

CAUSE NO. \_\_\_\_\_

**SANDRA NICELY FALCONER**  
Plaintiff,

V.

**PHH MORTGAGE COMPANY**  
Defendant.

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§  
§  
§

**IN THE DISTRICT COURT**

\_\_\_\_\_ **JUDICIAL DISTRICT**

**OF HARRIS COUNTY, TEXAS**

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION**

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

NOW COMES SANDRA NICELY FALCONER, Plaintiff herein, and files this Plaintiff's Original Petition and Application for Temporary Restraining Order and Temporary Injunction against **PHH MORTGAGE COMPANY**, Defendant herein, and in support thereof, will show the Court the following:

**I. PARTIES AND SERVICE**

1. Plaintiff is an individual with a primary address in Harris County, Texas. The last 3 digits of Plaintiff's drivers license are 073. The last three digits of Plaintiff's social security number are 254.
2. Defendant **PHH MORTGAGE CORPORATION** is a foreign corporation authorized to conduct business in the State of Texas. Defendant's primary place of business is 940 Ridgebrook Road, Sparks, Maryland 21152. Defendant can be served through its registered agent, Corporation Service Company dba CSC - Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, TX 78701-3218. Defendant will be served by private process server.

## II. JURISDICTION AND VENUE

3. The subject matter in controversy is within the jurisdictional limits of this court.
4. Pursuant to Tex. R. Civ. P. 47(c)(2), Plaintiffs seek relief of \$250,000.00 or less and non-monetary relief and judgment for all other relief to which the party deems herself entitled.
5. This court has jurisdiction over the parties because the real property subject of this suit is located in Harris County, Texas.
6. Venue in Harris County is proper in this cause because the real property subject of this suit is located in Harris County, Texas.

## III. FACTS

7. Plaintiff is the borrower on the promissory note (the “Note”) secured on the note secured by the Deed of Trust (the “Deed of Trust”) executed on September 11, 2003 and recorded in the Harris County Property Records, file number X043095. The loan agreed to with the original Lender Option One Mortgage Corporation was for the principal sum of \$72,800.00 with a maturity date of October 1, 2018. The note included an assumption that was paid off and released. Plaintiff has requested a release of lien from the loan servicer and is awaiting an accounting.
8. Plaintiff deeded to the property to her heirs Sania Nembhard, Remus Nembhard, Sarah McFarquhar, and Jacob Seals and they are the owners of the real property located at 3611 Lancaster Walk Dr. Houston, Texas 77066-4104 (the “Property”). The Property is more particularly described as:

**LOT THREE (3), IN BLOCK SIX (6), OF NORTHCLIFFE MANOR, SECTION ONE (1), A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 288, PAGE 119 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.**

9. Defendant is the mortgage servicer and/or the owner and holder of the Note secured by the

Deed of Trust against the Property and the Property is posted for the September 6, 2022 foreclosure sale.

10. Upon Plaintiff's information and belief, Plaintiff reasonably believes that Defendant has not properly accounted for all payments made or, alternatively, has posted charges or expenses that are not authorized by law. Plaintiff brings this lawsuit seeking a true and accurate accounting of all payments made to be accounted for and/or clarified in a declaratory judgment pursuant to Tex. Civ. Prac. & Rem Code § 37.004.
11. The loan Defendant seeks to foreclose is a home equity loan, as the same is described by Tex. Const. Art. XVI, Section 50(a)(6). Plaintiff did not refinance or modify the loan, the only loan she executed for on this property was the loan made in 2003. Therefore, there is an issue with matters related to the origination, servicing, and/or enforcement of this Note. Defendant will suffer no harm if the Court grants the restraining order request herein.
12. As the borrower on this Note, Plaintiff has standing to bring this suit as Defendant's attempts to wrongfully foreclose the Property would deprive her and her children of their legally purchased and inherited property.

#### **IV. ELEMENTS FOR INJUNCTIVE RELIEF**

13. Considering the above-described facts, the Plaintiff seeks recovery from Defendant. The nature of the lawsuit is for a declaratory judgment regarding payments made under the Note or fees and expenses charged to the account by Defendant. Plaintiff further requests a declaratory judgment that this foreclosure is invalid based on the Defendant's failure to accurately account for payments made on this Note.
14. Plaintiff is likely to succeed on the merits of this lawsuit because she can prove by a preponderance of the evidence that Defendant has not properly accounted for all payments

made on the Note or, alternatively, has charged fees and expenses to the account that are not supported by contract or law. Plaintiff can further prove that the Defendant failed to comply with applicable Texas law regarding the foreclosure of home equity loans made against homestead property.

15. Unless this Honorable Court immediately restrains the Defendant from conducting the foreclosure sale scheduled for Tuesday, September 6, 2022, Plaintiff will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiff complete, final and equal relief. More specifically, Plaintiff will show the court the following:
  - a. The harm to the Plaintiff is imminent because unless restrained for selling the property at foreclosure, the Defendant will conduct an auction to sell the Property and Plaintiff will lose both the Property and the substantial accumulated equity therein.
  - b. This imminent harm will cause the Plaintiff irreparable injury in that it will deprive her of the Property and all accumulated equity therein.
  - c. There is no adequate remedy at law which will give Plaintiff complete, final and equal relief.

#### **V. BOND**

16. Plaintiff is willing to post a reasonable temporary restraining order bond and requests the court to set such bond in the amount of \$25.00. Specifically, the Property is real property with a substantial amount of equity. Defendant is a secured lender and will recover a windfall if allowed to proceed with foreclosure. A higher bond would be inequitable to the Plaintiff.

## **VI. REMEDY**

17. The Plaintiff has met its legally required burden by establishing each element which must be present before injunctive relief can be granted by this Court and are entitled to the requested temporary restraining order.
18. Plaintiff requests the court to restrain Defendant from selling the Property at the September 6, 2022 foreclosure sale.
19. It is essential that the court immediately and temporarily restrain the Defendant from selling the Property at the September 6, 2022 foreclosure sale.
20. In order to preserve the status quo during the pendency of this action, Plaintiff requests that the Defendant be temporarily enjoined from selling the property at the September 6, 2022 foreclosure sale.

## **VII. SUIT FOR DECLARATORY JUDGMENT**

21. Tex. Civ. Prac. & Rem Code § 37.004 provides that a person interested under a deed, will, or other written contract or writings may have determined any question of construction or validity arising under the instrument and obtain a declaration of rights, status, or other legal relations thereunder. Accordingly, Plaintiff brings an action under § 37.004 to determine whether Defendant properly accounted for payments made under the Note or, alternatively, whether Defendant charged unauthorized costs and expenses.
22. Plaintiff further requests a declaratory judgment that Defendant's attempts to foreclose the Property without first obtaining a court order authorizing the same is an impermissible violation of the Texas Constitution.

## **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that:

- A. Defendant be cited to appear and answer herein;

B. A temporary restraining order issue without notice to Defendant, restraining Defendant, their officers, agents, servants, employees, agents, servants, successors and assigns, and attorneys from selling the Property at the September 6, 2022 foreclosure sale.

C. The Court sets a reasonable bond in the amount of \$25.00 for the temporary restraining order;

D. After notice and hearing, a temporary injunction will issue enjoining and restraining Defendant, their officers, agents, servants, employees, agents, servants, successors and assigns, and attorneys from selling the Property at a subsequent foreclosure sale.

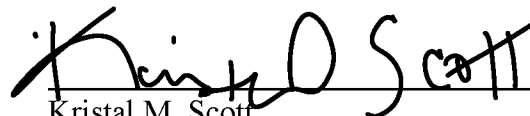
E. That the Plaintiff recover against the Defendants under Tex. Civ. Prac. & Rem Code § 37.004 for Defendant's failure to account for payments made on the Note or, alternatively, Defendant charging unauthorized costs and fees;

F. That the Plaintiffs recover attorney fees and costs of court; and

H. For such other and further relief, in law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

Kristal M. Scott, Attorney-at-Law, PLLC

A handwritten signature in black ink that reads "Kristal M. Scott". The signature is written in a cursive style and is positioned above a solid horizontal line.

Kristal M. Scott  
Texas Bar No: 24117032  
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Attorney for Plaintiff

CAUSE NO. \_\_\_\_\_

<b>SANDRA NICELY FALCONER</b> <b>Plaintiff,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>V.</b>	§	<b>____ JUDICIAL DISTRICT</b>
	§	
<b>PHH MORTGAGE COMPANY</b> <b>Defendant.</b>	§	<b>OF HARRIS COUNTY, TEXAS</b>

**TEMPORARY RESTRAINING ORDER**

On September \_\_, 2022, this Court heard the Application for a Temporary Restraining Order filed by **SANDRA NICELY FALCONER**, Plaintiff herein.

Based upon the pleadings, records, documents filed by counsel, and the arguments of counsel at the hearing, **IT CLEARLY APPEARS:**

A. That unless **PHH MORTGAGE COMPANY**, Defendant herein, is immediately restrained from foreclosing the Property located at **3611 Lancaster Walk Dr. Houston, Texas 77066-4104** (the “Property”), it will commit the foregoing foreclosure before notice and a hearing on Plaintiffs’ Application for Temporary Injunction.

B. Plaintiffs will suffer irreparable harm if Defendant is not immediately restrained from conducting the foreclosure sale because it will lose ownership of the Property and the substantial accumulated equity therein. There is no adequate remedy at law to grant Plaintiffs complete, final and equal relief.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that **PHH MORTGAGE COMPANY** Defendant herein, and all of **PHH MORTGAGE COMPANY’S** officers, agents, servants, employees, agents, servants, successors and assigns, and attorneys are **ORDERED** to immediately cease and desist from foreclosing the Property from the date of entry of this order until fourteen (14) days thereafter, or until further order of this Court.

The Property is more particularly described as:

**LOT THREE (3), IN BLOCK SIX (6), OF NORTHCLIFFE MANOR, SECTION ONE (1), A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 288, PAGE 119 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Application for Temporary Injunction be heard on September \_\_\_\_, 2022 at \_\_\_\_\_ am/pm. in the \_\_\_\_\_ District Court of Harris County located at 201 Caroline Street, Houston, Texas 77002. Defendant **PHH MORTGAGE COMPANY** is commanded to appear at that time and show cause, if any exist, why a temporary injunction should not be issued against said Defendant.

The Clerk of the Court shall issue a temporary restraining order in conformity with the law and the terms of this order upon the filing by Plaintiff of the bond hereinafter set.

This order shall not be effective until Plaintiff deposits a bond in the amount of \$ \_\_\_\_\_ with the Clerk in conformity with the law.

SIGNED and ENTERED on \_\_\_\_\_ 2022 at \_\_\_\_\_, A.M/P.M.

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PRESIDING JUDGE

**PREPARED BY AND APPROVED AS TO FORM AND CONTENT:**

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Kristal M. Scott  
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PO Box 15022  
Humble, Texas 77347  
Phone (713) 992-3449  
Kscott@attorneykristalscott.com  
Attorney for Plaintiff



**VERIFICATION**

My name is Sandra Nicely Falconer. I am over eighteen (18) years of age and otherwise fully capable of making this affidavit.

I declare under penalty of perjury that I have read the foregoing Plaintiff's Original Petition and that every statement contained therein is within my personal knowledge and true and correct.

Further Affiant sayeth naught.

*Sandra Nicely Falconer*

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Sandra Nicely Falconer

**UNSWORN DECLARATION**

My name is Sandra Nicely Falconer. My date of birth is 01/19/1961 and my address is 3611 Lancaster Walk drive Houston TX 77066. Pursuant to Tex. Civ. Prac. & Rem. Code § 132.001, I declare under penalty of perjury that every statement in the foregoing Plaintiff's Original Petition is within my personal knowledge and is true and correct:

Executed in Harris County, State of Texas, on the day of the 31<sup>st</sup> day of August, 2022.

*Sandra Nicely Falconer*

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Sandra Nicely Falconer

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<b>FILE NAME</b>	Verification%20-%...ly%20Falconer.pdf
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<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	✦ Signed

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