the burden on plaintiffs availing themselves of federal courts to demonstrate standing. Id. at 352 (citations omitted).[3]

IT IS THEREFORE ORDERED that Plaintiff's Motion for TRO (Doc. No. 3) is DENIED.

IT IS SO ORDERED.

Signed: November 15, 2010

Frank D. Whitney
United States District Judge

[3] Even assuming, *arguendo*, the Court has jurisdiction, Plaintiff has failed to make the necessary showing to issue a TRO. See Winter v. Natural Resources Defense Council, Inc., 129 S.Ct. 365, 374 (2008).

**Exhibit 17**

FILED
CHARLOTTE, NC
MAR 17 2011
U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

Jennifer Lynn Wilson
4360 Highway 49 S., 500-251
Harrisburg, NC 28075
Ph.: 704-455-7274
Pro Se

**UNITED STATES DISTRICT COURT**

**for the**

**WESTERN DISTRICT OF NORTH CAROLINA**

**CHARLOTTE DIVISION**

JENNIFER L. WILSON,

Plaintiff,

v.

SunTrust Bank incorporated in Georgia; SunTrust Mortgage, Inc.; Residential Funding Company, LLC; The Law Firm of Hutchens, Senter & Britton, P.A.; Substitute Trustee Services, Inc.; Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina; and DOES 1 – 10 inclusively,

Defendants.

CASE NO: **3:10 cv 573**

**COMPLAINT FIRST AMENDED**

**JURY TRIAL DEMANDED**

(1) Misrepresentation Breach of Fiduciary Duty;
(2) Malicious Prosecution;
(3) Malfeasance;
(4) Material Breach of Contract;
(5) Breach of Covenant;
(6) Quiet Title.

[Filed concurrently; NOTICE AND DEMAND FOR JURY TRIAL]

## COMPLAINT FIRST AMENDED

01. Plaintiff's, Jennifer L. Wilson, files this First Amended Complaint against defendants, SunTrust Bank ("SunTrust B"); SunTrust Mortgage, Inc. ("SunTrust M"); Residential Funding Company, LLC ("RFC"); The Law Firm of Hutchens, Senter & Britton, P.A. ("HSB"); Substitute Trustee Services, Inc. ("STSI"); Jennifer F. Thomas, Assistant Clerk of General Court of Justice North

Carolina ("ACLERK"); and DOES 1 – 10 inclusively, alleges, on information and belief as to all the facts other than as to Plaintiff, as follows:

**JURISDICTION**

02. This Court has jurisdiction pursuant to 28 U.S.C. 1331 as the case involves a federal question pursuant to 12 U.S.C. 2614 for violations of 2605; and pursuant to 28 U.S.C. § 1332(a) as a diversity of citizenship exist between the parties and the amount in controversy exceeds the sum of **$**75,000.00; and pursuant to Mastrobouono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 115 S.Ct. 1212, 131 L.Ed. 2d 76 (Mar. 6, 1995) and the "Choice Law" provision set forth in section "16[.]" of that certain "Deed of Trust" dated January 18, 2007.

**VENUE**

03. Venue is proper as the closing of the loan secured by the subject property was performed by State Street Title Group, LLC and the subject property and Plaintiff are all located within the District of this Court.

**NATURE OF THE ACTION**

04. This Complaint arises from actions taken by the defendants SunTrust B, SunTrust M, RFC, HSB, STSI, and ACLERK, either individually and/or collectively, resulting in several pervasive breaches of contract, terms and conditions set forth by the NOTE and/or Deed of Trust ("Deed"), and multiple violations of federal and state laws governing Federally Related Mortgages.

05. RFC is engaged in the business of, among other things, originating and acquiring by purchase, pursuant to a purchase servicing agreement, residential mortgage loans and selling those loans into and through securitization programs RFC creates. In 2007, RFC purchased the NOTE and/or Deed of Trust (hereinafter "CONTRACTS") from SunTrust B and/or SunTrust M, and then sold the CONTRACTS into the "RALI Series 2007- QS5" collectively benefiting all parties, RFC, SunTrust B and SunTrust M.

06. Agreements entered into between RFC, SunTrust B and/or SunTrust M to sell the CONTRACTS to RFC, and subsequently, absent any disclosure to the contrary, SunTrust M continued to masquerade as the only "Servicer" pursuant to that agreement with RFC, wantonly mislead plaintiff into believing SunTrust M is/was both the owner and servicer of the alleged obligation.

07. Assignment of Substitute Trustee Services, Inc., by SunTrust B to act on its behalf can only be characterized as a pervasive deception upon the plaintiff that SunTrust B is/was the owner of the obligation, a wantonly false characterization admitted to by SunTrust B in its answer to Plaintiff's Complaint.

08. STSI and HSB, STSI masquerading in the capacity of the lawfully appointed "Substitute Trustee" and HSB, Attorneys for STSI, collectively breached their fiduciary duty advocating for SunTrust B and/or SunTrust M by; (1) continuing to disguise the true nature and capacities of SunTrust B and SunTrust M from the plaintiff; (2) failing to adequately perform a review of the instruments and documentation claiming them to have been received from the alleged "NOTE HOLDER"; (3) lack of adequate research to determine the veracity of the instruments, documents, and claims again allegedly received from the "NOTE HOLDER"; and (4) subsequently filing specious documents, and affidavit(s) that HSB admits drafting, with the ACLERK of the General Court of Justice North Carolina Cabarrus County. These specious documents and affidavits presumably might mislead any lay person, ACLERK in this instant case, into believing all the four elements required by the North Carolina Statutes were met prior issuance of an ORDER by ACLERK to proceed with a non-judicial foreclosure, and unquestionably the record of the court rebuts this presumption.

09. ACLERK violated the oath of office of the Clerk for the General Court of Justice North Carolina by failing to adequately execute the duties of the office of the Clerk. Pursuant to the General Court of Justice North Carolina

Cabarrus County file/case number "09 SP 1613", the ORDER issued by ACLERK authorized STSI to proceed with a non-judicial foreclosure one hour five minutes prior to receipt and filing by the Clerk of the Court the alleged evidentiary instruments and documentation mandated to be on record pursuant to the North Carolina General Statutes.

**PARTIES**

10. The Plaintiff is unaware of all the true names and lawful capacities of all the Defendant(s) sued and/or agents for the Defendant(s) sued herein as DOES 1 through 100, but is informed and believes and thereon alleges that additional defendants may be responsible in some manner for the acts alleged herein and/or discovered at some future date and/or purports to hold or claims to hold a legal or equitable right, title, estate, lien or other interest in the Property, which is subsequent to and subject to the Plaintiff's. Plaintiff therefore sues said defendants by such fictitious names and will seek leave of the Court to amend this Complaint to their true names, capacities and add any additional causes of actions that be ascertained.

11. SunTrust Bank, is and at all times herein mentioned incorporated under the laws of the State of Georgia, Control Number J715952, with its principal place of business at 303 Peachtree St. N.E., 36th Floor, Atlanta, GA 30308-3201.

12. SunTrust Mortgage, Inc., is and at all times herein mentioned incorporated under the laws of the State of Virginia, Corporate Identification number 0030925 – 2, with its principal place of business located at 901 Semmes Ave, Richmond, VA 23224. SunTrust Mortgage, Inc., is a wholly-owned subsidiary of SunTrust Bank.

13. Residential Funding Company, LLC, is and at all times herein mentioned a limited liability company incorporated under the laws of the State of Delaware, with its principal place of business at 380 Jackson St., Suite 700, Saint

Paul, MN 5510. As of December 4, 2008, Residential Funding Company, LLC, is a wholly-owned subsidiary of Residential Capital LLC ("ResCap"), a Delaware limited liability Company, which itself is a wholly-owned subsidiary of GMAC LLC ("GMAC").

14. The Law Firm of Hutchens, Senter & Britton, P.A., is licensed to practice law in the State of North Carolina, its principal place of business is 4317 Ramsey Street, Fayetteville, NC 28311.

15. Jennifer F. Thomas in the capacity of Clerk of General Court of Justice North Carolina Cabarrus County, is and at all times herein mentioned the Assistant Clerk for the Clerk of the General Court of Justice North Carolina Cabarrus County, its principal place of business is 77 Union Street South, Concord, NC 28025.

## FIRST CAUSE OF ACTION

## MISREPRESENTATION – BREACH OF FIDUCIARY DUTY

16. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 1 through 15 as though fully set forth herein.

17. The contract, "Deed of Trust", is specific pursuant to numbered paragraph twenty-two in relevant part states,

> *"22[.]" "Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). . ."*

18. On October 20, 2009 HSB caused to be delivered a written communication (*See EXHIBIT "* 1 *"* ) identifying Hutchens, Senter & Britton, P.A., as representatives for SunTrust Bank. HSB among other claims states the following: (1) SunTrust Bank is the "note holder"; (2) HSB is informed by the

"note holder" that "you have defaulted under the terms of your Note and/or deed of trust"; (3) "note holder" has directed that we provide you with statement required under the terms of N.C. Gen. State § 45-21.16(a)(5a)."

19. Though this communication appears upon its face to be compliant with the terms and conditions set forth in the Deed, the Deed fails to provide the "note holder" with the option to delegating the "Lender[s]" authority for a Notice of Acceleration pursuant to numbered paragraph 22. THEREFORE, upon information and belief, Plaintiff alleges HSB pervasively made this misrepresentation and breached the fiduciary obligation owed to both the Note Holder and the Plaintiff pursuant to the NOTE and Deed of Trust.

20. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;
b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);
c. Consequential in the amount set by the jury;
d. General damages in an amount yet to be determined;
e. Restitution damages in an amount equal to the amount paid to HSB by SunTrust Bank;
f. Punitive in an amount to be set by the jury;
g. Treble;
h. Unliquidated in an amount to be set by the jury;
i. Order of this Court for HSB to seal all records that are in or subject to the control of HSB and are relevant to either the subject property or plaintiff; and
j. Such other relief as the Court deems proper and just.

## SECOND CAUSE OF ACTION

## MALICIOUS PROSECUTION

21. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 01 through 20 as though fully set forth herein.

22. On November 30, 2009 STSI caused a "NOTICE OF HEARING PRIOR TO FORECLOSURE OF DEED OF TRUST" ("HEARING") to be served on Plaintiff.

23. The HEARING claimed ". . . the note holder intends to commerce foreclosure on the Note and Deed of Trust dated January 18, 2007 which Note was originally held by SunTrust Mortgage, Inc. dba Sun America Mortgage and is now held by SunTrust Bank, c/o SunTrust Mortgage, Inc. . ." * * * ". . . the holder of the note [SunTrust Bank] has confirmed in writing to the substitute trustee [Substitute Trustee Services, Inc.] that within thirty (30) days of the date of notice," December 21, 2009 ". . . a detailed written statement of the amount of principal, interest and any other fees, expenses and disbursements that the holder in good faith is claiming to be due as of the date of the written statement, together with a daily interest charge based on the contract rate as of the date of the written statement was sent by first-class mail to the last known address of the borrower."

24. SunTrust Bank is/was not the "Note Holder" as defined in the NOTE. THEREFORE, based upon information and belief, Plaintiff alleges SunTrust Bank acted ultra vires to the CONTRACTS by directing STSI to serve the "NOTICE OF HEARING PRIOR TO FORECLOSURE OF DEED OF TRUST" is/was in excess of SunTrust Bank's capacity and authority and on that basis the "NOTICE OF HEARING PRIOR TO FORECLOSURE OF DEED OF TRUST" is VOID.

25. On December 1, 2009 at 2:30 p.m. STSI filed In the General Court of the State of North Carolina Carbarrus County, a "Special Proceedings Action" pursuant to Rule 5(b) of the Rules of Practice For Superior and District Court, file/case number 09 SP 1613.

26. Accompanying the filing for "Special Proceedings Action" STSI attached the following documentation; 1) a "Non-Subprime Loan Certificate" and attached thereto "EXHIBIT A" evidencing SunTrust Mortgage, Inc. capacity as "Servicer"; 2) "NOTICE OF HEARING PRIOR TO FORECLOSURE OF DEED OF TRUST"; 3) "NOTICE OF FORECLOSURE SALE." THEREFORE, upon information and belief, Plaintiff alleges the assignment of STSI to serve as "Substitute Trustee," by SunTrust B to be VOID renders STSI filing of the "Special Proceedings Action" VOID.

27. WHEREFORE PLAINTIFF seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in an amount yet to be determined;

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount equal to the amount paid to STSI by SunTrust Bank;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of the Court for STSI to file a rescission of all documents related to the subject property and Plaintiff that are recorded with the Register of Deeds for the County of Cabarrus; and

j. Such other relief as the Court deems proper and just.

## THIRD CAUSE OF ACTION

## MALFEASANCE

28. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 01 through 27 as though fully set forth herein.

29. Jennifer F. Thomas, Assistant Clerk for the General Justice Court North Carolina Cabarrus County did on January 25, 2010 execute an ORDER authorizing the alleged "Substitute Trustee can proceed to foreclose" pursuant to the relevant North Carolina General Statutes and did cause same to be recorded at 3:07 p.m by the Court Clerk for the General Justice Court North Carolina Cabarrus file/case number 09 SP 1613. (*See true and correct copy attached as EXHIBIT* "2")

30. Pursuant to NC GEN. STAT. § 45-21.16(d) the court Clerk must find the existence of; (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), (v) that the underlying mortgage debt is not a home loan as defined in G.S. 45-101(1b), or if the loan is a home loan under G.S. 45-101(1b), that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed, and (vi) that the sale is not barred by G.S. 45-21.12A, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article.

31. Jennifer F. Thomas, Assistant Clerk for the General Justice Court North Carolina Cabarrus County failed to comply with NC GEN. STAT. § 45-21.16(d) as the record of the court evidence the execution of this ORDER by Jennifer F. Thomas occurred one hour and five minutes prior to STSI filing of the instruments and documents necessary to prove upon the record the requirements set forth in the NC GEN. STAT. § 45-21.16(d). (*See EXHIBITS* "3, 4 and 5") THEREFORE, upon information and belief, Plaintiff alleges Jennifer F.Thomas actions in this case are of wanton malfeasance.

32. WHEREFORE PLAINTIFF seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court to the Clerk of the General Justice Court North Carolina Cabarrus County to Set Aside the ORDER of Jennifer F. Thomas file/case number 09 SP 1613 and to seal from the general public; and

33. Such other relief as the Court deems proper and just.

**FOURTH CAUSE OF ACTION**

**MATERIAL BREACH OF CONTRACT**

34. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 01 through 33 as though fully set forth herein.

35. Prior to March 2007 Residential Funding Company LLC (RFC) entered into an agreement with SunTrust Bank, to purchase mortgage loans originated by SunTrust Bank and/or its subsidiary(ies), SunTrust Mortgage, Inc..

36. On, or about, March 1, 2007 RFC purchased a "NOTE"; a true and correct copy of same filed in the General Justice Court for North Carolina Cabarrus County is attached hereto as EXHIBIT "4"; and the corresponding security instrument, a true and correct copy of that "Deed of Trust" filed in the General Justice Court for North Carolina Cabarrus County is attached hereto as EXHIBIT

"5"; from SunTrust Bank and/or its subsidiary, SunTrust Mortgage, Inc., pursuant to that certain mortgage purchase agreement.

37. The Agreement by and between RFC and SunTrust B, whereby RFC purchases loans originated by SunTrust B, and whereby RFC subsequently grants subservicing rights for those purchased mortgage loans to SunTrust B and/or its subsidiary, SunTrust M, required the approval of Board of Directors for SunTrust B.

38. On October 20, 2009 SunTrust B caused HSB to deliver a written communication (*See EXHIBIT "6"*) identifying Hutchens, Senter & Britton, P.A., as representatives for SunTrust Bank. In this correspondence HSB among other claims states the following: (1) SunTrust Bank is the "note holder"; (2) HSB is informed by the "note holder" that "you have defaulted under the terms of your Note and/or deed of trust"; (3) "note holder" has directed that we provide you with the statement required under the terms of N.C. Gen. State § 45-21.16(a)(5a)."

39. The Deed does not provide the "note holder" with the option to delegate the "Lender[s]" authority for a Notice of Acceleration pursuant to numbered paragraph 22. At that time SunTrust B knew or should have known it is/was not the Note Holder as defined in numbered paragraph 1 of the NOTE. THEREFORE, upon information and belief, Plaintiff alleges SunTrust B made material misrepresentations to HSB, and materially breached the Deed of Trust pursuant to paragraph 22 and the NOTE pursuant to paragraph 1.

40. On October 21, 2009 Rebecca W. Shaia, claiming the capacity of Vice President SunTrust Bank, did execute and cause to be recorded on November 18, 2009, Book 08966, Instrument number 28743, in the Office of the Register of Deeds Cabarrus County North Carolina a "APPOINTMENT OF SUBSTITUTE TRUSTEE."

41. The "APPOINTMENT OF SUBSTITUTE TRUSTEE" ("AST") document makes certain representations that SunTrust Bank knew or should have known to be false.

42. The AST document, prepared by HSB, represents SunTrust Bank is the "holder of the Note" a representation that SunTrust Bank knew or should have known to be false.

43. SunTrust Bank on or about March 1, 2007 sold the NOTE to RFC.

44. RFC then sold the NOTE to Residential Accredit Loans, Inc., a single purpose entity designated as the "Depositor" for that certain Pooling Servicing Agreement for the mortgage back asset securities known as "RALI Series 2007-QS5."

45. Pursuant to that certain Pooling Servicing Agreement ("PSA") Residential Accredit Loans, Inc. transfers all the purchased mortgage loan instruments and documents to the Trustee for the trust, in this instant case Deutsche Bank Trust Company Americas.

46. Subsequently Deutsche Bank Trust Company Americas delivers the purchase mortgage loan instruments and documents to the trust's Custodian for the Records.

47. RFC is the Master Service for the trust and the mortgage loans instruments and documents are held in the trust for the benefit of the certificate holders.

48. RFC, under the PSA, is responsible for foreclosing on non-performing assets held in the trust.

49. In order to foreclose on a mortgage loan property held in the trust, RFC must complete a certificate requesting the requisite instruments and documents for that certain mortgage loan property, and deliver the request to the Trustee.

50. The Trustee in turn delivers the request for the mortgage loan instruments and documents from RFC to the "Custodian of the Records."

51. The Custodian of the Records then delivers the mortgage loan documents to RFC.

52. RFC makes the mortgage loan instruments and documents available to the Subservicer, in this instant case SunTrust M, through its parent SunTrust Bank for the purpose of foreclosing on the relevant mortgage loan property.

53. SunTrust B has no possessory ownership in the NOTE or the Deed of Trust, thus The APPOINTMENT OF SUBSTITUTE TRUSTEE executed by Rebecca W.Shaia, Vice President for SunTrust Bank constitutes a wanton and material breach of the CONTRACTS. THEREFORE, upon information and belief, Plaintiff alleges SunTrust Bank materially breached the CONTRACTS.

54. On November 18, 2009 Jackie W. Ballos, claiming the capacity of the "duly authorized officers" for SunTrust Mortgage, Inc. dba Sun America Mortgage, did execute a "ASSIGNMENT OF NOTE AND DEED OF TRUST." (*See EXHIBIT "* 7 *"for a true and correct copy of the "ASSIGNMENT OF NOTE AND DEED OF TRUST"*)

55. The "ASSIGNMENT OF NOTE AND DEED OF TRUST", claims to ". . . sell, assign, transfer and set over unto the said SunTrust Bank all of its rights, title and interest in and to the said note secured by the said deed of trust."

56. The "ASSIGNMENT OF THE NOTE AND DEED OF TRUST" is defective as the Notarial Acknowledgement does not name any party having personally appeared before the Notary.

57. Additionally, SunTrust Bank knew or should have known that SunTrust Mortgage, Inc., was not the "Note Holder" thus the "ASSIGNMENT OF THE NOTE AND DEED OF TRUST" is defective.

58. SunTrust Mortgage, Inc., knew or should have known it had no possessory interest in the NOTE or Deed of Trust. THEREFORE, upon information and belief, Plaintiff alleges both SunTrust Bank, and its subsidiary, SunTrust Mortgage, Inc. have committed a material breach of contract.

59. WHEREFORE PLAINTIFF seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court directing SunTrust Bank to remove any and all derogatories in connection with mortgage loan from the three credit repositories, TransUnion, Experian, Equifax; and

j. Such other relief as the Court deems proper and just.

## FIFTH CAUSE OF ACTION

## BREACH OF COVENANT

60. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 01 through 59 as though fully set forth herein.

61. Paragraph 16 of the Deed of Trust in relevant part states,

*"Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located."*

62. United States Title 12 § 2605(b)(1) in relevant part states,

*"Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person."*

63. Residential Funding Company LLC, pursuant to that certain Pooling Servicing Agreement, is the Master Servicer ("MS").

64. As MS for the "RALI Series 2007- QS5" trust RFC acquired certain servicing rights and responsibilities with respect to the subject mortgage loan.

65. RFC, pursuant to the PSA, is responsible for all the administration of all required servicing for each mortgage loan held in the trust.

66. RFC, among other servicing responsibilities, is required on behalf of the "RALI Series 2007- QS5" trust to collect the monthly mortgage payment due for each mortgage loan held in trust.

67. Title 12 U.S.C. § 2605(b)(1) is specific "Each servicer . . . shall notify borrower in writing of any . . . transfer of the servicing of the loan to any other person."

68. Residential Funding Company LLC did not notice Plaintiff of transfer of certain servicing responsibilities.

69. The notification failure of RFC damaged Plaintiff in that Plaintiff was effectively barred from direct communications with the MS which might have been mutually beneficial. THEREFORE, upon information and belief, Plaintiff alleges Residential Funding Company LLC committed a Breach of Covenant.

70. WHEREFORE PLAINTIFF seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury; and

i. Such other relief as the Court deems proper and just.

**SIXTH CAUSE OF ACTION**

**QUIET TITLE**

71. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 01 through 70 as though fully set forth herein.

72. SunTrust B claims to have a ownership interest in the NOTE and the Deed of Trust. (*See EXHIBIT "7" for a true and correct copy of the "ASSIGNMENT OF THE NOTE AND DEED OF TRUST"*)

73. In the "ASSIGNMENT OF THE NOTE AND DEED OF TRUST" executed On November 18, 2009 by Jackie W. Ballos bears the asterisk notation "[T]his assignment is effective (03/01/2007)".

74. The "RALI Series 2007- QS5" trust documents evidence the NOTE and Deed of Trust for this mortgage loan are held in trust by Deutsche Bank Trust Americas for the benefit of the Certificate Owners of the "RALI Series 2007-QS5" trust.

75. Pursuant to the "ASSIGNMENT OF THE NOTE AND DEED OF TRUST", SunTrust Bank avers "all of the rights, title and interest in and to the said note secured by the deed of trust."

76. The claim of ownership of the NOTE and Deed of Trust gives rise that the Deed of Trust is separated from the NOTE.

77. The separation of the NOTE from the Deed of Trust VOIDs the Deed of Trust. THEREFORE, upon information and belief, Plaintiff alleges the Deed of Trust is separated and thus is VOID.

78. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. General damages in an amount yet to be determined;

c. Restitution damages in an amount set by the jury;

d. Punitive in an amount to be set by the jury;

e. Treble;

f. Unliquidated in an amount to be set by the jury;

g. A ORDER of this Court directing Residential Funding Company LLC to record a rescission of the Deed of Trust and all recorded foreclosing documents, registered with the Register of Deeds for North Carolina Cabarrus County; and

h. Such other relief as the Court deems proper and just.

79. WHEREFORE Plaintiff request judgment as set forth below.

**ON THE FIRST CAUSE OF ACTION**

80. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in an amount to be set by the jury;

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount equal to the amount paid to HSB by SunTrust Bank;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court for HSB to seal all records that are in or subject to the control of HSB and are relevant to either the subject property or plaintiff; and

j. Such other relief as the Court deems proper and just.

**ON THE SECOND CAUSE OF ACTION**

81. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in an amount yet to be determined;

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount equal to the amount paid to STSI by SunTrust Bank;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of the Court for STSI to file a rescission of all documents related to the subject property and Plaintiff that are recorded with the Register of Deeds for the County of Cabarrus; and

j. Such other relief as the Court deems proper and just.

**ON THE THIRD CAUSE OF ACTION**

82. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court to the Clerk of the General Justice Court North Carolina Cabarrus County to Set Aside the ORDER of Jennifer F. Thomas file/case number 09 SP 1613 and to seal from the general public; and

j. Such other relief as the Court deems proper and just.

**ON THE FOURTH CAUSE OF ACTION**

83. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court directing SunTrust Bank to remove any and all derogatories in connection with mortgage loan from the three credit repositories, TransUnion, Experian, Equifax; and

j. Such other relief as the Court deems proper and just.

**ON THE FIFTH CAUSE OF ACTION**

84. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury; and

i. Such other relief as the Court deems proper and just.

**ON THE SIXTH CAUSE OF ACTION**

85. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. General damages in an amount yet to be determined;

c. Restitution damages in an amount set by the jury;

d. Punitive in an amount to be set by the jury;

e. Treble;

f. Unliquidated in an amount to be set by the jury;

g. A ORDER of this Court directing Residential Funding Company LLC to record a rescission of the Deed of Trust and all recorded foreclosing documents, registered with the Register of Deeds for North Carolina Cabarrus County; and

h. Such other relief as the Court deems proper and just.

**ON ALL CAUSES OF ACTION**

86. WHEREFORE Plaintiff request;

a. That Defendants take nothing by way of their non-judicial foreclosure proceeding;

b. That the Court find for the Plaintiff and issue a Court order for Defendant Residential Funding Company LLC, to record in the Office of the Cabarras County Recorder a Full Reconveyance of the Note;

c. That the Court find for the Plaintiff and issue a Court order for Defendant to surrender over to Plaintiff the original NOTE;

d. For attorney's fees, legal fees, research cost and cost of suit incurred herein according to proof; and

e. That Plaintiff be awarded such other relief as the jury or this Court deems just and proper.

DATED: March 17, 2011

Respectfully submitted,

Jennifer Lynn Wilson

Jennifer Lynn Wilson, Pro Se

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**CERTIFICATE OF SERVICE**

I Jennifer Lynn Wilson hereby certify that a copy of the forgoing "COMPLAINT FIRST AMENDED" was mailed/delivered to defendant, SunTrust Bank, by and through their attorney NELSON MULLINS RILEY & SCARBOROUGH, LLP at Bank of America Corporate Center; 100 North Tyron Street, Suite 4200; Charlotte, North Carolina 28202; c/o Julia B. Hartley.

This the 17th day of March, 2011.

By: Jennifer Lynn Wilson

Jennifer Lynn Wilson
4360 Highway 49 S., 500-251
Harrisburg, NC 28075
Ph.: 704-455-7274

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**(Voluminous Exhibits Omitted)**

**Exhibit 18**

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF NORTH CAROLINA**
**CHARLOTTE DIVISION**
**DOCKET NO. 3:10-CV-573-FDW-DCK**

| | | |
|---|---|---|
| **JENNIFER L. WILSON,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| | ) | |
| **vs.** | ) | **ORDER** |
| | ) | |
| **SUNTRUST BANK, INC., et al.,** | ) | |
| | ) | |
| **Defendants.** | ) | |
| | ) | |

THIS MATTER is before the Court on *pro se* Plaintiff's Response to the Court's Order to Show Cause (Doc. No. 47). Having reviewed Plaintiff's Response, the Court construes the Response and accompanying Affidavit to be a Motion for Voluntary Dismiss pursuant to Fed. R. Civ. P. 41(a)(2). Because venue is improper in the Western District of North Carolina, Plaintiff's Complaint is DISMISSED without prejudice.

Plaintiff filed suit on November 12, 2010, seeking to enjoin the foreclosure sale of the property located at 7801 Pinecroft Court, Harrisburg, North Carolina 28075 in Cabarrus County. (Compl. ¶ 1). The Court denied Plaintiff's Emergency Motion for Temporary Restraining Order (Doc. No. 4) and pursuant to an order of this Court, Plaintiff amended her Complaint on March 17, 2011. (Doc. No. 15). Plaintiff's Amended Complaint alleges that venue in the Western District of North Carolina is proper because "the closing of the loan secured by the subject property was performed by State Street Title Group, LLC and the subject property and Plaintiff are all located within the District of this Court." (Am. Compl. ¶ 3). The Court recognized, however, that Cabarrus County, North Carolina–the situs of the subject property and Plaintiff's current location–is located entirely within the Middle District of North Carolina. The Court ordered Plaintiff to show cause

how venue is proper in the Western District pursuant to 28 U.S.C. § 1391, *et seq.*, on May 4, 2011.

Plaintiff responded to the Court's Show Cause Order on May 25, 2011, and admitted that "venue may be incorrect." (Doc. No. 47 at 1). Plaintiff further stated although the "Court has discretion to transfer this civil action to the Middle District [of] North Carolina" pursuant to 28 U.S.C. § 1404, Plaintiff had already "initiated the steps necessary to have this civil action moved to the proper venue." (Id.) To Plaintiff's Response, Plaintiff attached an "Affidavit of Mistake" detailing her reasons for filing suit in this District and describing her efforts to "correct this mistake." (Wilson Aff. ¶ 9). Importantly, Plaintiff states she "has since filed a new complaint in the Middle District Court and has had the new complaint properly served upon all parties." (Wilson Aff. ¶ 8). Indeed, the Court takes judicial notice that on May 16, 2011, Plaintiff filed a complaint in the Middle District of North Carolina. See Wilson v. Suntrust Bank Inc., et al., No. 1:11-cv-390-UA-LPA (M.D.N.C.).

Because Plaintiff admits that venue in this District is improper and has taken the step of re-filing her complaint in another district instead of seeking transfer of this action pursuant to 28 U.S.C. § 1404, the Court construes Plaintiff's Response to be a Motion for Voluntary Dismissal pursuant to Rule 41(a)(2). Rule 41(a)(2) provides "[e]xcept as provided in rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper" subject to certain limitations which are inapplicable. The Court will exercise its discretion, see, e.g., Walter Kidde Portable Equip., Inc. v. Universal Sec. Instruments, Inc., 479 F.3d 1330, 1336 (Fed. Cir. 2007), and GRANT Plaintiff's Motion.

IT IS THEREFORE ORDERED that Plaintiff's Response to the Court's Order to Show Cause (Doc. No. 47) be converted to a Motion for Voluntary Dismissal. Because venue in this District is improper, Plaintiff's Motion is GRANTED. Plaintiff's Complaint is hereby DISMISSED

without prejudice.

The Clerk is directed to send a copy of this Order to Plaintiff at 4360 Highway 49 S. 500-251, Harrisburg, North Carolina 28075, and to counsel for Defendants.

IT IS SO ORDERED.

Signed: May 26, 2011

Frank D. Whitney
United States District Judge

**Exhibit 19**

FILED
MAY 16 2011
IN THIS OFFICE
Clerk U. S. District Court
Greensboro, N. C.
By

Jennifer Lynn Wilson
4365 Highway 49 S., 500-251
Harrisburg, NC 28075
Ph.: 704-455-7274
Propria Persona

**UNITED STATES DISTRICT COURT**

for the

**MIDDLE DISTRICT OF NORTH CAROLINA**

**GREENSBORO DIVISION**

JENNIFER L. WILSON,

Plaintiff,

v.

SunTrust Bank incorporated in Georgia; SunTrust Mortgage, Inc.; Residential Funding Company, LLC; The Law Firm of Hutchens, Senter & Britton, P.A.; Substitute Trustee Services, Inc.; Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina; and DOES 1 – 10 inclusively,

Defendants.

CASE NO: 1:11CV390

**COMPLAINT**

**JURY TRIAL DEMANDED**

(1) Misrepresentation Breach of Fiduciary Duty;
(2) Malicious Act;
(3) Malfeasance – Breach of Oath;
(4) Misconduct – Breach of Oath;
(5) Material Breach of Contract;
(6) Breach of Covenant; and
(7) Quiet Title.

[Filed concurrently; NOTICE AND DEMAND FOR JURY TRIAL; and EXHIBIT LIST]

## COMPLAINT

01. Plaintiff's, Jennifer L. Wilson, files this Complaint against defendants, SunTrust Bank ("SunTrust B"); SunTrust Mortgage, Inc. ("SunTrust M"); Residential Funding Company, LLC ("RFC"); The Law Firm of Hutchens, Senter & Britton, P.A. ("HSB"); Substitute Trustee Services, Inc. ("STSI"); Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina ("ACLERK"); and DOES 1 –

10 inclusively, alleges, on information and belief as to all the facts other than as to Plaintiff, as follows:

**JURISDICTION**

02. This Court has jurisdiction pursuant to 28 U.S.C. 1331 as the case involves a federal question pursuant to 12 U.S.C. 2614 for violations of 2605; and pursuant to 28 U.S.C. § 1332(a) as a diversity of citizenship exist between party defendants and the amount in controversy exceeds the sum of $75,000.00; and pursuant to 42 U.S.C § 1983 violation of rights protected by the Constitution for the United States of America; and pursuant to Mastrobouono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 115 S.Ct. 1212, 131 L.Ed. 2d 76 (Mar. 6, 1995) and the "Choice Law" provision set forth in section "16[.]" of that certain "Deed of Trust" dated January 18, 2007.

**VENUE**

03. Venue is proper pursuant to 28 U.S.C. 1391(b)(2) as; (1) diversity of citizenship exist between plaintiff and defendants SunTrust B, SunTrust M, and RFC; (2) a substantial part of the claims occurred within the District of this Court; and (3) the subject property and plaintiff are located within the District of this Court.

**NATURE OF THE ACTION**

04. This Complaint arises from actions taken by the defendants SunTrust B, SunTrust M, RFC, HSB, STSI, and ACLERK, either individually and/or collectively, resulting in several pervasive breaches of contract, terms and conditions set forth by the NOTE and/or Deed of Trust ("Deed"), and multiple violations of federal and state laws that governing Federally Related Mortgages, and deprivation of Plaintiff's rights

guaranteed by both the Constitution for the United States and the North Carolina State Constitution.

05. RFC is engaged in the business of, among other things, originating and acquiring by purchase, pursuant to a purchase and servicing agreement, residential mortgage loans and selling said loans into and through securitization programs RFC creates. In 2007, RFC purchased the NOTE[1] and/or Deed of Trust[2] (collectively hereinafter "CONTRACTS") from SunTrust B and/or SunTrust M, and then sold the CONTRACTS into the "RALI Series 2007- QS5 Trust" collectively benefiting all parties, RFC, SunTrust B and SunTrust M.

06. Agreements entered into between RFC, SunTrust B and/or SunTrust M to sell the CONTRACTS to RFC, and subsequently, absent any disclosure to the contrary, SunTrust M continued to masquerade as the only "Servicer" pursuant to that agreement with RFC, wantonly mislead plaintiff into believing SunTrust M is/was both the owner and servicer of the alleged obligation.

07. Assignment of Substitute Trustee Services, Inc., by SunTrust B to act on its behalf can only be characterized as a pervasive deception upon the plaintiff that SunTrust B is/was the owner of the obligation, a wantonly false characterization.

08. STSI and HSB, STSI masquerading in the capacity of the lawfully appointed "Substitute Trustee" and HSB, Attorneys for STSI, individually and collectively breached a fiduciary duty owed plaintiff, advocated for SunTrust B and/or

[1] See "*EXHIBIT A*" for true and correct copy of the "NOTE" filed at 4:12 p.m. on January 25, 2010 in the Cabarrus County Court.
[2] See "*EXHIBIT B*" for true and correct copy of the "Deed of Trust" filed at 4:12 p.m. on January 25, 2010 in the Cabarrus County Court.

SunTrust M by; (1) continuing to disguise the true nature and capacities of SunTrust B and SunTrust M from the plaintiff; (2) failing to adequately perform a review of the document(s), instrument(s), and affidavit(s) that claimed to have been sent/received from the alleged "NOTE HOLDER"; (3) lack of adequate research to determine the veracity of the document(s), instrument(s) and affidavit(s) claims allegedly received from the "NOTE HOLDER"; and (4) subsequently filing specious document(s), instrument(s), and affidavit(s) that, in some cases, HSB admits drafting, with the Clerk of the General Court of Justice North Carolina Cabarrus County. These specious document(s), instrument(s), and affidavits presumably might mislead any lay person, ACLERK in this instant case, into believing all the four elements required by the North Carolina Statutes were met prior to the issuance of an ORDER by ACLERK to proceed with a non-judicial foreclosure, and unquestionably the record of the court rebuts this presumption.

09. ACLERK violated the oath of office of the Clerk for the General Court of Justice North Carolina by malfeasance and wanton misconduct in the course of executing the duties of the office of the Clerk. Pursuant to the General Court of Justice North Carolina Cabarrus County file/case number "09 SP 1613," the ORDER issued by ACLERK authorized STSI to proceed with a non-judicial foreclosure prior to filing, by the Clerk of the Court, the alleged lawful evidentiary instrument(s) and documentation pursuant North Carolina General Statute § 45-21.16(d).

**PARTIES**

10. The Plaintiff is unaware of all the true names and lawful capacities of all the Defendant(s) sued and/or agents for the Defendant(s) sued herein as DOES 1 through

10, but is informed and believes and thereon alleges that additional defendants may be responsible in some manner for the acts alleged herein and/or discovered at some future date and/or purports to hold or claims to hold a legal or equitable right, title, estate, lien or other interest in the Property, which is subsequent to and subject to the Plaintiff's. Plaintiff therefore sues said defendants by such fictitious names and will seek leave of the Court to amend this Complaint to their true names, capacities and add any additional causes of actions that be ascertained.

11. SunTrust Bank is, and at all times herein mentioned, incorporated under the laws of the State of Georgia, Control Number J715952, with its principal place of business at 303 Peachtree St. N.E., 36th Floor, Atlanta, GA 30308-3201.

12. SunTrust Mortgage, Inc. is, and at all times herein mentioned, incorporated under the laws of the State of Virginia, Corporate Identification number 0030925 – 2, with its principal place of business located at 901 Semmes Ave, Richmond, VA 23224. SunTrust Mortgage, Inc., is a wholly-owned subsidiary of SunTrust Bank.

13. Residential Funding Company, LLC is, and at all times herein mentioned, a limited liability company incorporated under the laws of the State of Delaware, with its principal place of business at 380 Jackson St., Suite 700, Saint Paul, MN 5510. As of December 4, 2008, Residential Funding Company, LLC, is a wholly-owned subsidiary of Residential Capital LLC ("ResCap"), a Delaware limited liability Company, which itself is a wholly-owned subsidiary of GMAC LLC ("GMAC").

14. The Law Firm of Hutchens, Senter & Britton, P.A. is licensed to practice law in the State of North Carolina, its principal place of business is 4317 Ramsey Street, Fayetteville, NC 28311.

15. Substitute Trustee Services, Inc. is registered with the Secretary of State for the State of North Carolina, and has its principal place of business at 4317 Ramsey Street, Fayetteville, NC 28311.

16. Jennifer F. Thomas, in the capacity of Clerk of General Court of Justice North Carolina Cabarrus County, is, and at all times herein mentioned, the Assistant Clerk for the Clerk of the General Court of Justice North Carolina Cabarrus County, its principal place of business is 77 Union Street South, Concord, NC 28025.

**FIRST CAUSE OF ACTION**

**MISREPRESENTATION □BREACH OF FIDUCIARY DUTY**

17. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 1 through 15 as though fully set forth herein.

18. The contract, "Deed of Trust", is specific pursuant to numbered paragraph twenty-two in relevant part states,

> *"22[.]" "Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). . ."*

19. On November 3, 2009 HSB caused to be delivered a written communication (*See EXHIBIT C, 2 pgs.*) identifying Hutchens, Senter & Britton, P.A., as

representatives for SunTrust Bank. HSB among other claims states the following: (1) SunTrust Bank is the "note holder"; (2) HSB is informed by the "note holder" that "you have defaulted under the terms of your Note and/or deed of trust"; (3) "note holder has directed that we provide you with the statement required under the terms of N.C. Gen. State § 45-21.16(c)(5a)."

20. Though this communication appears, upon its face, to be compliant with the terms and conditions set forth in the Deed, the Deed fails to provide the "note holder" with the option to delegate the "Lender[s]" authority for a Notice of Acceleration pursuant to numbered paragraph 22. THEREFORE, upon information and belief, Plaintiff alleges HSB pervasively made this misrepresentation and breached the fiduciary obligation it owed to both the Note Holder and plaintiff pursuant to the NOTE and Deed of Trust.

21. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount set by the jury;

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount equal to the amount paid to HSB by SunTrust Bank;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court for HSB to seal all records that are in or subject to the control of HSB and are relevant to either the subject property or plaintiff; and

j. Such other relief as the Court deems proper and just.

**SECOND CAUSE OF ACTION**

**MALICIOUS ACT**

22. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 01 through 21 as though fully set forth herein.

23. On November 30, 2009 STSI caused a "NOTICE OF HEARING PRIOR TO FORECLOSURE OF DEED OF TRUST" ("HEARING") to be served on Plaintiff.[3]

24. The HEARING claimed ". . . the note holder intends to commerce foreclosure on the Note and Deed of Trust dated January 18, 2007 which Note was originally held by SunTrust Mortgage, Inc. dba Sun America Mortgage and is now held by SunTrust Bank, c/o SunTrust Mortgage, Inc. . ." * * * ". . . the holder of the note [*SunTrust Bank*] has confirmed in writing to the substitute trustee [*Substitute Trustee Services, Inc.*] that within thirty (30) days of the date of notice," December 21, 2009 ". . . a detailed written statement of the amount of principal, interest and any other fees, expenses and disbursements that the holder in good faith is claiming to be due as of the date of the written statement, together with a daily interest charge based on the contract

[3] See "*EXHIBIT I*" or true and correct copy of the "NOTICE OF HEARING PRIOR TO FORECLOSURE OF DEED OF TRUST" filed in the Cabarrus County Court.

rate as of the date of the written statement was sent by first-class mail to the last known address of the borrower."

25. SunTrust Bank is/was **not** the "Note Holder" as defined in the NOTE. THEREFORE, based upon information and belief, Plaintiff alleges SunTrust Bank acted ultra vires to the CONTRACTS by directing STSI to serve the "NOTICE OF HEARING PRIOR TO FORECLOSURE OF DEED OF TRUST" is/was in excess of SunTrust Bank's standing.

26. On December 1, 2009 at 2:30 p.m. STSI filed in the General Court of the State of North Carolina Carbarrus County, a "Special Proceedings Action" pursuant to Rule 5(b) of the Rules of Practice For Superior and District Court, file/case number 09 SP 1613. (*See EXHIBIT E*)

27. Accompanying the filing for "Special Proceedings Action" STSI attached the following documentation; 1) a "Non-Subprime Loan Certificate" and attached thereto "EXHIBIT A" evidencing SunTrust Mortgage, Inc. capacity as "Servicer"; 2) "NOTICE OF HEARING PRIOR TO FORECLOSURE OF DEED OF TRUST"; 3) "NOTICE OF FORECLOSURE SALE." THEREFORE, upon information and belief, Plaintiff alleges the assignment of STSI to serve as "Substitute Trustee," by SunTrust B is VOIDABLE and renders STSI filing of the "Special Proceedings Action" VOIDABLE.

28. WHEREFORE PLAINTIFF seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in an amount yet to be determined;

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount equal to the amount paid to STSI by SunTrust Bank;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of the Court for STSI to file a rescission of all documents related to the subject property and Plaintiff that are recorded with the Register of Deeds for the County of Cabarrus; and

j. Such other relief as the Court deems proper and just.

**THIRD CAUSE OF ACTION**

**MALFEASANCE ☐BREACH OF OATH OF OFFICE**

29. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 01 through 28 as though fully set forth herein.

30. Jennifer F. Thomas, Assistant Clerk for the General Justice Court North Carolina Cabarrus County did on January 25, 2010 execute an ORDER authorizing the alleged "Substitute Trustee can proceed to foreclose" pursuant to the relevant North Carolina General Statutes and did cause same to be recorded at 3:07 p.m. by the Court Clerk for the General Justice Court North Carolina Cabarrus file/case number 09 SP 1613. (*See true and correct copy attached as "EXHIBIT D"*)

31. Pursuant to NC GEN. STAT. § 45-21.16(d) the court Clerk must find the existence of; (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), (v) that the underlying mortgage debt is not a home loan as defined in G.S. 45-101(1b), or if the loan is a home loan under G.S. 45-101(1b), that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed, and (vi) that the sale is not barred by G.S. 45-21.12A, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. (*Emphasis added*).

32. Jennifer F. Thomas, Assistant Clerk for the General Justice Court North Carolina Cabarrus County; 1) failed to comply with NC GEN. STAT. § 45-21.16(d) as the record of the court evidence the execution of this ORDER by Jennifer F. Thomas occurred one hour and five minutes prior to STSI filing of the document(s), instrument(s), and affidavit(s) necessary to prove upon the record the requirements set forth in the NC GEN. STAT. § 45-21.16(d) (*See EXHIBIT A, B, F, G, and H*); and 2) the "NOTE" (*See EXHIBIT A*) fails to evidence any indorsement that SunTrust Bank is the contractually lawful "note holder." THEREFORE, upon information and belief, Plaintiff alleges Jennifer F. Thomas action in this case is of wanton malfeasance and a breach of the oath of office for the Clerk of the Court for Cabarrus County.

33. WHEREFORE PLAINTIFF seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court to the Clerk of the General Justice Court North Carolina Cabarrus County to Set Aside the ORDER of Jennifer F. Thomas file/case number 09 SP 1613 and to seal from the general public; and

34. Such other relief as the Court deems proper and just.

**FOURTH CAUSE OF ACTION**

**MISCONDUCT ☐BREACH OF OATH OF OFFICE**

35. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 01 through 34 as though fully set forth herein.

36. At 2:30 p.m. on December 1, 2009 STSI filed in the General Court of Justice for Cabarrus County a "SPECIAL PROCEEDINGS ACTION"[4] pursuant to Rule5(b) of the Rules for Practice For Superior and District Courts.

[4] See *EXHIBIT E* for a true and correct copy filed with the clerk for the Cabarrus County Court.

37. Pursuant to N.C. Gen. Stat. § 45-21.16(d), a hearing ("HEARING") was held before ACLERK at approximately 3:07 p.m. on January 25, 2010.

38. At the HEARING Petitioner, STSI, presented numerous documents and/or instrument(s) allegedly evidencing SunTrust B to be the lawful holder of the note.

39. In support of SunTrust B standing to foreclose STSI allegedly, at or prior to the HEARING, presented ACLERK with purportedly a lawful; 1) "ASSIGNMENT OF NOTE AND DEED OF TRUST"[5]; 2) copy of the NOTE[6]; 3) "APPOINTMENT OF SUBSTITUTE TRUSTEE"[7]; and 4) "AFFIDAVIT PURSUANT TO NCGS 45-21.16(d) AND 45-21.16C(a)."[8]

40. The acknowledgment attached to the "ASSIGNMENT OF NOTE AND DEED OF TRUST" allegedly presented to ACLERK, at or prior to the HEARING, violates Virginia Code § 47.1-15(3).

41. The "ASSIGNMENT OF NOTE AND DEED OF TRUST," executed on November 18, 2009 purports to be retroactive stating, "*[T]his assignment is effective (03/01/2007)."

42. The NOTE allegedly presented to ACLERK, at or prior to the HEARING, does not bear any indorsement from SunTrust M to SunTrust B.[9]

43. The "AFFIDAVIT PURSUANT TO NCGS 45-21.16(d) AND 45-21.16C(a)" executed on October 27, 2009 and allegedly presented to ACLERK, at or

[5] See *EXHIBIT F* for a true and correct copy filed with the clerk for the Cabarrus County Court.
[6] See *EXHIBIT A* for true and correct copy filed with the clerk for the Cabarrus County Court.
[7] See *EXHIBIT G* for true and correct copy filed with the clerk for the Cabarrus County Court.
[8] See *EXHIBIT H* for true and correct copy filed with the clerk for the Cabarrus County Court.
[9] N.C. Gen. Stat. § 25-1-201(b)(21).

prior to the HEARING, avers SunTrust B is "[T]he holder of the Note and indebtedness is: SunTrust Bank, c/o SunTrust Mortgage, Inc., P.O. Box 27767, Richmond, VA 23261."

44. The "APPOINTMENT OF SUBSTITUTE TRUSTEE" allegedly presented to ACLERK, at or prior to the HEARING, executed on October 21, 2009 was 28 days in advance of the allegedly lawful "ASSIGNMENT OF NOTE AND DEED OF TRUST," and 22 days in advance of the allegedly lawful "AFFIDAVIT PURSUANT TO NCGS 45-21.16(d) AND 45-21.16C(a)."

45. Jennifer F. Thomas, Assistant Clerk for the General Justice Court North Carolina Cabarrus County failed to comply with NC GEN. STAT. § 45-21.16(d) as the record of the court evidence the document(s), instrument(s), and/or affidavit(s) allegedly presented by STSI, at or prior to the HEARING, fail to evidence SunTrust B is/was the lawful holder of the NOTE and thus SunTrust B lacked standing to seek relief pursuant to N.C. GEN. STAT. § 45-21.16(d). THEREFORE, upon information and belief, Plaintiff alleges Jennifer F. Thomas action in this case is of wanton misconduct, under color of law, and a breach of the oath of office for the Clerk of the Court for Cabarrus County.

46. WHEREFORE PLAINTIFF seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court to the Clerk of the General Justice Court North Carolina Cabarrus County to Set Aside the ORDER of Jennifer F. Thomas file/case number 09 SP 1613 and to seal from the general public; and

47. Such other relief as the Court deems proper and just.

**FIFTH CAUSE OF ACTION**

**MATERIAL BREACH OF CONTRACT**

48. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 01 through 47 as though fully set forth herein.

49. Prior to March 2007 Residential Funding Company LLC (RFC) entered into an agreement with SunTrust Bank, to purchase mortgage loans originated by SunTrust Bank and/or its subsidiary(ies), SunTrust Mortgage, Inc..

50. On, or about, March 1, 2007 RFC purchased a "NOTE"; a true and correct copy of same filed in the General Justice Court for North Carolina Cabarrus County is attached hereto as *EXHIBIT A*; and the corresponding security instrument, a true and correct copy of that "Deed of Trust" filed in the General Justice Court for North Carolina Cabarrus County is attached hereto as *EXHIBIT B*; from SunTrust Bank and/or its

subsidiary, SunTrust Mortgage, Inc., pursuant to that certain mortgage purchase agreement.

51. The Agreement by and between RFC and SunTrust B, whereby RFC purchases loans originated by SunTrust B, and whereby RFC subsequently grants subservicing rights for those purchased mortgage loans to SunTrust B and/or its subsidiary, SunTrust M, required the approval of Board of Directors for SunTrust B.

52. On November 3, 2009 SunTrust B caused HSB to deliver a written communication (*See EXHIBIT C*) identifying Hutchens, Senter & Britton, P.A., as representatives for SunTrust Bank. In this correspondence HSB, among other claims, states the following: (1) SunTrust Bank is the "note holder"; (2) HSB is informed by the "note holder" that "you have defaulted under the terms of your Note and/or deed of trust"; (3) "note holder" has directed that we provide you with the statement required under the terms of N.C. Gen. State § 45-21.16(a)(5a)."

53. The Deed does not provide the "note holder" with the option to delegate the "Lender[s]" authority for a Notice of Acceleration pursuant to numbered paragraph 22. At that time SunTrust B knew or should have known it is/was not the Note Holder as defined in numbered paragraph 1 of the NOTE. THEREFORE, upon information and belief, Plaintiff alleges SunTrust B made material misrepresentations to HSB, and materially breached the Deed of Trust pursuant to paragraph 22 and the NOTE pursuant to paragraph 1.

54. On October 21, 2009 Rebecca W. Shaia, claiming the capacity of Vice President SunTrust Bank, did execute and cause to be recorded on November 18, 2009,

Book 08966, Instrument number 28743, in the Office of the Register of Deeds Cabarrus County North Carolina a "APPOINTMENT OF SUBSTITUTE TRUSTEE." (*See EXHIBIT G*).

55. The "APPOINTMENT OF SUBSTITUTE TRUSTEE" ("AST") document makes certain representations that SunTrust Bank knew or should have known to be false.

56. The AST was prepared by HSB and represents SunTrust Bank is the "holder of the Note," a representation that SunTrust Bank knew or should have known to be false.

57. SunTrust Bank and/or SunTrust Mortgage, Inc. on or about March 1, 2007 sold the NOTE to RFC.

58. RFC then sold the NOTE to Residential Accredit Loans, Inc., a single purpose entity designated as the "Depositor" for that certain Pooling Servicing Agreement for the mortgage back asset securities known as "RALI Series 2007- QS5."

59. Pursuant to that certain Pooling Servicing Agreement ("PSA") Residential Accredit Loans, Inc. transfers all the purchased mortgage loan instruments and documents to the Trustee for the trust, in this instant case Deutsche Bank Trust Company Americas.

60. Subsequently Deutsche Bank Trust Company Americas delivers the purchase mortgage loan instrument(s) and document(s) to the trust's Custodian for the Records.

61. RFC is the Master Servicer for the trust and the mortgage loan instruments and documents are held in the trust for the benefit of the certificate holders.

62. RFC, under the PSA, is responsible for foreclosing on non-performing assets held in the trust.

63. In order to foreclose on a mortgage loan property held in the trust, RFC must complete a certificate requesting the requisite instrument(s) and document(s) for that certain mortgage loan property, and deliver the request to the Trustee.

64. The Trustee in turn delivers the request for the mortgage loan instrument(s) and document(s) from RFC to the "Custodian of the Records."

65. The Custodian of the Records then delivers the mortgage loan document(s) to RFC.

66. RFC makes the mortgage loan instruments and documents available to the Subservicer, in this instant case SunTrust M, through its parent SunTrust Bank for the purpose of foreclosing on the relevant mortgage loan property.

67. SunTrust B has no possessory ownership in the NOTE or the Deed of Trust, thus The APPOINTMENT OF SUBSTITUTE TRUSTEE executed by Rebecca W.Shaia, Vice President for SunTrust Bank constitutes a wanton and material breach of the CONTRACTS. THEREFORE, upon information and belief, Plaintiff alleges SunTrust Bank materially breached the CONTRACTS.

68. On November 18, 2009 Jackie W. Ballos, claiming the capacity of the "duly authorized officers" for SunTrust Mortgage, Inc. dba Sun America Mortgage, did execute a "ASSIGNMENT OF NOTE AND DEED OF TRUST." (*See EXHIBIT F for a true and correct copy*).

69. The "ASSIGNMENT OF NOTE AND DEED OF TRUST", claims to ". . . sell, assign, transfer and set over unto the said SunTrust Bank all of its rights, title and interest in and to the said note secured by the said deed of trust."

70. The "ASSIGNMENT OF THE NOTE AND DEED OF TRUST" is defective as the Notarial Acknowledgement does not name any party having personally appeared before the Notary.[10]

71. Additionally, SunTrust Bank knew or should have known that SunTrust Mortgage, Inc., is/was **not** the "Note Holder" thus the "ASSIGNMENT OF THE NOTE AND DEED OF TRUST" is defective.

72. SunTrust Mortgage, Inc. knew, or should have known, it had no possessory interest in the NOTE or Deed of Trust. THEREFORE, upon information and belief, Plaintiff alleges both SunTrust Bank, and its subsidiary, SunTrust Mortgage, Inc. have committed a material breach of contract.

73. WHEREFORE PLAINTIFF seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

[10] Virginia Code § 47.1-15(3)

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court directing SunTrust Bank to remove any and all derogatories in connection with mortgage loan from the three credit repositories, TransUnion, Experian, Equifax; and

j. Such other relief as the Court deems proper and just.

**SIXTH CAUSE OF ACTION**

**BREACH OF COVENANT**

74. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 01 through 73 as though fully set forth herein.

75. Paragraph 16 of the Deed of Trust in relevant part states,

*"Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located."*

76. United States Title 12 § 2605(b)(1) in relevant part states,

*"Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person."*

77. Residential Funding Company LLC, pursuant to that certain Pooling Servicing Agreement, is the Master Servicer ("MS").

78. As MS for the "RALI Series 2007- QS5 TRUST" RFC acquired certain servicing rights and responsibilities with respect to the subject mortgage loan.

79. RFC, pursuant to the PSA, is responsible for all the administration of all required servicing for each mortgage loan held in the trust.

80. RFC, among other servicing responsibilities, is required on behalf of the "RALI Series 2007- QS5 TRUST" to collect the monthly mortgage payment due for each mortgage loan held in trust.

81. Title 12 U.S.C. § 2605(b)(1) is specific "Each servicer . . . shall notify borrower in writing of any . . . transfer of the servicing of the loan to any other person."

82. Residential Funding Company LLC did not notice Plaintiff of transfer of certain servicing responsibilities.

83. The notification failure of RFC damaged Plaintiff in that Plaintiff was effectively barred from direct communications with the MS which might have been mutually beneficial. THEREFORE, upon information and belief, Plaintiff alleges Residential Funding Company LLC committed a Breach of Covenant.

84. WHEREFORE PLAINTIFF seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury; and

i. Such other relief as the Court deems proper and just.

**SEVENTH CAUSE OF ACTION**

**QUIET TITLE**

85. Plaintiff repeats, re-alleges and incorporates each and every allegation contained in paragraphs 01 through 84 as though fully set forth herein.

86. SunTrust B claims to have an ownership interest in the NOTE and the Deed of Trust. (*See EXHIBIT F for a true and correct copy of the "ASSIGNMENT OF THE NOTE AND DEED OF TRUST"*)

87. The "ASSIGNMENT OF THE NOTE AND DEED OF TRUST" executed On November 18, 2009 by Jackie W. Ballos avers a retroactive assignment evidenced by the asterisk notation "[T]his assignment is effective (03/01/2007)".

88. The "RALI Series 2007- QS5 TRUST" requires the NOTE and Deed of Trust for this mortgage loan to be held in trust by Deutsche Bank Trust Americas for the benefit of the Certificate Owners.

89. Pursuant to the "ASSIGNMENT OF THE NOTE AND DEED OF TRUST," SunTrust Bank claims possession of "all of the rights, title and interest in and to the said note secured by the deed of trust."

90. The claim, by SunTrust B, of ownership of the NOTE and Deed of Trust gives rise that the Deed of Trust is separated from the NOTE.

91. The separation of the NOTE from the Deed of Trust VOIDs the Deed of Trust. THEREFORE, upon information and belief, Plaintiff alleges the Deed of Trust is separated and thus is VOID.

92. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. General damages in an amount yet to be determined;

c. Restitution damages in an amount set by the jury;

d. Punitive in an amount to be set by the jury;

e. Treble;

f. Unliquidated in an amount to be set by the jury;

g. A ORDER of this Court directing Residential Funding Company LLC to record a rescission of the Deed of Trust and all recorded foreclosing documents, registered with the Register of Deeds for North Carolina Cabarrus County; and

h. Such other relief as the Court deems proper and just.

93. WHEREFORE Plaintiff request judgment as set forth below.

**RELIEF REQUESTED ON EACH CAUSE OF ACTION**

**ON THE FIRST CAUSE OF ACTION**

94. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in an amount to be set by the jury;

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount equal to the amount paid to HSB by SunTrust Bank;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court for HSB to seal all records that are in or subject to the control of HSB and are relevant to either the subject property or plaintiff; and

j. Such other relief as the Court deems proper and just.

**ON THE SECOND CAUSE OF ACTION**

95. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in an amount yet to be determined;

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount equal to the amount paid to STSI by SunTrust Bank;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of the Court for STSI to file a rescission of all documents related to the subject property and Plaintiff that are recorded with the Register of Deeds for the County of Cabarrus; and

j. Such other relief as the Court deems proper and just.

**ON THE THIRD CAUSE OF ACTION**

96. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court to the Clerk of the General Justice Court North Carolina Cabarrus County to Set Aside the ORDER of Jennifer F. Thomas file/case number 09 SP 1613 and to seal from the general public; and

j. Such other relief as the Court deems proper and just.

**ON THE FOURTH CAUSE OF ACTION**

97. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court to the Clerk of the General Justice Court North Carolina Cabarrus County to Set Aside the ORDER of Jennifer F. Thomas file/case number 09 SP 1613 and to seal from the general public; and

j. Such other relief as the Court deems proper and just.

**ON THE FIFTH CAUSE OF ACTION**

98. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury;

i. Order of this Court directing SunTrust Bank to remove any and all derogatories in connection with mortgage loan from the three credit repositories, TransUnion, Experian, Equifax; and

j. Such other relief as the Court deems proper and just.

**ON THE SIXTH CAUSE OF ACTION**

99. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. Compensatory in the amount of Fifty-one thousand eight hundred thirty-five and 95/100 dollars ($51,835.95);

c. Consequential in the amount of Two hundred forty thousand six hundred fifty-nine and/no 100 dollars ($240,659.00);

d. General damages in an amount yet to be determined;

e. Restitution damages in an amount set by the jury;

f. Punitive in an amount to be set by the jury;

g. Treble;

h. Unliquidated in an amount to be set by the jury; and

i. Such other relief as the Court deems proper and just.

**ON THE SEVENTH CAUSE OF ACTION**

100. WHEREFORE Plaintiff seeks, the following damages;

a. Actual as demonstrated and proved upon the record;

b. General damages in an amount yet to be determined;

c. Restitution damages in an amount set by the jury;

d. Punitive in an amount to be set by the jury;

e. Treble;

f. Unliquidated in an amount to be set by the jury;

g. A ORDER of this Court directing Residential Funding Company LLC to record a rescission of the Deed of Trust and all recorded foreclosing documents, registered with the Register of Deeds for North Carolina Cabarrus County; and

h. Such other relief as the Court deems proper and just.

**ON ALL CAUSES OF ACTION**

101. WHEREFORE Plaintiff request;

a. That Defendants take nothing by way of their non-judicial foreclosure proceeding;

b. That the Court find for the Plaintiff and issue a Court order for Defendant Residential Funding Company LLC, to record in the Office of the Cabarras County Recorder a Full Reconveyance of the Note;

c. That the Court find for the Plaintiff and issue a Court order for Defendant to surrender over to Plaintiff the original NOTE;

d. For attorney's fees, legal fees, research cost and cost of suit incurred herein according to proof; and

e. That Plaintiff be awarded such other relief as the jury or this Court deems just and proper.

DATED: May 16, 2011

Respectfully submitted,

Jennifer Lynn Wilson ©2010

Jennifer Lynn Wilson, Propria Persona
4365 Highway 49 S., 500-251
Harrisburg, NC 28075
Ph.: 704-455-7274

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**(Voluminous Exhibits Omitted)**

**Exhibit 20**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
Civil Action No. 3:11-cv-390

| | | |
|---|---|---|
| JENNIFER L. WILSON<br><br>Plaintiff,<br><br>vs.<br><br>SunTrust Bank, incorporated in Georgia; SunTrust Mortgage, Inc.; Residential Funding Company, LLC; The Law Firm of Hutchens, Senter & Britton, P.A.; Substitute Trustee Services, Inc.; Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina; and DOES 1-10 inclusively,<br><br>Defendants. | ) | **ANSWER OF RESIDENTIAL FUNDING COMPANY, LLC TO COMPLAINT** |

Pursuant to Rule 12 of the Federal Rules of Civil Procedure, Defendant Residential Funding Company, LLC ("RFC"), responding to the Complaint in this action, alleges and says the following:

**First Defense**

The Complaint should be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because the Court lacks subject matter jurisdiction.

**Second Defense**

The Complaint should be dismissed pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for lack of personal jurisdiction.

**Third Defense**

The Complaint should be dismissed pursuant to Rule 12(b)(4) of the Federal Rules of Civil Procedure for insufficient process.

**Fourth Defense**

The Complaint should be dismissed pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure for insufficient service of process.

**Fifth Defense**

The Complaint fails to state a claim upon which relief can be granted and therefore the Complaint should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

**Sixth Defense**

RFC, answering the individual paragraphs of the Complaint, alleges and says the following:

1. Paragraph 1 of the Complaint does not contain allegations of fact and a response is not required. To the extent a response is required, the allegations contained in paragraph 1 of the Complaint are denied.

**JURISDICTION**

2. With respect to the allegations contained in paragraph 2 of the Complaint, it is denied that diversity of citizenship exists between the parties. The remaining allegations contained in paragraph 2 of the Complaint are denied.

**VENUE**

3. RFC does not object to the venue of this action. It is denied that diversity of citizenship exists between the parties to this action.

**NATURE OF THE ACTION**

4. The allegations contained in paragraph 4 of the Complaint are denied.

5. With respect to the allegations contained in paragraph 5 of the Complaint, it is admitted that RFC, among other things, acquires mortgage loans, packages the loans as

securities, and transfers them to investors. It is further admitted that that the promissory note executed by Plaintiff in favor of SunTrust Mortgage, Inc. d/b/a Sun America Mortgage on March 1, 2007 and the deed of trust executed by Plaintiff securing such promissory note were transferred to RFC after the closing of Plaintiff's loan. The remaining allegations contained in paragraph 6 of the Complaint are denied.

6. The allegations contained in paragraph 6 of the Complaint are denied.

7. The allegations contained in paragraph 7 of the Complaint are denied.

8. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint, and accordingly, those allegations are denied.

9. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint, and accordingly, those allegations are denied.

**PARTIES**

10. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and accordingly, those allegations are denied.

11. With respect to the allegations contained in paragraph 11 of the Complaint, it is admitted upon information and belief that SunTrust Bank is a bank organized under the laws of the State of Georgia with its principal place of business located in Atlanta, Georgia. The remaining allegations contained in paragraph 12 of the Complaint are denied.

12. With respect to the allegations contained in paragraph 12 of the Complaint, it is admitted upon information and belief that SunTrust Mortgage, Inc. is a corporation organized

under the laws of the Commonwealth of Virginia with its principal place of business in Virginia. It is further admitted that SunTrust Mortgage, Inc. is a wholly-owned subsidiary of SunTrust Bank. The remaining allegations in paragraph 12 of the Complaint are denied.

13. With respect to the allegations contained in paragraph 13 of the Complaint, it is admitted that RFC is a limited liability company organized under the laws of the State of Delaware. RFC is a wholly-owned indirect subsidiary of Ally Financial, Inc, f/k/a GMAC, Inc. The remaining allegations contained in paragraph 13 of the Complaint are denied.

14. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, and accordingly, those allegations are denied.

15. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, and accordingly, those allegations are denied.

16. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint, and accordingly, those allegations are denied.

**FIRST CAUSE OF ACTION**
**Misrepresentation – Breach of Fiduciary Duty**

17. RFC hereby incorporates by reference and re-alleges its responses to paragraphs 1 through 16 of the Complaint.

18. With respect to paragraph 18 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

19. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint, and accordingly, those allegations are denied.

20. With respect to paragraph 20 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations contained in paragraph 21 of the Complaint, and accordingly, those allegations are denied.

21. RFC Mortgage denies that Plaintiff is entitled to any relief from RFC in this action including, but not limited to, the relief requested in subsections a-j of paragraph 21 of the Complaint.

**SECOND CAUSE OF ACTION**
**Malicious Prosecution**

22. RFC hereby incorporates by reference and re-alleges its responses to paragraphs 1 through 21 of the Complaint.

23. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint, and accordingly, those allegations are denied.

24. With respect to paragraph 24 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

25. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint, and accordingly, those allegations are denied.

26. With respect to paragraph 26 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

27. With respect to paragraph 27 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied. In further response to the allegations contained in paragraph 27 of the Complaint, it is denied that any of the documents referenced in paragraph 28 of the Complaint are void or voidable.

28. RFC denies that Plaintiff is entitled to any relief from RFC in this action including, but not limited to, the relief requested in subsections a-j of paragraph 28 of the Complaint.

**THIRD CAUSE OF ACTION**
**Malfeasance**

29. RFC hereby incorporates by reference and re-alleges its responses to paragraphs 1 through 28 of the Complaint.

30. With respect to paragraph 30 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

31. Paragraph 31 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, the allegations contained in paragraph 31 of the Complaint are denied.

32. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint, and accordingly, those allegations are denied.

33. RFC denies that Plaintiff is entitled to any relief from RFC in this action including, but not limited to, the relief requested in subsections a-i of paragraph 33 of the Complaint.

34. RFC denies that Plaintiff is entitled to any relief from RFC in this action including, but not limited to, the relief requested in paragraph 34 of the Complaint.

**FOURTH CAUSE OF ACTION**
**Material Breach of Oath of Office**

35. RFC hereby incorporates by reference and re-alleges its responses to paragraphs 1 through 34 of the Complaint.

36. With respect to paragraph 36 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

37. The allegations contained in paragraph 37 of the Complaint are admitted upon information and belief.

38. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint, and accordingly, those allegations are denied.

39. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint, and accordingly, those allegations are denied.

40. Paragraph 40 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, the allegations contained in paragraph 41 of the Complaint are denied.

41. With respect to paragraph 41 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

42. With respect to paragraph 42 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

43. With respect to paragraph 43 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

44. With respect to paragraph 44 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

45. Paragraph 45 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, the allegations contained in paragraph 45 of the Complaint are denied.

46. RFC denies that Plaintiff is entitled to any relief from RFC in this action including, but not limited to, the relief requested in subsections a-i of paragraph 46 of the Complaint.

47. RFC denies that Plaintiff is entitled to any relief from RFC in this action including, but not limited to, the relief requested in paragraph 47 of the Complaint.

**FIFTH CAUSE OF ACTION**
**Material Breach of Contract**

48. RFC hereby incorporates by reference and re-alleges its responses to paragraphs 1 through 47 of the Complaint.

49. The allegations contained in paragraph 49 of the Complaint are denied.

50. With respect to paragraph 50 of the Complaint, RFC admits that the promissory note executed by Plaintiff in favor of SunTrust Mortgage, Inc. d/b/a Sun America Mortgage on March 1, 2007 and the deed of trust executed by Plaintiff securing such promissory note were transferred to RFC after the closing of Plaintiff's loan. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the remaining allegations contained in paragraph 50 of the Complaint, and accordingly, those allegations are denied.

51. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint, and accordingly, those allegations are denied.

52. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint, and accordingly, those allegations are denied.

53. The allegations contained in paragraph 53 of the Complaint are denied.

54. With respect to paragraph 54 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

55. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint, and accordingly, those allegations are denied.

56. With respect to paragraph 56 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied. RFC lacks sufficient knowledge or

information upon which to form a belief as to the truth of the remaining allegations contained in paragraph 56 of the Complaint, and accordingly, those allegations are denied.

57. With respect to paragraph 57 of the Complaint, RFC admits that the promissory note executed by Plaintiff in favor of SunTrust Mortgage, Inc. d/b/a Sun America Mortgage on March 1, 2007 and the deed of trust executed by Plaintiff securing such promissory note were transferred to RFC after the closing of Plaintiff's loan.

58. With respect to paragraph 58 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied. RFC admits, upon information and belief, that Plaintiff's loan was a part of RALI Series 2007-QS5.

59. With respect to paragraph 59 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

60. With respect to paragraph 60 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

61. The allegations contained in paragraph 61 of the Complaint are admitted.

62. With respect to paragraph 62 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

63. With respect to paragraph 63 of the Complaint, RFC craves reference to the PSA referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

64. With respect to paragraph 64 of the Complaint, RFC craves reference to the PSA referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

65. With respect to paragraph 65 of the Complaint, RFC craves reference to the PSA referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

66. With respect to the allegations contained in paragraph 66 of the Complaint, it is admitted that SunTrust Mortgage is a sub-servicer of Plaintiff's loan. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint, and accordingly, those allegations are denied.

67. The allegations contained in paragraph 67 of the Complaint are denied.

68. With respect to paragraph 68 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

69. With respect to paragraph 69 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

70. The allegations contained in paragraph 70 of the Complaint are denied.

71. The allegations contained in paragraph 71 of the Complaint are denied.

72. The allegations contained in paragraph 72 of the Complaint are denied.

73. RFC denies that Plaintiff is entitled to any relief from RFC in this action including, but not limited to, the relief requested in subsections a-j of paragraph 73 of the Complaint.

**SIXTH CAUSE OF ACTION**
**Breach of Covenant**

74. RFC hereby incorporates by reference and re-alleges its responses to paragraphs 1 through 73 of the Complaint.

75. With respect to paragraph 75 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

76. Paragraph 76 of the Complaint states legal conclusions to which no factual response is required.

77. It is admitted that RFC is the Master Servicer of Plaintiff's loan at issue in this lawsuit.

78. The allegations contained in paragraph 78 of the Complaint are admitted.

79. With respect to paragraph 79 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

80. With respect to paragraph 80 of the Complaint, RFC craves reference to the PSA referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

81. Paragraph 81 of the Complaint states legal conclusions to which no factual response is required.

82. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 82 of the Complaint, and accordingly, those allegations are denied.

83. The allegations contained in paragraph 83 of the Complaint are denied.

84. RFC denies that Plaintiff is entitled to any relief from RFC in this action including, but not limited to, the relief requested in subsections a-i of paragraph 84 of the Complaint.

**SEVENTH CAUSE OF ACTION**
**Quiet Title**

85. RFC hereby incorporates by reference and re-alleges its responses to paragraphs 1 through 84 of the Complaint.

86. RFC lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in paragraph 86 of the Complaint, and accordingly, those allegations are denied.

87. With respect to paragraph 87 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

88. With respect to paragraph 88 of the Complaint, RFC craves reference to the PSA referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

89. With respect to paragraph 89 of the Complaint, RFC craves reference to the document referenced and asserts that such document, to the extent it exists, speaks for itself, and any allegations inconsistent therewith are denied.

90. The allegations contained in paragraph 90 of the Complaint are denied.

91. The allegations contained in paragraph 91 of the Complaint are denied.

92. RFC denies that Plaintiff is entitled to any relief from RFC in this action including, but not limited to, the relief requested in subsections a-h of paragraph 92 of the Complaint.

93. RFC denies that Plaintiff is entitled to any relief from RFC in this action including, but not limited to, the relief requested in paragraphs 93-101 of the Complaint.

**Seventh Defense**

Plaintiff's claims are barred in whole or in part by the applicable statutes of limitations.

**Eighth Defense**

Plaintiff's claims are barred in whole or in part by the doctrines of estoppel and waiver.

**Ninth Defense**

Plaintiff's claims are barred in whole or in part by the doctrine of ratification.

**Tenth Defense**

Plaintiff's damages, which damages are denied, were not proximately caused by any act of RFC, thus barring recovery.

**Eleventh Defense**

Plaintiff's claims are barred in whole or in part by the mootness doctrine.

**Twelfth Defense**

Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

**Thirteenth Defense**

To the extent Plaintiff is found to have failed to mitigate her damages, the existence of which is denied, then Plaintiff's claims are barred.

**Fourteenth Defense**

Plaintiff's claims are barred in whole or in part by the doctrine of res judicata and/or collateral estoppel.

**Fifteenth Defense**

Plaintiff's claims are barred in whole or in part by the Rooker-Feldman doctrine.

**Sixteenth Defense**

RFC reserves the right to assert additional defenses in this action if and when it becomes apparent to RFC—through discovery or otherwise—that such defenses are applicable to this matter.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant Residential Funding Company, LLC respectfully requests that the Court:

1. Order that Plaintiff have and recover nothing from RFC;
2. Dismiss the Complaint with prejudice;
3. Award RFC its costs in this action; and
4. Award such other and further relief as the Court deems just and proper.

This the 9th day of June, 2011.

By: s/ Julia B. Hartley

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Julia B. Hartley
N.C. Bar No. 35188
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*Attorneys for Defendant Residential Funding Company, LLC*

**Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing Answer was duly served when the same was deposited into the United States Mail, first-class postage prepaid, addressed as follows:

Jennifer Lynn Wilson
4365 Highway 49 S. 500-251
Harrisburg NC 28075

This the 9th day of June, 2011.

By: s/ Julia B. Hartley
Christina R. Hunoval
N.C. State Bar No. 37194
Julia B. Hartley
N.C. State Bar No. 35188

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*Attorneys for Defendant Residential Funding Company, LLC*

**Exhibit 21**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
Civil Action No. 3:11-cv-390

| | | |
|---|---|---|
| JENNIFER L. WILSON<br><br>Plaintiff,<br><br>vs.<br><br>SunTrust Bank, incorporated in Georgia; SunTrust Mortgage, Inc.; Residential Funding Company, LLC; The Law Firm of Hutchens, Senter & Britton, P.A.; Substitute Trustee Services, Inc.; Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina; and DOES 1-10 inclusively,<br><br>Defendants. | ) | **SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION** |

Pursuant to Rules 12(b)(1) and 12(h)(3) of the Federal Rules of Civil Procedure, Defendants SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC, (collectively, the "Bank Defendants"), respectfully request that the Court dismiss Plaintiff's claims related to the state court foreclosure for lack of subject matter jurisdiction. In support of this Motion, the Bank Defendants respectfully show the Court that this Court lacks subject matter jurisdiction of this action based on the *Rooker/Feldman* doctrine. The Bank Defendants refer the Court to their Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction and Motion for Judgment on the Pleadings for a further explanation of why they are entitled to the relief they seek here.

WHEREFORE, the Bank Defendants respectfully request that the Court:

1. Grant the Bank Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction;

2. Enter a judgment in the Bank Defendants' favor dismissing with prejudice this action; and

3. Award such other and further relief as the Court deems just and proper.

This the 11th day of September, 2012.

By: s/ Julia B. Hartley
Julia B. Hartley
N.C. State Bar No. 35188

NELSON MULLINS RILEY
& SCARBOROUGH, L.L.P.
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*Attorneys for Defendants SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC*

**Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing Motion was duly served when it was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

Grady L Balentine, Jr.
gbalentine@ncdoj.gov

J. Scott Flowers
jsflowers@hutchenandsenter.com

The undersigned further certifies that a copy of the foregoing Motion was duly served when the same was deposited into the United States Mail, first-class postage prepaid, addressed as follows:

Jennifer Lynn Wilson
4365 Highway 49 S. 500-251
Harrisburg NC 28075

This the 11th day of September, 2012.

By: s/ Julia B. Hartley
Julia B. Hartley
N.C. State Bar No. 35188

NELSON MULLINS RILEY
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*Attorneys for Defendants SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC*

**Exhibit 22**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
Civil Action No. 3:11-cv-390

| | | |
|---|---|---|
| JENNIFER L. WILSON<br><br>Plaintiff,<br><br>vs.<br><br>SunTrust Bank, incorporated in Georgia; SunTrust Mortgage, Inc.; Residential Funding Company, LLC; The Law Firm of Hutchens, Senter & Britton, P.A.; Substitute Trustee Services, Inc.; Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina; and DOES 1-10 inclusively,<br><br>Defendants. | ) | **RESIDENTIAL FUNDING COMPANY, LLC'S MOTION FOR JUDGMENT ON THE PLEADINGS** |

Pursuant to Rules 12(c) and 12(h)(2) of the Federal Rules of Civil Procedure, Defendant Residential Funding Company, LLC ("RFC"), respectfully requests that the Court enter a judgment on the pleadings on Plaintiff's claim for violation of 12 U.S.C. § 2605(b). In support of this Motion, RFC respectfully shows the Court that the Complaint fails to state a claim against RFC for violation of 12 U.S.C. § 2605(b). RFC refers the Court to its Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction and Motion for Judgment on the Pleadings for a further explanation of why it is entitled to the relief it seeks here.

WHEREFORE, RFC respectfully requests that the Court:

1. Grant RFC's Motion for Judgment on the Pleadings;

2. Enter a judgment in RFC's favor dismissing with prejudice Plaintiff's claim for violation of 12 U.S.C. § 2605(b); and

3. Award such other and further relief as the Court deems just and proper.

This the 11th day of September, 2012.

By: s/ Julia B. Hartley

Julia B. Hartley
N.C. State Bar No. 35188

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*Attorneys for Defendants SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC*

**Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing Motion was duly served when it was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

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J. Scott Flowers
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The undersigned further certifies that a copy of the foregoing Motion was duly served when the same was deposited into the United States Mail, first-class postage prepaid, addressed as follows:

Jennifer Lynn Wilson
4365 Highway 49 S. 500-251
Harrisburg NC 28075

This the 11th day of September, 2012.

By: s/ Julia B. Hartley
Julia B. Hartley
N.C. State Bar No. 35188

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*Attorneys for Defendants SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC*

**Exhibit 23**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
Civil Action No. 3:11-cv-390

| | | |
|---|---|---|
| JENNIFER L. WILSON<br><br>Plaintiff,<br><br>vs.<br><br>SunTrust Bank, incorporated in Georgia; SunTrust Mortgage, Inc.; Residential Funding Company, LLC; The Law Firm of Hutchens, Senter & Britton, P.A.; Substitute Trustee Services, Inc.; Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina; and DOES 1-10 inclusively,<br><br>Defendants. | ) | **SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND MOTION FOR JUDGMENT ON THE PLEADINGS** |

Pursuant to Local Rule 7.2, Defendants SunTrust Mortgage, Inc. ("STM"), SunTrust Bank ("STB"), and Residential Funding Company, LLC ("RFC"), (collectively the "Bank Defendants") submit this Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction and Motion for Judgment on the Pleadings.

## NATURE OF THE MATTER

This lawsuit represents yet another misguided attempt by Plaintiff Jennifer L. Wilson ("Wilson") to undo a foreclosure sale that was conducted pursuant to an Order of the Clerk of Court of the North Carolina General Court of Justice for Cabarrus County and to hold STM, STB, RFC, and the other named defendants liable for claims related to the foreclosure of her

property.[1] Wilson is also attempting to assert a claim for violation of the Real Estate Settlement Procedures Act ("RESPA") against RFC.

As an initial matter, this Court lacks subject matter jurisdiction over Wilson's claims related to the foreclosure proceeding in state court based on the *Rooker/Feldman* doctrine. Furthermore, it is clear from the face of the pleadings filed in this action that Wilson's purported claim against RFC for violation of 12 U.S.C. § 2605(b) fails to state a claim upon which relief can be granted.

Accordingly, STM, STB, and RFC have now moved the Court to dismiss this action in its entirety with prejudice pursuant to Rules 12(b)(1), 12(c), 12 (h)(2), and 12(h)(3) of the Federal Rules of Civil Procedure on the grounds that this Court lacks subject matter jurisdiction and the Complaint fails to state a claim for violation of the RESPA against RFC. All other Defendants named in this action have filed separate motions to dismiss, which are currently pending before this Court.

## FACTUAL ALLEGATIONS

On January 18, 2007, Wilson obtained a loan in the principal amount of $296,000.00 from SunTrust Mortgage, Inc. d/b/a Sun America Mortgage (hereinafter, the "Loan"). The Loan was evidenced by a promissory note and secured by a deed of trust recorded in book 7295, pages 122-140 of the Cabarrus County Registry (the "Note" and "Deed of Trust," respectively).[2] In

[1] *See Wilson v. Federal National Mortgage Association, et al.* 3:11-cv-537-MOC-DCK (W.D.N.C. Apr. 19, 2012) (dismissed for lack of subject matter jurisdiction) (Order attached as **Exhibit A** to this memorandum); *Wilson v. SunTrust Bank, Inc., et al.*, 3:11-cv-580-FDW (W.D.N.C Feb. 23, 2012) (dismissed for lack of subject matter jurisdiction) (Order attached as **Exhibit B** to this memorandum). These cases concerned other loans and properties previously owned by Wilson.

[2] *See* Promissory Note and Deed of Trust attached as Exhibit A and Exhibit B, respectively, to the Complaint filed by Wilson.

the Deed of Trust, Wilson granted to STM a security interest in a parcel of real property located at 7801 Pinecroft Court, Harrisburg, North Carolina (the "Property").[3]

On December 1, 2009, as the result of Wilson's default under the terms of the Loan, a foreclosure proceeding was commenced by Substitute Services, Inc., the substitute trustee, before the Assistant Clerk of Superior Court of Cabarrus County by means of a special proceeding bearing file number 09-SP-1613 (the "Foreclosure").[4] Wilson's last payment made on the Loan was in June 2009.[5] On January 25, 2010, the Assistant Clerk of Superior Court of Cabarrus County entered an order allowing a foreclosure sale to proceed pursuant to N.C. Gen. Stat. § 45-21.16.[6] In doing so, the Assistant Clerk of Court found "[t]hat SunTrust Bank is the holder of the note sought to be foreclosed and it evidences that this is a valid debt owned by Jennifer L. Wilson."[7] The Clerk of Court also found that "the debtors have shown no valid reason why foreclosure should not commence."[8] Wilson did not appeal from the Clerk's Order or file a separate action to enjoin the Foreclosure. On November 15, 2010, the substitute trustee held the Foreclosure sale and STB c/o STM was the highest bidder at the sale.[9] Nearly two years after the Foreclosure sale and over three years since she made a payment on the Loan, Wilson is still in possession of the Property.

Plaintiff filed this action on or about May 16, 2011 seeking damages related to the Foreclosure, an Order setting aside the Clerk's Order allowing the Foreclosure sale, and

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[3] *See* Deed of Trust.

[4] Compl., ¶ 9.

[5] *See* Affidavit of Annette Holman-Foreman attached as Exhibit H to the Complaint.

[6] Compl., ¶ 30; *see also* Order allowing foreclosure attached as Exhibit D to Complaint ("Foreclosure Order").

[7] Foreclosure Order, ¶ 1.

[8] *Id.*, ¶ 4.

[9] *See* Report of Sale attached hereto as **Exhibit C**.

"rescission of all documents related to the subject property."[10] On June 9, 2011, STM, STB, and RFC filed Answers to the Complaint.

Despite the Clerk of Court's denial of Wilson's Motion for Entry of Default, Wilson filed Motions to Set Aside Denial of Default as to STM, STB, and RFC. On July 25, 2012, this Court denied Wilson's Motions to Set Aside Denial of Default.[11] STM, STB, and RFC now join the other Defendants in this action in filing a Motion to Dismiss for Lack of Subject Matter Jurisdiction and RFC also moves for entry of a judgment on the pleadings as to Wilson's purported RESPA claim against RFC.

## STATEMENT OF QUESTIONS PRESENTED

1. Does this Court lack subject matter jurisdiction over this matter based on the *Rooker/Feldman* doctrine because the action seeks to appeal the judicial determination of the Cabarrus County Superior Court?

2. As to the only claim not directly related to the Foreclosure, does the Complaint fail to state a claim for violation of 12 U.S.C. § 2605(b) against RFC?

## ARGUMENT

### I. This action should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) because this Court lacks subject matter jurisdiction over the action.

Wilson's Complaint is an attempt to re-litigate issues that have already been judicially determined by the North Carolina state courts and consequently should be dismissed under the *Rooker/Feldman* doctrine. The *Rooker-Feldman* doctrine is premised upon two United States Supreme Court decisions; *Rooker v. Fidelity Trust Co.*[12] and *District of Columbia Court of*

[10] *See* Compl., ¶¶ 95, 97, Prayer for Relief.

[11] *See* Text-Only Order entered on July 25, 2012.

[12] 263 U.S. 413 (1923).

*Appeals v. Feldman.*[13] The doctrine bars the exercise of federal court jurisdiction where the claims are "inextricably intertwined" with the claims adjudicated in a state court.[14] According to *Rooker, Feldman,* and their progeny, this Court cannot sit in the place of a court of appeal reviewing facts or determinations made by North Carolina state courts, particularly where there is a means of appeal expressly provided under state law.[15]

In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.,*[16] the Supreme Court squarely addressed the principals of the *Rooker/Feldman* doctrine for the first time since the *Feldman* decision.[17] In *Exxon Mobil*, the Court set forth the following rule of application for the doctrine: "The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."[18] The *Exxon Mobil* test for the application of the *Rooker-Feldman* doctrine can be divided into the following four elements: "[1] cases brought by state-court losers [2] complaining of injuries caused by state-court judgments

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[13] 460 U.S. 462 (1983).

[14] *Feldman*, 460 U.S. at 483 n. 16

[15] *See Washington v. Wilmore*, 407 F.3d 274 (4th Cir. 2005); *Holliday Amusement Co. of Charleston, Inc. v. State of South Carolina*, 401 F.3d 534 (4th Cir. 2005), cert. denied, 126 S.Ct. 357. *See also Brumby v. Deutsche Bank Nat'l Trust Co.*, No. 1:09CV144, *6-20 (Feb. 17, 2010 M.D.N.C.) (Plaintiff's claims based on state court foreclosure barred by *Rooker-Feldman* doctrine because "the state court foreclosure order expressly found that Deutsche Bank was the holder of the Note and that Plaintiff had shown no valid reason why the foreclosure should not proceed."). A copy of the *Brumby* case is attached to this memorandum as **Exhibit D**.

[16] 544 U.S. 280 (2005).

[17] *Exxon Mobil*, 544 U. S. at 287.

[18] *Exxon Mobil*, 544 U.S. at 284.

[3] rendered before the district court proceedings commenced and [4] inviting district court review and rejection of those judgments."[19]

Wilson's purported claims satisfy all four elements in that Wilson is complaining of the state court Foreclosure, which was completed prior to Wilson initiating this action, and is seeking an order from this Court allowing her relief based on the determination that STB was not the holder of the Note at the time of the Foreclosure in direct contrast to the state court ruling.

North Carolina statutes set forth the procedure for state clerks of court to determine the validity of a debt subject to foreclosure and specifically provide that "the act of the clerk in so finding or refusing to find is a judicial act."[20] On January 25, 2010, the Assistant Clerk of Court entered an order allowing the Foreclosure and determined that STB was the holder of the Note sought to be foreclosed.[21] Accordingly, the issue of whether STB was the holder of the Note has already been judicially established pursuant to N.C. Gen. Stat. § 45-21.16.

Moreover, Chapter 45 of the North Carolina General Statutes provides a means for appeal of an order by a clerk of superior court that permits a foreclosure sale to move forward.[22] Such an appeal must be made within 10 days of the clerk's order allowing foreclosure and the appeal must be filed in the superior court division of the county where the foreclosure is occurring.[23] Wilson did not pursue the means of appeal provided for under North Carolina law and cannot now attempt to appeal the Order in this forum.

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[19] *Id.*

[20] N.C. Gen. Stat. § 45-21.16(d1).

[21] *See* Foreclosure Order.

[22] *See* N.C. Gen. Stat. § 45-21.6(d1).

[23] *See* N.C. Gen. Stat. § 45-21.6(e).

North Carolina statutes also provide a means for seeking an injunction to restrain foreclosure proceedings where equitable grounds exist to stop the foreclosure.[24] Such an injunction may be granted by a judge of the state superior court division upon any "equitable ground which the court may deem sufficient" but any such injunction must be sought before the rights of the parties become "fixed."[25] The rights of the parties become fixed "upon either the expiration of the period for filing an upset bid, the provision of injunctive relief precluding the consummation of the foreclosure sale, or the occurrence of some similar event."[26] Wilson did not, however, pursue the means available to her under North Carolina law for seeking such an injunction, but has attempted to use this Court as a means for obtaining injunctive relief instead, despite the issue being moot because the sale has already occurred and the rights of the parties having become fixed. This is precisely the kind of litigation that is intended to be barred under *Rooker/Feldman*, and accordingly, the Complaint should be dismissed.

With the exception of the purported RESPA claim, which will be addressed below, all of Wilson's purported claims against STM, STB, and RFC turn on Wilson's allegation that STB was not the holder of the Note at the time of the Foreclosure. Again, the Assistant Clerk of Court entered an order in which she determined that STB was the holder of the Note.[27] The Foreclosure Order is a final judgment and this Court lacks subject matter jurisdiction over all of Wilson's claims related to the Foreclosure.

In sum, each of Wilson's claims is merely an attempt to re-litigate claims that have already been judicially determined and such attempt is specifically prohibited by the

[24] N.C. Gen. Stat. § 45-21.34.

[25] N.C. Gen. Stat. § 45-21.34.

[26] *Goad v. Chase Home Finance, LLC*, 704 S.E.2d 1, 4 (N.C. App. 2010).

[27] *See* Foreclosure Order.

*Rooker/Feldman* doctrine. Accordingly, this Court should dismiss Wilson's claims related to the Foreclosure for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

## II. Wilson's purported claim for "Breach of Covenant" against RFC fails to state a claim upon which relief can be granted and judgment should be entered on the pleadings.

The only claim contained in the Complaint that is arguably not related to the Foreclosure in state court and thus barred by the *Rooker/Feldman* doctrine is Wilson's purported claim for "breach of covenant" against RFC, which appears to be claim for violation of 12 U.S.C. § 2605(b)(1).[28] Nevertheless, judgment should be entered on the pleadings as to this claim pursuant to Fed. R. Civ. P. 12(c).

### A. Standard of Decision

Fed. R. Civ. P. 12(c) provides, "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." A motion for judgment on the pleadings under Rule 12(c) is assessed under the same standard that applies to a Rule 12(b)(6) motion.[29] Judgment on the pleadings is proper where, after accepting all well-pleaded allegations in the complaint as true, it appears certain that the plaintiff cannot prove any set of facts in support of his claims that entitles him to relief.[30]

In *Bell Atlantic Corp. v. Twombly*, the United States Supreme Court held the following:

> While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.[31]

[28] Compl., ¶¶ 81-82.

[29] *Walker v. Kelly*, 589 F.3d 127, 139 (4th Cir. 2009).

[30] *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999).

[31] *Bell Atlantic Corp. v. Twombly*, 500 U.S. 544(2007).

Accordingly, this Court is not bound by a plaintiff's unsupported legal conclusions because "the purpose of Rule 12(b)(6) is to test the legal sufficiency of the complaint."[32] "Conclusory allegations in a complaint, if they stand alone, are a danger sign that the plaintiff is engaged in a fishing expedition."[33] "The heavy costs of modern federal litigation . . . counsel against launching the parties into pretrial discovery if there is no reasonable prospect that the plaintiff can make out a cause of action from the events narrated in the complaint."[34]

While "pleadings drafted by *pro se* litigants are held to less stringent standards than those presented to the court by an attorney . . . there are reasonable limits on how far the court should go to liberally construe . . . [such] pleadings."[35] "[P]ro se status does not 'exempt [plaintiffs] from compliance with relevant rules of procedural and substantive law."[36] And "one acting *pro se* has no license to harass others and overload the court dockets with meritless or abusive litigation."[37]

**B. Wilson's RESPA claim against RFC is time-barred.**

Wilson alleges that RFC violated provision of the RESPA codified at 12 U.S.C. § 2605(b), which states the following:

> Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan *to any other person* . . . the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan.[38]

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[32] *Randall v. United States*, 30 F.3d 518, 522(1994).

[33] *Migdal v. Rowe Price-Fleming International, Inc.*, 248 F.3d 321, 326(4th Cir. 2001).

[34] *Nixon v. Individual Head of the St. Joseph's Mortg. Co.*, 615 F. Supp. 898, 899(N.D. Ind. 1985).

[35] *Willis v. MCI Telecomms.*, 3 F. Supp. 2d 673, 674 (E.D.N.C. 1998), *aff'd*, 161 F.3d 5(4th Cir. 1998).

[36] *Rene v. Citibank, NA*, 32 F. Supp. 2d 539, 541(E.D.N.Y. 1999).

[37] *Strickland v. A Mortgage Co.*, 179 B.R. 979, 980(N.D. Ga. 1995).

[38] 12 U.S.C. § 2605(b)(1) (emphasis added).

Wilson alleges that RFC did not provide her notice of transfer of servicing responsibilities to RFC, which caused her damage in that she was "effectively barred from direct communication with the MS [RFC]."[39] The statute of limitations for a claim for a violation of 12 U.S.C. § 2605(b) is three years from the date the violation occurred.[40] Therefore, because Wilson filed her Complaint in this action on May 16, 2011, her claim for violation of 12 U.S.C. § 2605(b) must be based on conduct that occurred no earlier than May 16, 2008. However, Wilson alleges in the Complaint that RFC became the master servicer of her loan on March 1, 2007 when her loan was pooled and sold into a trust.[41] Therefore, any alleged violation of the requirement of providing notice of a transfer of servicing rights to any other person would have occurred no later than 15 days prior to March 1, 2007 – or February 14, 2007. Thus, because Wilson alleges the violation occurred prior to May 16, 2008, her purported claim for violation of 12 U.S.C. § 2605(b) is barred by the applicable statute of limitations.

**C. 12 U.S.C. § 2605(b) only applies to servicing transferors.**

As an additional ground for dismissal, 12 U.S.C. § 2605(b) applies to transferors of servicing rights, not transferees. Therefore, the alleged responsibility for issuing the notification required by 12 U.S.C. § 2605(b) did not rest with RFC, the receiving entity. Thus, in addition to the claim being time barred, Wilson's allegations do not state a claim for violation of 12 U.S.C. § 2605(b) because she alleges that RFC was a transferee of servicing rights related to her loan, and therefore, judgment should be entered on the pleadings in favor of RFC on Wilson's purported claim for "breach of covenant."

[39] Compl., ¶ 83.

[40] 12 U.S.C. § 2614.

[41] Compl., ¶¶ 57-61.

## CONCLUSION

Because this Court lacks subject matter jurisdiction over Wilson's claims related to the Foreclosure pursuant to the *Rooker/Feldman* doctrine and the Complaint fails to state a claim upon which relief can be granted as to Wilson's purported claim against RFC for violation of 12 U.S.C. § 2605(b), this Court should dismiss with prejudice Wilson's Complaint in its entirety.

This the 11th day of September, 2012.

By: s/ Julia B. Hartley
Julia B. Hartley
N.C. State Bar No. 35188

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*Attorneys for Defendants SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC*

**Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing Memorandum was duly served when it was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

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Jennifer Lynn Wilson
4365 Highway 49 S. 500-251
Harrisburg NC 28075

This the 11th day of September, 2012.

By: s/ Julia B. Hartley
Julia B. Hartley
N.C. State Bar No. 35188

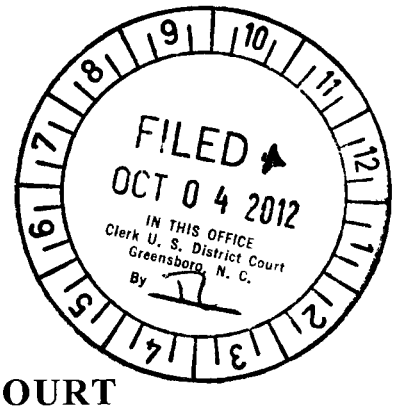
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*Attorneys for Defendants SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC*

**(Voluminous Exhibits Omitted)**

**Exhibit 24**

Jennifer L. Wilson, Pro Se
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Harrisburg, NC 28075
Ph.: 704-773-1712




**UNITED STATES DISTRICT COURT**
**for the**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**GREENBORO DIVISION**

Jennifer L. Wilson

Plaintiff,

v.

SunTrust Bank incorporated in Georgia; SunTrust Mortgage, Inc.; Residential Funding Company, LLC; The Law Firm of Hutchens, Senter & Britton, P.A.; Substitute Trustee Services, Inc.; Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina; and DOES 1 – 10 inclusively,

Defendants.

CASE NO: **1:11-cv-00390**

Judge: Unassigned

**RESPONSE IN OPPOSITION TO SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

[Filed concurrently with; MEMORANDUM IN SUPPORT OF MOTION IN OPPOSITION TO SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION]

Plaintiff, Jennifer L. Wilson, moves this Court to **DENY** Defendant's, SunTrust Bank incorporated in Georgia, SunTrust Mortgage, Inc., and Residential Funding Company, LLC's "MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION".

This "RESPONSE IN OPPOSITION TO SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION" is based upon the documents and records subject to judicial notice, the pleadings and evidence filed in the record of the United States District Court for the Western District of North Carolina Charlotte Division case number 3:10-cv-00573 and incorporated in its entirety by reference herein, the concurrently filed MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION", the record of this court, and such other and further evidence as may be presented.

WHEREFORE plaintiff, Jennifer L. Wilson, respectfully requests the Court:

01. Deny Defendant's, SunTrust Mortgage, Inc., SunTrust Bank incorporated in Georgia and Residential Funding Company, LLC's "MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION";
02. Award Plaintiff, Jennifer L. Wilson, such other and further relief as the Court deems just and proper.

DATE: October 3, 2012

Respectfully submitted,

Jennifer L. Wilson

Jennifer L. Wilson, Pro Se
4365 School House Commons, 500-251
Harrisburg, NC 28075
Ph.: 704-733-1712

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**CERTIFICATE OF SERVICE**

I Jennifer L. Wilson hereby certify that a copy of the "**RESPONSE IN OPPOSITION TO SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**" was mailed/delivered to defendants:

**SunTrust Bank, SunTrust Mortgage, Inc., and Residential Funding Company, LLC** by and through their counsel of record,
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Bank of America Corporate Center
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Attn.: Julia Hartley;

**The Law Firm of Hutchens, Senter, & Britton P.A. n/k/a Hutchens, Senter, Kellam, & Pettit, P.A., and Substitute Trustee Services, Inc.,** by and through their counsel,
c/o Hutchens, Senter, Kellam, & Pettit, P.A.
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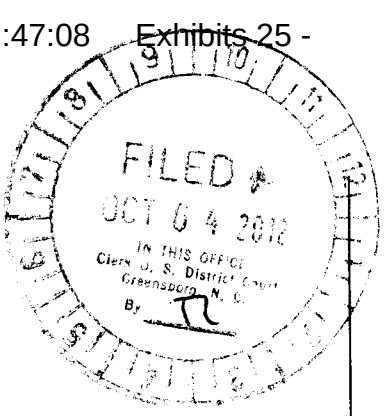
**Jennifer F. Thomas, Assistant Clerk of Superior Court**, by and through her counsel,
c/o North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
Attn.: Grady L. Balentine , Jr.

This the 4th day of October 2011.

By: Jennifer L. Wilson

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**Exhibit 25**




Jennifer L. Wilson, Pro Se
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**UNITED STATES DISTRICT COURT**

**for the**

**CENTRAL DISTRICT OF NORTH CAROLINA**

**GREENBORO DIVISION**

JENNIFER L. WILSON,

Plaintiff,

v.

SunTrust Bank incorporated in Georgia; SunTrust Mortgage, Inc.; Residential Funding Company, LLC; The Law Firm of Hutchens, Senter & Britton, P.A.; Substitute Trustee Services, Inc.; Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina; and DOES 1 – 10 inclusively,

Defendants.

CASE NO: **1:11-cv-00390**

Assigned to: UNASSIGNED

**MEMORANDUM IN SUPPORT OF MOTION IN OPPOSITION TO SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

[Concurrently filed with: RESPONSE IN OPPOSITION TO SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION].

Plaintiff, Jennifer L. Wilson, submits this Memorandum in Support of Motion in Opposition to SunTrust Mortgage, Inc., SunTrust Bank and Residential Funding Company, LLC Motion to Dismiss for Lack of Subject Matter Jurisdiction (hereinafter "*Opposition Memorandum*").

## INTRODUCTION

This *Opposition Memorandum* is responsive to defendants, SunTrust Mortgage, Inc., SunTrust Bank, Residential Funding Company, LLC "MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION" (Dkt. # 60). Defendants, SunTrust Mortgage, Inc. (hereinafter "STM"), SunTrust Bank (hereinafter "STB"), Residential Funding Company, LLC (hereinafter "RFC"), and collectively "DEFENDANTS" chose to incorporate into one brief[1] arguments in support of two (2) separate motions DEFENDANTS brought; 1) Motion to Dismiss pursuant to Fed. R. Civ. P. Rules 12(b)(1) and (h)(3) "lack of subject matter jurisdiction"; and 2) a Motion for Judgment on the Pleadings pursuant to Fed. R. Civ. P. Rules 12(c) and (h)(3). For reasons of clarity and pursuant to the "RULES OF PRACTICE AND PROCEDURE of the UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA" (Effective April 1, 2011) (hereinafter "Rules of Practice NC") and more particularly Rule 7.3(k) in relevant part states,

> "*A motion unaccompanied by a required brief may, in the discretion of the Court, be summarily denied. A response unaccompanied by a required brief may, in the discretion of the Court, be disregarded and the pending motion may be considered and decided as an uncontested motion.*" (Emphasis added).

therefore, plaintiff, Jennifer L. Wilson files a separate Response and accompanying Brief to DEFENDANTS separately filed motion, Dkt. # 60 and DEFENDANTS conflated MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND MOTION FOR JUDGMENT ON THE PLEADINGS.

[1] SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND MOTION FOR JUDGMENT ON THE PLEADINGS.

By reference herein Plaintiff, Jennifer L. Wilson, incorporates in its entirety the following "ARGUMENT" in Plaintiff's Memorandum In Support of Response in Opposition to Motion to Dismiss as to Defendant, Substitute Trustee Services, Inc., Dkt. # 39; and Memorandum In Support of Response in Opposition to Motion to Dismiss as to Defendant, The Law Firm of Hutchens, Senter, & Britton, P.A., Dkt. #41.

**NATURE OF THE MATTER**

Plaintiff, Jennifer L. Wilson (hereinafter "Wilson") incorporates by reference the "NATURE OF THE ACTION" as set forth in the Complaint as though fully stated herein (*Dkt. # 1, para's.* 04 – 09) and as amended in the Complaint First Amended by leave of the Court.

Wilson further states as follows:

DEFENDANTS mischaracterize the "NATURE OF THE MATTER" labeling Wilson's Complaint as "misguided". (See "SunTrust Mortgage Inc., SunTrust Bank, and Residential Funding Company, LLC Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction and Motion for Judgment on the Pleadings" (hereinafter "*Memo to Dismiss*"), Dkt. 62, p. 3).

Wilson seeks a redress of grievances for violations of federal and state statues relevant and not limited to Misrepresentation Breach of Fiduciary Duty, Malicious Act, Malfeasance, Misconduct, Material Breach of Contract, Breach of Covenant, and any such other cause of action by leave of the Court. The *Rooker-Feldman* doctrine does not strip this Court of subject matter jurisdiction over Wilson's grievances as will be further elaborated herein.

The Clerk of the Court in a General Court of Justice for North Carolina, more particularly Cabarrus County, does not pass on the elements of the document(s) veracity when presented for determination in a Special Proceeding to authorize a foreclosure sale.

It is widely publicized law firms that represent the alleged Lender and the Trustee in foreclosure actions, in general, are merely foreclosure mills often times drafting specious documents. These very law firms, whom represent the Trustee, and alleged Note Holder, frequently employ former North Carolina Assistant Clerks of the Court to appear on behalf of the Trustee at the foreclosure hearing, thereby creating camaraderie between the two parties, the law firm engaged to prosecute the foreclosure and the assistant clerk of the courts.

However, this case does not stem from the foreclosure hearing itself or the determination made by the Clerk of the Court. Rather, it seeks a determination of the truthfulness (veracity) of various documentation, that in and of itself, violates the terms of the contract(s) and numerous federal and state statutes. Therefore, Wilson does not seek this Courts review of the determination made by the Clerk of the Court at the Special Proceeding. On this basis the narrow application of the *Rooker-Feldman* doctrine, as set forth by the United States Supreme Court in *Exxon Mobil Corp. et al. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (Mar. 30, 2005) and the 4th Circuit opinion in *Daviani v. Virginia Dept. of Transportation,* 434 F.3d 712, 717 (Jan. 17, 2006), is inapplicable in the instant case.

## STATEMENT OF FACTS

DEFENDANTS "**Factual Allegations**" in their *Memo to Dismiss* redacts the following facts:

Prior to Wilson taking any action Wilson sought validation (verification) of the alleged debt through written communication on December 8, 2009, July 8, 2010, and October 27, 2010 to the DEFENDANTS, The Law Firm of Hutchen, Senter, and Britton, P.A. n/k/a Hutchens, Senter, Kellam, & Pettit, P.A., and Roy Cooper, State of Carolina Attorney General.

In advance of filing this action on May 4, 2010 Wilson sought bankruptcy protection.[2] During and post the bankruptcy proceeding(s) DEFENDANTS caused the filing of multiple mendacious "PROOF OF CLAIM[S]", Affidavits, and Declarations. Wilson, erroneously relying upon the mendacious "PROOF OF CLAIM[S]", Affidavits, and Declarations, voluntarily dismissed the Petition for Bankruptcy protection. On October 12, 2010 Wilson called STM and engaged in telephonic communication with STM customer service employee Ameerah, employee number UVAM96. Ameerah informed Wilson STM is not the "Note Holder" and that RFC is the owner of the loan. Armed with this information Wilson began to research RFC historical background which lead Wilson to the Securities and Exchange Commission ("SEC") website for evidence of the loan. After an exhaustive search of SEC's website Wilson found evidence the loan was sold into a Trust identified as "RALI Series 2007- QS5 Trust".

DEFENDANTS, by redaction of the facts in this case are attempting to paint an unfavorable picture of Wilson by falsely declaring Wilson "did not … file a separate action to enjoin the Foreclosure" (see *Memo to Dismiss*, p. 3) an allegation although labeled "Factual" is without question a lie. Having determined the truth about the location and ownership of the loan Wilson filed an action to enjoin the sale in United States Federal District Court for the Western District of North Carolina (hereinafter "USDCWD") on November 12, 2010, case number 3:10-cv-00573 (hereinafter "Complaint 2010"). Wilson's Emergency Motion for a Temporary Restraining Order ("TRO") to enjoin that foreclosure sale scheduled for November 15, 2010, was filed contemporaneously with the Complaint 2010.[3]

[2] United States Bankruptcy Court Western District North Carolina case number 10-31255, and by reference herein is incorporated in its entirety.

[3] The complete "U.S. District Court Western District of North Carolina (Charlotte) CIVIL DOCKET FOR CASE #: 3:10-cv-00573-FDW-DCK" attached hereto and labeled "EXHIBIT I" evidence the Complaint 2010 and the contemporaneously filed "EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER" (see EXHIBIT I, Dkt. #s 1 and 2 respectively.).

The USDCWD Court chose not to grant Wilson her request for a TRO allowing the sale to proceed.

The USDCWD directed Wilson and Wilson submitted a MEMORANDUM IN SUPPORT OF SUBJECT MATTER JURISDICTION (USDCWD case 3:10-cv-00573 (see EXHIBIT I, Dkt. #'s 11 & 12). The USDCWD directed Wilson to file and Wilson filed an Amended Complaint 2010.[4] In support of the Amend Complaint 2010 Wilson filed a "Request for Judicial Notice of U.S. Securities & Exchange Commissions Attestations" and incorporates by reference herein said Securities & Exchange Commissions Attestations in its entirety. (See EXHIBIT I, Dkt. # 20, Attachments: #1, SEC Attestation1 – Part 1; #2 SEC Attestation1 – Part 2; #3 SEC Attestation1 – Part 3; #4 Attestation2; #5 SEC Attestation 3).

Defendants, STB and STM, answered the Amended Complaint 2010 (see EXHIBIT I, Dkt. #s 21[5] & 43[6] respectively).

Following a flurry of motions the USDCWD directed Wilson to Show Cause how venue is proper in the USDCWD. Wilson, in response to the USDCWD Show Cause Order, and in an effort to avoid another round of motions to dismiss for lack of venue, voluntarily dismissed the action in USDCWD and re-filed on April 5, 2011in this District Court a Complaint serving same pursuant to the rules of the Court, see docket numbers 1, 12, 13, 14, 15, 16 and 17 respectively.

RFC answered the Complaint admitting STM was not the Note Holder.[7] The admission by RFC that "the promissory note executed by Plaintiff in favor of SunTrust Mortgage, Inc. d/b/a Sun America Mortgage on March 1, 2007 and the

[4] EXHIBIT I, Dkt. # 15.
[5] Dkt. # 21 of U.S. District Court Western District of North Carolina (Charlotte) CIVIL DOCKET FOR CASE #: 3:10-cv-00573-FDW-DCK by reference is incorporated herein in its entirety.
[6] Dkt. # 43 of U.S. District Court Western District of North Carolina (Charlotte) CIVIL DOCKET FOR CASE #: 3:10-cv-00573-FDW-DCK by reference is incorporated herein in its entirety.
[7] See "ANSWER OF RESIDENTIAL FUNDING COMPANY, LLC TO COMPLAINT, U.S. District Court Middle District of North Carolina (Greenboro) CIVIL DOCKET FOR CASE #: 3:10-cv-00390 Dkt. 25, p. 9, para. 50; and p. 10, para. 57 and 58.

deed of trust executed by Plaintiff securing such promissory note were transferred to RFC after the closing of Plaintiff's loan." (See Dkt. 25, p. 10, para. 57). This admission by RFC is prima facie evidence mendacious documents, "PROOF OF CLAIM", affidavits, declarations, and assignments, were all executed with the purpose and intent to deceive and are in fact fraudulent on their face.

## QUESTIONS PRESENTED

Is the *Rooker-Feldman* doctrine applicable in this instant case?

Is "inextricably intertwined" a threshold test for application of the *Rooker-Feldman* doctrine?

## ARGUMENT

a. **Introduction.**

Defendant relies upon the *Exxon Mobil Corp. et al. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (Mar. 30, 2005) in support of DEFENDANTS Fed. R. Civ. P. Rule 12(b)(6) motion to dismiss. (See *Memo to Dismiss*, pp. 5 & 6). DEFENDANTS further rely upon numerous decisions within the 4th circuit.[8] With exception of *Brumby v. Deutsche Bank Nat'l Trust Co.,* No. 1:09CV144, *6-20 (Feb. 17, 2010 M.D.N.C.) a case Wilson will address separately, all 4th Circuit opinions DEFENDANTS reference arguably are absent the Circuit Appellate opinion in *Daviani v. Virginia Dept. of Transportation,* 434 F.3d 712, 717 (Jan. 17, 2006).

The *Brumby v. Deutsche Bank Nat. Trust. Co.,* 2010 WL 617368, 4 (M.D.N.C.2010) is inapplicable: First, because Brumby, unlike Wilson, filed two separate state actions for wrongful foreclosure before filing in Federal District Court; Second, Wilson does not seek a review of the foreclosure hearing in state court by this Court; and Third, although Wilson's requested relief in the Second, Third, and Fourth causes of action asked this Court to set aside the clerk's order,

[8] See *Memo to Dismiss*, p. 5, fn. 15.

none of Wilson's claims seek review of the order of the clerk, rather the focus of each claim in the complaint is for redress of the DEFENDANTS acts evidenced by the filing of mendacious documents, affidavits, declarations, and "PROOF OF CLAIM[S]" Wilson relied upon and in so doing damaged Wilson.

DEFENDANTS allege "Wilson is complaining of the state court Foreclosure, which was completed prior to Wilson initiating this action."[9] Although this statement is technically correct with respect to the instant action the facts clearly establish Wilson initiated this action before the Trustee Sale date of November 15, 2010, (*See* EXHIBIT I attached).

b. ***Rooker-Feldman* doctrine before *Exxon Mobil Corp. et al. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (Mar. 30, 2005).**

The name "*Rooker-Feldman*" is derived from two separate U.S. Supreme Court decisions decided sixty years apart.[10] It, the *Rooker-Feldman* doctrine, rest on the federal courts' statutory jurisdictional structure, that is district-court jurisdiction is original, not appellate,[11] and the United States Supreme Court is the only federal court given statutory appellate jurisdiction of decisions of any state courts.[12] The doctrine thus operates in a unique way to constrain federal subject-matter jurisdiction.

Prior to *Exxon Mobil supra* the constraint applied by the *Rooker-Feldman* doctrine seemed easy when a federal-court plaintiff baldly seeks to have the court set aside a state-court judgment. However, the relationship between a federal claim and state adjudication, and hence the applicability of *Rooker-Feldman*, is not

[9] See *Memo to Dismiss*, p. 6.
[10] *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).
[11] *See, e.g.*, 28 U.S.C. § 1330(a) (2000) (actions against foreign states); 28 U.S.C. § 1331 (2000) (federal question);28 U.S.C. § 1332(a) (2000) (diversity and alienage); and 28 U.S.C. § 1333 (2000) (admiralty) (each of which refers to "original jurisdiction").
[12] *See* 28 U.S.C. § 1257(a) (2000) ("Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court" under certain circumstances).

always so simple and raises many issues, for example, the extent to which the doctrine's jurisdictional constraint overlaps state preclusion doctrines applicable in federal court under the full faith and credit statute.[13] The Second, Eighth, and Tenth circuits have apparently taken *Rooker-Feldman* quite far, by largely conflating it with preclusion,[14] making it applicable when federal-court plaintiffs had had no opportunity to raise their claims in state court, or even extending it to nonparties to prior state-court proceedings.[15] The Seventh[16] and Ninth[17] circuits were generally less expansive. For its part, the United States Supreme Court passed upon opportunities to review some far-reaching and controversial applications of the *Rooker-Feldman* doctrine.[18]

c. ***Rooker-Feldman* is not a bar to Wilsons Claims, Impact of *Exxon Mobil Corp. et al. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (Mar. 30, 2005).**

[13] 28 U.S.C. § 1738 (2000); *see* Parsons Steel, Inc. v. First Alabama Bank, 474 U.S. 518, 523 (1986) ("under the Full Faith and Credit Act [28 U.S.C. § 1738] a federal court must give the same preclusive effect to a state-court judgment as another court of that State would give.").

[14] *See* Moccio v. New York State Office of Court Admin., 95 F.3d 195, 199-200 (2d Cir. 1996) ("[W]here a federal plaintiff had an opportunity to litigate a claim in a state proceeding (as either the plaintiff or defendant in that proceeding), subsequent litigation of the claim will be barred under the *Rooker-Feldman* doctrine if it would be barred under the principles of preclusion.").

[15] *See* Lemonds v. St. Louis County, 222 F.3d 488, 495 (8th Cir. 2000) ("*Rooker-Feldman* is based squarely on federal law and is concerned with federalism and the proper delineation of the power of the lower federal courts. Such courts are simply without authority to review most state court judgments—-regardless of who might request them to do so."), *cert. denied*, 531 U.S. 1183 (2001).

[16] *See, e.g.*, GASH Assocs. v. Village of Rosemont, 995 F.2d 726, 728 (7th Cir. 1993) (if federal plaintiff "present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . ., then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion").

[17] *See, e.g.*, Noel v. Hall, 341 F.3d 1148, 1163 (9th Cir. 2003) ("[W]here the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, *Rooker-Feldman* does not bar jurisdiction.").

[18] *See Lemonds,* 222 F.3d at 488 ("*Rooker-Feldman* is based squarely on federal law and is concerned with federalism and the proper delineation of the power of the lower federal courts. Such courts are simply without authority to review most state court judgments--regardless of who might request them to do so."), *cert. denied*, 531 U.S. 1183 (2001); Kamilewicz v. Bank of Boston Corp., 92 F.3d 506 (7th Cir. 1996) (no jurisdiction over federal court attack on state court's approval of attorney fees in class-action settlement, brought by class members over whom state court arguably lacked jurisdiction), *cert. denied*, 520 U.S. 1204 (1997). The Supreme Court denied cert without published dissent even though five judges of the Seventh Circuit, including then-Chief Judge Posner and Judges Easterbrook and Diane Wood, had dissented vociferously from denial of rehearing. *See* Kamilewicz v. Bank of Boston Corp., 100 F.3d 1348, 1349 (7th Cir. 1996) (Easterbrook, J., dissenting from denial of rehearing en banc).

The United States Supreme Court, post a 22 year sabbatical since the opinion in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) leading to the advent of the *Rooker-Feldman* doctrine, granted certioriari to Exxon Mobile corporation.

Exxon Mobile corporation posed one of several questions concerning the scope of *Rooker-Feldman*—whether a state-court judgment rendered while a parallel federal action was pending could deprive a lower federal court of original jurisdiction that had been properly invoked. Saudi Basic Industries Corp., a majority government-owned Saudi Arabian corporation, sued two Exxon Mobil corporation subsidiaries in Delaware state court for a declaratory judgment that certain disputed royalty charges were proper. Around two weeks later, Exxon Mobil corporation and subsidiaries sued Saudi Basic as a foreign government entity in the New Jersey federal district court to recover the alleged overcharges. The subsidiaries also counterclaimed, with allegations that mirrored the federal complaint, in state court for the overcharges and eventually won a large judgment, which was on appeal to the Delaware Supreme Court at the time of the relevant proceedings in the Third Circuit.

The Third Circuit panel *sua sponte* raised the question whether the state trial court's judgment triggered *Rooker-Feldman*'s jurisdictional bar even though, as in this case, federal subject-matter jurisdiction initially had properly attached. Reading the doctrine broadly, the panel reasoned that if Saudi Basic won its pending state-court appeal, then Exxon-Mobil's federal suit would be seeking to undo a state-court judgment—-"the very situation contemplated by *Rooker-Feldman*'s 'inextricably intertwined' bar."[19] Hence, the Third Circuit concluded, the lower federal courts had lost jurisdiction.

[19] Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 364 F.3d 102, 106 (3d Cir. 2004), *rev'd*, 544 U.S. 280 2005).

The United States Supreme Court reversed, in a unanimous opinion by Associate Justice Ruth Bader Ginsburg. The opinion proceeds in four parts: an unnumbered introduction, including a distillation of how the Court now views *Rooker-Feldman*; a descriptive part I summarizing *Rooker*, *Feldman*, and the few other Supreme Court cases dealing with the doctrine; an account in part II of the proceedings; and a part III restating how the Court views the doctrine and applying its distillation to decide the case.

The first sentence in the introductory part of *Exxon Mobile supra* emphasizes the confinement and narrow application of *Rooker-Feldman* noting only two cases in which the Court has "applied" the doctrine.[20] Then two themes are introduced, the existence of concurrent state – and federal-court jurisdiction and the significance of preclusion: "[T]he doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738."[21]

As a negative example the Court cites a Second Circuit decision[22] that construed "inextricably intertwined" as largely conflating preclusion and *Rooker-Feldman*. That court had said:

> *"[The phrase] means, at a minimum, that where a federal plaintiff had an opportunity to litigate a claim in a state proceeding (as either the plaintiff or defendant in that proceeding), subsequent litigation of the claim will be barred under the Rooker-Feldman*

[20] *Exxon Mobil Corp. et al. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 283 (Mar. 30, 2005)
[21] *Id.*
[22] Moccio v. New York State Office of Court Admin., 95 F.3d 195, 199-200 (2d Cir. 1996) (emphasis added) (cited with "See, *e.g.*," signal immediately following quotation in text accompanying note 20 *supra*, 544 U.S. at 283).

*doctrine if it would be barred under the principles of preclusion."* (Emphasis added).

The Court then states the circumstances in which *Rooker-Feldman* applies:

> *"The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. Rooker-Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions."*

Strict application of the *Rooker-Feldman* doctrine, as enumerated in *Exxon Mobile supra*, to Wilson's Complaint reveals only one element of the requests for relief[23] in the Second, Third, and Fourth causes of action give rise to its application. The Seventh cause of action for "QUIET TITLE" is admittedly within the confines of the *Rooker-Feldman* doctrine. All other causes of action in the Complaint fall outside the narrow corridors of the *Rooker-Feldman* doctrine.

d. **Inextricably Intertwined is Non-Threshold.**

Two points are of major significance in *Exxon Mobil*'s discussion of *Feldman*: First, the Court reads *Feldman* in a way that puts "inextricably intertwined" in a non-threshold part of that case's analysis. Second, the opinion mentions the "inextricably intertwined" test only in this descriptive part I and in so

[23] Second Cause of Action, para. 28(i) "Order of the Court for STSI to file a rescission of all documents related to the subject property and Plaintiff that are recorded with the Register of Deeds for the County of Cabarrus"; Third Cause of Action para. 33(i) "Order of this Court to the Clerk of the General Justice Court North Carolina Cabarrus County to Set Aside the ORDER of Jennifer F. Thomas file/case number 09 SP 1613 and to seal from the general public"; and Fourth Cause of Action, para. 46(i) "Order of this Court to the Clerk of the General Justice Court North Carolina Cabarrus County to Set Aside the ORDER of Jennifer F. Thomas file/case number 09 SP 1613 and to seal from the general public".

much of part II as recounts the decision under review, without saying anything positive or negative about what it thinks of the phrase—but using it not at all in the introduction and part III, where the Court states its view of *Rooker-Feldman* and decides the case.

To expand somewhat on these points: The *Exxon Mobil* Court reads part III-A of *Feldman* as having "held," as to the judicial aspects of the D.C. court's challenged action, that "the District Court lacked subject-matter jurisdiction over their complaints"[24]—a "determination" that "did not dispose of the entire case"[25] but that apparently, in the Court's view, did dispose of some of it.[26] The *Exxon Mobil* opinion mentions the *Feldman* Court's use of the "inextricably intertwined" test in part III-B of that opinion as the basis for its having found no jurisdiction over the allegation that the D.C. court had acted arbitrarily in denying the petitions for waiver—in contrast to the facial challenges to the admission rule, which "do not require review of a judicial decision in a particular case."[27] *Exxon Mobil* thus parks *Feldman*'s use of "inextricably intertwined" in a non-threshold part of the disposition, a siting fully consistent with *Exxon Mobil*'s own disposition of the case before it without using "inextricably intertwined" as part of its analysis (as opposed to its description of other cases).

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[24] *Exxon Mobil*, 544 U.S. at 285.

[25] *Id.* at 285.

[26] This reading of *Feldman* is questionable, because the *Feldman* Court went on to start part III-B by saying that it was "[a]pplying" the "standard" from part III-A to the plaintiffs' complaints, and proceeded to deal with all aspects of their claims. *See Feldman*, 460 U.S. at 486-87; *compare id.* (dealing with five claims), *with id.* at 469 n.3 (summarizing complaint as making same five claims). However questionable it may thus be to read part lll-A of *Feldman* as disposing of part of the case, the *Exxon Mobil* Court's reading is plenty authoritative. What is significant for lower courts now is not the strength of our argument that the Court may have misread *Feldman* but that a unanimous Court has read it the way it has.

[27] *Exxon Mobil*, 544 U.S. at 286-87 (quoting *Feldman*, 460 U.S. at 487). The Court drops a footnote to mention a second appearance of the "inextricably intertwined" phrase in the *Feldman* opinion, where *Feldman* "explained that a district court could not entertain constitutional claims attacking a state-court judgment, even if the state court had not passed directly on those claims, when the constitutional attack was 'inextricably intertwined' with the state court's judgment." *Exxon Mobil*, 544 U.S. at 286 n.1 (quoting *Feldman*, 460 U.S. at 482 n.16). Again, the *Exxon Mobil* Court's use of the phrase comes in a purely descriptive mode. The third and last mention of "inextricably intertwined" in *Exxon Mobil* comes near the end of part II, where the Court quotes the Third Circuit's decision it is reviewing and reversing—once more in a wholly descriptive manner. *See Exxon Mobil*, 544 U.S. at 291.

"*Rooker-Feldman* did not prevent the District Court from exercising jurisdiction when Exxon Mobil filed the federal action, and it did not emerge to vanquish jurisdiction after Exxon Mobil prevailed in the Delaware courts."[28] Nowhere in the operative part of the opinion in Exxon Mobile does the Court invoke the "inextricably intertwined" test; instead, it directly applies its less formulaic distillation of circumstances in which *Rooker-Feldman* bars lower federal courts from exercising jurisdiction.

The 4th Circuit addressed the Courts application of the term "inextricably intertwined" stating, "Our cases have given the *Rooker-Feldman* doctrine an expansive reading."[29] The *Divani v. Virginia Dept. of Transportation* Court relying on the Exxon Mobile opinion stated,

> *"[T]his language undercuts the broad interpretation of the Rooker-Feldman doctrine we applied in cases like Barefoot. Whereas in Barefoot we examined whether the state-court loser who files suit in federal court is attempting to litigate claims he either litigated or could have litigated before the state court, Exxon requires us to examine whether the state-court loser who files suit in federal district court seeks redress for an injury caused by the state-court decision itself. If he is not challenging the state-court decision, the Rooker-Feldman doctrine does not apply."*[30] (Emphasis added).

In applying the Exxon opinion the Court concluded,

> *"we reject Appellees' argument that Davani's federal suit is "inextricably intertwined" with the state proceedings. Davani lost*

[28] *Exxon Mobil*, 544 U.S. at 293-94.

[29] *Daviani v. Virginia Dept. of Transportation*, 434 F.3d 712, 717 (Jan. 17, 2006); "Barefoot" is in reference to *Barefoot v. City of Wilmington*,306 F.3d 113 (4th Cir.2002).

[30] *Id. at 718* (citing Washington v. Wilmore, 407 F.3d 274, 280 (4th Cir. 2005).

*before the Virginia circuit court and then filed a suit in the federal district court raising similar claims to those he presented in the state proceedings. In his federal complaint, Davani did not allege that the state decision caused him injury; rather, he alleged that Appellees discriminated against him in violation of federal and state law. Davani's federal claims do not challenge the state decision and are therefore "independent" from that decision. Exxon, 125 S.Ct. at 1527."* (Emphasis added).

**CONCLUSION**

Plaintiff's, Jennifer L. Wilson, Complaint is not barred by the Rooker-Feldman *doctrine*.

"Inextricably Intertwined" is not a threshold for application of the *Rooker-Feldman* doctrine.

What pleading defects, if any, are present in the Complaint Wilson shall seek leave of the Court to amend the Complaint and the Court should afford Wilson the opportunity to amend.

For the foregoing reasons this Court should Deny SunTrust Mortgage, Inc., SunTrust Bank, Residential Funding Company, LLC "MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION".

DATE: October 3, 2012

Respectfully submitted,

By: Jennifer L. Wilson

Jennifer L. Wilson, Pro Se
4365 School House Commons, 500-251
Harrisburg, NC 28075
Ph.: 704-773-1712

**CERTIFICATE OF SERVICE**

I Jennifer L. Wilson hereby certify that a copy of the forgoing "**MEMORANDUM IN SUPPORT OF MOTION IN OPPOSITION TO SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**" was mailed/delivered to defendants:

**SunTrust Bank, SunTrust Mortgage, Inc., and Residential Funding Company, LLC,** by and through their counsel,
c/o NELSON MULLINS RILEY & SCARBOROUGH, LLP
Bank of America Corporate Center
100 North Tyron Street, Suite 4200
Charlotte, NC 28202
Attn.: Julia Hartley

**The Law Firm of Hutchens, Senter, & Britton P.A. n/k/a Hutchens, Senter, Kellam, & Pettit, P.A., and Substitute Trustee Services, Inc.,** by and through their counsel,
c/o Hutchens, Senter, Kellam, & Pettit, P.A.
4317 Ramsey Street
PO Box 2505
Fayetteville, NC 28302
Attn.: J. Scott Flowers
//
//
//

**Jennifer F. Thomas, Assistant Clerk of Superior Court**, by and through her counsel,
c/o North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
Attn.: Grady L. Balentine , Jr.

This the 4th day of October 2011.

By: Jennifer L Wilson

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# EXHIBIT I

# EXHIBIT I

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**U.S. District Court**
**Western District of North Carolina (Charlotte)**
**CIVIL DOCKET FOR CASE #: 3:10-cv-00573-FDW-DCK**

Wilson v. SunTrust Bank et al
Assigned to: District Judge Frank D. Whitney
Referred to: Magistrate Judge David Keesler
Cause: 28:1331 Fed. Question

Date Filed: 11/12/2010
Date Terminated: 05/27/2011
Jury Demand: Plaintiff
Nature of Suit: 220 Real Property: Foreclosure
Jurisdiction: Federal Question

**Plaintiff**

**Jennifer L. Wilson**

represented by **Jennifer L. Wilson**
4360 Highway 49 S. 500-251
Harrisburg, NC 28075
PRO SE

V.

**Defendant**

**SunTrust Bank**
*incorporated in Georgia*

represented by **Christina Rampey Hunoval**
The Hunoval Law Firm, PLLC
501 Minuet Lane
Suite 104-A
Charlotte, NC 28217
704-334-7114
Fax: 704-612-4872
Email: christi@hunovallaw.com
*ATTORNEY TO BE NOTICED*

**Julia Bright Hartley**
Nelson Mullins Riley & Scarborough LLP
100 N. Tryon St., Ste. 4200
Charlotte, NC 28202
(704) 417-3136
Fax: (704) 417-3249
Email: Julia.Hartley@nelsonmullins.com
*ATTORNEY TO BE NOTICED*

**Defendant**

**Does 1-10**
*inclusively*

**Defendant**

# EXHIBIT I

**Suntrust Mortgage, Inc.** represented by **Julia Bright Hartley**
(See above for address)
*ATTORNEY TO BE NOTICED*

**Defendant**

**Residential Funding Company, LLC**

**Defendant**

**Law Firm of Hutchens, Senter & Pritton, P.A.** represented by **J. Scott Flowers**
Hutchens, Senter & Britton
4317 Ramsey Street
PO Box 2505
Fayetteville, NC 28302
910-864-6888
Fax: 910-864-6848
Email: scott.flowers@hsbfirm.com
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**Defendant**

**Substitute Trustee Service, Inc** represented by **J. Scott Flowers**
(See above for address)
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**Defendant**

**Jennifer F. Thomas**
*Assistant Clerk of Superior Court* represented by **Grady L. Balentine , Jr.**
N.C. Department of Justice
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
919-716-6867
Fax: 919-716-6755
Email: gbalentine@ncdoj.gov
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

| Date Filed | # | Docket Text |
|---|---|---|
| 11/12/2010 | 1 | COMPLAINT against Does 1-10, SunTrust Bank ( Filing fee $ 350 receipt number CHD009681), filed by Jennifer L. Wilson. (Attachments: # 1 Cover Sheet)(gpb) (Entered: 11/12/2010) |
| 11/12/2010 | 2 | Summons Issued Conventionally as to SunTrust Bank. (gpb) (Entered: 11/12/2010) |
| 11/12/2010 | 3 | Emergency MOTION for Temporary Restraining Order by Jennifer L. Wilson.Responses due by 12/2/2010. (gpb) (Entered: 11/12/2010) |
| 11/12/2010 | | Clerk's Entry and Service of **Initial Scheduling Order** and **Certificate of** |

# EXHIBIT I

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|---|---|---|
| | | **Initial Attorney FRCP 26(f) Conference Form** pursuant to the Standing Order Governing Civil Case Management before the Honorable Frank D. Whitney (3:07-mc-47 (Doc. No. 2)). The order was served conventionally. (gpb) (Entered: 11/12/2010) |
| 11/15/2010 | 4 | **ORDER denying 3 Motion for TRO. Signed by District Judge Frank D. Whitney on 11/15/2010. (Pro se litigant served by US Mail.)(bsw)** (Entered: 11/15/2010) |
| 12/30/2010 | 5 | ANSWER to 1 Complaint by SunTrust Bank.(Hunoval, Christina) (Entered: 12/30/2010) |
| 01/03/2011 | 6 | NOTICE of Appearance by Julia Bright Hartley on behalf of SunTrust Bank (Hartley, Julia) (Entered: 01/03/2011) |
| 01/18/2011 | 7 | SUMMONS Returned Executed by Jennifer L. Wilson. SunTrust Bank served on 12/13/2010. (tmg) (Entered: 01/18/2011) |
| 01/18/2011 | 8 | CERTIFICATION of initial attorney conference and discovery plan by Plaintiff Jennifer L. Wilson (tmg) (Entered: 01/18/2011) |
| 01/18/2011 | 9 | CERTIFICATION of initial attorney conference and discovery plan (Hartley, Julia) (Entered: 01/18/2011) |
| 01/21/2011 | 10 | Corporate Disclosure Statement by SunTrust Bank (Hartley, Julia) (Entered: 01/21/2011) |
| 01/24/2011 | 11 | **ORDER directing Plaintiff to file a memorandum re: subject matter jurisdiction. Failure to respond may result in this action being dismissed without prejudice. ( Show Cause Response/Memorandum due by 2/14/2011.). Signed by District Judge Frank D. Whitney on 1/24/11. (Pro se litigant served by US Mail.)(gpb)** (Entered: 01/24/2011) |
| 02/14/2011 | 12 | MEMORANDUM IN SUPPORT OF SUBJECT MATTER JURISDICTION by Jennifer L. Wilson re: 11 Order. (Attachments: # 1 Exhibit A- Part 1, # 2 Exhibit A- Part 2, # 3 Exhibit A- Part 3, # 4 Exhibit A- Part 4, # 5 Exhibit A- Part 5, # 6 Exhibit B, # 7 Letter of Service)(gpb) (Entered: 02/15/2011) |
| 02/14/2011 | 13 | Request for Judicial Notice in Support of 12 Memorandum in Support of Subject Matter Jurisdiction by Jennifer L. Wilson. (Attachments: # 1 Exhibit A- Part 1, # 2 Exhibit A- Part 2, # 3 Exhibit A- Part 3, # 4 Exhibit A- Part 4, # 5 Exhibit A- Part 5, # 6 Exhibit B)(gpb) (Entered: 02/15/2011) |
| 02/17/2011 | 14 | **ORDER directing Plaintiff to file an Amended Complaint. ( Amended Complaint due by 3/17/2011.). Signed by District Judge Frank D. Whitney on 2/17/11. (Pro se litigant served by US Mail.)(gpb)** (Entered: 02/17/2011) |
| 03/17/2011 | 15 | AMENDED COMPLAINT with Jury Demand against SunTrust Bank, Suntrust Mortgage, Inc., Residential Funding Company, LLC, Law Firm of Hutchens, Senter & Pritton, P.A., Substitute Trustee Service, Inc, Jennifer F. Thomas filed by Jennifer L. Wilson. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7)(chh) Modified text to add defendants on 3/24/2011 (tmg). (Entered: 03/18/2011) |
| | | |

# EXHIBIT I

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|---|---|---|
| 03/17/2011 | 16 | NOTICE AND DEMAND FOR JURY TRIAL by Jennifer L. Wilson re 15 Amended Complaint (chh) (Entered: 03/18/2011) |
| 03/24/2011 | 17 | Summons Issued Conventionally as to Law Firm of Hutchens, Senter & Pritton, P.A., Residential Funding Company, LLC, Substitute Trustee Service, Inc, Suntrust Mortgage, Inc., Jennifer F. Thomas. (tmg) (Entered: 03/24/2011) |
| 04/05/2011 | 18 | SUMMONS Returned Executed by Jennifer L. Wilson. Law Firm of Hutchens, Senter & Pritton, P.A. served on 3/25/2011, answer due 4/15/2011; Residential Funding Company, LLC served on 3/25/2011, answer due 4/15/2011; Substitute Trustee Service, Inc served on 3/28/2011, answer due 4/18/2011; Suntrust Mortgage, Inc. served on 3/25/2011, answer due 4/15/2011; Jennifer F. Thomas served on 3/28/2011, answer due 4/18/2011. (Main Document as to Hutchens, Senter, Britton) (Attachments: # 1 SunTrust Mortgage, # 2 Substitute Trustee Svc, # 3 Jennifer F. Thomas, # 4 Residential Funding Co) (bsw) (Entered: 04/05/2011) |
| 04/05/2011 | 19 | NOTICE / "Request for judicial notice of adjudicative fact U.S. Statutes at large shall be legal evidence of law" by Jennifer L. Wilson (bsw) (Entered: 04/05/2011) |
| 04/05/2011 | 20 | NOTICE /"Request for judicial notice of US Securities & Exchange Commissions Attestations in support of re 15 Amended Complaint by Jennifer L. Wilson (Attachments: # 1 SEC Attestation1 - Part 1, # 2 SEC Attestation1 - Part 2, # 3 SEC Attestation1 - Part 3, # 4 SEC Attestation2, # 5 SEC Attestation3)(bsw) (Entered: 04/05/2011) |
| 04/05/2011 | 21 | ANSWER to 15 Amended Complaint, by SunTrust Bank.(Hartley, Julia) (Entered: 04/05/2011) |
| 04/08/2011 | 22 | MOTION for Extension of Time to Answer re: 15 Amended Complaint, by Suntrust Mortgage, Inc.. (Attachments: # 1 Proposed Order Extending Time to Respond to Amended Complaint)(Hartley, Julia). Motions referred to David Keesler. (Entered: 04/08/2011) |
| 04/11/2011 | 23 | **ORDER granting 22 Motion for Extension of Time to Answer re 15 Amended Complaint. SunTrust Bank answer due 5/5/2011. Signed by Magistrate Judge David Keesler on 4/8/2011. (Pro se litigant served by US Mail.) (tmg)** Modified answer due date on 4/11/2011 (tmg). (Entered: 04/11/2011) |
| 04/11/2011 | | Reset Deadlines: SunTrust Bank answer due 5/5/2011. (tmg) (Entered: 04/11/2011) |
| 04/13/2011 | 24 | NOTICE of Appearance by J. Scott Flowers on behalf of Law Firm of Hutchens, Senter & Pritton, P.A., Substitute Trustee Service, Inc (Flowers, J.) (Entered: 04/13/2011) |
| 04/13/2011 | 25 | MOTION for Extension of Time to Answer re: 15 Amended Complaint, by Law Firm of Hutchens, Senter & Pritton, P.A., Substitute Trustee Service, Inc. (Attachments: # 1 Exhibit Exhibit A, # 2 Proposed Order)(Flowers, J.). Motions referred to David Keesler. (Entered: 04/13/2011) |
| 04/13/2011 | 26 | **ORDER granting 25 Motion for Extension of Time to Answer. Law Firm** |

# EXHIBIT I

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|---|---|---|
| | | **of Hutchens, Senter & Pritton, P.A. answer due 5/4/2011; Substitute Trustee Service, Inc answer due 5/4/2011. Signed by Magistrate Judge David Keesler on 4/13/2011. (Pro se litigant served by US Mail.) (tmg)** (Entered: 04/13/2011) |
| 04/18/2011 | 27 | MOTION to Dismiss for Lack of Jurisdiction by Jennifer F. Thomas.Responses due by 5/5/2011. (Balentine, Grady) (Entered: 04/18/2011) |
| 04/18/2011 | 28 | MEMORANDUM in Support re 27 MOTION to Dismiss for Lack of Jurisdiction by Jennifer F. Thomas. (Balentine, Grady) (Entered: 04/18/2011) |
| 04/22/2011 | 29 | NOTICE of Non-Consent to Magistrate Pursuant to Title 28 Section 636 by Jennifer L. Wilson (tmg) (Entered: 04/22/2011) |
| 04/22/2011 | 30 | MOTION for Entry of Default as to defendant Residential Funding Company, LLC by Jennifer L. Wilson. (Attachments: # 1 Affidavit in Support, # 2 Certificate of Service, # 3 Proposed Order) (tmg) (Entered: 04/22/2011) |
| 04/22/2011 | 31 | Response in Opposition re: Suntrust Mortgage, Inc's 22 MOTION for Extension of Time to Answer re: 15 Amended Complaint, by Jennifer L. Wilson. Responses due by 5/9/2011. (Attachments: # 1 Memorandum in Support, # 2 Proposed Order)(tmg) Modified docket text on 5/2/2011 (bsw). (Entered: 04/22/2011) |
| 04/22/2011 | 32 | Response in Opposition re: Hutchens, Senter & Pritton, P.A. and Substitute Trustee Service, Inc's 25 MOTION for Extension of Time to Answer re: 15 Amended Complaint, by Jennifer L. Wilson. Responses due by 5/9/2011. (Attachments: # 1 Memorandum in Support, # 2 Proposed Order) (tmg) Modified docket text on 5/2/2011 (bsw). (Entered: 04/22/2011) |
| 04/22/2011 | 33 | NOTICE / Request for Judicial Notice of "Affidavit of Jennifer L. Wilson" in Support re: 32 Notice of Motion and MOTION in Opposition re: Hutchens, Senter & Pritton, P.A. and Substitute Trustee Service, Inc's MOTION for Extension of Time by Jennifer L. Wilson (Attachments: # 1 Affidavit)(tmg) (Entered: 04/22/2011) |
| 04/25/2011 | 34 | Corporate Disclosure Statement by Law Firm of Hutchens, Senter & Pritton, P.A. (Flowers, J.) (Entered: 04/25/2011) |
| 04/25/2011 | 35 | Corporate Disclosure Statement by Substitute Trustee Service, Inc (Flowers, J.) (Entered: 04/25/2011) |
| 04/27/2011 | 36 | **ORDER, as to 27 MOTION to Dismiss for Lack of Jurisdiction. (Responses due by 5/18/2011). Signed by District Judge Frank D. Whitney on 4/27/2011. (Pro se litigant served by US Mail.) (tmg)** (Entered: 04/27/2011) |
| 05/04/2011 | 37 | **ORDER denying 30 Motion for Entry of Default as to Defendant Residential Funding Company, LLC. Signed by District Judge Frank D. Whitney on 5/4/2011. (Pro se litigant served by US Mail.) (tmg)** (Entered: 05/04/2011) |
| 05/04/2011 | 38 | **ORDER TO SHOW CAUSE how venue is proper in the WDNC. Show Cause Response due by 5/25/2011.. Signed by District Judge Frank D.** |

# EXHIBIT I

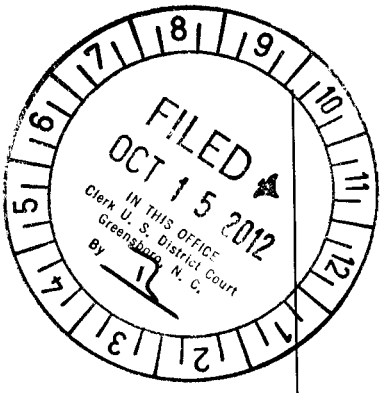
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| | | **Whitney on 5/4/2011. (Pro se litigant served by US Mail.) (tmg)** (Entered: 05/04/2011) |
| 05/04/2011 | 39 | MOTION to Dismiss by Law Firm of Hutchens, Senter & Pritton, P.A..Responses due by 5/23/2011. (Flowers, J.) (Entered: 05/04/2011) |
| 05/04/2011 | 40 | MEMORANDUM in Support re 39 MOTION to Dismiss by Law Firm of Hutchens, Senter & Pritton, P.A.. (Flowers, J.) (Entered: 05/04/2011) |
| 05/04/2011 | 41 | MOTION to Dismiss by Substitute Trustee Service, Inc.Responses due by 5/23/2011. (Flowers, J.) (Entered: 05/04/2011) |
| 05/04/2011 | 42 | MEMORANDUM in Support re 41 MOTION to Dismiss by Substitute Trustee Service, Inc. (Flowers, J.) (Entered: 05/04/2011) |
| 05/05/2011 | 43 | ANSWER to 15 Amended Complaint, by Suntrust Mortgage, Inc..(Hartley, Julia) (Entered: 05/05/2011) |
| 05/18/2011 | 44 | RESPONSE in Opposition with Memorandum (Motion in Opposition) re 27 MOTION to Dismiss for Lack of Jurisdiction by Jennifer L. Wilson. Replies due by 5/31/2011. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(com) (Entered: 05/18/2011) |
| 05/23/2011 | 45 | RESPONSE in Opposition (Motion in Opposition) re 41 MOTION to Dismiss by Jennifer L. Wilson. Replies due by 6/3/2011. (Attachments: # 1 Memorandum)(com) (Entered: 05/23/2011) |
| 05/23/2011 | 46 | RESPONSE in Opposition (Motion in Opposition) re 39 MOTION to Dismiss by Jennifer L. Wilson. Replies due by 6/3/2011. (Attachments: # 1 Memorandum)(com) (Entered: 05/23/2011) |
| 05/25/2011 | 47 | RESPONSE re 38 Order to Show Cause by Jennifer L. Wilson. (Attachments: # 1 Affidavit)(com) Modified converted to motion dismiss by May 26, 2011 Order on 5/26/2011 (bsw). (Entered: 05/25/2011) |
| 05/26/2011 | 48 | **ORDER granting 47 converted Motion for voluntary Dismissal, complaint is dismissed without prejudice. Signed by District Judge Frank D. Whitney on 5/26/2011. (Pro se litigant served by US Mail.)(bsw)** (Entered: 05/26/2011) |
| 05/27/2011 | 49 | **CLERK'S JUDGMENT is hereby entered in accordance with the Court's Order dated May 26, 2011. Signed by Clerk, Frank G. Johns. (Pro se litigant served by US Mail.)(bsw)** (Entered: 05/27/2011) |

| **PACER Service Center** | | | |
|---|---|---|---|
| **Transaction Receipt** | | | |
| 10/01/2012 21:32:31 | | | |
| **PACER Login:** | kc3257 | **Client Code:** | |
| **Description:** | Docket Report | **Search Criteria:** | 3:10-cv-00573-FDW-DCK |

# EXHIBIT I

| Billable Pages: | 5 | Cost: | 0.50 |
|---|---|---|---|

**Exhibit 26**




Jennifer L. Wilson, Pro Se
4365 School House Commons, 500-251
Harrisburg, NC 28075
Ph.: 704-773-1712

**UNITED STATES DISTRICT COURT**
**for the**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**GREENSBORO DIVISION**

Jennifer L. Wilson

Plaintiff,

v.

SunTrust Bank incorporated in Georgia; SunTrust Mortgage, Inc.; Residential Funding Company, LLC; The Law Firm of Hutchens, Senter & Britton, P.A.; Substitute Trustee Services, Inc.; Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina; and DOES 1 – 10 inclusively,

Defendants.

CASE NO: **1:11-cv-00390**

Judge: Unassigned

**RESPONSE IN OPPOSITION TO RESIDENTIAL FUNDING COMPANY, LLC MOTION FOR JUDGMENT ON THE PLEADINGS**

[Filed concurrently with; Memorandum of Points and Authorities in Support; and proposed ORDER]

Plaintiff, Jennifer L. Wilson (hereinafter "Wilson"), moves this Court to **DENY** Defendant, "RESIDENTIAL FUNDING COMPANY, LLC's MOTION FOR JUDGMENT ON THE PLEADINGS".

This "RESPONSE IN OPPOSITION TO RESIDENTIAL FUNDING COMPANY, LLC MOTION FOR JUDGMENT ON THE PLEADINGS" is based

upon the documents and records subject to judicial notice, the pleadings and evidence filed in the record of the United States District Court for the Western District of North Carolina Charlotte Division case number 3:10-cv-00573 and incorporated in its entirety by reference herein, the concurrently filed MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO RESIDENTIAL FUNDING COMPANY, LLC MOTION FOR JUDGMENT ON THE PLEADINGS", the record of this court, and such other and further evidence as may be presented.

Defendant, RESIDENTIAL FUNDING COMPANY, LLC (hereinafter "RFC"), is not entitled to judgment in its favor on the pleadings pursuant to Fed. R. Civ. P. Rule 12(c) and 12(h)(2) for the following; 1) issues of material fact remain unresolved; 2) Wilson's claims are not time-barred under "contra non valentem agree nulla currit praescriptio" (doctrine of equitable tolling); and 3) Title 12 U.S.C. § 2605 is applicable to RESIDENTIAL FUNDING COMPANY, LLC. The foregoing issues preclude summary judgment on the pleadings and are more fully set forth in the concurrently filed "MEMORANDUM IN SUPPORT OF OPPOSITION TO RESIDENTIAL FUNDING COMPANY, LLC MOTION FOR JUDGMENT ON THE PLEADINGS."

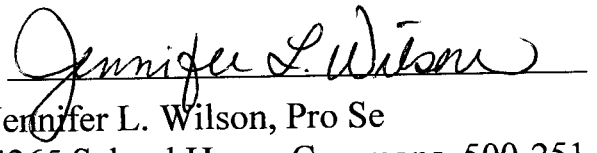
WHEREFORE plaintiff, Jennifer L. Wilson, respectfully requests the Court:

01. Deny Defendant, Residential Funding Company, LLC's "MOTION FOR JUDGMENT ON THE PLEADINGS";
02. Order initial pretrial conference of the parties and set a hearing for scheduling by order of the Court[1];
03. Award Plaintiff, Jennifer L. Wilson, such other and further relief as the Court deems just and proper.

[1] LR 16.1(a).

DATE: October 15, 201

Respectfully submitted,



Jennifer L. Wilson, Pro Se
4365 School House Commons, 500-251
Harrisburg, NC 28075
Ph.: 704-733-1712

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**CERTIFICATE OF SERVICE**

I Jennifer L. Wilson hereby certify that a copy of the "**RESPONSE IN OPPOSITION TO RESIDENTIAL FUNDING COMPANY, LLC MOTION FOR JUDGMENT ON THE PLEADINGS**" was electronically delivered to defendants:

**SunTrust Bank, SunTrust Mortgage, Inc., and Residential Funding Company, LLC** by and through their counsel of record,
c/o NELSON MULLINS RILEY & SCARBOROUGH, LLP
Bank of America Corporate Center
100 North Tyron Street, Suite 4200
Charlotte, North Carolina 28202
Attn.: Julia Hartley;

**The Law Firm of Hutchens, Senter, & Britton P.A. n/k/a Hutchens, Senter, Kellam, & Pettit, P.A., and Substitute Trustee Services, Inc.,** by and through their counsel,
c/o Hutchens, Senter, Kellam, & Pettit, P.A.
4317 Ramsey Street
PO Box 2505
Fayetteville, NC 28302
Attn.: J. Scott Flowers

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**Jennifer F. Thomas, Assistant Clerk of Superior Court**, by and through her counsel,
c/o North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
Attn.: Grady L. Balentine , Jr.

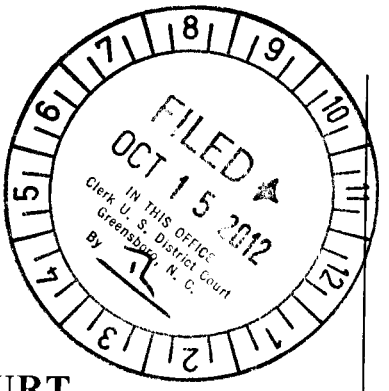
This the 15th day of October 2011.

By: Jennifer L Wilson

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**Exhibit 27**

Jennifer L. Wilson, Pro Se
4365 School House Commons, 500-251
Harrisburg, NC 28075
Ph.: 704-773-1712




**UNITED STATES DISTRICT COURT**
**for the**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**GREENSBORO DIVISION**

Jennifer L. Wilson

Plaintiff,

v.

SunTrust Bank incorporated in Georgia; SunTrust Mortgage, Inc.; Residential Funding Company, LLC; The Law Firm of Hutchens, Senter & Britton, P.A.; Substitute Trustee Services, Inc.; Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina; and DOES 1 – 10 inclusively,

Defendants.

CASE NO: **1:11-cv-00390**

Judge: Unassigned

**MEMORANUDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO RESIDENTIAL FUNDING COMPANY, LLC MOTION FOR JUDGMENT ON THE PLEADINGS**

[Filed concurrently with; Response in Opposition to Residential Funding Company, LLC Motion for Judgment on the Pleadings; and proposed ORDER]

Plaintiff, Jennifer L. Wilson, submits this "MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO RESIDENTIAL FUNDING COMPANY, LLC MOTION FOR JUDGMENT ON THE PLEADINGS" (hereinafter "OPPOSITION MEMORANDUM").

//

## FACTUAL BACKGROUND

On October 12, 2010 Wilson called SunTrust Mortgage, Inc. (hereinafter "STM") and engaged in a telephonic communication with STM customer service employee Ameerah, employee number UVAM96. Ameerah informed Wilson STM is not the "Note Holder" and that RFC is the owner of the loan. Armed with this information Wilson began to research RFC historical background which lead Wilson to the Securities and Exchange Commission ("SEC") website for evidence of the loan. After an exhaustive search of SEC's website Wilson found evidence the loan was sold into a Trust identified as "RALI Series 2007- QS5 Trust".

Having determined the truth about the location and ownership of the loan Wilson filed an action to enjoin the sale in United States Federal District Court for the Western District of North Carolina (hereinafter "USDCWD") on November 12, 2010, case number 3:10-cv-00573 (hereinafter "Complaint 2010"). Wilson's Emergency Motion for a Temporary Restraining Order ("TRO") to enjoin that foreclosure sale scheduled for November 15, 2010, was filed contemporaneously with the Complaint 2010.[1] The USDCWD Court chose not to grant Wilson her request for a TRO allowing the sale to proceed.

The USDCWD directed Wilson and Wilson submitted a MEMORANDUM IN SUPPORT OF SUBJECT MATTER JURISDICTION (USDCWD case 3:10-cv-00573 (see EXHIBIT I, Dkt. #'s 11 & 12). The USDCWD directed Wilson to file and Wilson filed an Amended Complaint 2010.[2] In support of the Amend Complaint 2010 Wilson filed a "Request for Judicial Notice of U.S. Securities & Exchange Commissions Attestations" and incorporates by reference herein said Securities & Exchange Commissions Attestations in its entirety. (See EXHIBIT I,

[1] The complete "U.S. District Court Western District of North Carolina (Charlotte) CIVIL DOCKET FOR CASE #: 3:10-cv-00573-FDW-DCK" attached hereto and labeled "EXHIBIT I" evidence the Complaint 2010 and the contemporaneously filed "EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER" (see EXHIBIT I, Dkt. #s 1 and 2 respectively.).

[2] EXHIBIT I, Dkt. # 15.

Dkt. # 20, Attachments: #1, SEC Attestation1 – Part 1; #2 SEC Attestation1 – Part 2; #3 SEC Attestation1 – Part 3; #4 Attestation2; #5 SEC Attestation 3).

Defendants, STB and STM, answered the Amended Complaint 2010 (see EXHIBIT I, Dkt. #s 21[3] & 43[4] respectively).

Following a flurry of motions the USDCWD directed Wilson to Show Cause how venue is proper in the USDCWD. Wilson, in response to the USDCWD Show Cause Order, and in an effort to avoid another round of motions to dismiss for lack of venue, voluntarily dismissed the action in USDCWD and re-filed in this District Court on April 5, 2011 a Complaint serving same pursuant to the rules of the Court, see docket numbers 1, 12, 13, 14, 15, 16 and 17 respectively.

RFC answered the Complaint admitting STM was not the Note Holder.[5] The admission by RFC that "the promissory note executed by Plaintiff in favor of SunTrust Mortgage, Inc. d/b/a Sun America Mortgage on March 1, 2007 and the deed of trust executed by Plaintiff securing such promissory note were transferred to RFC after the closing of Plaintiff's loan." (See Dkt. 25, p. 10, para. 57). This admission by RFC is prima facie evidence mendacious documents, "PROOF OF CLAIM", affidavits, declarations, and assignments, were all executed with the purpose and intent to deceive and are in fact fraudulent on their face.

## QUESTION PRESENTED

01. Did RESIDENTIAL FUNDING COMPANY, LLC MOTION FOR JUDGMENT ON THE PLEADINGS prove beyond doubt no issues of material fact remains unresolved?

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[3] Dkt. # 21 of U.S. District Court Western District of North Carolina (Charlotte) CIVIL DOCKET FOR CASE #: 3:10-cv-00573-FDW-DCK by reference is incorporated herein in its entirety.

[4] Dkt. # 43 of U.S. District Court Western District of North Carolina (Charlotte) CIVIL DOCKET FOR CASE #: 3:10-cv-00573-FDW-DCK by reference is incorporated herein in its entirety.

[5] See "ANSWER OF RESIDENTIAL FUNDING COMPANY, LLC TO COMPLAINT, U.S. District Court Middle District of North Carolina (Greenboro) CIVIL DOCKET FOR CASE #: 3:10-cv-00390 Dkt. 25, p. 9, para. 50; and p. 10, para. 57 and 58.

02. Is plaintiff's, Jennifer L. Wilson, claim time-barred by the statute of limitations in Title 12 U.S.C. 2614?

03. Is Title 12 U.S.C. § 2605(b) applicable to RESIDENTIAL FUNDING COMPLANY, LLC?

**STANDARD OF REVIEW**

No prejudice to any party results from treating a Rule 12(c) motion as a Rule 12(b)(6) motion because the standard of review for motions for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure is essentially the same as that for motions to dismiss under Rule 12(b)(6). See *Ramirez v. Dep't of Corrections*, 222 F.3d 1238, 1240-41 (10th Cir. 2000); *Haynesworth v. Miller*, 820 F.2d 1245, 1254 (D.C. Cir. 1987); *Transworld Products Co. v. Canteen Corp.*, 908 F. Supp. 1, 2 (D.D.C. 1995). On either motion, the Court may not rely on facts outside the pleadings and must construe the complaint in the light most favorable to the non-moving party. See *Kowal v. MCI Communications Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994). Granting judgment on the pleadings pursuant to Rule 12(c) or a motion to dismiss for failure to state a claim under Rule 12(b)(6) is warranted only if it appears beyond doubt, based on the allegations contained in the complaint, that "the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). See also *Alicke v. MCI Communications Corp.*, 111 F.3d 909, 912 (D.C. Cir. 1997).

**RULE 12(C) LEGAL STANDARD**

On a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), the district court must "accept all factual allegations in the complaint as true and construe them in the light most favorable to the non-moving party." *Fleming*, 581 F.3d at 925 (citing *Turner v. Cook*, 362 F.3d 1219, 1225 (9th Cir.2004)). The Rule 12(c) standard is the same as the Rule 12(b)(6) standard. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir.1988); see *Corder v.*

*Lewis Palmer School Dist. No. 38*, 566 F.3d 1219, 1223-24 (10th Cir.2009) (applying *Twombly-Iqbal* standard on Rule 12(c) motion); *Johnson v. Rowley*, 569 F.3d 40, 43-44 (2d Cir.2009) (same). "A district court will render a judgment on the pleadings when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Enron Oil Trading & Transp. Co. v. Walbrook Ins. Co., Ltd.*, 132 F.3d 526, 529 (9th Cir.1997). "Judgment may only be granted when the pleadings show that it is beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.* When reviewing a motion for judgment on the pleadings the court may consider documents that were either attached to the complaint or on which the complaint necessarily relies. See *Lee*, 250 F.3d at 688.

The court evaluating the 12(c) motion will accept as true the allegations in the opponent's pleadings, and as false all controverted assertions of the movant, *Bloor v. Carro, Spanbock, Londin, Rodman & Fass*, 754 F.2d 57, 61 (2d Cir.1985); *Gumer v. Shearson, Hammill & Co.*, 516 F.2d 283, 286 (2d Cir.1974); *Cash v. Commissioner*, 580 F.2d 152, 154 (5th Cir.1978), and will accord the benefit of all reasonable inferences to the non-moving party, *NLRB v. Weirton Steel Co.*, 146 F.2d 144, 145 (3d Cir.1944); *Quality Mercury, Inc. v. Ford Motor Co.*, 542 F.2d 466, 468 (8th Cir.1976), cert. denied, 433 U.S. 914, 97 S.Ct. 2986, 53 L.Ed.2d 1100 (1977).

## ARGUMENT

### a. Issues of Material Fact Remain Unresolved.

Defendants, "SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC'S MEMORANDUM IN SUPPORT MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND MOTION FOR JUDGMENT ON THE PLEADINGS"

(hereinafter "Memo for Judgment") fails to prove beyond doubt RFC "did not notice Plaintiff of transfer of certain servicing responsibilities." (See Compliaint, ¶ 82). In RFC answer to the complaint RFC denied the allegation in paragraph 82 of the Complaint stating, "RFC lacks sufficient knowledge or information …"

Therefore, a material fact remains unresolved and summary judgment on the pleading is inappropriate.

b. **Wilson's claims are not time-barred under "contra non valentem agere nulla currit praescriptio" (doctrine of equitable tolling).**

The "doctrine of equitable tolling" is a legal principle that the statute of limitations is **not** applicable, or a prescriptive period does **not begin** to run, against a plaintiff where; 1) some legal cause prevented a court or its officer from acting on a plaintiff's action; 2) some condition associated with the litigation process prevented the plaintiff from acting; 3) the defendant prevented the plaintiff from acting; or 4) the plaintiff is ignorant of the injury caused by the defendant, and his or her ignorance is not due to negligence, unreasonableness, or a willful act.

> *"Equitable tolling is proper only when the principles of equity would make the rigid application of a limitation period unfair." Nara, 264 F.3d at 319 (quoting Miller, 145 F.3d at 618). Equitable tolling is permitted if "(1) the defendant has actively misled the plaintiff, (2) the plaintiff has in some extraordinary way been prevented from asserting his rights, or (3) the plaintiff has timely asserted his rights mistakenly in the wrong forum." Fahy, 240 F.3d at 244 (quoting Jones, 195 F.3d at 159)."* (*Johnson v. Hendricks*, 314 F.3d 159 (3rd Cir. (Oct. 31, 2002)).[6]

[6] *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990) ("Federal courts have typically extended equitable relief only spar-ingly…allow[ing] equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.").

RFC incorrectly presumes Wilson knew RFC to be the Master Servicer of the "RALI Series 2007- QS5 TRUST" (hereinafter "TRUST") from the date (March 1, 2007) the alleged loan was allegedly transferred into the TRUST (see Memo for Judgment, p. 10, para. 1. This presumption is unsupported by the facts.

Wilson states "*[O]n October 12, 2010 Wilson called STM and engaged in telephonic communication with STM customer service employee Ameerah, employee number UVAM96. Ameerah informed Wilson STM is not the "Note Holder" and that RFC is the owner of the loan.*" (See "MEMORANDUM IN SUPPORT OF MOTION IN OPPOSITION TO SUNTRUST MORTGAGE, INC., SUNTRUST BANK, AND RESIDENTIAL FUNDING COMPANY, LLC MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION", *p. 5, ll. 6 – 9*).

Accordingly, Wilson was unaware RFC had any role in the mortgage documents until October 12, 2010. Wilson filed her first complaint with the United States District Court for the Western District of North Carolina Charlotte Division on November 12, 2010 case number 3:10-cv-00573-FDW-DCK.[7]

Assuming arguendo, and in a light most favorable to RFC, Wilson first filed the Complaint on May 16, 2011and applying the doctrine of "equitable tolling" to Wilson's first discovery of RFC's role on October 12, 2010, it is unquestioned Wilson timely filed within the 3 year statute of limitations pursuant to Title 12 U.S.C. § 2614.

Therefore, Title 12 U.S.C. § 2614 does not time-bar plaintiff, Jennifer L. Wilson, and judgment on the pleadings is inappropriate.

[7] In further evidence of this fact Wilson submits the "United States Securities and Exchange Commmission Attestation" dated February 28, 2011 and attached hereto as "EXHIBIT A", p. 6, "RESIDENTIAL FUNDING COMPANY, LLC, Master Servicer".)

c. **Title 12 U.S.C. § 2605(b) is applicable to RESIDENTIAL FUNDING COMPLANY, LLC.**

"It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the lawmaking body which passed it, the sole function of the courts is to enforce it according to its terms. *Lake County v. Rollins*, 130 U. S. 662, 670, 671, 32 L. ed. 1060, 1063, 1064, 9 Sup. Ct. Rep. 651; *Bate Refrigerating Co. v. Sulzberger*, 157 U. S. 1, 33, 39 L. ed. 601, 610, 15 Sup. Ct. Rep. 508; *United States v. Lexington Mill & Elevator Co.* 232 U. S. 399, 409, 58 L. ed. 658, 661, L.R.A.1915B, 774, 34 Sup. Ct. Rep. 337; *United States v. First Nat. Bank,* 234 U. S. 245, 258, 58 L. ed. 1298, 1303, 34 Sup. Ct. Rep. 846.

Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion. *Hamilton v. Rathbone*, 175 U. S. 414, 421, 44 L. ed. 219, 222, 20 Sup. Ct. Rep. 155."[8]

Title 12 U.S.C. § 2605(i)(2) "Servicer" in relevant part states,

> "*The term "servicer" means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan).*"

While defendant is technically correct Title 12 U.S.C. § 2605(b) is relevant to the "transferor" the identical requirement for notice to the borrower by the transferee is found in Title 12 U.S.C. § 2605(c) to wit:

> *"Notice by transferee of loan servicing at time of transfer (1) Notice requirement*

[8] *F.Drew Caminetti v. United States*, 242 U.S. 470 (Jan. 15 1917).

*Each transferee servicer to whom the servicing of any federally related mortgage is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer."*

The error on the part of plaintiff, Jennifer L. Wilson, in citing subsection (b) rather than (c) of Title 12 U.S.C. § 2605 is harmless and may be readily amended. Further, this pleading defect is not fatal to the cause of action against RFC and is not prejudicial to the defendant.

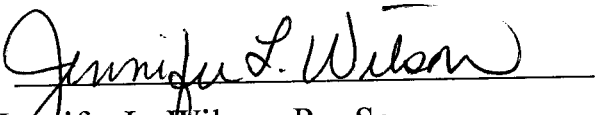
Therefore, Title 12 U.S.C. § 2605(c) is applicable to defendant, RESIDENTIAL FUNDING COMPANY, LLC and judgment on the pleadings is inappropriate.

**CONCLUSION**

Based upon the foregoing defendant, RESIDENTIAL FUNDING COMPANY, LLC failed; 1) to prove beyond doubt no issues of material fact remains unresolved; 2) under the doctrine of equitable tolling plaintiff's, Jennifer L. Wilson's, claims are not time-barred; and 3) defendant was/is required to serve notice to borrower pursuant to Title 12 U.S.C. § 2605(c), thus, defendant, RESIDENTIAL FUNDING COMPANY, LLC is not entitled to judgment on the pleadings.

DATE: October 15, 2012

Respectfully submitted,



Jennifer L. Wilson, Pro Se
4365 School House Commons, 500-251
Harrisburg, NC 28075
Ph.: 704-733-1712

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**CERTIFICATE OF SERVICE**

I Jennifer L. Wilson hereby certify that a copy of the "**RESPONSE IN OPPOSITION TO RESIDENTIAL FUNDING COMPANY, LLC MOTION FOR JUDGMENT ON THE PLEADINGS**" was electronically delivered to defendants:

**SunTrust Bank, SunTrust Mortgage, Inc., and Residential Funding Company, LLC** by and through their counsel of record,
c/o NELSON MULLINS RILEY & SCARBOROUGH, LLP
Bank of America Corporate Center
100 North Tyron Street, Suite 4200
Charlotte, North Carolina 28202
Attn.: Julia Hartley;

**The Law Firm of Hutchens, Senter, & Britton P.A. n/k/a Hutchens, Senter, Kellam, & Pettit, P.A., and Substitute Trustee Services, Inc.,** by and through their counsel,
c/o Hutchens, Senter, Kellam, & Pettit, P.A.
4317 Ramsey Street
PO Box 2505
Fayetteville, NC 28302
Attn.: J. Scott Flowers

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**Jennifer F. Thomas, Assistant Clerk of Superior Court**, by and through her counsel,
c/o North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
Attn.: Grady L. Balentine , Jr.

This the 15th day of October 2011.

By: Jennifer L. Wilson

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**Exhibit 28**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
Civil Action No. 3:11-cv-390

| | |
|---|---|
| JENNIFER L. WILSON<br><br>Plaintiff,<br><br>vs.<br><br>SunTrust Bank, incorporated in Georgia; SunTrust Mortgage, Inc.; Residential Funding Company, LLC; The Law Firm of Hutchens, Senter & Britton, P.A.; Substitute Trustee Services, Inc.; Jennifer F. Thomas, Assistant Clerk of General Court of Justice North Carolina; and DOES 1-10 inclusively,<br><br>Defendants. | **RESIDENTIAL FUNDING COMPANY, LLC'S REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS** |

Pursuant to Local Rule 7.3, Defendant Residential Funding Company, LLC ("RFC") respectfully submits the following reply in support of its Motion for Judgment on the Pleadings.

## I. Plaintiff Jennifer Wilson has failed to demonstrate that the statute of limitations applicable to her purported RESPA claim should be equitably tolled.

In Wilson's Memorandum of Points and Authorities in Support of Opposition to RFC's Motion for Judgment on the Pleadings, Wilson asks the Court to invoke the doctrine of equitable tolling to salvage her purported RESPA claim against RFC from the applicable three-year statute of limitations contained in 12 U.S.C. § 2614. Wilson argues that the statute of limitations should be tolled solely on the grounds that she "was unaware RFC had any role in the mortgage documents until October 12, 2010."[1] Specifically, Wilson contends that the limitations period should not have begun to run until October 12, 2010, the date she claims she "called STM [SunTrust Mortgage, Inc.] and engaged in telephonic communication with STM customer

[1] Memorandum of Points and Authorities in Support of Opposition to Residential Funding Company, LLC Motion for Judgment on the Pleadings ("Memo in Opposition") (Docket No. 68), p. 7.

service" and was allegedly told "STM is not the Note Holder and that RFC is the owner of the loan."[2] Notwithstanding Wilson's alleged late discovery of RFC's role related to her loan, Wilson's alleged lack of knowledge concerning RFC's role is insufficient as a matter of law to toll the statute of limitations.

The U.S. Court of Appeals for the Fourth Circuit has held that equitable tolling is available to litigants only in "those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result."[3] As Wilson acknowledges, "[f]ederal courts have typically extended equitable relief only sparingly . . . allow[ing] equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass."[4] Accordingly, this Court has held that, to invoke equitable tolling, the plaintiff "bears the burden of establishing two elements: that he has been pursuing his rights diligently, and that some extraordinary circumstance stood in his way."[5]

In *Davis v. Beazer Homes, U.S.A., Inc*., the plaintiff consumer claimed that the defendant violated § 2607 of the RESPA when it inflated the sales price of her home by including costs of financial incentives she had received from the defendant in the sales price.[6] The defendant

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[2] *Id.*

[3] *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2000).

[4] Memo in Opposition, p.6 n.6 (quoting *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990)).

[5] *Davis v. Beazer Homes, U.S.A., Inc*., 1:08CV247, 2009 U.S. Dist. LEXIS 107253, at **8-9 (M.D.N.C. Nov. 17, 2009) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)) (a copy of the *Davis* case is attached to this Reply as **Exhibit A**); *see also Rouse v. Lee*, 339 F.3d 238, 246 (4th Cir.2003); *United States v. Sosa*, 364 F.3d 507, 512 (4th Cir. 2004).

[6] *Davis*, 2009 U.S. Dist. LEXIS 107253, at *10-11.

moved to dismiss the claim pursuant to Fed. R. Civ. P. 12(b)(6) on the ground that the one-year statute of limitations contained in 12 U.S.C. § 2614 barred plaintiff's claim.[7] Despite the plaintiff's argument that the statute of limitations was subject to equitable tolling, this Court granted the defendant's motion and dismissed the plaintiff's RESPA claim as time-barred.[8]

This Court noted in *Davis* that 12 U.S.C. § 2614 mandates that RESPA's limitations periods begin to run "on the date of the occurrence of the violation," and thus, "the so-called 'discovery rule' . . . has no applicability."[9] The Court rejected the plaintiff's contention that "the alleged fraudulent concealment of certain critical facts" constituted an "extraordinary circumstance" that kept her from timely filing her RESPA claim.[10] This Court stated that, to toll the statute of limitations based on fraudulent concealment grounds, the plaintiff must establish that "(1) the party pleading the statute of limitations fraudulently concealed facts which are the basis of a claim, (2) the claimant failed to discover those facts within the statutory period, (3) the exercise of due diligence."[11] In rejecting the plaintiff's allegation of fraudulent concealment and ultimately refusing to toll the statute of limitations, this Court stated the following:

> Plaintiff has not pled any facts whatsoever to show that she exercised any diligence at all in determining whether the cost of the incentives she received were actually "priced-in" to the total cost of her home, other than to state as much in a completely terse and conclusory manner. She does not allege that she had (or even considered having) an independent appraisal conducted for her own benefit, or even that she took the most basic step of asking Defendants whether said incentives were actually included in the price of her home -- not that such a superficial inquiry would have satisfied her duty to vigilantly protect her own rights. *See, e.g., Pocahontas Supreme Coal, 828 F.2d at 219* ("'[D]ue diligence' contemplates more than [a mere] unpursued inquiry" by the claimant.).

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[7] *Id*. at *5.

[8] *Id*. at *16.

[9] *Id.* at **6-7.

[10] *Id.* at * 9.

[11] *Id.* at *10.

Significantly, Wilson makes no allegations of fraudulent concealment or trickery on the part of RFC. Nor does she allege any other "extraordinary circumstance" that prevented her from timely filing her RESPA claim against RFC. Indeed, the only basis Wilson offers in support of equitable tolling is that she simply did not have knowledge of the alleged transfer of servicing. Section 2614 of the RESPA and this Court's opinion in *Davis* make clear, however, that the discovery rule does not apply to the statute of limitations for RESPA claims.

In addition to showing some extraordinary circumstance, in order to be entitled to equitable tolling, Wilson must show she exercised diligence. Wilson, like the plaintiff in *Davis*, makes no allegations in her Complaint or her Memo in Opposition that she engaged in any diligence at all to determine that RFC had become the master servicer during the statute of limitations period. Therefore, because Wilson has offered no valid basis for why the extraordinary doctrine of equitable tolling should be applied in this case to excuse her late filing, her claim against RFC for violation of the RESPA should be dismissed with prejudice.

**II. RFC did not violate RESPA's transfer-notice requirements.**

In her Complaint, Wilson alleges that RFC violated 12 U.S.C. § 2605(b) when it failed to give her notice of a transfer of unspecified servicing rights.[12] Section 2605(b) applies only to *transferors* of certain servicing rights and requires that those transferors give notice of such a transfer.[13] Wilson's Complaint, however, alleges only that RFC became the master servicer of her loan when it was sold by SunTrust Bank or SunTrust Mortgage to RFC. [14] Thus, in the context of the Complaint's allegations, RFC could only be considered to be a *transferee* with respect to the transfer of servicing rights for Wilson's loan. Accordingly, Wilson now concedes

[12] Complaint (Docket No. 1), ¶ 82.

[13] 12 U.S.C. § 2605(b).

[14] Complaint, ¶ 61.

she has no claim under § 2605(b).[15] So, Wilson suggests the Court should allow her to amend the Complaint to allege a violation of 12 U.S.C. § 2605(c), which requires *transferees* to give notice of certain transfers of servicing rights. Such a proposed amendment would not, however, save Wilson's purported RESPA claim.

The federal regulations promulgated to implement the RESPA demonstrate that the requirement that a transferee give notice of a transfer of servicing is not absolute. As the U.S. District Court for the District of Colorado observed in *Huckfeldt v. BAC Home Loans Servicing, LP*,[16] the regulations "provide that no transfer notice is required in certain circumstances where the change in servicer is not material . . . so long as 'there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due."[17] The regulation on this point provides:

> The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of . . . [the notice] requirement *if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due*:
>
> (A) Transfers between affiliates;
>
> (B) Transfers resulting from mergers or acquisitions of servicers or subservicers;
>
> (C) *Transfers between master servicers, where the subservicer remains the same.*[18]

The regulations define "master servicer" as "the owner of the right to perform servicing, which may actually perform the servicing itself or may do so through a subservicer" and define

[15] Memo in Opposition, pp. 8-9.

[16] Civil Action No. 10-cv-01072, 2011 U.S. Dist. LEXIS 111581 (D. Col. Sept. 29, 2011). (A copy of *Huckfeldt* is attached to this brief as **Exhibit B**.).

[17] *Id.* at *29 (citing 24 C.F.R. § 3500.21(d)(1)(i)(A), (B)).

[18] 24 C.F.R. § 3500.21(d)(1)(i) (emphasis added).

"subservicer" as "a servicer who does not own the right to perform servicing but does so on behalf of the master servicer."[19]

The plaintiff in the *Huckfeldt* case mentioned above claimed she had not received notice of a transfer of the servicing rights for her mortgage loan.[20] Rejecting the plaintiff's claim that the lack of notice entitled the plaintiff to pursue a RESPA claim, the district court first noted that the loan had not been "transferred" from one entity to another but was still being held by the same entity, which had merely changed its name.[21] The court then further held that "[m]oreover, Ms. Huckfeldt has come forward with no evidence that the payee, address for payment, account number, or amount of the payment changed as a result of BAC's name change."[22]

It is apparent from a consideration of the Complaint's allegations and exhibits that, assuming the allegations are true, the alleged transfer in this case would not trigger RESPA's notice requirements. Wilson alleges SunTrust Bank or SunTrust Mortgage held her loan until it was sold to RFC in March 2007, at which point Wilson alleges RFC became the master servicer for the loan.[23] Wilson further alleges that RFC appointed either SunTrust Bank or SunTrust Mortgage—the alleged previous holder of her loan—to act as the subservicer for the loan.[24] The foreclosure affidavit attached as Exhibit H to the Complaint shows Wilson continued to make payments on her loan even after the transfer. Specifically, the affidavit shows Wilson made

[19] *Id.* § 3500.21(a).

[20] *Huckfeldt*, 2011 U.S. Dist. LEXIS 111581 at *29.

[21] *Id.* at **29-30.

[22] *Id.* at *20.

[23] Complaint, ¶¶ 57, 61.

[24] *Id.*, ¶ 51.

payments through June 1, 2009,[25] over two years after the alleged transfer to RFC in March 2007.[26]

Connecting the dots in Wilson's poorly worded Complaint, the allegations suggest something akin to the transfer from one master servicer to another with the same party—SunTrust Bank or SunTrust Mortgage—continuing to accept monthly mortgage payments. SunTrust Bank or SunTrust Mortgage would have fulfilled this role first as the note holder and then as a formally designated subservicer. In other words, the Complaint's allegations suggest the entity performing the role of subservicer, either formally or informally, did not change. The foreclosure affidavit attached to the Complaint, which shows Wilson kept making payments well after the alleged transfer, shows Wilson still had the information that would have been conveyed to her in a notice of transfer—assuming such a notice was required in this case—and was able to make her payments. For her part, Wilson has not alleged that she was deprived of any payee information necessary for her to make her payments. Thus, the principal problem that the RESPA transfer-notice statute and regulations apparently seek to avoid—that a borrower defaults because she does not know where to send her payments—did not occur in this case. Wilson has failed to state a claim based on either 12 U.S.C. § 2605(b) or (c).

## III. Wilson has not alleged sufficient actual injury caused by an alleged violation of 12 U.S.C. § 2605(c).

Section 2605(f) provides that for a violation of 12 U.S.C. § 2605(c), a plaintiff may recover actual damages and additional damages not to exceed $1,000.00 should the Court find a pattern or practice of noncompliance.[27] This Court has held that the damages alleged by a

[25] Complaint, Exhibit H (Docket No. 1-9) ("There has been a default in the payment of the indebtedness evidenced by said Note, the last payment made having been for the period ending June 1, 2009.").

[26] Complaint, ¶¶ 57, 61.

[27] 12 U.S.C. § 2605(f).

plaintiff for such a violation must be tied to the failure to give notice by the servicer and cannot be a mere conclusory statement.[28] Wilson alleges that "[t]he notification failure of RFC damaged [her] in that [she] was effectively barred from direct communications with MS [the master servicer]," and speculates that such communications "*might* have been mutually beneficial."[29] Wilson's allegation of damage is speculative in nature and insufficient to rise to the level of actual damages. Furthermore, Plaintiff's Complaint fails to allege a pattern or practice of noncompliance with the RESPA on the part RFC. Finally, the laundry list of compensatory, consequential, restitutionary, punitive, treble, and unliquidated damages contained in paragraph 84 of the Complaint is nothing more than a collection of conclusory statements with no allegations as to how the alleged failure of RFC to provide notice to Wilson caused her to sustain such damages. Because Wilson insufficiently pleads the requisite element of damages in her Complaint, her RESPA claim should be dismissed.

## CONCLUSION

The Complaint fails to state a claim upon which relief can be granted against RFC for violation of the RESPA. Consequently, the Court should enter judgment on the pleadings in favor of RFC dismiss the purported claim with prejudice.

[28] *See Spencer v. Hutchens*, 471 F. Supp. 2d 548, 554 (M.D.N.C. 2006); *see also Teaupa v. U.S. Bank*, 836 F. Supp. 2d 1083, 1098 (Dist. Haw. 2011) (dismissing §2605(b) claim for failure to state a claim because plaintiff failed to allege actual damages from servicer's failure to notify); *Amaral v. Wachovia Mortg. Corp.*, 692 F. Supp. 2d 1226, 1232 (E.D. Cal. 2010) ("Absent factual allegations suggesting that Plaintiffs suffered actual damages, Plaintiffs' [§ 2605(f)] RESPA claim is insufficiently pled and subject to dismissal.").

[29] Complaint, ¶ 83 (emphasis added).

Respectfully submitted, this the 1st day of November, 2012.

By: s/ Julia B. Hartley
Julia B. Hartley
N.C. State Bar No. 35188

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*Attorneys for Defendants SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC*

**Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing Reply was duly served when it was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

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The undersigned further certifies that a copy of the foregoing Reply was duly served when the same was deposited into the United States Mail, first-class postage prepaid, addressed as follows:

Jennifer Lynn Wilson
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This the 1st day of November, 2012.

By: s/ Julia B. Hartley
Julia B. Hartley
N.C. State Bar No. 35188

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**(Voluminous Exhibits Omitted)**

**Exhibit 29**

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JOSEPH BRUMBY, JR., Plaintiff, pro se, v. DEUTSCHE BANK NATIONAL TRUST COMPANY, SUBSTITUTE TRUSTEE SERVICES, INC., Defendants.

1:09CV144

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

*2010 U.S. Dist. LEXIS 13406*

February 17, 2010, Decided
February 17, 2010, Filed

SUBSEQUENT HISTORY: Adopted by, Complaint dismissed at, Motion denied by *Brumby v. Deutsche Bank Nat'l Trust Co., 2010 U.S. Dist. LEXIS 83088 (M.D.N.C., Aug. 13, 2010)*

COUNSEL: [*1] JOSEPH BRUMBY, JR., Plaintiff, Pro se, MCLEANSVILLE, NC.

For DEUTSCHE BANK NATIONAL TRUST COMPANY, Defendant: DONALD R. POCOCK, MARK ANDREW STAFFORD, LEAD ATTORNEYS, NELSON MULLINS RILEY & SCARBOROUGH, L.L.P., WINSTON-SALEM, NC.

For SUBSTITUTE TRUSTEE SERVICES, INC., Defendant: J. SCOTT FLOWERS, LEAD ATTORNEY, HUTCHENS SENTER & BRITTON, P.A., FAYETTEVILLE, NC.

JUDGES: WALLACE W. DIXON, United States Magistrate Judge.

OPINION BY: WALLACE W. DIXON

OPINION

MEMORANDUM OPINION AND RECOMMENDATION

This matter is before the court on motions to dismiss by Defendants Deutsche Bank National Trust Company ("Deutsche Bank") and Substitute Trustee Services, Inc. ("STS") (docket nos. 11, 12, 13, 20). Also pending before the court is a motion by Plaintiff to "enjoin the state court proceedings" (docket no. 6); a motion by Defendant Deutsche Bank to strike Plaintiff's first request for production of documents, admissions, and set of written interrogatories (docket no. 39); and Plaintiff's motion for entry of default as to Defendant Deutsche Bank (docket no. 16). The parties have responded to the respective motions, and, in this posture, the matter is ripe for disposition. Furthermore, the parties have not consented to the jurisdiction [*2] of the magistrate judge. Therefore, all dispositive motions must be addressed by recommendation. For the following reasons, it will be recommended that the court grant Defendants' motions to dismiss and deny Plaintiff's motion to enjoin the state court proceedings. To the extent that the court grants Defendants' motions to dismiss and denies Plaintiff's motion to enjoin the state court proceedings, all other pending motions will be rendered moot.

FACTS AND BACKGROUND

Plaintiff obtained a mortgage loan for $ 105,350 for his residence in McLeansville, North Carolina, on or about May 18, 2006. The loan was evidenced by a promissory note ("the Note") and secured by a deed of trust, recorded in book 6534, page 1106, of the Guilford

County Registry. The deed of trust claimed a security interest in Plaintiff's residence at 4826 Kingwell Drive, McLeansville, NC 27301.

Plaintiff failed to make payments when payments were due under the terms of the Note as of March 1, 2008. Defendant STS, in its capacity as Substitute Trustee for the deed of trust on Plaintiff's residence, thereafter commenced a foreclosure action against Plaintiff before the Clerk of Superior Court of Guilford County by means [*3] of a special proceeding bearing file number 08 SP 4007 ("the Foreclosure"). On February 25, 2009, the Clerk of Superior Court of Guilford County entered an order allowing a foreclosure sale to proceed pursuant to *N.C. GEN. STAT. § 45-21.16*. In the order allowing foreclosure, the state court found that Defendant Deutsche Bank was the holder of the Note and deed of trust. [1]

1 As will be discussed, *infra*, Plaintiff denies that Deutsche Bank is the holder of the Note and deed of trust at issue in the foreclosure.

Plaintiff's Two State Court Lawsuits

On March 24, 2008, after the foreclosure action had been commenced, Plaintiff filed two lawsuits in Guilford County District Court related to the foreclosure proceedings. (*See* Exs. E, F, G & H to Def. STS's Brief, docket no. 14.) Plaintiff filed the first action against America's Servicing Company, the servicer of the Note on behalf of Deutsche Bank. Plaintiff alleged in the state court complaint against America's Servicing Company that it had reported incorrect information to credit agencies. Plaintiff also alleged that America's Servicing Company had violated the federal Fair Debt Collection Practices Act. Plaintiff sought to have the state court [*4] enter an order requiring America's Servicing Company to cease collection of the purported debt on the Note. Plaintiff's second state court complaint named the original payee of the Note, First Franklin Loan Services, as Defendant, and alleged that the Note was unenforceable and that First Franklin was illegally attempting to collect on the Note. [2] The lawsuit against First Franklin Loan Services essentially mirrored the lawsuit against America's Servicing Company. Both of the state court complaints were dismissed with prejudice for failure to state a claim.

2 The Affidavit of Default states that Defendant Deutsche Bank, as Trustee for First Franklin Loan Services, is the holder of the Note and Indebtedness. (*See* Ex. C to Def. STS's Brief, docket no. 14.)

This Lawsuit Filed by Plaintiff in This Court

On February 25, 2009, the same day that the state court ordered foreclosure and sale of Plaintiff's residence in the state court action, Plaintiff filed this action, naming Deutsche Bank and STS as Defendants. Plaintiff seeks to recover damages related to the state court foreclosure and for an order by this court enjoining the foreclosure sale. On March 31, 2009, Plaintiff filed a First Amended [*5] Complaint and a "Motion to Enjoin State Court Proceeding." [3] The First Amended Complaint alleges claims against Defendants for violations of the Fair Debt Collection Practices Act ("FDCPA") (*15 U.S.C. § 1692 et seq.*); the Fair Credit Reporting Act ("FCRA") (*15 U.S.C. § 1681 et seq.*); the Racketeer Influenced and Corrupt Organizations Act ("RICO") (*18 U.S.C. § 1951 et seq.*); and the North Carolina Unfair and Deceptive Trade Practices Act (*N.C. GEN. STAT. § 75-1.1 et seq.*).

3 Plaintiff purportedly filed the motion to enjoin pursuant to *28 U.S.C. § 2283*. The pending motion to enjoin was described incorrectly as a "motion for joinder" in the clerk's referral to this court dated September 29, 2009.

Defendants Deutsche Bank and STS have filed separate motions to dismiss. Both Defendants contend that dismissal is appropriate because this court lacks subject matter jurisdiction based on the *Rooker-Feldman* doctrine. Defendants further contend that dismissal is appropriate based on the alternative grounds of lack of personal jurisdiction, insufficient service of process, and failure to state a claim.

**DISCUSSION**

I will first consider Defendants' Rule 12(b)(1) motions to dismiss based on lack of subject [*6] matter jurisdiction under the *Rooker-Feldman* doctrine. The burden of proving subject matter jurisdiction on a motion to dismiss is on the plaintiff. *Adams v. Bain, 697 F.2d 1213, 1219 (4th Cir. 1982)*. In determining whether jurisdiction exists, the district court must regard the pleadings as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment. *Richmond, Fredericksburg & Potomac R.R. v. United*

*States, 945 F.2d 765, 768 (4th Cir. 1991).* The district court should apply the standard applicable to a motion for summary judgment, under which the nonmoving party must set forth specific facts beyond the pleadings to show that a genuine issue of material fact exists. *Id.* A court should grant the Rule 12(b)(1) motion to dismiss if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law. *Id.*

Whether Plaintiff's Claims Are Barred by the *Rooker-Feldman* Doctrine

I first consider Defendants' contention that Plaintiff's claims are barred by the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine generally prohibits lower federal courts from reviewing state [*7] court decisions; "rather, jurisdiction to review such decisions lies exclusively with superior state courts and, ultimately, the United States Supreme Court." [4] *Plyler v. Moore, 129 F.3d 728, 731 (4th Cir. 1997); see also Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005)* (clarifying that the *Rooker-Feldman* doctrine bars a federal court from asserting jurisdiction in only the following types of cases: "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments"). The *Rooker-Feldman* bar extends not only to issues actually presented to and decided by a state court, but also to issues that are "inextricably intertwined" with questions ruled on by a state court. *Plyler, 129 F.3d at 731.* A federal claim is "inextricably intertwined" with a state court decision where, "in order to grant the federal plaintiff the relief sought, the federal court must determine that the [state] court judgment was erroneously entered or must take action that would render the judgment ineffectual." *Jordahl v. Democratic Party of Va., 122 F.3d 192, 202 (4th Cir. 1997).* [*8] *Rooker-Feldman,* therefore, applies when the federal action "essentially amounts to nothing more than an attempt to seek review of [the state court's] decision by a lower federal court." *Plyler, 129 F.3d at 733; see also Brown & Root, Inc. v. Breckenridge, 211 F.3d 194, 201 (4th Cir. 2000).*

4 The *Rooker-Feldman* doctrine is derived from the United States Supreme Court's decisions in *District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983),* and *Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923).*

Here, Defendants contend that Plaintiff's complaint is an attempt to re-litigate issues that have already been judicially determined in the prior state court foreclosure proceedings or that are inextricably intertwined with the state court foreclosure proceedings and should therefore be dismissed under the *Rooker-Feldman* doctrine. For the following reasons, I agree.

The State Court Foreclosure Proceedings

The North Carolina General Statues set forth the procedure for Clerks of Court to determine the validity of a debt subject to foreclosure and specifically provide that "the act of the clerk in so finding or refusing to find is a judicial act and may be appealed to the judge of the district [*9] or superior court having jurisdiction at any time within 10 days after said act." *N.C. GEN. STAT. § 45-21.16(d1).* On February 25, 2009, the Clerk of Superior Court of Guilford County made the determination that Deutsche Bank is the owner and holder of the Note and deed of trust at issue here, based on proof submitted by means of an affidavit in that proceeding. More specifically, the Clerk entered an Order finding that: (1) the Note constituted a valid debt; (2) the Note was in default; (3) Deutsche Bank, as Trustee for First Franklin Mortgage Loan Trust 2006-FF11, was the holder of the Note entitled to enforce the same; (4) the deed of trust gave Deutsche Bank the right to foreclose; and (5) Plaintiff had shown no valid legal reason why the foreclosure should not proceed. (*See* Exs. C & D to Def. STS's Brief, docket no. 35.) Thus, the issue of whether Deutsche Bank is the holder of the Note and deed of trust at issue was judicially established pursuant to *N.C. GEN. STAT. § 45-21.16.*

Plaintiff's Allegations in This Lawsuit

In the First Amended Complaint, Plaintiff alleges that sometime after he purchased his residence in 2006, he began to receive communications from Defendant Deutsche [*10] Bank regarding an alleged indebtedness on his residence. (First Am. Compl., P 1, docket no. 5.) Plaintiff alleges that Deutsche Bank refused to respond to Plaintiff's requests to verify the debt, commenced foreclosure proceedings on Plaintiff's residence, and continued to report a negative payment history to the three main credit bureaus. (*Id.* PP 8-10.) Plaintiff alleges that Deutsche Bank has failed to provide proof that it is

the proper holder of the Note and deed of trust at issue in the foreclosure and that it misrepresented the legal status of the debt when it sought foreclosure in the state court proceedings. (*See id.* PP 24-30.) Based on these alleged facts, Plaintiff purports to bring claims against Defendants for violations of the FDCPA, the FCRA, "Extortion" under RICO, and violations of North Carolina's unfair and deceptive trade practices statute.

More specifically, in support of the FDCPA and FCRA claims, Plaintiff alleges that Defendants refused to respond to Plaintiff's requests for verification of his debt and that they further tainted Plaintiff's credit score by reporting Plaintiff's default to various credit agencies. In support of the RICO extortion claim, Plaintiff [*11] alleges that Defendant Deutsche Bank has sought to collect money from Plaintiff when Plaintiff is under no contractual obligation to pay Deutsche Bank anything, and that Defendant Deutsche Bank has sought to obtain property from Plaintiff without Plaintiff's consent or under color of official right. In support of the unfair and deceptive trade practices claim, Plaintiff alleges that Defendants committed unfair and deceptive trade practices by initiating a foreclosure action while knowing that they could not produce the Note showing that Deutsche Bank was the holder of the Note. Finally, Plaintiff's claims against STS are entirely derivative of Plaintiff's allegations that Deutsche Bank was not the holder of the Note. That is, Plaintiff alleges that STS wrongfully foreclosed the deed of trust on behalf of Deutsche Bank, despite that Deutsche Bank failed to supply Plaintiff with information establishing validity of the debt.

In his prayer for relief, Plaintiff asks for money damages as well as an order from the court enjoining the foreclosure of Plaintiff's residence, an order requiring the cancellation of all liens on Plaintiff's residence, and an order requiring Defendants to remove [*12] all references to the mortgage from Plaintiff's credit report. Furthermore, as noted, the same day that he filed the First Amended Complaint, Plaintiff filed a "motion to enjoin state court proceeding." (*See* Pl.'s Motion to Enjoin State Court Proceeding, P 1, docket no. 6.) In the motion, Plaintiff states that he has filed the current action "to address important federal claims raised in defense of a foreclosure action that has been filed in state court" and that the state court foreclosure action cannot fully address the validity of Plaintiff's debt on his residence.

Here, through filing the First Amended Complaint and the accompanying motion to enjoin the state court proceedings, Plaintiff is clearly attempting to attack the validity of the state court foreclosure proceedings, particularly the judicial findings of the Clerk that Defendant Deutsche Bank was the holder of the Note with the right to bring the foreclosure action. That is, Plaintiff's lawsuit filed in this court is clearly an attempt to invalidate the judicial finding by the state court that (1) the Note constituted a valid debt; (2) the Note was in default; (3) Deutsche Bank was the holder of the Note entitled to enforce [*13] the same; (4) the Deed of Trust gave Deutsche Bank the right to foreclose; and (5) Plaintiff had shown no valid legal reason why the foreclosure should not proceed. Thus, Plaintiff's claims here are barred by *Rooker-Feldman*. [5]

> 5 Defendants contend that Plaintiff's claims are also barred under the *Rooker-Feldman* doctrine as a result of the dismissal with prejudice of Plaintiff's two state court lawsuits against America's Servicing Company (the servicer of the Note on behalf of Defendant Deutsche Bank) and First Franklin Loan Services (the original payee of the Note). Defendants contend that the allegations in the two state court lawsuits--that the Defendants there failed to respond to Plaintiff's requests to verify his debt and therefore violated the FDCPA--are essentially the same claims raised by Plaintiff's First Amended Complaint against Defendant Deutsche Bank in this case. Defendants contend that Plaintiff is, therefore, precluded by *Rooker-Feldman* from attempting to re-litigate these issues in federal court. Regardless of the impact of the two state court complaints and their subsequent dismissals, *Rooker-Feldman* bars this court's adjudication of Plaintiff's claims here because [*14] Plaintiff's claims here are "inextricably intertwined" with the state court foreclosure ruling.

Moreover, to the extent that Plaintiff contends that he did not raise certain claims against Deutsche Bank in the state court proceedings, such as the FDCPA claim, this fact does not preclude the application of *Rooker-Feldman*, as the remedies sought by Plaintiff would clearly require this court to invalidate the judicial findings made in the state court foreclosure action. *Accord Givens v. Homecomings Fin., 278 Fed. Appx. 607, at *2 (6th Cir. 2008)* (unpublished) (where a

mortgagor brought a FDCPA claim against a mortgagee after a state court granted the mortgagee possession of the residence due to the mortgagor's default, upholding the trial court's ruling that it lacked jurisdiction under the *Rooker-Feldman* doctrine, since the FDCPA action was effectively an attempt to appeal the state court order); *Kafele v. Lerner, Sampson & Rothfuss, L.P.A., 161 Fed. Appx. 487, at *2 (6th Cir. 2005)* (unpublished) (upholding the trial court's ruling that it lacked jurisdiction under the *Rooker-Feldman* doctrine, stating "[t]hat the plaintiffs' [fair debt collection practices and other] claims are indeed [*15] 'inextricably intertwined' is evident from the fact that there is simply no way for this or any other court to grant relief without disturbing the judgments of foreclosure entered by the state court"); *Done v. Wells Fargo Bank, N.A., No. 08-cv-3040 (JFB) (ETB), 2009 U.S. Dist. LEXIS 84114, 2009 WL 2959619, at *3-5 (E.D.N.Y. Sept. 14, 2009)* (stating that the plaintiff's federal lawsuit, in which the plaintiff was complaining of the injury from losing his home after a state foreclosure proceeding, was "squarely foreclosed by the *Rooker-Feldman* doctrine," and was alternatively barred by claim preclusion and collateral estoppel); *Burlinson v. Wells Fargo Bank, N.A., Civil No. 08-cv-01274-REB-MEH, 2009 U.S. Dist. LEXIS 18221, 2009 WL 646330, at *6 (D. Colo. Mar. 9, 2009)* (stating that "any claim that Defendants violated the FDCPA by foreclosing on a property in which they had no legal interest is barred by *Rooker-Feldman*").

Finally, I note that Plaintiff's reliance on the Fourth Circuit's unpublished opinion in *Kimble v. Greenpoint Mortgage* is misplaced. *128 Fed. Appx. 984 (4th Cir. 2005)* (unpublished). In *Kimble*, the Fourth Circuit held that *Rooker-Feldman* did not preclude federal subject matter jurisdiction because state court foreclosure proceedings [*16] were still pending when the plaintiff mortgagor filed a federal lawsuit against the mortgagee and others. *See id. at 986* (citing *Exxon Mobil Corp., 544 U.S. at 284*). By contrast, when Plaintiff here filed the First Amended Complaint and the accompanying motion to enjoin the state court foreclosure action, the state court had already entered the foreclosure order, and Plaintiff's lawsuit here is clearly an attempt to invalidate that order.

In any event, even if Plaintiff were not precluded under the *Rooker-Feldman* doctrine, the doctrine of res judicata, or claim preclusion, would nevertheless bar Plaintiff from bringing his claims here. *See 28 U.S.C. § 1738*. Under *28 U.S.C. § 1738*, known as the Full Faith and Credit Statute, federal courts must give the same preclusive effect to a state court judgment as another court of that state would give. Under North Carolina law "a final judgment on the merits prevents relitigation of issues actually litigated and necessary to the outcome of the prior action in a later suit involving a different cause of action between the parties or their privies." *Thomas M. McInnis & Assocs., Inc. v. Hall, 318 N.C. 421, 428, 349 S.E.2d 552, 557 (1986)*. Under [*17] claim preclusion, parties are barred "from retrying fully litigated issues that were decided in any prior determination, even where the claims asserted are not the same." *McCallum v. N.C. Coop. Extension Serv., 142 N.C. App. 48, 51, 542 S.E.2d 227, 231 (2001)*. A party may not avoid the application of claim preclusion merely by "shifting legal theories or asserting a new or different ground for relief." *Nw. Fin. Group v. County of Gaston, 110 N.C. App. 531, 538, 430 S.E.2d 689, 694 (1993)*.

The state court judgment to which Defendants would have this court give preclusive effect is the foreclosure proceeding in Guilford County. As discussed, *supra*, the state court foreclosure order expressly found that Deutsche Bank was the holder of the Note and that Plaintiff had shown no valid legal reason why the foreclosure should not proceed. Here, Plaintiff is challenging the right of Deutsche Bank to foreclose on Plaintiff's residence on the basis that Deutsche Bank could not produce the Note and also on Deutsche Bank's alleged refusal to respond to Plaintiff's requests for verification of his debt on the Note. By Plaintiff's own admission, however, the issue of whether the Note was lost was raised [*18] in the state court foreclosure proceedings, and the clerk nonetheless found that Deutsche Bank was the legal holder of the Note and that Plaintiff was in default. (*See* Pl.'s Response Br., p. 4, docket no. 27.) Therefore, the issues Plaintiff attempts to raise here, as well as the legal remedies sought, are the same as those already decided in the state court foreclosure proceeding.

Moreover, to the extent that Plaintiff failed to raise any issues in the state court proceeding that he attempts to raise in this lawsuit, a North Carolina state court would find that Plaintiff waived the right to raise those issues. Chapter 45 of the North Carolina General Statutes provides for an appeal of an order allowing a foreclosure sale. *See N.C. GEN. STAT. § 45-21.16(d1)*. The appeal must be taken within ten days of the Clerk's order allowing foreclosure, and the appeal must be filed in the

Superior Court Division of the county where the foreclosure is occurring. *See id.* The North Carolina General Statutes also provide a means for seeking an injunction of foreclosure proceedings where equitable grounds exist to stop a foreclosure. *Id. § 45-21.34.* The injunction may be granted by a judge of the Superior [*19] Court Division upon any "legal or equitable ground which the court may deem sufficient," but any such injunction must be sought before the rights of the parties become "fixed." *Id.*

Here, Plaintiff neither appealed the state court foreclosure ruling under *N.C. GEN. STAT. § 45-21.16(d1)*, nor did he seek an injunction pursuant to *N.C. GEN. STAT. § 45-21.34.* Plaintiff therefore waived his right in the state courts to contest the issues adjudicated by the Clerk in the state court foreclosure proceedings, including proof of ownership of the Note and deed of trust under *N.C. GEN. STAT. § 45-21.16(d).* In other words, if Plaintiff had brought his present claims in state court, the state court would give preclusive effect to the judicial findings in the state foreclosure proceeding, and Plaintiff may not use this forum to achieve the results he could not obtain in state court.

In sum, Plaintiff's claims should be dismissed as barred under the *Rooker-Feldman* doctrine or, alternatively, under the doctrine of collateral estoppel. Because the claims should be dismissed on this basis alone, there is no need for the court to address Defendants' alternative arguments for dismissal based on insufficient [*20] service of process.

CONCLUSION

For the reasons stated herein, I **RECOMMEND** that the court **GRANT** Defendants' motions to dismiss (docket nos. 11, 12, 13, 20) for lack of subject matter jurisdiction as barred by the *Rooker-Feldman* doctrine. I further **RECOMMEND** that the court **DENY** Plaintiff's motion to enjoin the state court proceedings (docket no. 6). If the court adopts the recommendation of dismissal, Defendant Deutsche Bank's motion to strike Plaintiff's first request for production of documents, admissions, and written interrogatories (docket no. 39) and Plaintiff's motion for entry of default as to Defendant Deutsche Bank (docket no. 16) will be rendered moot.

/s/ Wallace W. Dixon

WALLACE W. DIXON

United States Magistrate Judge

Durham, NC

February 17, 2010