CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

purpose of illitiating the civil to	ocket sheet. (SEE INSTRU	CHONS ON NEXT FAGE O	г тпът							
I. (a) PLAINTIFFS				DEFENDAN	TS					
HARRIET NICH	OLSON			BANK OF AN	MERIO	CA,NA	, COUNTRYI	DE HOME	LOANS	S, INC
(b) County of Residence of First Listed Plaintiff Tarrant County, Texto (EXCEPT IN U.S. PLAINTIFF CASES)				County of Residence of First Listed Defendant OUT OF STATE NC (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF						
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(c) Attorneys (Firm Name, . Pro se	Address, and Telephone Numb	er)		Connie Flores		2				
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2 U.S. Government Defendant	x 4 Diversity (Indicate Citizensh	nip of Parties in Item III)	Citize	en of Another State	2	_ 2	Incorporated and P of Business In A		<u> </u>	X 5
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IV. NATURE OF SUIT	Γ (Place an "X" in One Box O	nly)			Cli	ck here	for: Nature of S	uit Code De	scription	<u>.s</u> .
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DATE		SIGNATURE OF ATT	ORNEY (OF RECORD						
7/30/2021		/s/ Harriet Nicho	olson							
FOR OFFICE USE ONLY										
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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

HARRIET NICHOLSON,	
Plaintiff,	
v.	CIVIL ACTION NO
BANK OF AMERICA AND	
COUNTRYWIDE HOME LOANS, INC.,	
Defendant	

PLAINTIFF'S ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 57 and Title 28 U.S.C. §§ 2201 and 2202, Plaintiff Harriet Nicholson files her Original Complaint for Declaratory Judgment and shows the following

I. PARTIES

- 1. Harriet Nicholson resides in the Northern District of Texas.
- 2. Defendant, Bank of America, is a national bank headquartered in Charlotte, North Carolina that may be served with process by delivering a copy of the summons to its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.
- 3. Defendant, Countrywide Home Loans, Inc. may be served with process by delivering a copy of the summons to its registered agent CT Corporation System,

1999 Bryan Street, Suite 900, Dallas, Texas 75201.

II. JURISDICTION AND VENUE

- 4. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 (a)(1) and (2), because Harriet Nicholson, Bank of America, and Countrywide Home Loans are citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.
- 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a), because Bank of America and Countrywide Home Loans, Inc. is subject to personal jurisdiction in this District.

III. FACTUAL BACKGROUND

- 6. Bank of America hired Barrett, Daffin, Frappier, Turner and Engle ("BDFTE") to prosecute a post-foreclosure eviction suit against Harriet Nicholson and all occupants by virtue of Substitute Trustee's Deed, D212187326, investing title in the Bank of New York Mellon as owner/legal titleholder at the July 3, 2012, foreclosure sale in Dallas County, Texas.
- 7. On September 5, 2012, BDFTE filed a post-foreclosure eviction suit against Harriet Nicholson and all occupants in case number <u>JP-07-12-E00067238</u> styled the Bank of New York Mellon v. Harriet Nicholson and all Occupants appending Substitute Trustee's Deed, D212187326, affirming David Stockman sold Harriet Nicholson's homestead at the George Allen Courts Building, 600 Commerce Street, Dallas, Texas on July 3, 2012.
- 8. On September 25, 2012, BONY was granted Judgment of Possession in the eviction suit in case <u>JP-07-12-E00067238</u>.
- 9. On October 1, 2012, Ms. Nicholson timely appealed the Justice of Peace judgment to the County Court at Law 2012-0006670-1.

- 10.On November 1, 2012, the BONY was granted Judgment of Possession in the Court Court at Law, <u>2012-0006670-1</u>.
- 11. On November 5, 20212, Ms. Nicholson filed an application for TRO to enjoin the wrongful post-foreclosure eviction and quiet title lawsuit in the 342nd District Court of Tarrant County, Texas in cause 342-262692-12.
- 12.On July 31, 2014, Recontrust Company, foreclosure attorney, clandestinely filed a "Notice of Rescission, D214164490" in the Tarrant County, Texas real property records purporting to grant Ms. Nicholson the "Notice of Rescission" rescinding the July 3, 2012 invalid foreclosure sale; cancelling the August 2, 2012 Substitute Trustee's Deed on July 3, 2012; and reinstating Ms. Nicholson's foreclosed loan without her knowledge or consent during the pendency of the quiet title lawsuit to escape a legal malpractice lawsuit for violations of the Texas Property Code 51.002(a) to save its face from the invalid foreclosure sale. Gulf Coast Inv. Corp. v. Brown, 821 S.W.2d 159, 160 (Tex. 1991); see TEX. PROP. CODE § 51.002 (prescribing the mandatory process for selling real property via non-judicial foreclosure sale under a power of sale conferred by a contract lien).

IV. PROCEDURAL FACTS

- 13. On June 21, 2016, Ms. Nicholson filed a lawsuit in the 48th District Court, Tarrant County, Texas for declaratory judgment to declare the "July 31, 2014, Notice of Rescission, D214164490" was null and void and had no effect on the July 3, 2012, foreclosure sale; assigned case numbered 048-286132-16 styled Harriet Nicholson v. David Stockman.¹
- 14.On June 11, 2018, Plaintiff filed her Eighth Amended Petition in cause 048-286132-16 complaining against eleven (11) separate defendants, including BANA and CHLI; David Stockman, Donna Stockman, Denise Boerner, ReconTrust, Nationstar, Harvey Law Group, BONY, William Viana and Trefe

¹ See Ex. A, 048-286132-16 styled Harriet Nicholson v. David Stockman et al, Plaintiff's Eighth Amended Pleading-operative pleading.

Tekel - which was the operative pleading.

- 15. In the Eighth Amended Petition, Plaintiff asserted causes of action for violations of § 12.002 of the Civil Practice and Remedies Code, negligence per se, gross negligence per se, declaratory judgment pursuant to Chapter 37 of the Civil Practice and Remedies Code, civil conspiracy to commit fraud, fraud, and respondent superior against ALL defendants based on allegations relating to the execution and filing an artifice in the Tarrant County, Texas real property records to escape legal malpractice for failing to effectuate a valid non-judicial foreclosure sale and post-foreclosure mortgage fraud to save its face.
- 16. On October 30, 2018, the Trial Court granted summary judgment in favor of BANA and against the Eighth Amended Petition (the "BANA MSJ Order"). ²
- 17. That same day, the Trial Court also granted summary judgment in favor of CHLI and against the Eighth Amended Petition (the "CHLI MSJ Order"). ³
- 18. On November 9, 2018, BANA and CHLI filed its Motion to Sever after dismissal of all claims against them in the interlocutory summary judgment orders on October 30, 2018.
- 19. On November 28, 2018, the Court granted BANA's and CHLI's Motion to Sever and assigned Cause No. 048-304598-18 to the Severed Case. ⁴
- 20. On February 26, 2019, Plaintiff filed Notice of Appeal, appealing the presumptive final severance and summary judgment orders in favor of BANA and CHLI.⁵
- 21. On December 31, 2019, the Second Court of Appeals entered an advisory opinion⁶ and signed a judgment affirming BANA's and CHLI's interlocutory summary judgment and severance orders rendered in case 048-286132-16 in the

² See Ex. A, Interlocutory Order Granting BANA"s MSJ 10.30.18

³ See Ex. B, Interlocutory Order Granting CHLI's MSJ 10.30.18

⁴ See Ex. D, Interlocutory Order Granting BANA's and CHLI's Motion to Sever 11.28.18

⁵ See Ex E. Notice of Appeal of Presumptive Final Severance Order 02.16.19

⁶ See Ex. F, Memorandum Opinion 02-19-00085-CV 12.31.19

trial court.7

22. On February 19, 2020, the trial court signed its Final Judgment disposing all parties and claims in case 048-286132-16.8

	CAUSES OF ACTION								
DEFENDANTS	VIOLATION OF 12.002	CIVIL CONSPIRACY TO COMMIT FRAUD	COMMON LAW FRAUD	NEGLIGENCE PER SE	GROSS NEGLIGENCE PER SE	DECLARATORY RELEF	DISMISSED ALL CLAIMS AGAINST DEFENDANT	SEVERANCE	048-286132-16 FINAL JUDGMENT
BANA	<	Ý	1	V.	Y	<.	10/30/2018	11/28/2018	2/19/2020
CHLI	<	Ý	1	Ý	₹	√	10/30/2018	11/28/2018	2/19/2020
DAVID STOCKMAN	Κ.	Ÿ	1	V	Y	¥	UNADJUDICATED		2/19/2020
DONNA STOCKMAN	√	1	√	√	√	√	UNADJUDICATED		2/19/2020
DENISE BOERNER	√	V	√	V	Y	√	UNADJUDICATED		2/19/2020
NATIONSTAR	V	V	V	V	V	V	UNADJUDICATED		2/19/2020
BANK OF NEW YORK	V	√	1	1	1	1	UNADJUDICATED		2/19/2020
HARVEY LAW GROUP	V	V	1	/	1	1	UNADJUDICATED		2/19/2020
WILLIAM VIANA	V	<i>f</i>	1	√-	1	√	UNADJUDICATED		2/19/2020
TREFE TEKEL	V	V	V	V	V	V	UNADJUDICATED		2/19/2020
RECONTRUST	V	6	1	V	¥	1	UNADJUDICATED		2/19/2020

The chart above shows there were pending claims against nine remaining defendants after BANA's and CHLI's interlocutory summary judgment and severance orders were signed.

⁷ See Ex. G, Judgment 02-19-00085-CV 12.31.19

⁸ See Ex. H, Final Judgment 048-286132-16 dismissing all claims and parties, final and appealable judgment. 02.19.2020

A. THE SECOND COURT OF APPEALS JUDGMENT CAN BE COLLATERALLY ATTACKED IN FEDERAL COURT FOR LACK OF JURISDICTION

Under Texas law, a state court judgment must be defective for at least one of the following four reasons to be collaterally attacked in federal court (2) the state court lacked jurisdiction over the subject matter of the suit: (3) the state court lacked jurisdiction to enter the particular judgment rendered: or (4) the state court lacked the capacity to act as a court. Steph v. Scott, 840 F.2d 267, 270 (5th Cir. 1988). citing Ranger Insurance Co. v. Robertson, 680 S.W.2d 618, 620 (Tex.Ct.App.1984) (citing, Austin Independent School District v. Sierra Club, 495 S.W.2d 878 (Tex.1973); Hodges, Collateral Attack on Judgments, 41 Tex.L.Rev. 163, 164 (1962)).

B. SECOND COURT OF APPEALS' JUDGMENT AFFIRMING INTERLOCUTORY ORDERS WITHOUT JURISDICTION IS VOID

The Supreme Court made clear in Cohens v. Virginia, 19 U.S 264, 404 (1821) (Marshall, C.J.) ("We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given."), and has continued to reiterate the principle. See, e.g., Susan B. Anthony List v. Driehaus, 573 U.S. 149, 167 (2014); Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 126 (2014); Sprint Communications, Inc. v. Jacobs, 571 U.S. 69, 77 (2013).

C. TEXAS APPELLATE COURTS HAVE JURISDICTION ONLY OVER FINAL JUDGMENTS AND STATUTORILY APPEALBALE INTERLOCUTORY ORDERS

- 23. Appellate jurisdiction is never presumed. *Brashear v. Victoria Gardens of McKinney, L.L.C.*, 302 S.W.3d 542, 546 (Tex.App.-Dallas 2009, no pet.). Appellate jurisdiction is established exclusively by constitutional and statutory enactments. See, e.g., Tex. Const. art. V, § 6; Tex. Gov't Code Ann. § 22.220 (Vernon Supp.2009).
- 24. It is well settled that appellate courts have jurisdiction only over final judgments and interlocutory orders made appealable by statute. *Lehmann v. Har-Con*

Corp., 39 S.W.3d 191, 195 (Tex.2001); TEX. CIV. PRAC. & REM. CODE ANN. § 51.014 (West 2015) (authorizing appeals from certain interlocutory orders). A judgment issued without a conventional trial on the merits is final for purposes of appeal if either: (1) it actually disposes of all claims and parties then before the court, regardless of its language; or (2) it states with unmistakable clarity that it is a final judgment as to all claims and parties. Farm Bureau County Mut. Ins. Co. v. Rogers, 455 S.W.3d 161, 163 (Tex.2015); Lehmann, 39 S.W.3d at 192-93.

D. BANA'S AND CHLI'S INTERLOCUTORY SUMMARY JUDGMENTS WERE NOT STATUTORILY APPEALABLE

25. By contrast, at least in theory, a partial summary judgment--one that does not dispose of all parties and issues--is not final until the trial court takes action disposing of the remaining issues and parties. See *Guillory*, 751 S.W.2d at 492 (holding that when a summary judgment is clearly interlocutory, any appeal from that judgment must be dismissed, absent a severance of the unresolved issues by the trial court); *Columbia Rio Grande Reg'l. Hosp. v. Stover*, 17 S.W.3d 387, 391 (Tex. App.-- Corpus Christi 2000, no pet.)

E. JUDGMENT WITHOUT JURISDICTION IS VOID

The most fundamental issue for any court to determine is jurisdiction. "A judgment is void ... when it is apparent that the court rendering the judgment had no jurisdiction of the parties, no jurisdiction of the subject matter, no jurisdiction to enter the judgment, or no capacity to act as a court." Mapco, Inc. v. Forrest, 795 S.W.2d 700, 703 (Tex.1990). Because jurisdiction is necessary for the court to have power to act, it may be questioned at any time by any party or the court itself. McCauley v. Consolidated Underwriters, 157 Tex. 475, 304 S.W.2d 265, 266 (1957); Ramsey v. Dunlop, 146 Tex. 196, 205 S.W.2d 979, 983 (1947).

F. BANA'S AND CHLI'S SEVERANCE ORDER WAS NOT A FINAL JUDGMENT

- 26. A severance order itself is not a final judgment. Allen Parker Co. v. Trustmark Nat. Bank, 14-11-00027-CV, 2012 WL 8017011 (Tex. App.-Houston [14th Dist.] Feb. 16, 2012, no pet.) (mem. op.). A severance order that does not dispose of all parties and claims is a nonappealable interlocutory order. Beckham Group, P.C. v. Snyder, 315 S.W.3d 244 (Tex.App.-Dallas 2010, no pet.).
- 27. The finality of judgments can be affected by the occurrence of certain events during the course of litigation. For example, under the doctrine of "merger," an otherwise interlocutory order becomes final when a subsequent order (or series of orders) is entered disposing of the remaining parties and claims. See Woosley v. Smith, 925 S.W.2d 84, 87 (Tex. App.--San Antonio 1996, no writ) ("Once an order has been entered disposing of all remaining parties and issues, all the orders merge, creating a final appealable judgment.")
- 28. As soon as an order disposes of the final party or issue (or contains a Mother Hubbard clause), the orders all conceptually merge into a final, appealable judgment and any desired appeal must be taken. See Howard Gault & Son, Inc. v. Metcalf, 529 S.W.2d 317, 320 (Tex. Civ. App.--Amarillo 1975, no writ)

V. REQUEST FOR DECLARATORY RELIEF

29. Harriet Nicholson respectfully requests that this Court declare (1) the Second Court of Appeals' Judgment in <u>Case No. 02-19-00085-CV styled Harriet Nicholson v. Bank of America</u>, <u>N.A. and Countrywide Home Loans</u>, <u>Inc.</u> is null and void and not binding on the parties; and (2) vacate the Second Court of Appeals' judgment in <u>Case No. 02-19-00085-CV styled Harriet Nicholson v. Bank of America</u>, <u>N.A. and Countrywide Home Loans</u>, <u>Inc. 02-19-00085-CV</u> styled Harriet Nicholson v. Bank of America and Countrywide Home Loans, Inc. This request for declaratory relief is made subject to and without waiver of Harriet Nicholson's rights.

VI. PRAYER

WHEREFORE, Harriet Nicholson prays that BANA and CHLI be cited to appear and answer, and that Harriet Nicholson have judgment:

- Declaring that the Second Court of Appeals' Judgment rendered on December 31, 2019, in case numbered 02-19-00085-CV styled Harriet Nicholson v. BANA and CHLI is null and void for lack of jurisdiction; and
- 2) Vacating the Second Court of Appeals' Judgment rendered on December 31, 2019, in case numbered 02-19-00085-CV; and
- 3) Awarding Harriet Nicholson such other and further relief to which she may be entitled, including attorney's fees, costs, and expenses in prosecuting this action.

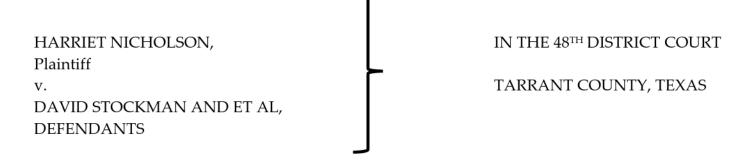
Respectfully submitted, By: /s/Harriet Nicholson Harriet Nicholson 2951 Santa Sabina Drive Grand Prairie, Texas 75052 817-217-0245 harrietnicholson@vahoo.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on Connie Flores, counsel of record, by the court's electronic filing system and/or email on July 30, 2021.

/s/ Harriet Nicholson

EX. A



PLAINTIFF'S EIGHTH AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, HARRIET NICHOLSON, Plaintiff, complaining of David Stockman, Recontrust Company, NA, Nationstar Mortgage, Company, Countrywide Home Loans, Inc., Harvey Law Group, Bank of America, The Bank of New York Mellon, Donna Stockman, Denise Boerner, William Viana, and Trefe Trekle Defendants in this her EIGHTH AMENDED Complaint, and for cause of action would respectfully show unto the Court as follows, to wit:

PARTIES

- 1. Plaintiff is a natural person and is a resident and citizen of the State of Texas and of the United States.
- 2. Defendant, David Stockman, is a natural person and is a resident and citizen of the State of Texas and of the United States has been served and appeared.
- 3. Defendant, Recontrust Company, NA, may be served by serving its registered agent CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, TX 75201 by certified mail.
- 4. Nationstar Mortgage, Company may be served by serving any Corporate Officer at 8950 Cypress Waters Boulevard, Dallas, Texas by constable.
- 5. Defendant, Countrywide Home Loan has been served and appeared.
- 6. Defendant, Harvey Law Group, may be served by serving any corporate officer (president, vice-president, secretary, or treasurer) at 1126 West Gray, Houston, Texas 77019 by constable.
- 7. Defendant, Bank of America, has appeared.
- 8. Defendant, Bank of New York Mellon, has been served.
- 9. Donna Stockman, is a natural person, resident and citizen of the of the State of Texas and the United States and may be served wherever she is found.

- 10. Denise Boerner, is a natural person, resident and citizen of the of the State of Texas and the United States and may be served wherever she is found.
- 11. William Viana, is a natural person, resident and citizen of the of the State of Texas and the United States and may be served wherever he is found.
- 12. Terefe Tekle, is a natural person, resident and citizen of the of the State of Texas and the United States and may be served wherever he is found.

DISCOVERY CONTROL PLAN LEVEL

13. Plaintiff intends that discovery be conducted under Discovery Level 3. TRCP 190.4.

AGENCY AND RESPONDEAT SUPERIOR

14. Whenever in this petition it is alleged that a Defendant did, or failed to do, any act, thing and/or omission, it is meant that Defendant itself or its agents, officers, servants, employees, vice principals, or representatives either did or failed to do such act, thing and/or omission, and it was done with the full authorization or ratification of Defendant, and/or done in the normal routine, course and scope of the agency or employment of Defendant or its agents, officers, servants, employees, vice principals, or representatives and/or with actual and/or apparent authority of Defendant.

JURISDICTION AND VENUE

- 15. The amount in controversy exceeds the minimum jurisdictional limits of this Court; and the Court has jurisdiction over the subject matter.
- 16. This Court has jurisdiction over the Defendants in that the Defendants are a resident and citizen and doing business in the State of Texas.

STATEMENT OF THE CASE

17. Defendants devised a scheme or artifice to defraud Plaintiff and the courts and executed this scheme or artifice by recording Instrument D214164490 in the Tarrant County, Texas Real Property records to defeat Plaintiff's claims in a pending lawsuit, (Nicholson v. Bank of New York Mellon and others, 342-262692-12, "Nicholson 1") for wrongful foreclosure and wrongful post-

foreclosure eviction that was filed by Barrett, Daffin, Frappier, Turner and Engle in the Justice of Peace Courts on September 5, 2012. Defendants have committed fraud upon the courts and sought to defraud Plaintiff.

- 18. Defendants devised or intended to devise a scheme or artifice to defraud Plaintiff and this court and executed this scheme or artifice by recording Instrument D214164490 in the Tarrant County, Texas Real Property records to reinstate Plaintiff's loan.
- 19. Defendants filed fraudulent documents in the Tarrant County, Texas real property records purporting to create a lien, claim, or an interest in Plaintiff's property; clouding her title after the foreclosure sale to further harass Plaintiff.
- 20. On December 1, 2014, Bank of America allegedly transferred servicing of Plaintiff's loan after recording the Notice of Rescission to Nationstar Mortgage, LLC, thereafter, Nationstar Mortgage, LLC pursued aggressive debt collection activity, threaten a subsequent foreclosure, and damaged Plaintiff's credit worthiness by reporting incorrect adverse account information to the credit repositories after recording the "Rescission Deed."
- 21. On January 17, 2015 Plaintiff filed a second lawsuit, Nicholson v. Nationstary Mortgage, LLC, 048-276347-15 (Nicholson2) complaining of Nationstar Mortgage, LLC's deceptive collection practices, harassment, and to enjoin a subsequent wrongful foreclosure.
- 22. Plaintiff complained to the Consumer Financial Protection Bureau regarding Defendants' unreasonable conduct more than eighty times over the past four years. Nevertheless, responded to each complaint and continued their fraud and harassment. ¹

FACTUAL ALLEGATIONS

- 23. On <u>August 2, 2012</u>, David Stockman executed Instrument <u>D212187326</u>, Substitute Trustee's Deed, conveying title to the Bank of New York Mellon and divesting Plaintiff of title to her property without selling Plaintiff's property as noticed.
- 24. On September 5, 2012, Barrett, Daffin, Frappier, Turner and Engle filed an eviction suit to evict Plaintiff and all occupants from the Property in the Tarrant County Justice of the Peace, Number 7 Court on behalf of the Bank of New York Mellon.

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- 25. On September 20, 2012, the Bank of New York Mellon was granted Judgment of Possession in the eviction suit as the legal titleholder after proffering the Substitute Trustee's Deed as the legal title holder.
- 26. On November 5, 2012, Plaintiff filed suit (Nicholson 1) to enjoin a wrongful post-foreclosure eviction and suit to set aside sale, cancel substitute trustee's deed, and recover title in the 342ndDistrict Court, Tarrant County, Texas whereby, the case is currently pending numbered 342-262692-12.
- 27. On December 6, 2012 Plaintiff filed a Lis Pendens recording the pending of the lawsuit referencing the title dispute on her property after the invalid foreclosure sale.
- 28. On March 23, 2013, a Temporary Injunction hearing was heard in the 342nd Court, whereby the Bank of New York Mellon's counsel admitted the lawsuit was initiated to enjoin an eviction.
- 29. On April 21, 2014 Plaintiff filed CFPB complaint numbered 140421-000784 complaining of Bank of America sending post-foreclosure emails indicating Plaintiff's loan was active. Plaintiff filed the following complaint.

I was being assessed for a loan modification, however, Bank of America kept advising me my loan was in the bankruptcy division. Notwithstanding, I did not have an active Bankruptcy Case. After convincing them I wasn't in Bankruptcy and them contacting the lawyer on file, they moved my account from Bankruptcy Division to Foreclosure Department. They alleged they never received the documentations to assess me for a modification. Nevertheless, they conveyed a substitute trustee's deed to the alleged investor without conducting an auction of the property at the scheduled foreclosure sale. To add on, Bank of America, the servicer has shown my account active since the foreclosure date. Since wer're litigating, there's a cease and desist on my account with Bank of America and they will not discuss anything with me. Apparently, there's a disconnect somewere. Bank of New York Mellon/Bank of America allegedly foreclosed but they're showing the account active through the date of this complaint. We're currently litigating in the US District Court Northern District of Texas styled Nicholson V. Bank of New York Mellon and others, No. 4:13-cv-310. I've contacted the Texas Attorney General, Tarrant County Commissioners, Congressman Joe Barton- Texas, and FHA/HUD to assist me in this matter.

- 30. On 5/14/2014, Kevin Castro, Office of the CEO and President of Bank of America, responded to CFPB complaint numbered 140421-000784 advising the foreclosure sale remained in place and the notices and alerts were sent in error.
- 31. On July 15, 2014 Bank of America filed a counterclaim seeking to reform the Substitute Trustee's Deed due to a scrivener's error during the pendency of the Nicholson 1 in the federal court;

- however, Bank of America withdrew motion prior to determination.
- On August 20, 2014 David Stockman, Bank of America's attorney, advised Plaintiff via email the foreclosure sale was no good.
- 33. On August 2, 2014, unbeknowst to Plaintiff and in the midst of Plaintiff's litigation in the case styled Harriet Nicholson v. Bank of New York Mellon and others, numbered 342-262692-12, to enjoin a post-foreclosure eviction, set aside wrongful foreclosure sale, cancel trustee's deed and recover title; David Stockman(in his alleged capacity as an alleged "Substitute Trustee") and Recontrust Company (Defendant in pending case 342-262692-12) conspired to commit fraud upon the Court and Plaintiff by executing, recording, and filing Instrument D214164490, Notice of Rescission of Sale and Cancellation of Substitute Trustee's Deed purporting to cancel Instrument D212187326, Substitute Trustee's Deed.
- 34. On December 19, 2014 Plaintiff filed CFPB complaint numbered 141219-000354 against Bank of America protesting the transfer of the alleged reinstated stated loan to Nationstar Mortgage to collect. Plaintiff filed the following complaint.

Bank of America allegedly conducted a foreclosure sale of my home, the Substitute Trustee was not present at the Courthouse to auction my prperty. As a result of fighting and litigating self represented for over two years, the Substitute Trustee rescinded the sale. To date we're currently litigating this wrongful foreclosure. On December 1, 2014, Banking of America transferred servicing of the loan to Nationstar Mortgage. We've been litigating this wrongful foreclosure lawsuit for over two years. As a result, another party has been added to this confusion.

- 35. On December 31, 2014, Nationstar Mortgage, LLC sent Plaintiff a Notice of Default advising plaintiff's loan was more than \$80,000 dollars in default and threatening a subsequent foreclosure.
- On January 16, 2015 Bank of America responded to CFPB complaint 141219-000354 advising they had a right to transfer servicing of loan to Nationstar. (See Ex. A)
- 37. On February 9, 2015 Plaintiff filed a CFPB complaint numbered 150209-002008 against Nationstar Mortgage concerning the failure to validate debt they were pursuing collection. Plaintiff filed the following complaint.

Nationstar Mortgage, LLC has alleged they're the servicer for my investor. I've requested documents pursuant to RESPA and FDCPA. Nationstar Mortgage, LLC has not acknowledged they've received the documents.

38. On February 11, 2015 Nationstar responded to CFPB complaint 150209-002008 advising they had authority to service the loan on behalf of Bank of New York Mellon and the loan was contractually

- due April 2011 and subsequent payments. (See Ex. B)
- On January 17, 2015, Plaintiff filed a lawsuit against Nationstar Mortgage to enjoin postforeclosure collection, a subsequent foreclosure after the recording of the "Rescission Deed", and to enjoin harassing home inspections by Nationstar Mortgage, LLC numbered 048-276347-15.
- 40. On <u>February 17, 2015</u> Document <u>D215032449</u>, <u>Corporate Assignment Deed of Trust</u> was filed in the Tarrant County, Texas Real Property records. Countrywide Home Loans (defunct entity) allegedly assigned Plaintiff's Deed of Trust, D201015378, to Bank of New York Mellon. Nationstar Mortgage served in the dual capacity as Power of Attorney for Countrywide Home Loans and servicer for Bank of New York Mellon.
- Around March 2015 Nationstar Mortgage reported incorrect adverse information to the credit repositories damaging Plaintiff's credit worthiness.
- 42. On April 2015, Kelly Harvey, Nationstar Mortgage, LLC's attorney, sent Plaintiff correspondence advising her loan was more than \$80,000 delinquent and Bank of New York Mellon was the investor of her alleged reinstated loan.
- 43. On December 25, 2015 Plaintiff filed CFPB Complaint numbered 1512225-000105 complaining of Nationstar Mortgage causing the fraudulent Corporate Assignment Deed of Trust to be filed in the Tarrant County, Texas real property records. Plaintiff filed the following complaint.

On February 17, 2015, Nationstar Mortgage executed and recorded a fraudulent instrument (ASSIGNMENT OF DEED OF TRUST") in Tarrant County Texas Recorder's office declaring they were assigning a deed of trust on behalf of Assignor-Countrywide Home Loans, defunct entity, as attorneyin-fact to Bank of New York Assignee. On February 8, 2015, Nationstar responded to a QWR via a CFPB complaint declaring they were servicing the note on behalf of Bank of New York the assignee of the Assignment. The recorded instrument contradicts this reply and is fraudulent and false.

- 44. On February 12, 2016 Nationstar Mortgage responded to CFPB complaint 1512225-000105 advising they had the right to service Plaintiff's loan and acknowledged the pending lawsuit against Bank of America and others. (See Ex. C)
- 45. On April 19, 2016, the Harvey Law Group, in its capacity as a debt collector post-foreclosure, sent Plaintiff an "Abandonment of Acceleration" letter to gain an advantage in Plaintiff's Lawsuit 1. However, this letter contradicted Kelly Harvey's advisement a year prior.
- 46. The Harvey Law Group is not registered with the Secretary of State as a third party debt collector, thereby violating Section 392.101 of the Texas Finance Code which prohibits a third-party debt

- collector or credit bureau from engaging in debt collection in Texas unless the third-party debt collector or credit bureau has obtained a surety bond and filed a copy of the bond with the Office of the Secretary of State.
- 47. On June 5, 2016 Plaintiff filed CFPB complaint numbered 160605-000073 against contesting the debt collection activity of Nationstar Mortgage and Bank of America. Plaintiff filed the following complaint.

Nationstar continues to pursue debt collection activity on a debt without validation and reporting false and incorrect information to all three credit bureaus. Nationstar has responded to multiple complaints referencing I have filed a suit against their predecessor and them. However, Nationstar highlights they were granted a No-evidence motion for summary judgment and a pending lawsuit against their predecessor, Bank of America, validates their debt collection activity. Nationstar claims they can't verify or validate their debt collection activity until the lawsuit against their predecessor is adjudicated. Bank of America's summary judgment was denied on 14 out of 16 claims including fraud. Nationstar should not be able to pursue debt collection activity until the lawsuit against their predecessor is adjudicated. Nationstar only has the right to pursue collection on what their predecessor had to transfer. Bank of America has not proven any right to collect the debt that was transferred. At the time Bank of America transferred the debt tp Nationstar, Bank of America NEVER denied an allegations in the lawsuit that was filed on November 5, 2012. Bank of America sought to file an answer to the lawsuit in OCTOBER 2015. The Court's decision granting Bank of America to answer the lawsuit almost two years late is pending in the 5th COA. However, Bank of America transferred the ZERO balanced debt to Nationstar on December 2014, 23 months after the lawsuit was filed against them.

48. On June 20, 2016 Plaintiff filed CFPB complaint numbered 160620-0001499 complaining of Nationstar's debt collection activity and the adverse credit reporting to the credit bureaus. Plaintiff filed the following complaint.

On July 3, 2012, Bank of America's agent foreclosed on my house. After the completed foreclosure sale, the substitute trustee executed a trustee's deed to the Bank of New York Mellon. BONY filed an eviction suit and was awarded Judgment of Possession. On November 5, 2012, I filed a lawsuit to stop a post-foreclosure wrongful eviction. This lawsuit 4:13-cv-310-Y is currently pending in the Fifth Circuit Court of Appeals because the Defendants (Bank of New York Mellon and Bank of America) was granted leave to file an answer to the complaint more than two years late. On OCTOBER 16, 2015, Bank of America and Bank of New York filed a late answer to the lawsuit and included the following affirmative defense: 207. Should Plaintiff be awarded any damages, Defendants are entitled to offset and recoupment in the amount the funds due and owing at the time of the foreclosure sale plus reasonable market value rent from the date of foreclosure until the service release of the loan to non-party Nationstar Mortgage, LLC. As per the aforementioned defense, Nationstar's predecessor, Bank of America, is asking for rent after the foreclosure sale on October 16, 2015 in their answer. However, Nationstar contends I

owe them more than \$117,000 for the same loan their predecessor foreclosed on. I have not executed any loan agreements to Bank of America or Nationtstar since the foreclosure sale on July 3, 2012. Nationstar is reporting this fraudulent, incorrect, and false information to a third party, the credit bureaus (Equifax, Experian, and Transunion.) Bank of America is claiming the house was foreclosed and they are seeking rent post foreclosure. Nationstar is claiming I contractually owe them from April 2011. To add on, Nationstar is reporting to HUD, that the loan is a contested foreclosure. Nationstar is reporting contradictory and false information to HUD, the credit bureaus, and me. Nationstar has not been able to validate their debt collection activity. Bank of America and Nationstar are colluding and harassing me to collect a loan that was satisfied from foreclosure proceeds four years ago, I will be filing this complaint with the HUD Inspector General's Office, Mr. David A. Montonya; since my loan was HUD insured loan. I've included the following documents to substantiate my claims: 1. The Defendants' Late Answer excerpts (Doc. 136-1) 2. The most recent docket entry of the pending lawsuit, Doc. 167; Order Continuing Stay dated May 19, 2016 These are records that are documented in the Federal Court that are undisputed.

- 49. On June 20, 2016 Recontrust, BOA, and BONY's attorney responded to CFPB complaint numbered 160605-000073 advising the Notice of Rescission reinstated the lien and the balance of debt and direct further inquiries to Nationstar Mortgage, LLC, my new servicer. (See Ex. D)
- 50. On June 29, 2016 Nationstar responsed to 160620-0001499 relying on the Notice of Rescission to collect the debt and report adverse credit information to credit bureaus. (See Ex. E)
- 51. On June 23, 2017, Bank of New York's attorney, R. Dwayne Danner, conceded the Substitute Trustee's Deed" and "Rescission Deed" were both invalid to circumvent an adverse ruling against them in Nicholson's Lawsuit 1.
- 52. Plaintiff has suffered severe emotional distress which manifested in the form of tension, loss of enjoyment of life, nervousness, lack of concentration, inability to perform at work, anxiety, depression, inability to sleep, hospitalization, crying spells, panic attacks, nausea, humiliation, fright, embarrassment, and thoughts of suicide.
- Plaintiff have suffered severe emotional stress damage as a result of the ongoing harassment and reckless disregard, and intentional conduct by Defendants. Plaintiff is no longer able to work full time due to chronic depression and anxiety. Plaintiff was terminated from her employment due to excessive absences due to the stress of this case. Plaintiff also lost out on a full-time position making \$75,000.00 a year in November 2015. Plaintiff is a 30-year accountant and compliance analyst, but due to being overwrought with stress and fighting to keep her home, losing the home, execution of Substitute Trustee's Deed without selling property, Defendants' clandestine attempt to cancel trustees deed during pending litigation, reinstating the debt without authority, Bank of America transferring the debt to Nationstar Mortgage to collect without authority, and Defendants continuous litigation as though the sale was valid. Plaintiff is unable to perform on a full-time job. Plaintiff have received therapy associated

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- with Defendants' constant harassment and hospitalization.
- 54. Defendants wrongful acts in the instant case began after they sought to rescind the foreclosure sale secretly to gain an advantage in the pending Lawsuit 1 for wrongful foreclosure and coerce Plaintiff to start repayment of loan to resurrect contractual obligations.
- 55. Plaintiff has incurred significant life threatening experiences due to stress, harassment, reckless disregard of Defendant. These medical expenses are continuing and currently exceeds \$30,000. Plaintiff's medical issues are directly related to the wrongful acts of Defendants. Defendants' wrongful, reckless and intentional acts are continuing to date. Plaintiff suffers depression, anxiety, sleepless nights and headaches due to the actions of the Defendants and the vexing litigation.
- 56. Plaintiff has suffered severe emotional distress, heart attack like symptons, and medical expenses related to the egregious conduct of the Defendants. Plaintiff is incapacitated to work full-time due to the related emotional distress and severe chronic depression associated with Defendants' egregious conduct.
- 57. Plaintiff has litigated two legal proceedings in the Tarrant County Justice of the Peace Court Number 7, 1 legal proceeding in the County Court at Law Number 1, four Federal proceedings, six Tarrant County District Court State proceedings, two Fifth Circuit Court of Appeals proceedings, filed eighty-five Consumer Financial Protection Bureau complaints, HUD Inspection General complaint, and one Texas Attorney General Complaint seeking justice to remedy Defendants' wrongs and stop Defendants' ongoing fraudulent activities. Plaintiff has lost more than 13,000 hours of time trying to defend her home against the false encumbrances of the Defendants and their fraudulent acts for the past six years.
- 58. On <u>December 17, 2017</u> Document <u>D217291711</u>, Corporate Assignment of Deed of Trust, recorded by Nationstar Mortgage, LLC allegedly assigning Plaintiff's Deed of Trust from Bank of New York Mellon to Nationstar Mortgage, LLC.
- 59. It is beyond cavil that Bank of America, as a sophisticated party (indeed, one of the most sophisticated creditors operating in the United States economy), knew and knows the black-letter statutory law and the concomitant case law.
- 60. Bank of America and its agents actions, however, tell a story that smacks of cynical disregard for the law when dealing with the Plaintiff and the Courts.
- 61. Defendants intentionally disregarded the law in the course of the Plaintiff's saga by the following:
 - a) Knowing of the existence of non-compliance with Texas statutory laws to effectuate a valid non-judicial foreclosure, *David Stockman nevertheless foreclosed on the Plaintiff residence*.

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- b) Knowing of the existence of non-compliance with Texas statutory laws to effectuate a valid non-judicial foreclosure, <u>David Stockman and Recontrust Company nevertheless recorded a</u> <u>trustee's deed transferring title to The Bank of New York Mellon.</u>
- c) Knowing of the existence of an invalid substitute trustee's deed, Barrett, Daffin, Frappier, Turner and Engle, <u>The Bank of New York Mellon's attorneys, nevertheless filed an unlawful detainer action in state court.</u>
- d) Knowing of the existence of non-compliance with Texas statutory laws to effectuate a valid non-judicial foreclosure and the pendency of lawsuit for wrongful foreclosure; <u>Barrett, Daffin,</u>

 <u>Frappier, Turner and Engle, York Mellon's attorneys, nevertheless gave notices in the state-court unlawful detainer action consistent with imminent eviction.</u>
- e) Knowing that the foreclosure was void as a violation Texas statutory laws to effectuate a valid non-judicial foreclosure, and the pendency of lawsuit for wrongful foreclosure <u>Bank of America nevertheless failed to inform the Plaintiff before she filed a lawsuit to enjoin a wrongful postforeclosure eviction.</u>
- f) Knowing that the foreclosure was void as a result of non-compliance with Texas statutory laws to effectuate a valid foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Bank of America nevertheless failed to inform either the Plaintiff or the Courts during the pendency of Lawsuit 1 to enjoin a wrongful post-foreclosure eviction.</u>
- g) Knowing that the foreclosure was void as a result of non-compliance with Texas statutory laws to effectuate a valid foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Bank of</u>

 America nevertheless failed to inform Plaintiff and the Courts they filed Notice of Rescission.
- h) Knowing that the foreclosure was void as a result of non-compliance with Texas statutory law to effectuate a valid foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Bank of America nevertheless failed to vacate the state-court unlawful detainer action seeking to enforce the void foreclosure.</u>
- i) Knowing that the foreclosure was void as a violation Texas statutory laws to effectuate a valid non-judicial foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Bank of America nevertheless committed fraud upon the Courts and maliciously prosecuted the pending wrongful foreclosure lawsuit, as though the foreclosure sale was valid.</u>
- j) Knowing that the foreclosure was void as a violation Texas statutory laws to effectuate a valid non-judicial foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Bank of America nevertheless secretly sought to rescind the foreclosure sale, reinstate the title, and reinstate the debt without any authority.</u>
- k) Knowing that the foreclosure was void as a violation Texas statutory laws to effectuate a valid non-judicial foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Bank of America</u> <u>nevertheless allegedly transferred the servicing of the reinstated debt to Nationstar Mortgage,</u> <u>LLC to collect.</u>
- 1) Knowing of the existence of non-compliance with Texas statutory laws to effectuate a valid non-

- judicial foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Nationstar Mortgage</u>, <u>LLC</u>, <u>nevertheless conducted open and notorious harassing inspections of the Plaintiff's</u> <u>residence after the alleged transferred of servicing</u>.
- m) Knowing that the foreclosure was void as a result of non-compliance with Texas statutory law to effectuate a valid foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Nationstar</u>

 <u>Mortgage, LLC, Bank of America's alleged successor, nevertheless pursued aggressive debt</u>

 <u>collection activity and threaten a subsequent foreclosure.</u>
- n) Knowing that the foreclosure was void as a result of non-compliance with Texas statutory law to effectuate a valid foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Nationstar</u> <u>Mortgage, LLC and Bank of America sought to coerce Plaintiff to pay on loan to reinstate</u> <u>debt; advising the "Notice of Rescission" reinstated the lien and the debt.</u>
- o) Knowing that the foreclosure was void as a result of non-compliance with Texas statutory law to effectuate a valid foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Nationstar Mortgage</u>, <u>LLC</u>, <u>Bank of America's alleged successor</u>, <u>nevertheless</u>, <u>reported derogatory credit information to the credit repositories referencing the alleged reinstated debt after the foreclosure sale damaging Plaintiff's creditworthiness.</u>
- p) Knowing that the foreclosure was void as a result of non-compliance with Texas statutory law to effectuate a valid foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Nationstar Mortgage</u>, <u>LLC</u>, <u>Bank of America's alleged successor</u>, <u>acing in the capacity as Power of Attorney for Countrywide Home Loans</u>, <u>Inc.</u>, <u>nevertheless executed and filed a Corporation Assignment of Deed of Trust from Countrywide Home Loans</u>, <u>Inc.</u> (<u>defunct since 2008</u>) to Bank of New York Mellon on February 17, 2015 in the Tarrant County, Texas real property records.
- q) Knowing that the foreclosure was void as a result of non-compliance with Texas statutory law to effectuate a valid foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Nationstar Mortgage</u>, <u>LLC</u>, <u>Bank of America's alleged successor</u>, <u>nevertheless executed and filed a Corporation Assignment of Deed of Trust from Bank of New York Mellon to Nationstar Mortgage</u>, <u>LLC on December 17</u>, <u>2017 in the Tarrant County</u>, <u>Texas real property records</u>.
- r) Knowing that the foreclosure was void as a result of non-compliance with Texas statutory law to effectuate a valid foreclosure and the pendency of lawsuit for wrongful foreclosure, <u>Harvey Law Group's managing attorney and officer of the Court, nevertheless provided inconsistent statements of material fact under oath to gain an advantage in an official proceeding thereby perjuring herself.</u>
- 62. For these reasons, Bank of America has been acting toward the Plaintiff in knowing and cynical disregard for the law.

- 63. In the calculus of reprehensibility, Bank of America's intentional conduct adds up to reckless and callous disregard for the rights of others. It has been wanton and oppressive. This equates with a high degree of reprehensibility.
- 64. Defendants have slandered Plaintiff's title thereby depriving her of the right to sell her property, redeem her equity therein and impeded the vendibility.
- 65. Defendants, all sophisticated parties, knowledgeable in business matters and represented by counsel, for the purpose of escaping liability, cannot be heard to say, that they have not done what they intended to do, and what, on the face of the record, appear to have done.
- 66. Ultimately the Defendants' "No Harm, No Foul," argument is a claim that rules of law should yield to banks' convenience.

CAUSES OF ACTION

I. VIOLATIONS OF § 12 OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE (ALL DEFENDANTS)

Plaintiff hereby adopts by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

- 67. Section 12.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE ("CPRC") provides:
- 68. A person may not make, present, or use documents or other record with:
 - a. knowledge that the document or other record is a fraudulent court record or a
 fraudulent lien or claim against real or personal property or an interest in real or
 personal property;
 - b. intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and
 - c. intent to cause another person to suffer:
 - physical injury;
 - financial injury; or
 - mental anguish or emotional distress.
- 69. A person who violates Subsection (a) or (a-1) is liable to each injured person for:
 - a. the greater of:
 - (A) \$10,000; or

- (B) the actual damages caused by the violation;
- b. court costs;
- c. reasonable attorney's fees; and
- d. exemplary damages in an amount determined by the court.

TEX. CIV. PRAC. & REM. CODE § 12.002.

- 70. Defendants made, presented, or used documents or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property.
 - a) On July 31, 2014, Document <u>D214164490</u>, Notice of Rescission of Foreclosure Sale and Cancellation of Substitute Trustee's Deed purporting to reinstate lien on Plaintiff's property after invalid foreclosure sale.
 - b) On February 17, 2015, Document <u>D215032449</u>, Corporate Assignment of Deed of Trust, Countrywide Home Loans, Inc., Assignor, purporting to assign Plaintiff's Deed of Trust to The Bank of New York Mellon, Assignee
 - c) On **December 17, 2017**, Document <u>D217291711</u>, Corporate Assignment of Deed of Trust, The Bank of New York Mellon, Assignor, purporting to assign Plaintiff's Deed of Trust to Nationstar Mortgage, LLC, Assignee
- 71. Defendants made, presented, or used documents or other record with intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the Texas constitution or laws of the State of Texas, evidencing a valid lien or claim against real property or an interest in real property.
- 72. The documents or records filed or caused to be filed by Defendants, falsely represent Defendants' interest in the real property that is the subject of such instruments, causing damages and injuries to Plaintiff.
- 73. Defendants knew at the time of such filing the instruments falsely represented Defendants' interest in the real property that is the subject of such instruments.
- 74. Defendants made, presented, or used documents or other record with intent to cause Plaintiff to suffer financial injury, mental anguish, or emotional distress.
- 75. Defendants' conduct and actions violated TEX. CIV. PRAC. & REM. CODE § 12.002 on *July 24, 2014, February 17, 2015*, and *December 17, 2017*, for which Plaintiff seeks

judgment against Defendants, jointly and severally, equal to the greater amount of \$10,000 per violation, or actual damages caused by each violation, together with attorney's fees, court costs, and exemplary damages in an amount determined by the Court. There are breaks in Plaintiff's Chain of Title. (See Ex. I)

A. <u>Violation of 12.002 by filing D214164490 in the Tarrant County real property records on 7/31/14 (David Stockman, Donna Stockman, Denise Boerner, and Recontrust Company)</u>

Plaintiff hereby adopts by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

David Stockman, Donna Stockman, Denise Boerner and Recontrust Company executed, signed, and filed a fraudulent document in the Tarrant County, Texas real property records purporting to reinstate a lien, give it legal effect and knew the harmful effect it would have on Plaintiff's title. Defendants knew or should have known the Notice of Rescission was fraudulent claim or interest in Plaintiff's property.

Defendants David Stockman, Donna Stockman, Denise Boerner and Recontrust Company were knowledgeable of the facts that a foreclosure sale had been performed and substitute trustee's deed executed in 2012, the purchaser/grantee at the foreclosure had been granted Judgment of Possession in 2012, the foreclosure sale was invalid; Plaintiff had initiated a lawsuit to enjoin a wrongful post-foreclosure eviction in 2012; Plaintiff filed a lis pendens in Tarrant County, Texas real property records noticing lawsuit and Defendants failure to notify Plaintiff of the Rescission should have caused Defendants to make an inquiry that would have lead to a discovery of fraud. Knowledge of the facts that would cause a reasonably prudent person to make inquiry which if pursued would lead to a discovery of fraud is in law equivalent to knowledge of the fraud. Glenn v. Steele, 141 Tex. 565, 61 S.W.2d 810; Wise v. Anderson, 163 Tex. 608, 359 S.W.2d 876.

Assuming arguendo, David Stockman, Donna Stockman, Denise Boerner and Recontrust Company were acting in the capacity of substitute trustees under Plaintiff's Deed of Trust. When exercising a power contained in a deed of trust, the trustee becomes a special agent for both parties, and he must act with absolute impartiality and with fairness to all concerned in order to achieve the objective of the trust. SeeHammonds v. Holmes, 559 S.W.2d 345, 347 (Tex.1977); First Federal Sav. & Loan Ass'n v. Sharp, 359 S.W.2d 902, 904 (Tex.1962). David Stockman, Recontrust Company, Donna Stockman, and Denise Boerner failed to notify Plaintiff of the execution or filing of the Notice of the Rescission purportedly reinstating Plaintiff's lien and cancelling the substitute trustee's deed. When

the particular circumstances impose on a person a duty to speak and he deliberately remains silent, his silence is equivalent to a false representation. Smith v. National Resort Communities, Inc., 585 S.W.2d 655, 658 (Tex.1979).

Texas courts have interpreted the "intent" element to require only that the person filing the fraudulent lien be aware of the harmful effect that filing such a lien could have on a landowner. Taylor Elec. Services, Inc. v. Armstrong Elec. Supply Co., 167 S.W.3d 522, 531-32 (Tex. App.-Ft. Worth 2005)

David Stockman and Recontrust Company, sophisticated industry professionals, understood that Plaintiff was likely to incur financial injury (and perhaps mental anguish or emotional distress) as a result of the filing the Notice of Rescission purportedly reinstating the lien on Plaintiff's property clouding her title, seeking to affect the outcome of Nicholson 1 and reinstating loan for transfer and collection by Nationstar Mortgage. David Stockman and Recontrust Company, knew they had no authority to rescind an invalid foreclosure sale extra-judicially two years after the foreclosure sale and Bank of New York Mellon's being awarded Judgment of Possession and knew of the harmful effect of filing the Notice of Rescission without notifying Plaintiff.

Since intent to defraud is not susceptible to direct proof, it invariably must be proven by circumstantial evidence. Maulding v. Niemeyer, 241 S.W.2d 733, 737 (Tex.Civ.App.-El Paso 1951) (orig. proceeding); Turner v. Biscoe, 171 S.W.2d at 119.

Circumstantial evidence of fraud may also be used to support a finding of fraudulent intent. See Spoljaric v. Percival Tours, Inc., 708 S.W.2d 432, 435 (Tex.1986).

Defendants David Stockman, Donna Stockman, Denise Boerner, and Recontrust Company knew they were filing a fraudulent record in the Tarrant County, Texas real property records to give it legal effect to cause financial injury perhaps mental anguish and emotional distress.

B. <u>Violations of 12.002 by filing D215032449 in the Tarrant County, Texas real property records on 2/17/15 (CHLI, Nationstar, William Viana, Assistant Secretary, Bank of New York as Trustee for Reperforming Trust, 500 Grant Street, Pittsburgh, PA)</u>

Plaintiff hereby adopts by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

On **February 17, 2015** Nationstar Mortgage executed and presented the "Corporate Assignment of Deed of Trust" to Tarrant County Texas real property records to be filed and recorded. Countrywide Home Loans, Assignor, caused Nationstar Mortgage to execute, file and record a fraudulent claim or interest in Plaintiff's property to BONY Grant street (different trust add in). Countrywide Home Loans, Inc has been defunct since the July 2008 acquisition by Bank of America. Defunct CHLI had no interest in Plaintiff's property to assign. Nevertheless, CHLI secured execution of documents by deception, violating Texas Penal Code 32.46.

On 1/27/15 Plaintiff filed a lawsuit complaining of Nationstar's aggressive deceptive collections activity, harassment, threatening a subsequent foreclosure and filing the fraudulent Corporate Assignment of Deed of in the Tarrant County real property records styled Nicholson v. Nationstar numbered 048-276347-15.

On **2/9/15** Nationstar Mortgage sent Plaintiff a letter advising they were allegedly servicing account number 0619301724 for the Bank of New York Mellon and the account was 47 months in arrears.

On 2/17/16 in open court Nationstar's attorney advised the Court, Nationstar Mortgage was not a party to the assignment. (embed transcript snippet) However, the seller's account servicing number 0619301724 referenced on the Corporation Assignment Deed of Trust was allegedly being serviced by Nationstar Mortgage on behalf of the BONY as trustee for certificateholders of CWMBS......

On **December 25, 2015** Plaintiff filed a CFPB complaint against Nationstar complaining of the fraudulent Corporate Assignment of Deed of Trust filed and recorded in the Tarrant County, Texas real property recorded on 2/17/15. (embed complaint) Nationstar acknowledged receipt of the December 25, 2015 complaint on December 30, 2015.

On **February 19, 2016** Nationstar responded to Plaintiff's December 25,2015 complaint advising they had the right to service loan. Plaintiff complained to the CFPB referencing the derogatory credit reporting by Nationstar Mortgage to the credit repositories on May 29, 2016, May 31, 2016, June 4, 2016, June 19, 2016 and June 20, 2016; requesting removal of the derogatory marks affecting her credit worthiness.

On **June 29, 2016** Nationstar Mortgage acknowledged receipt of the credit reporting complaints from May 29, 2016 through June 20, 2016; advising they will continue to report the adverse information to the credit repositories relying on the Notice of Rescission.

On September 13, 2016 Plaintiff sent Nationstar Mortgage, LLC a certified letter, return

receipt requested, putting Nationstar Mortgage "on notice" that the filing of Instrument D215032449, Corporate Assignment of Deed of Trust, was a fraudulent claim against Plaintiff's property and requested a release of Instrument D215032449, the 2/17/15 Assignment. The return receipt shows the letter was delivered on September 16, 2016. Nevertheless, Instrument D215032449 was not purged from the Tarrant County, Texas real property records. Nevertheless, the Corporate Assignment of Deed of Trust filed on February 17, 2015 was not purged from the Tarrant County, Texas real property records within 21 days, thereby intending to harm or defraud Plaintiff pursuant to Texas Penal Code 32.49.

On **June 21, 2017** Plaintiff sent Bank of New York a certified letter, return receipt requested, putting BONY "on notice" that the filing of Instrument D215032449, Corporate Assignment of Deed of Trust, was a fraudulent claim against Plaintiff's property and requested a release of Instrument D215032449, the 2/17/15 Assignment. The return receipt shows delivery on June 24, 2017 to 500 Grant Street, Pittsburgh, PA 15258. Nevertheless, BONY failed to execute a release of the fraudulent interest from the Tarrant County, Texas real property records within 21 days; thereby intending to harm or defraud Plaintiff pursuant to Texas Penal 32.49.

Under Texas law, an assignment is a manifestation by the owner of a right to transfer such right to the assignee. Hermann Hosp. v. Liberty Life Assur. Co.,696 S.W.2d 37, 44 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). An existing right is a precondition for a valid assignment. Pain Control Institute, Inc. v. GEICO Gen. Ins. Co., 447 S.W.3d 893, 899 (Tex. App.-Dallas 2014, no pet.). An assignee stands in the shoes of the assignor but acquires no greater right than the assignor possessed. John H. Carney & Assocs. v. Texas Prop. & Cas. Ins. Guar. Ass'n, 354 S.W.3d 843, 850 (Tex. App.-Austin 2011, pet. denied). An assignment cannot be made by a dead man; it is a transfer by one existing party to another existing party of some valuable interest. Pool v. Sneed, 173 S.W.2d 768, 775 (Tex. Civ. App.-Amarillo 1943, writ ref'd w.o.m.).

Knowledgeable of the facts that would cause a reasonably prudent person to make inquiry which if pursued would lead to a discovery of fraud is in law equivalent to knowledge of the fraud. Glenn v. Steele, 141 Tex. 565, 61 S.W.2d 810; Wise v. Anderson, 163 Tex. 608, 359 S.W.2d 876. Nationstar, Countrywide, and William Viana were knowledgeable of the facts which if were pursued would lead to a discovery a fraud.

Texas courts have interpreted the "intent" element to require only that the person filing the

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fraudulent lien be aware of the harmful effect that filing such a lien could have on a landowner. Taylor Elec. Services, Inc. v. Armstrong Elec. Supply Co., 167 S.W.3d 522, 531-32 (Tex. App.-Ft. Worth 2005)

Nationstar Mortgage, sophisticated creditor and industry professional represented by counsel, understood that Plaintiff was likely to incur financial injury (and perhaps mental anguish or emotional distress) as a result of the filing the Corporate Assignment Deed of Trust on 2/17/15, refusing to purge the Corporate Assignment of Deed of Trust from the real property records creating a cloud/burden on Plaintiff's title, and refusing to remove the disputed derogatory credit marks damaging her credit worthiness. Since intent to defraud is not susceptible to direct proof, it invariably must be proven by circumstantial evidence. Maulding v. Niemeyer, 241 S.W.2d 733, 737 (Tex.Civ.App.-El Paso 1951) (orig. proceeding); Turner v. Biscoe, 171 S.W.2d at 119. Circumstantial evidence of fraud may also be used to support a finding of fraudulent intent. See Spoljaric v. Percival Tours, Inc., 708 S.W.2d 432, 435 (Tex.1986). Intent may also be inferred from a party's subsequent actions. Spoljaric, 708 S.W.2d at 434.

On May 11, 2017 the Harvey Law Group, Nationstar's attorney, sent a letter advising Plaintiff they would continue to report adverse credit information to the credit repositories. (See Ex. F)

On June 23, 2017 Nationstar sent Plaintiff letter advising the payment history has been reported correctly to the credit repositories. (See Ex. G)

On June 28, 2017 Nationstar sent Plaintiff a letter advising they would report the credit information as disputed to the credit repositories. (See Ex. H)

Nationstar Mortgage knew the harmful effect the Corporate Assignment of Deed of Trust would have on Plaintiff's title and the adverse credit reporting to the credit repositories would have on Plaintiff's creditworthiness. Nationtar intended to cause Plaintiff financial injury and perhaps mental anguish and emotional distress.

On April 2016 and July 2017 Plaintiff received offers for more than \$200,000 on her property, however, the Corporate Assignment Deed of Trust filed on 2/17/15 and the Notice of Rescission filed on July 31, 2014 impeded the vendibility of Plaintiff's property. The cloud of the 2/17/15 Assignment and the July 2014 Notice of Rescission slandered Plaintiff's title and thereby deprived of her right to sell the property and redeem her equity therein.

On May 2016 and June 2016, Plaintiff sought to purchase an automobile. Plaintiff was

denied a favorable credit approval due to the derogatory credit marks by Nationstar on her credit report.

Defendants Countrywide Home Loans, Nationtstar, and William knew they were filing a fraudulent claim/interest in the Tarrant County records to give it legal effect to harm Plaintiff financially, mentally, and emotionally. Defendants' egregious conduct is relentless.

(C) Violation of 12.002 by filing D217291711 in the Tarrant County, Texas real property records on 12/17/17 (Nationstar Bank, THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWMBS., CWMBS REFORMING LOAN REMIC TRUST CERTIFICATES, SERIES 2005-R2, Trefe Tekle, President)

Plaintiff hereby adopts by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

On **July 3, 2012** the Bank of New York Mellon Trustee for the Certificateholders was conveyed title to Plaintiff's property via a Substitute Trustee's Deed, thereby divesting Plaintiff of her title. On September and November 2012 the Bank of New York Mellon was granted Judgment of Possession. And until a court sets a deed aside, it remains "valid and represents prima facie evidence of title." Lance v. Robinson, Tex: Supreme Court (March 2018), citing Nobles v. Marcus, 533 S.W.2d 923 (Tex. 1976) at 926; see also Morlock, L.L.C. v. Bank of N.Y., 448 S.W.3d 514, 517 (Tex. App.-Houston [1st Dist.] 2014, pet. denied) Plaintiff has adversely possessed the property under color of title since July 3, 2012.

Specifically with respect to mortgagors in default who claim adverse possession, the statutory period does not begin to run until title to the property passes at the foreclosure sale. Warnecke v. Broad, 161 S.W.2d 453, 455 (Tex. 1942). The Texas Civil Practice and Remedies Code provides, "A person must bring suit to recover real property held by another in peaceable and adverse possession under title or color of title not later than three years after the day the cause of action accrues. TEX. CIV. PRAC. REM.CODE ANN. § 16.024 (West 2002). "If an action for the recovery of real property is barred under [chapter 16], the person who holds the property in peaceable and adverse possession has full title, precluding all claims." Id. § 16.030(a). Plaintiff has resided on the property in peaceable and adverse possession since July 3, 2012. As a matter of law, Plaintiff had full title, precluding all claims effective July 3, 2015.

On **December 17, 2017** Nationstar Mortgage executed, presented, and filed a Corporate Assignment of Deed of Trust from the Bank of New York Mellon to Nationstar Mortgage in the Tarrant County real property records to give it legal effect. The Bank of New York Mellon had no interest in Plaintiff's property to assign to Nationstar Mortgage.

Alternatively, Plaintiff's Deed of Trust is void since Plaintiff's mortgage loan has been accelerated since April 24, 2012 more than four years pursuant to Texas Civil Remedies and Practices Code 16.035.

Under Texas law, an assignment is a manifestation by the owner of a right to transfer such right to the assignee. Hermann Hosp. v. Liberty Life Assur. Co.,696 S.W.2d 37, 44 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). An existing right is a precondition for a valid assignment. Pain Control Institute, Inc. v. GEICO Gen. Ins. Co., 447 S.W.3d 893, 899 (Tex. App.-Dallas 2014, no pet.). An assignee stands in the shoes of the assignor but acquires no greater right than the assignor possessed. John H. Carney & Assocs. v. Texas Prop. & Cas. Ins. Guar. Ass'n, 354 S.W.3d 843, 850 (Tex. App.-Austin 2011, pet. denied). Nationstar Mortgage now serves as the alleged servicer from the Bank of New York Mellon and the Assignee in the Corporation Assignment of Deed of Trust.

Knowledge of the facts that would cause a reasonably prudent person to make inquiry which if pursued would lead to a discovery of fraud is in law equivalent to knowledge of the fraud. Glenn v. Steele, 141 Tex. 565, 61 S.W.2d 810; Wise v. Anderson, 163 Tex. 608, 359 S.W.2d 876. Bank of New York Mellon was knowledgeable of the facts that if pursued would have lead to a discovery of fraud.

Nationstar Mortgage, sophisticated creditor and industry professional, that has been represented by counsel in another related suit, understood that Plaintiff is likely to incur financial injury (and perhaps mental anguish or emotional distress) as a result of the filing the Corporate Assignment Deed of Trust on December 17, 2017 in the Tarrant County records to give it legal effect to further cloud Plaintiff's property and harass.

Since intent to defraud is not susceptible to direct proof, it invariably must be proven by circumstantial evidence. Maulding v. Niemeyer, 241 S.W.2d 733, 737 (Tex.Civ.App.-El Paso 1951) (orig. proceeding); Turner v. Biscoe, 171 S.W.2d at 119. Circumstantial evidence of fraud may also be used to support a finding of fraudulent intent. See Spoljaric v. Percival Tours, Inc., 708 S.W.2d 432, 435 (Tex.1986). Intent may also be inferred from a party's subsequent actions. Spoljaric, 708 S.W.2d at 434.

Defendants Bank of New York, Nationstar, and Trefle knew they were filing a fraudulent

claim/interest in the Tarrant County records to give it legal effect to harm Plaintiff financially, mentally, and emotionally. Defendants' egregious conduct is relentless.

II. NEGLIGENCE PER SE (ALL DEFENDANTS)

Plaintiff hereby adopt by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

- 72. Defendants were negligent per se in the misconduct alleged herein. Such negligence per se included, but was and is not limited to:
 - a. violation of section 12.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE by filing false and deceptive record in the deed record of Texas on July 24, 2014 (D214164490), February 17, 2015 (D215032449), and December 17, 2017 (D217291711)
 - b. The negligence per se of Defendant set forth herein was a proximate cause of damages to Plaintiff for which she seeks judgment of the Court.

III. GROSS NEGLIGENCE PER SE (ALL DEFENDANTS)

Plaintiff hereby adopt by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

- 73. Defendants were grossly negligent per se in the misconduct alleged herein. Such gross negligence per se included, but was and is not limited to:
 - a. violation of section 12.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE by filing false and deceptive records in the deed records of Texas on *July 24, 2014 (D214164490), February 17, 2015(D214032449)*, and *December 17, 2017 (D217291711)*
 - b. The gross negligence per se of Defendants set forth herein was a proximate cause of damages to Plaintiff for which she seeks judgment of the Court.
 - 76. On *July 24, 2014, February 17, 2015*, and *December 17, 2017*, Defendants made, presented, or used documents or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property intending to cause Plaintiff financial injury.

DECLARATORY JUDGMENT

- 77. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37, Plaintiff seeks declaratory judgment that D215032449 and D217291711 are null and void and should be purged from the Tarrant County, Texas Real Property records.
- 78. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37, Plaintiff seeks a declaratory judgment that Defendants made, presented, or used documents or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property in violation of TEX. CIV. PRAC. & REM. CODE § 12.002 specifically D214164490, D215032449, and D217291711.
- 79. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37, Plaintiff seeks a declaratory judgment that Defendants made, presented, or used documents or other record with intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the Texas constitution or laws of the State of Texas, evidencing a valid lien or claim against real property or an interest in real property in violation of TEX. CIV. PRAC. & REM. CODE § 12.002 specifically D214164490, D215032449, and D117291711.
- 80. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37, Plaintiff seeks a declaratory judgment that documents or records filed or caused to be filed by Defendants, falsely represent Defendants' interest in the real property that is the subject of such instruments in violation of TEX. CIV. PRAC. & REM. CODE § 12.002 specifically D214164490, D215032449, and D217291711.
- 81. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37, Plaintiff seeks a declaratory judgment that documents or records filed or caused to be filed by Defendants with the intent cause Plaintiff financial injury, mental anguish and emotional distress in violation of TEX. CIV. PRAC. & REM. CODE § 12.002 specifically D214164490, D215032449, and D217291711.
- 82. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that THE BONY was conveyed title to Plaintiff's property on August 2, 2012;
- 83. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Plaintiff was divested of title to her property on August 2, 2012;
- 84. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Plaintiff's Deed of Trust, D201015378, was wiped out on August 2, 2012;

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- 85. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Plaintiff had no contractual obligations under Deed of Trust, D201015378 after August 2, 2012;
- 86. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that David Stockman, Donna Stockman, Denise Berner, and Recontrust Company weren't substitute trustee's under Plaintiff's Deed of Trust, D201015378 after August 2, 2012;
- 87. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Plaintiff was an adverse possessor of her property at 2951 Santa Sabina Drive, Grand Prairie, Texas 75052 after August 2, 2012;
- 88. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that David Stockman, Donna Stockman, Denise Boerner, or Reontrust Company had no interest in Plaintiff's property, title, or lien to grant, convey, or reinstate on July 24, 2014;
- 89. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Instrument D214164490, Notice of Rescission, was an artifice and stratagem that was filed in the Tarrant County, Texas real property record;
- 90. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Countrywide Home Loans was a non-existent entity on February 17, 2015;
- 91. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Countrywide Home Loans had no interest in Plaintiff's property on February 17, 2015;
- 92. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Nationstar Mortgage had no authority to act in the capacity as attorney-in-fact for Countrywide Home Loans, Inc. in Instrument D215032449;
- 93. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that BONY as assignee, Instrument D215032449, was a non-existent entity on February 17, 2015;
- 94. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Instrument D215032449, Assignment, did not convey any interest in Plaintiff's property to the Bank of New York Mellon, Pittsburgh, PA because Countrywide Home Loans had no such interest to convey;
- 95. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Instrument D217291711, Assignment, did not convey any interest in Plaintiff's property to Nationstar Mortgage/Mr. Cooper, because THE BONY had no such interest to convey;
- 96. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that David Stockman, Donna Stockman, Denise Berner, Recontrust, and Bank of America made,

- presented, or used Instrument D214164490, Notice of Rescission with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property;
- 97. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that David Stockman, Donna Stockman, Denise Boerner, Recontrust, and Bank of America intended that the document, Instrument D214164490 or other record be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property;
- 98. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that David Stockman, Donna Stockman, Denise Berner, Recontrust, and Bank of America intended to cause Plaintiff physical injury, financial injury or mental anguish or emotional distress by recording Instrument D214164490 in the Tarrant County, Texas real property records;
- 99. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Countrywide Home Loans, Nationstar Mortgage, LLC, William Viana and Bank of New York Mellon made, presented, or used used a document, instrument D215032449, Assignment with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property;
- 100. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Countrywide Home Loans, Nationstar Mortgage, LLC, William Viana, and Bank of New York Mellon intended that the document, Instrument D215032449, Assignment to be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property;
- 101. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Countrywide Home Loans, Nationstar Mortgage, LLC, William Viana, and Bank of New York Mellon intended to cause Plaintiff physical injury, financial injury or mental anguish or emotional distress by recording Instrument D215032449, Assignment in the Tarrant County, Texas real property records;
- 102. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that BONY, Terefe Trekle, and Nationstar Mortgage/Mr. Cooper made, presented, or used used Instrument D217291711, Corp Assignment of Deed of Trust with knowledge that the document or

- other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property;
- 103. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that BONY, Terefe Trekle, and Nationstar Mortgage/Mr. Cooper, intended that Instrument D217291711, Corp Assignment of Deed of Trust be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property;
- 104. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that BONY, Terefe Trekle and Nationstar Mortgage/Mr. Cooper intended to cause Plaintiff physical injury, financial injury or mental anguish or emotional distress by recording Instrument D217291711 in the Tarrant County, Texas real property records;
- 105. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Instrument D217291711 is an "invalid cloud and burden" on the Plaintiff's property;
- 106. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Instrument D215032449 is an "invalid cloud and burden" on the Plaintiff's property;
- 107. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Instrument D214164490 is a "deed or other record" under Chapter 12;
- 108. Pursuant to TEX. CIV. PRAC. & REM CODE § 37, Plaintiff seeks declaratory judgment that Instrument D215032449 is a "deed or other record" under Chapter 12;
- 109. Pursuant to TEX. CIV. PRAC. & REM CODE § 37Plaintiff seeks declaratory judgment that Instrument D217291711 is a "deed or other record" under Chapter 12;
- 110. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009, Plaintiff seeks recovery of costs and fees.

IV. <u>CIVIL CONSPIRACY TO COMMIT FRAUD UPON THIS HONORABLE</u> <u>COURT AND PLAINTIFF (ALL DEFENDANTS)</u>

Plaintiff hereby adopts by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.

111. The elements of civil conspiracy are (1) a combination of two or more persons; (2) the objective to be accomplished is an unlawful purpose or a lawful purpose by unlawful means; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt

acts; and (5) damages as the proximate result. Ins. Co. of N. Am. v. Morris, 981 S.W.2d 667, 675 (Tex. 1998). Civil conspiracy requires specific intent. Triplex Commc=ns Inc. v. Riley, 900 S.W.2d 716, 719 (Tex. 1995). For a civil conspiracy to arise, the parties must be aware of the harm or wrongful conduct at the inception of the combination or agreement. Id. Because liability depends on participation in some underlying tort, conspiracy is considered a derivative tort. Baty, 63 S.W.3d at 864 (citing Tilton v. Marshall, 925 S.W.2d 672, 681 (Tex. 1996)). Therefore, to prevail on a civil conspiracy claim, the plaintiff must show the defendant was liable for some underlying tort. Id. (citing Trammell Crow Co. No. 60 v. Harkinson, 944 S.W.2d 631, 635(Tex. 1997)). Proof of a civil conspiracy may be, and usually must be, made by circumstantial evidence.

- 112. On August 2, 2012 David Stockman executed a Substitute Trustee's Deed conveying Plaintiff's title to the Bank of New York Mellon. And until a court sets a deed aside, it remains "valid and represents prima facie evidence of title." <u>Lance v. Robinson, Tex: Supreme Court (March 2018)</u>, citing Nobles v. Marcus, 533 S.W.2d 923 (Tex. 1976) at 926; see also Morlock, L.L.C. v. Bank of N.Y., 448 S.W.3d 514, 517 (Tex. App.-Houston [1st Dist.] 2014, pet. denied)
- On October 31, 2012 Bank of New York Mellon was awarded Judgment of Possession after an invalid foreclosure sale of Plaintiff's property.
- 114. On November 5, 2012 Plaintiff filed a lawsuit to enjoin a wrongful post-foreclosure eviction in the 342nd Court styled Nicholson v. Bank of New York Mellon numbered 324-262692-12. (*Nicholson* 1)
- 115. On December 6, 2012 Plaintiff filed a Lis Pendens in the Tarrant County real property records to put the public on notice of the pending 342nd lawsuit referencing title and eviction.
 Bank of America sent Plaintiff alerts 2012-2014 post-foreclosure advising payments on her account that was allegedly foreclosed and assigning a new Customer Service Manager, Maria Ivarra during the pendency of (Nicholson 1)
- 116. On January 24, 2014 Bank of America sent Plaintiff a letter advising the payoff on her account was more than \$212,000 during the pendency of (*Nicholson 1*)
- 117. On April 20, 2014 Plaintiff filed a CFPB complaint complaining of the alerts and letters postforeclosure referencing the account being active.
- 118. On May 6, 2014 Kevin Castro, Bank of America Office of the President sent Plaintiff a letter advising the January 24, 2014 was sent as informational purposes only, the foreclosure remained in place, and there had been no charges assessed after the foreclosure sale.
- 119. On May 28,2014 Defendants responded to Request for Admissions admitting the foreclosure sale

was invalid.

- On July 24, 2014 David Stockman, Recontrust Company, Donna Stockman and Denise Boerner, clandestinely executed and filed a Notice of Rescission purportedly reinstating the lien on Plaintiff's property and cancelling the substitute trustee's deed in the Tarrant County real property records to give it legal effect and cause harm to Plaintiff. The Notice of Rescission was filed:
- 121. After the purchaser was granted Judgment of Possession in the Justice of the Peace and County Court at Law on <u>September 20, 2012</u> and <u>November 1, 2012</u> respectively
- 122. After the execution of the substitute trustee's deed that was filed on **August 2, 2012**
- 123. After Plaintiff filed a lawsuit to enjoin a wrongful post-foreclosure eviction on November 5, 2012
- 124. After Plaintiff filed a Lis Pendens on **December 6, 2012 to publicly notice title suit**
- 125. After Recontrust Company and others advised the Court they would not evict Plaintiff during the pendency of *Nicholson 1* on <u>March 21, 2013</u>
- 126. After Kevin Castro, Bank of America's Office of the President, Plaintiff's servicer pre-foreclosure, sent Plaintiff a letter advising the foreclosure sale remained in place on <u>May 20, 2014</u>
- 127. After Bank of America admitted the foreclosure sale did not comply with the Texas statutory laws to effectuate a valid foreclosure sale on **May 28, 2014**
- 128. After Recontrust Company and others sought to file a counterclaim in <u>Nicholson 1</u> to reform the substitute trustee's deed due to scrivener's error on **July 15, 2014**

<u>Subsequent Actions after filing the Notice of Rescission on July 31, 2014 in the Tarrant County real</u> property records

- 129. Defendant Recontrust Company's attorney, McGlinchey Stafford Law Firm (David Romness, Nathan Anderson, R. Dwayne Danner) failed to notify the Court during the pendency of *Nicholson 1* of the filing of the Notice of Rescission executed by its client pursuant to Rule 3.3 of the Model Roles of Professinal Conduct and Rule 3.03 of the Texas Rules of Professional Conduct so that Plaintiff would not incur unnecessary time and expense associated with the ongoing litigation of the invalid foreclosure sale and the subsequent fraudulent acts
- 130. Recontrust Company's attorney, David Romness, advised Plaintiff the foreclosure sale was invalid on <u>August 8, 2014</u> via email
- 131. Recontrust and others withdrew their counterclaim on <u>August 23, 2014</u> after full briefing in <u>Nicholson</u>

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- 132. Recontrust and others filed a Motion for Summary Judgment judicially admitting Bank of America and Bank of New York had the right to foreclose appending an affidavit from Recontrust Company September 15, 2014
- 133. Bank of America, Plaintiff's servicer pre-foreclosure, relied on the Notice of Rescission to reinstate Plaintiff's Ioan without notifying Plaintiff or the Court
- 134. Bank of America, Plaintiff's servicer pre-foreclosure, allegedly transferred servicing of the reinstated loan to Nationstar Mortgage to service and collect
- 135. Nationstar Mortgage threaten a subsequent foreclosure on <u>December 31, 2014</u>
- 136. Nationstar Mortgage relied on the Notice of Rescission to service the alleged reinstated loan, pursue debt collection on contractual past due payments, and report derogatory credit activity to the credit repositories
- 137. Countrywide Home Loans, Inc (defunct entity) relied on Notice of Rescission to allegedly assign Plaintiff's Deed of Trust to Bank of New York Mellon as Trustee on <u>February 17, 2015</u>
- 138. Recontrust and others in <u>Nicholson 1</u> filed their answer in Nicholson 1 alleging they were entitled to rent after the foreclosure sale up to transferring to Nationstar on <u>December 30, 2015</u>
- Nationstar Mortgage sought to coerce Plaintiff to reaffirm debt by deception relying on the Notice of Rescission
- 140. Recontrust's attorney, Richard Danner sent Plaintiff correspondence advising Plaintiff's lien and debt were reinstated the balance on Plaintiff's loan relying on the Notice of Rescission <u>June 20, 2016</u> ²
- 141. Richard Danner, Defendants' attorney in <u>Nicholson 1</u> conceded the Notice of Rescission was invalid in Responses to Request for Disclosures on February 24, 2017
- 142. Harvey Law Group, Nationstar's attorney, sent Plaintiff a letter entitled "Abandonment of Acceleration" on <u>April 20,2016</u> contradicting information Nationstar had been providing to Plaintiff for more than a year earlier indicating Plaintiff's loan was contractually due for forty-seven payments since April 2011 with more than \$80,000 in arrears.
- 143. Assuming arguendo, David Stockman, Donna Stockman, Denise Boerner and Recontrust Company were acting in the capacity of substitute trustees under Plaintiff's Deed of Trust. Although not a fiduciary duty, a trustee has a duty in connection with a foreclosure sale to act with "absolute impartiality and fairness' to all concerned, including the mortgagor." See Peterson v. Black, 980 S.W.2d 818, 822 (Tex.App.-San Antonio 1998, no pet.); First State Bank v. Keilman, 851 S.W.2d 914, 925 (Tex.App.-Austin 1993, writ denied) (citing Hammonds v. Holmes, 559 S.W.2d 345, 347 (Tex.1977)). A trustee fulfills the duty of impartiality and fairness by "strictly complying with the

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terms of the deed of trust." *Keilman*, 851 S.W.2d at 925. David Stockman, Recontrust Company, Donna Stockman or Denise Boerner failed to notify Plaintiff (mortgagor) of the execution or filing of the Notice of the Rescission purportedly reinstating Plaintiff's lien and canceling substitute trustee's deed, neverthess, the mortgagee pre-foreclosure was notified and took subsequent actions including allegedly reinstating the debt and transferring servicing agreements to Nationtar Mortgage to collect, harras, and deceive Plaitniff to reaffirm by misrepresentating the Notice of Rescission reaffirmed the debt. When the particular circumstances impose on a person a duty to speak and he deliberately remains silent, his silence is equivalent to a false representation. Smith v. National Resort Communities, Inc., 585 S.W.2d 655, 658 (Tex.1979).

- Texas courts have long adhered to the view that fraud vitiates whatever it touches, and have consistently held that a party will not be permitted to avail himself of the protection of a limitations statute when by his own fraud has prevented the other party from seeking redress within the period of limitations. To reward a wrongdoer for his own fraudulent contrivance would make the statute a means of encouraging rather than preventing fraud. Estate of Stonecipher v. Estate of Butts, 591 S.W.2d at 809; Ruebeck v. Hunt, 142 Tex. 167, 176 S.W.2d 738, 739 (1943); Glenn v. Steele, 141 Tex. 565, 61 S.W.2d 810, 810 (1933); Port Arthur Rice Milling Co. v. Beaumont Rice Mills, 105 Tex. 514, 522, 143 S.W. 926, 929 (1912); Heirs of Brown v. Brown, 61 Tex. 45, 59 (1884); Munson v. Hallowell, 26 Tex. 475, 484 (1863).
- 145. Defendants devised a scheme or artifice to defraud Plaintiff and the courts and executed this scheme or artifice by recording Instrument D214164490 in the Tarrant County, Texas Real Property records to defeat Plaintiff's claims in a pending lawsuit, (Nicholson v. Bank of New York Mellon and others, 342-262692-12, "Nicholson 1"). Defendants, David Stockman and Recontrust Company recorded the instrument to reinstate Plaintiff's lien and debt. Then, Bank of America allegedly reinstated the debt and transferred the servicing to Nationstar Mortgage to pursue collection activity, Nationstar Mortgage pursued debt collection and sought to coerce Plaintiff to reinstate contractual obligations, Countrywide Home Loans recorded a fraudulent claim interest to BONY, and BONY recorded a fraudulent claim/interest/to Nationstar Mortgage to further harass.
- 146. Defendants devised or intended to devise a scheme or artifice to defraud Plaintiff and this court and executed this scheme or artifice by recording Instrument D214164490 in the Tarrant County, Texas Real Property records to coerce Plaintiff to start loan repayment to reinstate loan contract by deception.

V.FRAUD (ALL DEFENDANTS)

- **A.** Plaintiff hereby adopts by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.
- 147. The elements of fraud are: (1) that a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury. In re FirstMerit Bank, N A., 52 S.W.3d 749 (Tex. 2001); Formosa Plastics Corp. v. Presidio Eng'rs. & Contractors, Inc., 960 S.W.2d 41, 47 (Tex.1998).
- 148. On July 24, 2014 David Stockman, Recontrust Company, Donna Stockman and Denise Boerner, clandestinely executed and filed a Notice of Rescission purportedly reinstating the lien on Plaintiff's property and cancelling the substitute trustee's deed in the Tarrant County real property records to give it legal effect and cause harm to Plaintiff.
- 149. Defendant Recontrust Company's attorney, McGlinchey Stafford Law Firm (David Romness, Nathan Anderson, R. Dwayne Danner) failed to notify the Court during the pendency of *Nicholson 1* of the filing of the Notice of Rescission executed by its client pursuant to Rule 3.3 of the Model Roles of Professinal Conduct and Rule 3.03 of the Texas Rules of Professional Conduct so that Plaintiff would not incur unnecessary time and expense associated with the ongoing litigation of the invalid foreclosure sale and the subsequent fraudulent acts.
- 150. Recontrust Company's attorney, David Romness, advised Plaintiff the foreclosure sale was invalid on **August 8, 2014** via email
- 151. Bank of America, Plaintiff's servicer pre-foreclosure, relied on the Notice of Rescission to reinstate Plaintiff's loan without notifying Plaintiff or the Court
- 152. Bank of America, Plaintiff's servicer pre-foreclosure, allegedly transferred servicing of the reinstated loan to Nationstar Mortgage to service and collect
- 153. Nationstar Mortgage threaten a subsequent foreclosure on **December 31, 2014**

- 154. Nationstar Mortgage relied on the Notice of Rescission to service the alleged reinstated loan, pursue debt collection on contractual past due payments, and report derogatory credit activity to the credit repositories
- 155. Countrywide Home Loans, Inc (defunct entity) relied on Notice of Rescission to allegedly assign Plaintiff's Deed of Trust to Bank of New York Mellon as Trustee on <u>February 17, 2015</u>
- 156. Recontrust and others in <u>Nicholson 1</u> filed their answer in Nicholson 1 alleging they were entitled to rent after the foreclosure sale up to transferring to Nationstar on <u>December 30, 2015</u>
- 157. Nationstar Mortgage sought to coerce Plaintiff to reaffirm debt by deception relying on the Notice of Rescission
- 158. Recontrust's attorney, Richard Danner sent Plaintiff correspondence advising Plaintiff's lien and debt were reinstated the balance on Plaintiff's loan relying on the Notice of Rescission <u>June 20, 2016</u>, misrepresenting the effect of the Notice of Rescission.
- 159. Richard Danner, Defendants' attorney in <u>Nicholson 1</u> conceded the Notice of Rescission was invalid in Responses to Request for Disclosures on <u>February 24, 2017</u>
- 160. Harvey Law Group, Nationstar's attorney, sent Plaintiff a letter entitled "Abandonment of Acceleration" on April 20,2016 contradicting information Nationstar had been providing to Plaintiff for more than a year earlier indicating Plaintiff's loan was contractually due for forty-seven payments since April 2011 with more than \$80,000 in arrears.
- 161. Defendants, BONY, BOA, Recontrust Company, and Melanie Cowan secretly sought to rescind sale, cancel trustee's deed and reinstate lien without any authority
- 162. BONY, BOA, Recontrust Company, and Melanie Cowan pursued litigation of wrongful foreclosure lawsuit for more than five years as though foreclosure sale was valid
- 163. BOA misrepresented to Plaintiff the Notice of Rescission reinstated the lien and debt
- 164. Nationstar misrepresented to Plaintiff the Notice of Rescission reinstated the debt to coerce Plaintiff to reaffirm debt by deception.
- 165. On April 2016 and July 2017 Plaintiff received offers for more than \$200,000 on her property, however, the Corporate Assignment Deed of Trust filed on 2/17/15 and the Notice of Rescission filed on July 31, 2014 impeded the vendibility of Plaintiff's property. The cloud of the 2/17/15 Assignment and the July 2014 Notice of Rescission slandered Plaintiff's title and thereby deprived of her right to sell the property and redeem her equity therein.
- 166. On May 2016 and June 2016, Plaintiff sought to purchase an automobile. Plaintiff was denied a favorable credit approval due to the derogatory credit marks by Nationstar on her credit report.

167. BONY, BOA, Recontrust Company, Nationstar, Countrywide Home Loans, Harvey Law Group, and David Stockman made material representations; the representation were false; when the representations were made the speakers knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; the speakers made the representation with the intent that the Plaintiff should act upon it; the Plaintiff acted in reliance on the representation; and Plaintiff suffered injury.

CLAIM FOR RESPONDEAT SUPERIOR

- 168. Paragraphs 1 through 167 above are incorporated by reference as if set forth in full herein.
- 169. Defendants David Stockman, Donna Stockman, Denise Boerner, and Recontrust Company, tortfeasors, conspired to commit fraud upon the Court and defraud Plaintiff, violated 12.002 of TCPRC, Fraud, Negligence Per Se and Gross Negligence per se against Plaintiff.
- 170. Civil Conspiracy, Violation of 12.002, Fraud, Negligence Per Se and Gross Negligence Per se are torts.
- 171. The Civil Conspiracy, Violation of 12.002, Fraud, Negligence Per Se and Gross Negligence Per se were committed while David Stockman, Donna Stockman, Denise Boerner, and Recontrust were acting within the scope of agents for Bank of America.
- 172. Bank of America is liable to Plaintiff for her injuries under the theory of Respondent Superior.

CLAIM FOR RESPONDEAT SUPERIOR

- 173. Paragraphs 1 through 167 above are incorporated by reference as if set forth in full herein.
- 174. Defendants Nationstar Mortgage and William Viana, tortfeasors, conspired to commit fraud upon the Court and defraud Plaintiff, violated 12.002 of TCPRC, Fraud, Negligence Per Se and Gross Negligence per se against Plaintiff.
- 175. Civil Conspiracy, Violation of 12.002, Fraud, Negligence Per Se and Gross Negligence Per se are torts.
- 176. Civil Conspiracy, Violation of 12.002, Fraud, Negligence Per Se and Gross Negligence Per se were committed while Nationstar Mortgage and William ere acting within the scope of agents

- for Countrywide Home Loans.
- 177. Countrywide Home Loans is liable to Plaintiff for her injuries under the theory of Respondeat Superior.

CLAIM FOR RESPONDEAT SUPERIOR

- 178. Paragraphs 1 through 167 above are incorporated by reference as if set forth in full herein.
- 179. Defendants Nationstar Mortgage and Trefle Tekle, tortfeasors, conspired to commit fraud upon the Court and defraud Plaintiff, violated 12.002 of TCPRC, Fraud, Negligence Per Se and Gross Negligence per se against Plaintiff.
- 180. Civil Conspiracy, Violation of 12.002, Fraud, Negligence Per Se and Gross Negligence Per se are torts.
- 181. Civil Conspiracy, Violation of 12.002, Fraud, Negligence Per Se and Gross Negligence Per se were committed while Nationstar Mortgage and Trefle were acting within the scope of agents for the Bank of New York Mellon.
- 182. The Bank of New York Mellon is liable to Plaintiff for her injuries under the theory of Respondeat Superior.

VII. DAMAGES

- 183. As a proximate result of the above, Plaintiffs have incurred, or will incur the following actual damages:
 - a) A. Reasonable and necessary attorney's fees and costs in the proceedings before this court, and those fees required for any appeal to the Court of Appeals, and thereafter to the Supreme Court;
 - b) The loss of creditworthiness and the stigma of foreclosure;
 - c) Mental anguish and acute psychic trauma;
 - d) The loss of title to her home;
 - a. The value of the time lost in attempting to correct Defendants' errors; and
 - e) Exemplary damages.
 - f) Plaintiff seeks monetary relief more than \$1,000,000.

VI. EXEMPLARY DAMAGES

- Plaintiff hereby adopt by reference each and every paragraph of the Facts and allegations stated in this Amended Petition as if fully and completely set forth herein.
- On *July 24, 2014, February 17, 2015*, and *December 17, 2017*; Defendants made, presented, or used documents or other record with knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real property or an interest in real property.
- 186. The conduct of Defendants as set forth herein constituted fraud, malice, or gross negligence such that Defendants are liable for exemplary damages for which Plaintiff seeks judgment of the Court.
- Plaintiff' injuries and damages resulted from Defendants' gross negligence, malice, or actual fraud, which entitles Plaintiff to exemplary damages under TEXAS CIVIL PRACTICE & REMEDIES CODE § 41.003(a), TEX. CIV. PRAC. & REM. CODE § 12.002, and Texas common law fraud.
- 188. The conduct of Defendants' actions or omissions described above, when viewed from the standpoint of Defendants at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff and others.
- 189. Defendants had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others.
- 190. Plaintiff intends to show that the factors the jury may consider in determining the amount of exemplary damages which should be awarded include:
 - a. the nature of the wrong committed by Defendants;
 - b. the character of Defendants' conduct;
 - c. the degree of culpability of Defendants;
 - d. the situation and sensibilities of the parties concerned; and
 - e. the extent to which Defendants' conduct offends a public sense of justice and propriety.
 - 191. Based on the facts stated herein, Plaintiff requests exemplary damages be awarded to Plaintiff from Defendants, jointly and severally.

VII. JURY DEMAND

192. Plaintiff demanded a jury trial and previously tendered the appropriate fee.

VIII. CONDITIONS PRECEDENT

193. All conditions precedent have been performed or have occurred pursuant to Rule 54 of the TEXAS RULES OF CIVIL PROCEDURE.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for:

- Judgment in favor of Plaintiff on all Counts;
- Pre-judgment and post judgment interest on such monetary relief;
- An award of Plaintiff's fees and costs; and
- Such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.
- The Court finds that the conduct of the Defendants was so deplorable that Plaintiff is entitled to exemplary damages.
- Plaintiff recovers her actual damages, out-of-pocket damages, including but not limited
 to damages for clouding the title/slander of title concerning said residence, harm to
 credit reputation, credit worthiness, and credit history, medical expenses, mental
 anguish, emotional distress, anxiety, depression, humiliation, and the value of time lost
 trying to remedy the problem, and investigative services against Defendants.
- Plaintiff recovers punitive damages.
- Plaintiffs' attorneys have costs of court and reasonable and necessary attorneys fees resulting from writs or appeals, and the same be taxed as costs and ordered paid directly to Plaintiffs' attorneys, who may enforce the order for fees in their own name.
- That the Court finds that the fraudulent documents D215032449 and D217291711 complained of in the instant case be declared null and void and purged from the Tarrant County, Texas real property records.

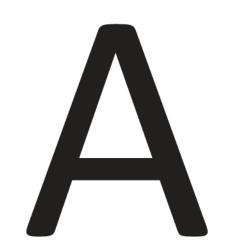
Respectfully Submitted,
/s/ Harriet Nicholson
Harriet Nicholson

2951 Santa Sabina Drive Grand Prairie, Texas 75052 harrietnicholson@yahoo.com 817-217-0245

CERTIFICATE OF SERVICE

By the execution of my signature below, I certify that a true and correct copy of Plaintiff's Eighth Amended Petition has been served to all counsel of record on the $\underline{11}^{\underline{h}}$ day of June, 2018 pursuant to rule 21(a) of the TEXAS RULES OF CIVIL PROCEDURE:

/s/ Harriet Nicholson



Office of the Chairman and CEO Enterprise Customer Relations

Ms. Harriet H. Nicholson 2951 Santa Sabina Drive Grand Prairie, TX 75052

Correspondence received on: December 19, 2014

Dear Ms. Nicholson:

I am responding to the correspondence we received on your behalf from the Consumer Financial Protection Bureau (CFPB).

Bank of America understands the importance of listening to our customers. We appreciate the time you took to share your concerns. Please find a summary of our research and the response to the concerns below.

We are responding to your request for a loan modification or other home retention assistance with respect to your mortgage loan secured by the above-referenced property.

Nothing contained herein is intended to be, nor shall anything herein be construed as: (a) the commencement or continuation of any action to recover a claim against you that arose prior to the filing of your bankruptcy case, (b) an effort to obtain possession of any property in your bankruptcy estate, (c) any other action in violation of the automatic stay that may be in effect in your bankruptcy case, or (d) any violation of any discharge injunction that may have been entered as a result of your bankruptcy case. This letter is solely a response to your request for mortgage assistance and is not a demand for payment or an attempt to collect a debt. You are not obligated to enter into a modification or other workout agreement. Please inform your bankruptcy counsel, if you have one, that you have requested a loan modification or other workout assistance from Bank of America. In addition, any workout assistance that you may be eligible for may require bankruptcy court approval before going into effect.

Summary of research

According to our records, on April 2, 2003 you filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code in the United States Bankruptcy Court. Our records indicate that the Chapter 13 Bankruptcy was discharged on February 21, 2007 and subsequently closed on September 22, 2006. Please note this information is as of the service transfer date of December 1, 2014.

Our records show that on December 1, 2014, your loan was transferred to Nationstar Mortgage LLC, and is no longer being serviced by Bank of America. We notified you of this change in the enclosed letter dated November 12, 2014. If you need more information about the current servicing of your loan, please contact Nationstar Mortgage, LLC, at

January 16, 2015

Contact Us: 1.877.471.4367, extension 436617

Loan Ending: 5134

Service Request Number: 1-535744815

Page 1 of 2

For more information about help for homeowners, visit bankofamerica.com/ homeloanhelp or makinghomeaffordable.gov

To check on the status of a loan modification, go to bankofamerica.com/ loanhelpstatus

Bank of America, NC1-007-5816 100 N Tryon Street, Charlotte, NC 28255-0001 1.877.372.0512, extension 21, Monday through Thursday from 8:00 a.m. to 8:00 p.m., Friday from 8:00 a.m. to 6:00 p.m., and Saturday from 8:00 a.m. to 2:00 p.m. Central.

January 16, 2015 Page 2 of 2

Please know that in the mortgage lending industry, the transfer or sale of loan servicing to other institutions is a common practice and is in accordance with the loan documents. Therefore, we must respectfully decline your request to transfer the servicing of your loan back to Bank of America.

Documents enclosed

Service transfer letter dated November 12, 2014

If you have any questions

Thank you for bringing the concerns to our attention. We understand that this may not be the result or resolution you were hoping for, but I hope we have been able to clarify matters in a way that enhances your understanding of the reasons for our decision. If you have any questions or would like to discuss further, my phone number is 1.877.471.4367, extension 436617, and I'm available Monday through Friday from 8:00 a.m. to 4:30 p.m. Pacific.

Sincerely,

Thelma Monterrosa Customer Advocate

Thelma Mintervisia

Office of the Chairman and CEO

cc: Consumer Financial Protection Bureau, case number 141219-000354

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector. If you are currently in a bankruptcy proceeding or have previously obtained a discharge of this debt under applicable bankruptcy law, this notice is for information only and is not an attempt to collect a debt, a demand for payment or an attempt to impose personal liability for a discharged debt.

Mortgages funded and administered by an a Equal Housing Lender.

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February 11, 2015

Harriet H. Nicholson 2951 Santa Sabina Drive Grand Prairie, TX 75052

RE: Nationstar Reference Number – NSM-01-15-00866 NSM-02-15-04561

> Mortgagor – Harriet H. Nicholson Property Address – 2951 Santa Sabina Drive, Grand Prairie, TX 75052 Loan Number – 0619301724 CFPB Case Number – 150209-002008

Dear Harriet H. Nicholson:

Nationstar Mortgage LLC (Nationstar) is in receipt of your correspondence, dated January 5, 2015, and the correspondence submitted through the Consumer Financial Protection Bureau (CFPB) on February 2, 2015, regarding the mortgage loan account described above. We appreciate you bringing this to our attention, as we take all matters such as this seriously.

We have conducted an investigation and corrected the error asserted within the received correspondence. Due to the litigation on the account, Nationstar was unable to determine the correct party to address our acknowledgement letter to. Accordingly Nationstar did not acknowledge the receipt of your mailed complaint dated January 5, 2015, until February 9, 2015. We sincerely apologize for this error and appreciate your patience during this process. The effective date of the correction is February 9, 2015.

In regards to your request for information and the allegations presented in your correspondences, we have determined the following. Some information you have requested does not pertain directly to the servicing of the loan, does not identify any specific servicing errors, and/or is considered proprietary and confidential. Therefore, this information is considered outside the scope of information that must be provided. However, the information below and enclosed documents should address any of your relevant questions and requests. You have the right to access the documents relied upon in this investigation. We have included those documents for your records. Enclosed, you will find the following documents:

- Note and Security Instrument
 - The Note and Security Instrument will validate the above-mentioned loan. These documents will explain our rights to:
 - Collect any remaining debt owed under the Note and Security Instrument
 - Assess fees and costs to the loan as necessary, including late fees if a payment is received after the specified grace period and legal fees if a loan is in default.



- Inspect the property and charge applicable fees
- Purchase lender placed insurance
- Pay taxes on the mortgagor's behalf

Payment History

- The Payment History reflects a complete history for the period Nationstar has serviced the loan. Late fees are assessed any time the contractual payment is received after the grace period, as indicated in the Note. Please note, late fees are not considered interest and are not reported to the IRS on IRS form 1098. If a payment was applied to the suspense account, it will be indicated in the code description column. Payments can be applied to the suspense account if the funds received do not represent the full monthly mortgage payment due or if Nationstar is not informed of where the payment is to be applied. Furthermore, this Payment History reflects:
 - When payments were received
 - How the payments were applied to the loan
 - Any disbursements made from the loan, including, but not limited to, disbursements for taxes, insurance, property inspections, brokers price opinions (BPOs), and legal fees.
 - A description for each transaction, with running balances of the unpaid principal and escrow accounts
 - The date fees and charges were assessed, if any
 - Any amounts paid towards fees
 - Any waivers/reversals of fees
- Notice of Servicing Transfer, also known as Welcome Letter
 - The Servicing Transfer Notice will detail the date and terms of the service transfer from the prior servicer to Nationstar. This document evidences Nationstar's right to service the loan.
- Most Recent Escrow Analysis Statement
 - The Escrow Analysis will provide a detailed description of all disbursements made from the escrow account as well as any payments towards the escrow account for the prior year. It will also provide a breakdown of how the current escrow payment has been calculated, including any shortages that may exist.





Payoff Quote

The Payoff Quote will include the full amount necessary to pay the loan in full. You may have received a copy of the Payoff Quote under separate cover. This document is sent for informational purposes only and is no way a demand to pay the loan in full and will not result in any additional fees being assessed to the loan.

Furthermore, our records indicate The Bank of New York as Trustee for CWMBS 2005-R2 is the current owner of the Note. As requested, we have provided the address and phone number below:

The Bank of New York / Mellon Corp 101 Barclay St - 8th Floor West New York, NY 10286 212.815.8184

Please note that Nationstar is the servicer of the loan, and therefore will be responsible for responding to any concerns regarding the servicing of the loan. Servicing matters include but are not limited to the following: payment assistance and modifications, payment posting, validation of the debt, foreclosure proceedings, and payment adjustments. As such, please direct any correspondence related to these matters to Nationstar.

Additionally, the owner of the mortgage Note is the note holder of the Ioan Note. However, there are some circumstances where the owner has given temporary possession of the Ioan note to the servicer. The owner does this in order to ensure that the servicer is able to perform the services and duties incident to the servicing of the mortgage Ioan, such as foreclosure actions, bankruptcy cases, and other legal proceedings.

Upon receipt of this correspondence, the above-mentioned loan and related documents were reviewed and found to comply with all state and federal guidelines that regulate them. As such, the above mentioned loan account will continue to be serviced appropriate to its status.

Furthermore, the Payment History appears to be reported accurately to the main credit repositories. If you have documentation that substantiates that any of the information reported by Nationstar on the credit report is incorrect, please provide the detailed information for review.

As of the date of this correspondence, the account is approximately 47 payments delinquent and contractually due for the April 1, 2011, monthly installment. Should there be any questions or concerns regarding the account, or if you would like to discuss available payment assistance options including modification, liquidation, or reinstatement, you may work directly with:

Single Point of Contact (SPOC) Information:

Name: Garian Lucas

Phone Number: 469.549.3085



At Nationstar, customer concerns are important to us. Should you have any questions, please contact me directly; or, if you have general questions regarding the account, please contact:

Loss Mitigation Department

Monday through Thursday, 7 a.m. to 8 p.m. CDT

Friday, 7 a.m. to 5 p.m. CDT Saturday, 8 a.m. to 2 p.m. CDT Toll-free number: 877.783.7491

Sincerely,

Alison Mayou

Customer Relations Specialist Nationstar Mortgage LLC

P.O. Box 630348 Irving, TX 75063 phone: 480.467.0769

facsimile: 469.312.4552

e-mail: alison.mayou@nationstarmail.com

Enclosures 6

www.NationstarMtg.com

NER161

By United States Postal Service



February 12, 2016

Harriet H. Nicholson 2951 Santa Sabina Drive Grand Prairie, TX 75052

RE: Nationstar Reference Number – CN-12-15-36514

Mortgagor – Harriet H. Nicholson

Property Address – 2951 Santa Sabina Drive, Grand Prairie, TX 75052

Loan Number – 0619301724

CFPB Case Number – 151225-000105

Dear Harriet H. Nicholson,

Thank you for reaching out to us. We received your letter on December 30, 2015, and have put together this letter with information that I hope will alleviate your concerns.

1. Foreclosure

In response to your letter, we have conducted an investigation and below is our response to each concern.

1. Foreclosure

Ms. Nicholson has filed a lawsuit against Nationstar Mortgage LLC, in cause number 048-276347-15, in the 48th District Court of Tarrant County Texas, concerning the above referenced loan. I have attached her Fourth Amended Petition and our First Amended Answer for your review. Additionally, Ms. Nicholson has sued the previous servicer of the loan, Bank of America N.A, as well as the Bank of New York Mellon, as Trustee. That case is pending in federal court, under case number 4:13-CV-00310-Y, In the United States District Court for the Northern District of Texas, Ft. Worth Division. I have attached a copy of Ms. Nicholson's complaint filed in the federal case for your records. According to our records, the foreclosure sale in July 2012 was rescinded due to a publication error.

Additionally enclosed with this letter is a copy of the Note, Amended and Restated Note, Deed of Trust and Correction Deed of Trust. These documents will validate the above mentioned loan and explain our rights to collect any remaining debt owed under the loan documents. They will validate our right to assess fees and costs to the loan as necessary, including late fees if a payment is received after the specified grace period, and legal fees if the loan is in default. They will also validate our right to inspect the property and charge applicable fees, purchase lender placed insurance, and pay taxes on the mortgagor's behalf.

Upon receipt of this correspondence, the above-mentioned loan and related documents were reviewed and found to comply with all state and federal guidelines that regulate them. As such, the above-mentioned loan account will continue to be serviced appropriate to its status.





Should you have any questions or concerns regarding the account, or if you would like to discuss available payment assistance options including modification, reinstatement, or liquidation, you may work directly with:

Single Point of Contact (SPOC)

Name: Blake Waldrum

Phone Number: 972.956.6214

We were not able to identify an error on the account. You have the right to access the documents relied upon in this investigation, We have included those documents for your records.

If you have any general questions other than those referenced in your correspondence, please contact:

Loss Mitigation Department

Monday through Thursday, 7 a.m. to 10 p.m. Central

Friday, 7 a.m. to 8 p.m. Central Toll-free Number: 1.888.850.9398

I hope this information is helpful and addresses your concerns. If you have any questions about the information I have provided, please contact me directly.

Sincerely,

Kimberly Brinkley Customer Relations Specialist

Nationstar Mortgage LLC P.O. Box 619098

Dallas, TX 75261-9741

phone: 972,894.1598 facsimile: 214.488.1993

e-mail: kimberly.brinkley@nationstarmail.com

Enclosures 7 By CFPB Portal



Ms. Harriet Nicholson 2951 Santa Sabina Drive Grand Prairie, TX 75052

Correspondence received on: May 22, 2016

File number: 160613-000257, 160614-001285, and 160620-001498

Dear Ms. Nicholson:

Our Enterprise Customer Care Resolution team received correspondence sent on your behalf from the Consumer Financial Protection Bureau (CFPB). Every customer is important to us, and we appreciate the opportunity to address the concerns presented.

Bank of America has responded through our legal counsel, Mr. R. Dwayne Danner of McGlinchey Stafford, PLCC to your concerns under separate cover, dated June 20, 2016. I have enclosed a copy of the letter for your reference. Please note that the letter from Mr. R. Dwayne Danner references the first 12 CFPB cases numbers. Please accept that the letter enclosed is also in response to the CFPB cases listed above as well.

Summary of enclosures

Enclosed is a copy of our letter for your reference.

Response Letter and enclosures dated June 20, 2016

If you have any questions or would like to discuss further, Mr. R. Dwayne Danner can be contacted at 214.445.2445.

Sincerely,

Jennifer Burrows Resolution Specialist

Enterprise Customer Care Resolution

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector. If you are currently in a bankruptcy proceeding or have previously obtained a discharge of this debt under bankruptcy law, this notice is for informational purposes only and is not an attempt to collect a debt, a demand for payment or an attempt to impose personal liability for a discharged debt.

Equal Housing Lender. (2)

Protect your personal information before recycling this document.

Loan Ending: 5134

June 20, 2016

Service Request Number: 1-581739216

Page 1 of 1

For more information about help for homeowners, visit bankofamerica.com/ homeloanhelp or makinghomeaffordable.gov

To check on the status of a loan modification, go to bankofamerica.com/ loanhelpstatus

68

Direct: (214) 445-2408 ddanner@mcglinchey.com CALIFORNIA FLORIDA LOUISIANA MISSISSIPPI **NEW YORK** OHIO TEXAS

June 20, 2016

Certified Mail RRR No. 9414 7266 9904 2022 7469 85 and Regular Mail

Ms. Harriett Nicholson 2951 Santa Sabina Drive Grand Prairie, Texas 75052

> RE: Consumer Financial Protection Bureau ("CFPB") Complaint Nos.:

160525-001071 160525-001724 160527-000546 160529-000060 160529-000082 160530-000196 160531-001218 160525-001570 160601-002264 160522-000072 160605-000073

160605-000319

Dear Ms. Nicholson:

Bank of America N.A ("Bank of America") is in receipt of your twelve (12) CFPB complaints and this letter will respond to all current complaints. While each of your complaints contains some slight difference in facts, all appear to be related to the fact that there was a prior foreclosure, a rescission of that foreclosure, and subsequently a rescission of the acceleration. Your complaints appear to question why there was a zero balance at one point in time on your account and now there is again a balance with the new servicer, Nationstar Mortgage, LLC, and various complaints related to the credit reporting.

Enclosed for your review are copies of the following documents:

- 1) Letter to you related to prior CFPB complaints and Exhibits A through G thereto, dated May 6, 2014 (Exhibit 1);
- Service release letter, dated November 12, 2014 (Exhibit 2);
- Rescission of Substitute Trustee's Sale and Cancellation of Substitute Trustee's Deed, recorded in Tarrant County on July 31, 2014 (Exhibit 3).

As indicated in the attached service release letter, Bank of America ceased servicing your loan on December 1, 2014. Subsequent to that point, Nationstar Mortgage, LLC has been the servicer of your loan. The reason there was at one time a zero balance on your loan was because of the July 3, 2012, foreclosure. After the foreclosure the loan would have been moved to a zero balance due to the loan being foreclosed. Subsequently, on July 24, 2014, the rescission was filed, reinstating the lien on the property and you as the owner of the property. It would be at that time that the loan would again have a balance. Bank of America has no further interest in your loan and has not since December 1, 2014. You will need to discuss these issues with the current servicer.

Finally, as you are aware, you have a current lawsuit against Bank of America, styled Harriet Nicholson v. Bank of America, N.A., Bank of New York Mellon, ReconTrust Company N.A.; and Melanie Cowan, Cause No. 4:13-cv-00310-Y, pending in the United States District Court for the Northern District of Texas, Fort Worth Division. This lawsuit deals with issues related to the servicing of the loan prior to the above-referenced service transfer. Due to this matter being involved in litigation, please direct any further inquiries regarding issues that transpired prior to the service transfer date to the undersigned.

Sincerely,

McGlinchey Stafford, PLLC

R. Dwayne Danner

Enclosures

cc: Certified Mail RRR

No. 9414 7266 9904 2022 7469 92

Consumer Financial Protection Bureau

PO Box 4503

Iowa City, IA 52244

May 6, 2014

Ms. Harriet Nicholson 2951 Santa Sabina Drive Grand Prairie, Texas 75052

Bank of America account ending: 5134 CFPB Complaint number(s): 140421-000784 and 140422-000733

Inquiry received date: April 21, 2014 and April 22, 2014

Dear Ms. Nicholson:

We are writing to inform you that Bank of America, N.A. ("Bank of America") has received your inquiries submitted to the Consumer Financial Protection Bureau related to the above referenced account. As you are aware, your dispute with Bank of America is the subject of a lawsuit currently pending in the United States District Court for the Northern District of Texas styled Harriet Nicholson v. Bank of America, N.A., et al, under Civil Action No. 4:13-CV-00310-Y in which Bank of America's motion to dismiss your amended complaint is currently pending ruling from the court (the "Current Litigation").

Background

Based upon Bank of America's review of its records, you obtained a purchase money loan on January 16, 2001 in the amount of \$125,048.00¹ which was secured by a lien on your home in Grand Prairie, Texas.² Under the terms of the promissory note, your monthly principal and interest payment was \$827.75.³ On May 16, 2012, your mortgage was assigned to The Bank of New York Mellon, as Trustee for the Certificateholders of CWMBS Reforming Loan REMIC Trust Certificate Series 2005-R2 (the "Bank of New York").⁴ Bank of America acts as a mortgage servicer for the Bank of New York.

Beginning in July, 2004, you became delinquent on your monthly mortgage payments. Consequently, on or about November 22, 2006 you obtained a loan modification which allowed you to capitalize the amount then due on your mortgage of \$15,223.12 (the "First Modification"). After the First Modification was put into place, the unpaid principal balance on your mortgage was \$146,335.14. You failed to adhere to the terms of the First Modification by timely making the required payments. Specifically, beginning in February 2007 you began failing to timely make your modified monthly payments under the First Modification.

¹ See Promissory Note attached hereto as Exhibit "A".

² See Deed of Trust attached hereto as Exhibit "B".

³ See Exhibit "A".

⁴ See Assignment attached hereto as Exhibit "C".

You then entered into a second loan modification with Bank of America on or about September 25, 2009 (the "Second Modification"). Under the terms of the Second Modification, you were allowed to capitalize the amount then due on your mortgage of \$13,967.45. After the Second Modification was put into place, the unpaid principal balance on your mortgage was \$166,925.13. You then failed to adhere to the terms of the Second Modification by timely making the required payments. Specifically, beginning in May 2010 you began failing to timely make your modified monthly payments under the Second Modification.

As a result of your default under the Second Modification, Bank of America notified you on or about June 6, 2011 that you were in default of your repayment obligations, that the total amount needed to bring your account current was \$4,762.63 which was due on or before July 11, 2011, and that your failure to tender this amount would result in the acceleration of your loan in full and the commencement of the foreclosure process.⁵ You failed to tender the amount due and owing, and Bank of America notified you on or about June 12, 2012 that your property was posted for foreclosure on July 3, 2012.⁶ On July 3, 2012, the foreclosure occurred and the Bank of New York purchased the property.⁷ At the time of the July 3, 2012 foreclosure, your account was paid through March, 2011.

Response to Your Allegations

On or about January 24, 2014, Bank of America sent you a notification which stated the amount needed to pay your account in full was \$212,584,52.8 This notification was sent to you in error and the July 3, 2012 foreclosure remains in place. Your account is not considered active and has not been assessed with any late fees or penalties that would have accrued after the July 3, 2012 foreclosure. Additionally, the January 24, 2014 correspondence indicates the notice was for informational purposes only and was not a request for payment from you.

Because you have initiated litigation against Bank of America, any inquiries must be sent to our counsel of record, Mr. Nathan T. Anderson, McGlinchey Stafford, PLLC, 2711 N. Haskell Ave., Suite 2750, LB 38 Dallas, Texas 75204. Please direct any and all future inquiries to our attorney of record.

Bank of America provided you with two modifications of your loan – one on November 22, 2006 and the other on September 25, 2009. You failed to adhere to the terms of both of these modifications when you failed to timely make the monthly payments. As a result of your default, Bank of America was authorized to enforce the terms of your loan by foreclosing upon the property on July 3, 2012.

⁵ See Notice of Default attached hereto as Exhibit "D".

⁶ See Sale Notice attached hereto as Exhibit "E".

⁷ See Trustee's Deed attached hereto as Exhibit "F".

⁸ See January 24, 2014 Correspondence attached hereto as Exhibit "G".

Sincerely,

Kevin Castro Customer Advocate Office of the CEO and President

cc: Consumer Financial Protection Bureau (CFPB), Case numbers: 140421-000784 and 140422-000733



June 29, 2016

Harriet H. Nicholson 2951 Santa Sabina Drive Grand Prairie, TX 75052

RE: Nationstar Reference Numbers – CN-06-16-16504, 17761, 17663, 17778, 17236, & 17666

Mortgagor - Harriet H. Nicholson

Property Address - 2951 Santa Sabina Drive, Grand Prairie, TX 75052

Loan Number - 0619301724

CFPB Case Numbers - 160529-000081

160531-001217 160614-001286 160619-000231 160619-000228 160620-002056 160620-001499

Dear Harriet H. Nicholson,

Nationstar Mortgage LLC ("Nationstar") is in receipt of your Complaints referenced above, submitted through the Consumer Financial Protection Bureau (CFPB). We appreciate you bringing this to our attention, as we take matters such as this seriously.

As you are aware, Bank of America transferred the above referenced loan to Nationstar in November of 2014. Prior to the transfer, as you mentioned in several of the Complaints, you filed suit against Bank of America for wrongful foreclosure, breach of contract and several other claims and causes of action regarding a foreclosure sale instituted by Bank of America that occurred in July of 2012. You have resided at the property since the date of the foreclosure sale. This lawsuit was removed to federal court. Your claim for wrongful foreclosure was dismissed with prejudice (because you still reside at the property and one cannot maintain a suit for wrongful foreclosure under such circumstances). However, your other claims regarding the foreclosure sale are still pending. According to a review of the file, there was an irregularity in the Notice of Foreclosure Sale. It did not indicate the sale was to be held in Tarrant County but in Dallas County. The subject property is located in Tarrant County. Additionally, the Substitute Trustee recorded a Cancellation and Rescission of the foreclosure sale due to the discrepancy in the Notice of Sale. You have consistently maintained in your pleadings that the foreclosure sale was invalid. Consequently, the issues regarding the foreclosure sale are still pending judicial review.

In regard to the credit reporting issue, you stated in Complaint 160529-000081 that you attached the most recent update from Bank of America. We assume you mean the most recent update to your Equifax report. However, the Equifax report does not appear to have been attached when submitting the Complaint so we are unable to review it. Nevertheless, we assume that if Bank of America is reporting a \$0.00 balance on the loan, then they are assuming that the foreclosure sale was valid. As you are aware, the foreclosure sale is under judicial review and you have maintained that the sale was invalid; therefore,





the issue of the foreclosure sale is unresolved. We will continue to monitor the litigation and will provide the credit reporting agencies updates as needed.

At Nationstar, customer concerns are important to us. Should you have any general questions other than those referenced in the correspondence, please contact:

Loss Mitigation Department

Monday through Thursday, 7:00 a.m. to 10:00 p.m. Central

Friday, 7:00 a.m. to 8:00 p.m. Central Toll-free Number: 1.888.850.9398

Sincerely,

Kimberly Brinkley

Customer Relations Specialist Nationstar Mortgage LLC

P.O. Box 619098

Dallas, TX 75261-9741 phone: 972.894.1598

phone: 972,894.1598 facsimile: 214.488.1993

e-mail: kimberly.brinkley@nationstarmail.com

Enclosures 7 By CFPB Portal

cc: Consumer Financial Protection Bureau

Are you experiencing a financial hardship? Our local non-profit partners can help with financial counseling and other services. Please visit these websites for assistance:

- Hud.gov
- Neighborworks.org



NY: New York City Department of Consumer Affairs License Number: 1392003

NC: Nationstar Mortgage LLC is licensed by the North Carolina Commissioner of Banks, Mortgage Lender License L-103450. Nationstar Mortgage LLC is also licensed by the North Carolina Department of Insurance, Permit Number 105369.

TX: COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TX 78705. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 877-276-5550.

A complaint form and instructions may be downloaded and printed from the Department's website located at www.sml.texas.gov or obtained from the department upon request by mail at the address above, by telephone at its toll-free consumer hotline listed above, or by email at smlinfo@sml.texas.gov.



KELLY HARVEY P.C.

P.O. Box 131407 Houston, Texas 77219 P:(832) 922-4000 F:(832) 922-6262

May 11, 2017

Harriet H. Nicholson 2951 Santa Sabina Drive Grand Prairie, TX 75052

RE: Mortgagor - Harriet H. Nicholson

Property Address – 2951 Santa Sabina Drive, Grand Prairie, TX 75052

Last 4 digits of Loan Number – 1724 CFPB Case Numbers – 170426-2041406 170402-000103

** This communication is from a debt collector and this is an attempt to collect a debt and any information obtained will be used for that purpose. **

Dear Ms. Nicholson:

Nationstar Mortgage LLC (Nationstar) is in receipt of your Complaints referenced above submitted through the Consumer Financial Protection Bureau (CFPB) and directly to Nationstar.

As you are well aware, Bank of America transferred the above referenced loan to Nationstar in November of 2014. Prior to the transfer, as you mentioned in your Complaints, you filed suit against Bank of America for wrongful foreclosure, breach of contract and several other claims and causes of action regarding a foreclosure sale instituted by Bank of America that occurred in July of 2012. You have resided at the property since the date of the foreclosure sale. Your claim for wrongful foreclosure was dismissed with prejudice (because you still reside at the property and one cannot maintain a suit for wrongful foreclosure under such circumstances) however your other claims regarding the foreclosure sale are still pending. According to a review of the file, there was an irregularity in the notice of foreclosure sale. It did not indicate the sale was to be held in Tarrant County but in Dallas County. The subject property is located in Tarrant County. Additionally, the substitute trustee recorded a cancellation and rescission of the foreclosure sale due to the discrepancy in the notice of sale. You have consistently maintained in your pleadings that the foreclosure sale was invalid. Consequently, all of these issues regarding the foreclosure sale are still pending judicial review. Nationstar will continue to monitor this pending suit and make any adjustments to its records and any credit reporting in accordance with the judgment that is rendered. In the meantime, Nationstar is reporting the account as disputed.

Furthermore your claims alleged against Nationstar in your Complaints allude to claims of fraud, negligence, negligent misrepresentation, violations of the Texas Debt Collection Act, and violations of the Texas Deceptive Trade Practices Act, as well as several other claims. As you are aware, these claims were dismissed on summary judgment granted in cause number 048-

276347-15, in the 48th District Court of Tarrant County, Texas. We therefore consider these matters resolved.

Sincerely,

/s/ Kelly J. Harvey



June 23, 2017

Harriet H. Nicholson 2951 Santa Sabina Drive Grand Prairie, TX 75052

RE: Nationstar Reference Number - LB-05-17-00838

Mortgagor - Harriet H. Nicholson

Property Address - 2951 Santa Sabina Drive, Grand Prairie, TX 75052

Loan Number - 0619301724

CFPB Case Number - 170427-2043264

Dear Harriet H. Nicholson,

Thank you for reaching out to us. We are looking forward to helping you.

Why am I receiving this letter?

We received your correspondence from the Consumer Financial Protection Bureau (CFPB) on May 10, 2017, and have put together this reply with information that we hope will alleviate your concerns. Below are the concerns mentioned in your correspondence:

Credit Reporting

We looked into the concern you expressed and after an investigation, we are sharing with you what we found.

After reviewing your account, our research indicates the payment history appears to be reported accurately to the main credit repository agencies (Transunion, Experian, Innovis and Equifax). Please be advised that under section 15 U.S.C. 1681s-2(a)(1) of the Fair Credit Reporting Act (FCRA), Nationstar is required to report complete and accurate information to all credit bureaus. If you have information in which state otherwise, please submit applicable proof using the contact information below and we will investigate those concerns.

Nationstar Mortgage, LLC Attention: Research Department 8950 Cypress Waters Boulevard Coppell, TX 75019

Overall, we could not find any errors on our part in regards to your concerns. However, you have the right to access the documents we used in this investigation, and we have included those documents in this letter for your records.

Detailed Transaction History

Your Loan Summary

<u>UPB</u>	Monthly Payment	Due Date	Escrow Balance	Last Payment Received
\$161,098.95	\$1,741.11	April 1, 2011	-\$37,232.51	August 1, 2012

NATIONSTAR IS A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. HOWEVER, IF YOU ARE CURRENTLY IN BANKRUPTCY OR HAVE RECEIVED A DISCHARGE IN BANKRUPTCY, THIS COMMUNICATION IS NOT AN ATTEMPT TO COLLECT A DEBT FROM YOU PERSONALLY TO THE EXTENT THAT IT IS INCLUDED IN YOUR BANKRUPTCY OR HAS BEEN DISCHARGED, BUT IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.





If you have any questions regarding payment assistance or the status of the account, your Dedicated Loan Specialist is Blake Waldrum and can be reached at 1.972.956.6214.

If you have any general questions, please call our Loss Mitigation Department at 1.866.316.2432. Our hours of operation are 8 a.m. to 8 p.m. (CT), Monday through Thursday, 8 a.m. to 6 p.m. (CT), Friday, and 8 a.m. to 12 p.m. (CT) on Saturday.

I hope this information is helpful and addresses your concerns. If you have any specific questions about the information I have provided, please contact me directly, using the information below.

Sincerely,

Lovett C. Johnson

Customer Relations Specialist

Nationstar Mortgage LLC

P.O. Box 619098

Dallas, TX 75261-9741 Phone: 1.877.783.7480

E-mail: lovett.johnson@nationstarmail.com

Enclosure By CFPB Portal

Are you experiencing a financial hardship? Our local non-profit partners can help with financial counseling and other services. Please visit these websites for assistance:

- Hud.gov
- · Neighborworks.org



Hawaii Residents: If you believe a loss mitigation option request has been wrongly denied, you may file a complaint with the state division of financial institutions at 808-586-2820 or http://cca.hawaii.gov/dfi/.

New York Residents: Nationstar Mortgage LLC is licensed by the New York City Department of Consumer Affairs License Number: 1392003. If you believe a Loss Mitigation request has been wrongly denied, you may file a complaint with the New York State Department of Financial Services at 1-800-342-3736 or www.dfs.ny.gov.

New York Residents Income Disclosure: If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt: supplemental security income (SSI); social security; public assistance (welfare); spousal support, maintenance (alimony) or child support; unemployment benefits; disability benefits; workers' compensation benefits; public or private pensions; veterans' benefits; federal student loans, federal student grants, and federal work study funds; and ninety percent of your wages or salary earned in the last sixty days.

Oregon Residents: There are government agencies and nonprofit organizations that can give you information about foreclosure and help you decide what to do. For the name and telephone number of an organization near you, please call 211 or visit www.oregonhomeownersupport.gov. If you need help finding a lawyer, consult the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling 503-684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at 800-452-7636. Free legal assistance may be available if you are very low income. For more information and a directory of legal aid programs, go to www.oregonlawhelp.org.

North Carolina Residents: Nationstar Mortgage LLC is licensed by the North Carolina Commissioner of Banks, Mortgage Lender License L-103450. Nationstar Mortgage LLC is also licensed by the North Carolina Department of Insurance, Permit Number 105369, 112715, 105368, 111828, 112953, and 112954. If you believe a Loss Mitigation request has been wrongly denied, you may file a complaint with the North Carolina Office of the Commissioner of Banks website www.nccob.gov.

Texas Residents: COMPLAINTS REGARDING THE SERVICING OF A MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN TX 78705. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 877-276-5550. A complaint form and instructions may be downloaded and printed from the Department's website located at www.sml.texas.gov or obtained from the department upon request by mail at the address above, by telephone at its toll-free consumer hotline listed above, or by email at smlinfo@sml.texas.gov.



June 28, 2017

Harriet H. Nicholson 2951 Santa Sabina Drive Grand Prairie, TX 75052

RE: Nationstar Reference Number – LB-05-17-01164

Mortgagor - Harriet H. Nicholson

Property Address - 2951 Santa Sabina Drive, Grand Prairie, TX 75052

Loan Number - 0619301724

CFPB Case Number - 170511-2082404

Dear Harriet H. Nicholson,

Thank you for reaching out to us. We are looking forward to helping you.

Why am I receiving this letter?

We received your letter on May 17, 2017, via the Consumer Financial Protection Bureau (CFPB), and have put together this reply with information that we hope will alleviate your concerns.

Below is the concern mentioned in your letter:

Previous Response

We looked into the concern you expressed and after an investigation, we are sharing with you what we found.

Under the Real Estate Settlement Procedures Act (RESPA) and Regulation X, Nationstar is not required to respond to requests for information that are duplicative and substantially the same as previous requests. After reviewing your correspondence, we found that the asserted errors are substantially the same as errors previously asserted, for which our attorney previously complied with its obligation to respond on May 11, 2017. Unless there is new and material information that has not been provided to Nationstar for investigation, Nationstar considers this matter resolved. Additionally, Nationstar is reporting the account as disputed to the credit bureaus.

Overall, no account errors were found regarding your concerns. However, you have the right to access the documents we used in this investigation, and we have included those documents with this letter for your records.

Your Loan Summary

<u>UPB</u>	Monthly Payment	<u>Due Date</u>	Escrow Balance	Last Payment Received
\$161,098.95	\$1,741.11	April 1, 2011	-\$37,232.51	August 1, 2012

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If you have any questions regarding payment assistance or the status of the account, you can contact Blake Waldrum, the assigned Single Point of Contact (SPOC), directly, at 1.972.956.6214.

If you have any general questions, please call our Loss Mitigation Department at 1.866.316.2432. Our hours of operation are 8 a.m. to 8 p.m. (Central), Monday through Thursday, 8 a.m. to 6 p.m. (Central), Friday, and 8 a.m. to 12 p.m. (Central), Saturday.

I hope this information is helpful and addresses your concerns. If you have any questions about the information I have provided, please contact me directly.

Sincerely,

Kimberly Brinkley

Customer Relations Specialist Nationstar Mortgage LLC

P.O. Box 619098

Dallas, TX 75261-9741 phone: 972.894.1598 facsimile: 214.488.1993

e-mail: kimberly.brinkley@nationstarmail.com

Enclosure By CFPB Portal

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- Neighborworks.org



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New York Residents Income Disclosure: If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt: supplemental security income (SSI); social security; public assistance (welfare); spousal support, maintenance (alimony) or child support; unemployment benefits; disability benefits; workers' compensation benefits; public or private pensions; veterans' benefits; federal student loans, federal student grants, and federal work study funds; and ninety percent of your wages or salary earned in the last sixty days.

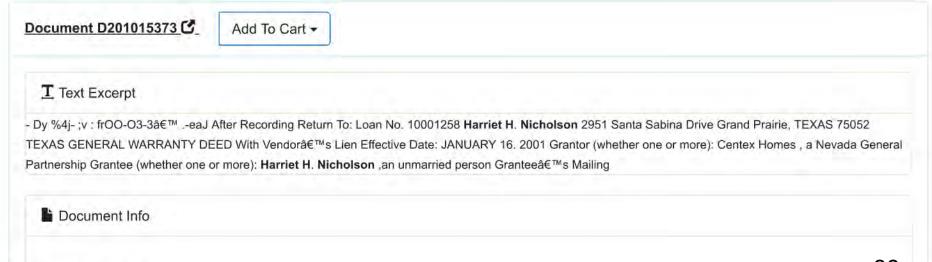
Oregon Residents: There are government agencies and nonprofit organizations that can give you information about foreclosure and help you decide what to do. For the name and telephone number of an organization near you, please call 211 or visit www.oregonhomeownersupport.gov. If you need help finding a lawyer, consult the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling 503-684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at 800-452-7636. Free legal assistance may be available if you are very low income. For more information and a directory of legal aid programs, go to www.oregonlawhelp.org.

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"Harriet Nicholson" or "Harriet H. Nicholson" or D201015378 Q **T** Advanced If you use quotes around your search criteria the system will return only exact matches. To see all results please remove quotes. Add Filters Total Matches: 14 Time Taken: 62 ms Page 1 of 2 Sort By: Relevance Custom Compact View Expanded View If the T Text Excerpt contains some unreadable words, please click on the document link to view a PDF file that is more legible.



Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages
WARRANTY DEED	1/23/2001	1/18/2001	D201015373	14697	23	3

CENTEX HOMES

Grantees

NICHOLSON HARRIET H

@ Legal

Addition	Lot	Block	Freeform	
MIRABELLA VIL	22	D		

Document D201015378

Add To Cart →

T Text Excerpt

Recording Data) ______ FI-IA Case No. State of Texas 492-5968619-703 - 203(b) DEED OF TRUST â€" THIS DEED OF TRUST (Security Instrumentâ€□) is made on January 16,2001. The Grantor is **Harriet H**. **Nicholson**, an unmarried person (Borrower'). The trustee is Jeffrey E. Bode ("Trusteeâ€□). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERSâ€□), (solely as nominee for Lender, as

Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages
DEED OF TRUST	1/23/2001	1/18/2001	D201015378	14697	28	7

■ Grantors

NICHOLSON HARRIET H

Grantees

MID AMERICA MTG INC

@ Legal

Addition	Lot	Block	Freeform	
MIRABELLA VIL	22	D		

Document D202032012 C

Add To Cart ▼

T Text Excerpt

OF TRUST FHA Case No. 492-5968619-703 - 203(b) THIS DEED OF TRUST (†Security Instrument†) is made on January 16,2001. The Grantor is **Harriet H**. **Nicholson**, an unmarried person (†Borrower†). The trustee is Jeffrey E. Bode (†Trustee †). The beneficiary is Mortgage Electronic Registration Systems, Inc. (MERStt), (solely as nominee for Lender, as hereinafter defined, and Lender†successors and assigns

Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages
DEED OF TRUST	2/4/2002	1/18/2001	D202032012	15443	52	10

■ Grantors

NICHOLSON HARRIET H

Grantees

MID AMERICA MTG INC

@ Legal

Addition	Lot	Block	Freeform	
MIRABELLA VIL	22	D		

Document D202169952 C

Add To Cart ▼

T Text Excerpt

650, Plano, TEXAS 75093, acting herein by and through a duly authorized officer, the owner and holder of one certain promissory note for the sum executed by **Harriet**H. **Nicholson**, an unmarried person payable to the order of Mid America Mortgage, Inc., and secured by a Deed of Trust even date therewith to Jeffrey E. Bode 1eceLpt
i/ 2021429J8 5900W. Piano Parkway, Suite 650, Piano, Coihn County TEXAS

Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages
ASSIGNMENT	6/20/2002	1/16/2001	D202169952	15762	32	2

MID AMERICA MTG INC

Grantees

COUNTRYWIDE HOME LOANS

@ Legal

Addition	Lot	Block	Freeform	
MIRABELLA VIL	22	D		

Document D212122006 C

Add To Cart →

T Text Excerpt

DATED OL'16/2001, EXECUTED BY: HARRIET H. NICHOLSON, AN UNMARRIED PERSON, TRUSTOR: TO JEFFERY F. BODE, AS TRUSTEE AND RECORDED AS INSTRUMENTNO. D201015378 ON O/23/2001, AND RE-RECORDED ON 02/04/2002 AS INSTRUMENT NO, D202032012 OF OFFICIAL RECORDS IN THE COUNTY RECORDERS OFFICE OF DALLAS COUNTY, IN THE STATE OF TEXAS. THE LAND AFFECTED BY THIS ASSIGNMENT IS LOCATED IN DALLAS COUNTY. THE STATE OF TEXAS

Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages
ASSIGNMENT	5/22/2012	5/16/2012	D212122006			1

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC

Grantees

BANK OF NEW YORK MELLON

@ Legal

Addition	Lot	Block	Freeform	
MIRABELLA VIL	22	D	1,111,111	

Document D212130550 C

Add To Cart -

T Text Excerpt

BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEI-IOLDERS OF CWMBS, INC., CWMBS REFORMING LOAN REMIC TRUST CERTIFICATES, SERIES 2005-R2 ALL BENEFICIAL INTEREST UNDER THAT CERTAIN DEED OF TRUST DATED 01/16/2001, EXECUTED BY: HARRIET FL NICHOLSON, AN UNMARRIED PERSON, TRUSTOR; TO JEFFERY S BODE, AS TRUSTEE AND RECORDED AS INSTRUMENT NO. D201015378 ON 01/23/2001, AND RE

Document Info							
Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages	
ASSIGNMENT	5/31/2012	5/23/2012	D212130550			2	

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC

Grantees

BANK OF NEW YORK MELLON

@ Legal

Addition	Lot	Block	Freeform	
MIRABELLA VIL	22	D		

Document D212130551 C

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T Text Excerpt

Page 1 of I • Electronically Recorded Tarrant County Texas Official Public Records 5/31/2012 3:43 PM D212130551 TS#: .PGS 1 \$16.00 TSG#: 09.&33746S.04lary Louise Garcia Submitter: SIMPLIFILE APPOINTMENT OF SUBSTITUTE TRUSTEE DEED OF TRUST DATED: January 16,2001 GRANTOR(S): HARRIET H, NICHOLSON, AN UNMARRIED PERSON ORIGINAL MORTGAGEE: MORTGAGE ELECTRONIC REGISTRATION SYSTEM, TNC. CURRENT MORTGAGEE

			A CONTRACTOR OF THE PROPERTY O			
Document Info						
Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages
APPOINTMENT OF TRUSTEE	5/31/2012	5/23/2012	D212130551			1
I Grantors						
BANK OF NEW YORK MELLON						
≅ Grantees						
STOCKMAN DAVID						
LEE BOB						
URBANCZYK JANAE RECONTRUST CO						
BOERNER DENISE						
STOCKMAN DONNA						
Addition		Lot	Block	Free	eform	
MIRABELLA VIL		22	D			

Document D212187326 🖸

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T Text Excerpt

8/12

with respect to the foreclosure of that certain Deed of Trust dated January 16,2001, recorded on January 23, 2001, as Clerk's File No. 0201015378, and re-recorded on February 4, 2002 as Clerk's File No. D202032012, Real Property Records, Tarrant County, Texas, executed by **HARRIET H**, **NICHOLSON**; AN UNMARRIED PERSON to JEFFERY E. BODE, original Trustee(s), in favor of. MORTGAGE ELECTRONIC REGISTRATION

Document Info

Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages
TRUSTEES DEED	8/2/2012	7/31/2012	D212187326			3

■ Grantors

NICHOLSON HARRIET H STOCKMAN DAVID

Grantees

BANK OF NEW YORK MELLON

@ Legal

Addition	Lot	Block	Freeform	
MIRABELLA VIL	22	D		

Document D212299642 C

Add To Cart ▼

T Text Excerpt

Page 1 of 2 NOTICE OF LIS PENDENS STATE OF TEXAS TARRINT COUNTY TEXAS COUNTY OF TARRANT 2912 DEC -7 All jO: 22 i L3U!E COUNTY C NOTICE IS HEREBY GIVEN that Cause No. 342 262692 12, styled **Harriet Nicholson** v. THE BANK OF NE W YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICA TEHOLDERS OF CWMBS, INC., WMBSFORMTNc7LDANREMIC TRUST CERTIFICA TES SERIES 2005-R2, commenced in the 342

Document Info

Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages
LIS PENDENS	12/7/2012	12/6/2012	D212299642			2

■ Grantors

BANK OF NEW YORK MELLON

Grantees

NICHOLSON HARRIET

@ Legal

Addition	Lot	Block	Freeform	
MIRABELLA VIL	22	D		

Document D214164490 C

Add To Cart -



, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN CABINET A, SLIDE 5197 OF THE PLAT RECORDS OF TARRANTY COUNTY, TEXAS. 2. Based upon information provided by Bank of America, N.A., Bankof America, NA. is the Mortgage Servicer of a promissory note dated January 16, 2001 in the original principal amount of \$125,048.00 from **HARRIET H. NICHOLSON**, AN UNMARRIED PERSON to MORTGAGE ELECFRONIC

■ Document	Info						
Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages	
NOTICE	7/31/2014	7/24/2014	D214164490			2	

■ Grantors

RECONTRUST CO

Grantees

@ Legal

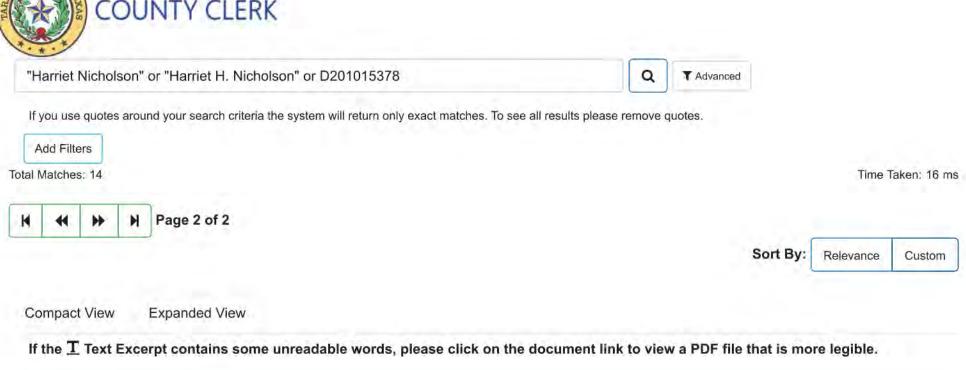
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Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages
ASSIGNMENT	2/17/2015	2/17/2015	D215032449			2
≣ Grantors						
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Page 1 of 3 3 Li 342-262692-12 **hARRIET NICHOLSON**, § IN TIIE I)ISTRICT COURT § Plaintiff, § § ħ OF TARRANT COUNTY, TEXAS § TIIE BANK OF NEW YORK MELLON § FKA TIIE BANK OF NEW YORK AS § TRUSTEE FOR THE § CERTJFJCATEBOLDERS OF CWMBS, § INC., CWMBS REFORMING LOAN § REMJC TRUST CERTIFICATES § SERIES 2005-R2, et al. § § Defendants. § 342nd JUDICIAL DISTRICT ORDER GRANTING IN PART AND DENYING IN I'ART

Doc Type	Recorded	Doc Date	Doc Num	Book	Page	Num Pages
ORDER	8/18/2017	8/18/2017	D217191934			3



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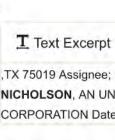
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,TX 75019 Assignee; NATIONSTAR MORTGAGE LLC 0/WA MR. COOPER at 8950 CYPRESS WATERS BLVD., COPPELL, TX 75019 Executed By: HARRIET H.

NICHOLSON, AN UNMARRIED PERSON To: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR MID AMERICA MORTGAGE, INC.	Α
CORPORATION Date of Deed of Trust: O1I16I2OJ1 Recorded: 0112312001 in Book/Reel/Liber 14697 Page/Follo: 26 as Instrument No.: 0201016378	

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■ Grantors BANK OF NEW YORK MELLON

Grantees

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Page 2 of 2

EX. B

048-286132-16

CAUSE NO. 048-286132-16

HARRIET NICHOLSON,

Plaintiff,

V.

DAVID STOCKMAN, ET AL.,

Defendants.

\$ TARRANT COUNTY, TEXAS \$ 48th JUDICIAL DISTRICT

ORDER GRANTING DEFENDANT BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT

On this day, the Court considered Defendant Bank of America, N.A. ("BANA" or "Defendant") Motion for Summary Judgment (the "Motion"). The Court, having considered the Motion, objection(s) and responses thereto, and argument of counsel, if any, finds the Motion has merit and should be GRANTED.

It is therefore ORDERED, ADJUDGED, and DECREED that BANA is entitled to summary judgment on all claims asserted by Plaintiff Harriet Nicholson ("Plaintiff") in her June 11, 2018 Eighth Amended Petition (the "Pet.") and that the Motion is GRANTED.

It is further ORDERED, ADJUDGED, and DECREED that Plaintiff take nothing on any of her claims against Defendant BANA and that all costs of Court are taxed against Plaintiff.

It is further ORDERED, ADJUDGED, and DECREED that all of the claims asserted by Plaintiff against Defendant BANA in this lawsuit are hereby DISMISSED with prejudice.

SIGNED this 30th day of Acroba , 2018

JUDGE PRESIDING

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EX. C

048-286132-16

CAUSE NO. 048-286132-16

HARRIET NICHOLSON,

Plaintiff,

v.

BAVID STOCKMAN, ET AL.,

Defendants.

S

48th JUDICIAL DISTRICT

ORDER GRANTING DEFENDANT COUNTRYWIDE HOME LOANS, INC.'S CORRECTED MOTION FOR SUMMARY JUDGMENT

On this day, the Court considered Defendant Countrywide Home Loans, Inc. ("CHLI" or "Defendant") Corrected Motion for Summary Judgment (the "Motion"). The Court, having considered the Motion, objection(s) and responses thereto, and argument of counsel, if any, finds the Motion has merit and should be GRANTED.

It is therefore ORDERED, ADJUDGED, and DECREED that CHLI is entitled to summary judgment on all claims asserted by Plaintiff Harriet Nicholson ("Plaintiff") in her June 11, 2018 Eighth Amended Petition (the "Pet.") and that the Motion is GRANTED.

It is further ORDERED, ADJUDGED, and DECREED that Plaintiff take nothing on any of her claims against Defendant CHLI and that all costs of Court are taxed against Plaintiff.

It is further ORDERED, ADJUDGED, and DECREED that all of the claims asserted by Plaintiff against Defendant CHLI in this lawsuit are hereby DISMISSED with prejudice.

SIGNED this Hay of Och bec, 2018

JUDGE PRESIDING

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EX.D

FILED TARRANT COUNTY 11/9/2018 3:17 PM THOMAS A. WILDER DISTRICT CLERK

CAUSE NO. 048-286132-16

HARRIET NICHOLSON	8	IN THE DISTRICT COURT
Plaintiffs,	9	
v.	\$	
DAVID STOCKMAN, ET AL	<i>5</i> 60 60 60 60 60 60 60 60 60 60 60 60 60	TARRANT COUNTY, TEXAS
Defendants.	8	
	8	48th JUDICIAL DISTRICT

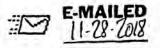
ORDER GRANTING DEFENDANTS BANK OF AMERICA, N.A. AND COUNTRYWIDE HOME LOANS, INC.'S MOTION TO SEVER

On this day, the Court considered the Motion to Sever (the "Motion") filed by Defendants Bank of America, N.A. ("BANA") and Countrywide Home Loans, Inc. ("CHLI," and collectively with BANA, "Dismissed Defendants"). On October 30, 2018, the Court granted summary judgment in favor of the Dismissed Defendants, dismissing each of Plaintiff's claims against the Dismissed Defendants. In light of the foregoing, and having considered the Motion, any timely responses thereto, the competent evidence, all pleadings properly before the Court, the arguments of counsel, if any, and all other matters properly before the Court, the Court is of the opinion that the Motion should be granted.

It is ORDERED that Plaintiff's claims against BANA and CHLI are hereby SEVERED from this lawsuit. It is further,

ORDERED that the Clerk of the Court shall assign the severed cause the cause number 048-34598-18. It is further,

ORDERED that all costs are taxed against Plaintiff.



Order Granting Bank of America, N.A. and Countrywide Home Loans, Inc.'s Motion to Sever - Page 1 This judgment finally disposes of all claims by Plaintiff against BANA and CHLI and is appealable.

SIGNED this the Rolling of brender, 2018.

JUDGE PRESIDENG

(ce.M-PH Hurriet Nicholson)

EX. E

EX. F



In the Court of Appeals Second Appellate District of Texas at Fort Worth

No. 02-19-00085-CV

HARRIET NICHOLSON, Appellant

V.

BANK OF AMERICA, N.A. AND COUNTRYWIDE HOME LOANS, INC., Appellees

On Appeal from the 48th District Court Tarrant County, Texas Trial Court No. 048-304598-18

Before Gabriel, Bassel, and Wallach, JJ. Memorandum Opinion by Justice Wallach

MEMORANDUM OPINION

Appellant Harriet Nicholson sued Appellees Bank of America, N.A. (BoA) and Countrywide Home Loans, Inc. (Countrywide), and other defendants on claims related to the foreclosure of her home. The trial court granted summary judgment for BoA and Countrywide and severed the claims against them. Nicholson appeals from both the grant of summary judgment and the severance. We affirm.

Background

On July 3, 2012, the substitute trustee under a deed of trust foreclosed on Nicholson's Tarrant County property. However, the notice of foreclosure sale listed the Dallas County courthouse as the location of the sale rather than the Tarrant County courthouse.

After the purchaser at the foreclosure sale brought a forcible detainer action to evict her, Nicholson filed suit in the 342nd district court of Tarrant County against the purchaser, the substitute trustee, BoA, and others for claims arising from the foreclosure sale and to stop her eviction. While that suit (*Nicholson I*) was pending, the substitute trustee executed a rescission of the 2012 foreclosure sale and of the substitute trustee's deed, and he recorded this instrument in the Tarrant County real property records. On October 26, 2017, the trial court signed a final judgment ordering that the substitute trustee's deed and rescission were invalid and void and dismissing Nicholson's remaining claims with prejudice.

In 2016, before rendition of a final judgment in *Nicholson I*, Nicholson filed this suit against the substitute trustee in the 48th district court of Tarrant County. By amended pleadings, she added Countrywide¹ and BoA as defendants. In Nicholson's eighth amended petition, she asserted (as she had in *Nicholson I*) claims for violations of Section 12.002 of the Texas Civil Practice and Remedies Code, negligence per se, gross negligence, and fraud, and she sought declaratory relief.² She also alleged civil conspiracy to commit fraud.

Countrywide and BoA each filed a motion for summary judgment. In BoA's motion, it asserted that it was entitled to judgment as a matter of law because Nicholson's claims were barred by res judicata and collateral estoppel. It challenged Nicholson's tort claims on the ground that they were barred by the economic loss

¹Countrywide had been the servicer of Nicholson's loan, but by assignment to BAC Home Loans Servicing, LP and the merger of that entity with BoA, BoA became its servicer in 2011. While *Nicholson I* was pending in the 342nd, BoA transferred servicing of the loan to Nationstar Mortgage, LLC, effective December 1, 2014.

²Nicholson sought declarations that all the defendants had violated Section 12.002 of the Texas Civil Practice and Remedies Code. Tex. Civ. Prac. & Rem. Code Ann. § 12.002. She further sought numerous other declarations, including declarations that she was divested of title to her property on August 2, 2012; that the deed of trust "was wiped out on August 2, 2012"; that she had no contractual obligations under the deed of trust after that date; that she was an adverse possessor of the subject property after that date; that the notice of rescission "was an artifice and stratagem that was filed in the Tarrant County, Texas real property record"; that Countrywide was a non-existent entity on February 17, 2015; that the deed of trust was not assigned; and that the assignment of the deed of trust was an "invalid cloud and burden" on her property.

doctrine. It further moved for summary judgment on each of Nicholson's claims on the grounds that it was entitled to judgment "as a matter of law and undisputed fact" and that "Plaintiff cannot prove with competent summary judgment evidence each element of her claim." Countrywide moved for summary judgment on identical grounds.

The trial court granted Countrywide's and BoA's summary judgment motions without specifying the grounds and subsequently granted their motions to sever. Nicholson filed a motion for new trial, which the trial court denied. Nicholson now appeals.

Discussion

I. This court has jurisdiction over both of Nicholson's issues.

We begin by considering Appellees' argument that we do not have jurisdiction over Nicholson's first issue. *See In re City of Dallas*, 501 S.W.3d 71, 73 (Tex. 2016) (orig. proceeding) (per curiam). They argue that this court should dismiss Nicholson's

³Appellees did not specify whether they sought summary judgment under Rule of Civil Procedure 166a(c), Rule 166a(i), or both. *See* Tex. R. Civ. P. 166a(c) (traditional summary judgment standard). Rather, they moved for summary judgment generally under Rule 166a. Further, for each of Nicholson's claims, Appellees asserted both that they were entitled to judgment "as a matter of law and undisputed fact" *and* that "Plaintiff cannot prove with competent summary judgment evidence each element of her claim." *See* Tex. R. Civ. P. 166a(c), (i). In her brief, Nicholson characterizes Appellees' motions as including both traditional and no-evidence grounds. Appellees argue that they did not move for no-evidence summary judgment. For purposes of this appeal, whether the motions were traditional motions or combined traditional and no-evidence motions makes no difference to our disposition.

first issue "in which she attempts to challenge the [summary judgment orders]," because in the section of her notice of appeal listing the date of the orders from which she appealed, she listed only the dates of the severance order—which rendered the summary judgments final—and the order denying her motion for new trial. We disagree.

Under the Texas Rules of Appellate Procedure, a notice of appeal must "state the date of the judgment or order appealed from." Tex. R. App. P. 25.1(d)(2). However, "[t]he requirement in Rule 25.1(d) that the notice of appeal must state the date of the judgment or order appealed from does not . . . limit what trial court rulings may be challenged on appeal," but rather "is used to determine whether the appeal is timely." *Anderson v. Long*, 118 S.W.3d 806, 810 (Tex. App.—Fort Worth 2003, no pet.). Nicholson's notice of appeal invoked this court's jurisdiction over Appellees, and Rule 25.1 does not limit the issues that Nicholson may bring on appeal. *See id.* at 809 (stating that "Anderson's timely filing of her notice of appeal invoked our jurisdiction over the Longs, who were parties to the order sustaining the plea to the jurisdiction" and that "[n]othing in [Texas Rule of Appellate Procedure] 25.1 limits the issues that Anderson, having properly invoked our jurisdiction, may raise on appeal"). We have jurisdiction over both of Nicholson's issues.

II. The trial court did not err by granting summary judgment.

In her first issue, Nicholson challenges the trial court's summary judgment orders. However, her entire argument for that issue is as follows:

Countrywide . . . did not prove they appeared or answered in Nicholson /// (342-262692-12). [Countrywide] and [BoA] did not prove the postforeclosure claims, that arose after Nicholson /I/ was filed, were litigated or could have been litigated. Appellant/Plaintiff provided controverting evidence to prove the post-foreclosure claims were not allowed to be litigated in Nicholson I]. There was sufficient evidence before the trial court to support every element of each of Plaintiff's claim and genuine issues of material fact (controverting evidence) that should have gone to thereby precluding the grant of summary judgment to [Countrywide] and [BoA]. [Countrywide] and [BoA] failed to prove every element of each of its affirmative defenses and Plaintiff provided controverting evidence precluding summary iudgment [Countrywide]'s and [BoA]'s summary judgment on affirmative defenses that should have gone to trial.

This argument is not sufficient to challenge each ground on which summary judgment may have been granted; nowhere in her brief does Nicholson mention the economic loss rule or challenge the grant of summary judgment on her tort claims on the basis that they were barred by the economic loss rule. *See Miller v. El Campo Holdings LLC*, No. 02-15-00388-CV, 2017 WL 370936, at *3 (Tex. App.—Fort Worth Jan. 26, 2017, no pet.) (mem. op.) ("When an argument is not made challenging every ground on which the summary judgment could be based, we are required to affirm the summary judgment, regardless of the merits of the unchallenged ground."). Accordingly, we must affirm the trial court's summary judgment as to her tort claims on that basis alone.

Further, Nicholson failed to explain how the record⁴ shows that she provided controverting evidence defeating Appellees' entitlement to judgment on any of her claims, including her claims under Section 12.002 and her requests for declaratory relief. Nicholson provides limited references to the record in her brief, and for the most part, when she does point to evidence in the record, she does so to support factual allegations about defendants who are not parties to this appeal rather than to support her claims against Appellees. For the evidence she mentions that does relate to Appellees, Nicholson does not explain how any of that evidence shows that Appellees made, presented, or used any document with intent to cause Nicholson to suffer physical injury, financial injury, or mental anguish or emotional distress. See Tex. Civ. Prac. & Rem. Code Ann. § 12.002. She also failed to explain how any evidence in the record provided support for her multiple requests for declaratory relief. That is, Nicholson did not merely fail to provide page numbers for evidence in the record that would support her claims. Instead, she failed to explain how any evidence in the record related to her claims, much less raised a fact issue. Because Nicholson does not tell us why the summary judgment evidence raised a fact issue sufficient to defeat summary judgment, we would not only have to search the record for relevant evidence, we would be obliged to make her argument for her as to why

⁴The parties' summary judgment motions, responses, and evidence take up over five hundred pages in the record, not counting BoA's and Countrywide's briefs in support of their respective motions.

that evidence raised a fact issue on her claims.⁵ See City of Keller v. Hall, 433 S.W.3d 708, 729 (Tex. App.—Fort Worth 2014, pet. denied); Cooper v. McFadin, No. 2-06-173-CV, 2007 WL 2405124, at *1 (Tex. App.—Fort Worth Aug. 24, 2007, pet. denied) (mem. op). Accordingly, we overrule Nicholson's first issue.

The trial court did not abuse its discretion by severing the claims against III. Countrywide and BoA.

In her second issue, Nicholson complains of the trial court's severance order. A trial court does not abuse its discretion in severing a claim if "(1) the controversy involves more than one cause of action, (2) the severed claim is one that would be the proper subject of a lawsuit if independently asserted, and (3) the severed claim is not so interwoven with the remaining action that they involve the same facts and issues." Aviation Composite Techs., Inc. v. CLB Corp., 131 S.W.3d 181, 188 (Tex. App.—Fort

⁵In her Statement of the Case and Statement of the Facts, Nicholson asserted the following facts mentioning or referencing Appellees. Nicholson's property was sold at a foreclosure sale on July 3, 2012. On May 6, 2014, a BoA "customer advocate" told Nicholson that the foreclosure sale "remained in place" and that her "account was not active and had not been assessed any late fees or penalties that would have accrued" after the foreclosure sale. Then, on July 24, 2014, a notice of rescission was filed in the Tarrant County real property records. "On or around July 24, 2014 [BoA] purported to have reinstated Appellant's loan documents relying on the Notice of Rescission . . . during the pendency of a lawsuit to reverse an invalid foreclosure sale and enjoin a wrongful post-foreclosure eviction without Appellant's knowledge or consent." Then, on November 12, 2014, BoA "allegedly transferred servicing of the purported reinstated loan documents to Nationstar Mortgage, LLC, to service." On June 20, 2016, a BoA "resolution specialist" advised Nicholson that a notice of rescission had been executed effective as of July 24, 2014, but this notice of rescission was subsequently declared invalid by the trial court (in Nicholson I). Nicholson does not explain how these facts or any evidence supporting them relates to her claims on which Appellees were granted summary judgment.

Worth 2004, no pet.) (citing *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 658 (Tex. 1990) (op. on reh'g)). The controlling reasons for granting a severance "are to do justice, avoid prejudice, and further convenience." *Id.*

Nicholson's argument in her brief is simply that her claims against Countrywide and BoA "were the same cause of actions against" other defendants and that "[because] the cause[s] of actions were identical, involving the same facts and issues, the trial court effectively severed parties and split[] cause[s] of actions into another lawsuit." She further asserted that "[Countrywide's and BoA's] supporting affidavit[s] relied on evidence involving the same facts and issues from" the other defendants.

Nicholson does not, however, address whether the severed claims, if asserted independently, were the proper subject of a lawsuit and does not explain how the severed claims are so interwoven with the remaining action that they involve the same facts and issues. See Tex. R. App. P. 38.1(i); City of Keller, 433 S.W.3d at 729. Further, "a trial court may sever dismissed claims from remaining claims in order to render an otherwise interlocutory judgment final and appealable," Aviation Composite, 131 S.W.3d at 187 n.5, and Nicholson does not explain why the trial court abused its discretion by severing her claims in order to render its interlocutory summary judgment orders final and appealable. See id.; see also Watson v. City of Southlake, No. 02-18-00143-CV, 2019 WL 4509047, at *10 (Tex. App.—Fort Worth Sept. 19, 2019, pet. filed) (citing Aviation Composite for the proposition that "[r]egardless of whether the claims could be maintained separately, 'a trial court may sever dismissed claims from remaining claims

in order to render an otherwise interlocutory judgment final and appealable."

(emphasis added)). Nicholson also failed to explain how severing her claims against

Countrywide and BoA harmed her in any way. See Tex. R. App. P. 38.1(i), 44.1(a);

Thomas v. Logic Underwriters, Inc., No. 02-16-00376-CV, 2017 WL 5494386, at *5 (Tex.

App.—Fort Worth Nov. 16, 2017, pet. denied) (mem. op.). For these reasons, we

overrule her second issue.

Conclusion

Having overruled Nicholson's two issues, we affirm the trial court's summary

judgment and severance orders.

/s/ Mike Wallach Mike Wallach

Justice

Delivered: December 31, 2019

10

EX. G



In the Court of Appeals Second Appellate District of Texas at Fort Worth

No. 02-19-00085-CV

S	On Appeal from the 48th District Court
S	of Tarrant County (048-304598-18)
S	December 31, 2019
\$	Opinion by Justice Wallach
	\$ \$ \$

JUDGMENT

This court has considered the record on appeal in this case and holds that there was no error in the trial court's summary judgment and severance orders. It is ordered that the judgment and orders of the trial court are affirmed.

SECOND DISTRICT COURT OF APPEALS

By _/s/ Mike Wallach	
Justice Mike Wallach	

EX. H

CAUSE NO. 048-286132-16

HARRIET NICHOLSON Plaintiff	§ IN '	THE DISTRICT COURT OF
VS. DAVID STOCKMAN, et al Defendant	9 9 9 8	TARRANT COUNTY, THE DARRANT COUNTY TARRANT COUNTY THOMAS A. WILLDER JUDICIAL DISTRICT CERK

Came on for consideration the First Amended Motion for Summary Judgment filed by the Defendant Harvey Law Group (the "Motion") against the Plaintiff. The Court entered an order granting the Motion on March 20, 2019. The Court additionally granted the Defendants Nationstar Mortgage LLC's and the Bank of New York Mellon's Motions for Summary Judgment on March 21, 2019 and those orders are incorporated herein. The Court further entered an order of Non-Suit as to Defendants Trefe Trekel and William Viana on March 26, 2019 which is incorporated herein and all other parties have been severed from this cause.

The Court further ORDERS, ADJUDGES and DECREES that Plaintiff shall take nothing on her claims against Defendant Harvey Law Group and said claims are dismissed with prejudice;

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Harvey Law Group is awarded \$11,700.00 against Plaintiff, Harriet Nicholson, as its reasonable and necessary attorney's fees on its counterclaim for attorney fees and costs pursuant to the Texas Declaratory Judgment Act.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Harvey Law Group is awarded \$22,500.00 as reasonable and necessary attorney's fees in the event of an unsuccessful appeal to the Court of Appeals, in addition to necessary costs; and an additional





\$22,500.00 as reasonable and necessary attorney's fees in the event of an unsuccessful petition for review in the Supreme Court of Texas, in addition to necessary costs.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that this judgment disposes

of all claims and parties and is a final appealable judgment.

Signed this 19 of Lehreny 2020.

David Evans, Presiding Judge