

HARRIET NICHOLSON
Plaintiff

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**IN THE DISTRICT COURT OF**

V

**TARRANT COUNTY, TEXAS**

**NATIONSTAR MORTGAGE LLC**  
*Defendant*

## 48th JUDICIAL DISTRICT

**DEFENDANT’S RESPONSE TO PLAINTIFF’S  
MOTIONS FOR SANCTIONS**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, Nationstar Mortgage LLC d/b/a Mr. Cooper (hereinafter “Nationstar”), and files this its Response to Plaintiff’s Motions for Sanctions (the “Motions”) and shows the Court as follows:

## I. FACTS

1. Plaintiff has falsely accused Nationstar and its counsel of fabricating evidence in this case. The evidence Plaintiff claims is fabricated is the letter dated April 19, 2016, abandoning the acceleration of the subject Note executed by the Plaintiff (hereinafter referred to as the “Abandonment of Acceleration”). The Abandonment of Acceleration was not “fabricated”. A true and correct copy of the Abandonment of Acceleration is attached hereto as Exhibit “2-A” to the Affidavit of Kelly Harvey, attached as Exhibit “2”.<sup>1</sup> As reflected in the affidavit of Kelly Harvey, the Abandonment of Acceleration was sent to the Plaintiff via certified and regular mail on April 19, 2016. The Abandonment of Acceleration was sent pursuant to Section 16.038 of the Texas Civil Practice and Remedies Code, which allows for unilateral abandonment of acceleration by a lienholder or mortgage servicer. The Abandonment of Acceleration was sent to Plaintiff giving her notice that the lienholder and mortgage servicer,

Nationstar, were rescinding the acceleration letter dated April 24, 2012, that had been sent by a previous mortgage servicer.

2. Plaintiff also alleges in her Motion that Nationstar's counsel advised the Court that Nationstar had not sent a notice of acceleration. This is an accurate statement. Nationstar did not send a notice of acceleration to Plaintiff. As stated above, the Abandonment of Acceleration was sent to rescind the notice of acceleration dated April 24, 2012. The notice of acceleration that is the subject of the Abandonment of Acceleration was sent on behalf of Nationstar's predecessor, Bank of America N.A., not an acceleration letter sent by Nationstar. The Plaintiff is well aware that the April 24, 2012 acceleration letter was not sent by Nationstar as she included it in correspondence sent to the lienholder's attorney on April 25, 2016. See Exhibit B-2 of letter from Plaintiff attached as Exhibit "3".

3. Plaintiff additionally asserts that Nationstar's counsel falsely stated to the Court that Nationstar had not instituted foreclosure proceedings and did not send a notice of default. It is true that Nationstar had not instituted foreclosure proceedings at that time, however Nationstar's counsel was unaware of the letter attached as Exhibit "B" to the Plaintiff's Motion. Nevertheless, the point Nationstar's counsel was trying to make in the subject hearing was that Nationstar was not seeking a claim for foreclosure in the present action, and that is still true today. Nationstar certainly did not rely on the letter attached as Exhibit "B" to Plaintiff's second Motion for Sanctions in any pleadings or motions and certainly did not represent to the Court in any pleadings that it was seeking to foreclose on the subject property based upon the subject letter. On the contrary, Nationstar abandoned the acceleration of the Note and did not seek foreclosure.<sup>2</sup>

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<sup>1</sup> Exhibit 2 is the same business records affidavit that was used in Nationstar's Response to Plaintiff's Motion for Partial Summary Judgment.

<sup>2</sup> Concerning discovery requests, the Plaintiff never requested any notices of default or demand for payment letters. See Nationstar's Responses to Request for Production attached as Exhibit "D" to Plaintiff's Motion.

## II. ARGUMENT

4. **Rule 10 Sanctions.** Nationstar incorporates by reference paragraphs 1 through 3 as if set forth verbatim herein. Plaintiff has sought sanctions under Sec. 10.001 of the Texas Civil Practices and Remedies Code (“Rule 10”), which states that the signer of a pleading or motion certifies that each claim, each allegation, and each denial is based on the signatory's best knowledge, information, and belief, formed after reasonable inquiry. TEX. CIV. PRAC. & REM. CODE § 10.001; *Low v. Henry*, 221 S.W.3d at 615. The signer certifies that the paper is not filed for an improper purpose; each claim has basis in the law or by a non-frivolous argument for the extension or modification of the law; each allegation has evidentiary support, and each denial is warranted by the evidence. Affidavits and declarations filed in support of pleadings and motions cannot be the basis for sanctions under Rule 10 because they are not pleadings or motions. *See R.M. Dudley Constr. Co. v. Dawson*, 258 S.W.3d 694, 707 (Tex. App.—Waco 2008, pet. denied). *cf. Metzger v. Sebek*, 892 S.W.2d 20, 52-53 (Tex. App.—Houston [1st Dist.] 1994, writ denied). The Plaintiff has not asserted in her Motions for Sanctions any pleading or motion that Nationstar or its counsel filed that would be subject to Rule 10 sanctions, therefore her claims under Rule 10 should be denied.

5. **Rule 13 Sanctions.** Nationstar incorporates by reference paragraphs 1 through 3 as if set forth verbatim herein. Plaintiff has additionally sought sanctions pursuant to Rule 13 of the Texas Rules of Civil Procedure (“Rule 13”). Rule 13 provides that "the signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion or other paper; that to the best of their knowledge, information, and belief formed after a reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment." TEX. R. CIV. P. 13. The Plaintiff has not asserted in her Motions for Sanctions any pleading, motion or other paper that Nationstar or its counsel filed that would be

subject to Rule 13 Sanctions, therefore her claims under Rule 13 should be denied.

6. **Rule 215 Sanctions.** Nationstar incorporates by reference paragraphs 1 through 3 as if set forth verbatim herein. Concerning Rule 215 of the Texas Rules of Civil Procedure, the Plaintiff merely states that the Court should impose “*sanction (sic) available under Texas Rule of Civil Procedure 10, 13 and 215*”. (Plaintiff’s Motion, p. 3) Rule 215 concerns discovery abuses. TEX. R. CIV. P. 215. The Plaintiff fails to allege which subpart of Rule 215 Nationstar allegedly violated. Nationstar has not abused discovery in this case and Plaintiff has not made any allegation concerning any such discovery abuse, therefore the Plaintiff’s Motion based upon Rule 215 should be denied.

### **III. CONCLUSION**

Plaintiff’s Motion should be denied as Nationstar did not file any pleadings, motions or papers that would subject it to sanctions under Rule 10 or Rule 13. Further, there is no allegation and no evidence of abuse of discovery that would subject Nationstar to sanctions under Rule 215.

### **IV. PRAYER**

WHEREFORE, Defendant Nationstar prays that Plaintiff’s Motion be denied and that Defendant be granted such other and further relief as it may be justly entitled.

Respectfully submitted,

**HARVEY LAW GROUP**

/s/ Kelly J. Harvey

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ATTORNEY FOR DEFENDANT

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Response was sent to all parties and/or attorneys of record, as listed below, by e-file electronic delivery / e-mail, in accordance with the Texas Rules of Civil Procedure, on this the 16<sup>th</sup> day of June, 2021.

Harriet Nicholson  
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Grand Prairie, TX 75052

Via Email:

HARRIET NICHOLSON ([NICH.DISTRICT@GMAIL.COM](mailto:NICH.DISTRICT@GMAIL.COM))

HARRIET NICHOLSON ([HARRIETNICHOLSON@YAHOO.COM](mailto:HARRIETNICHOLSON@YAHOO.COM))

/s/ Kelly J. Harvey  
Kelly J. Harvey