

CAUSE NO. 2022-54455

<p><b>RICHARD A. SCHLUTER,</b></p> <p><b>Plaintiff,</b></p> <p><b>V.</b></p> <p><b>US BANK TRUST NATIONAL                  ASSOCIATION AS TRUSTEE OF                  THE CABANA SERIES IV TRUST                  and SN SERVICING                  CORPORATION, its/their successors                  and/or assigns.,</b></p> <p><b>Defendants.</b></p>	§ § § § § § § § § § § § § §	<p><b>IN THE DISTRICT COURT</b></p>          <p><b>334<sup>TH</sup> JUDICIAL DISTRICT</b></p>          <p><b>HARRIS COUNTY, TEXAS</b></p>
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**DEFENDANTS’ ORIGINAL ANSWER**

Come now Defendants US BANK AND TRUST NATIONAL ASSOCIATION AS TRUSTEE OF THE CABANA SERIES IV TRUST (“US BANK”) and SN SERVICING CORPORATION (“SNSC”) and files their Defendants’ Original Answer.

**GENERAL DENIAL**

Defendants US BANK and SNSC deny generally every allegation contained in Plaintiff’s Live Petition and demand strict proof by a preponderance of the credible evidence.

**DEFENSES**

Without assuming the burden of proof, Defendants assert the following defenses:

Plaintiff’s Live Petition fails to state a claim upon which relief can be granted.

Plaintiff’s claims are barred because Plaintiff has not been damaged by the conduct or alleged conduct of Defendants.

Defendants are not liable to Plaintiff on the grounds that Plaintiff’s damages, if any, were caused in whole or in part by Plaintiff’s own conduct and/or negligence. Therefore, Defendants

are entitled to a determination of proportionate responsibility under Chapter 33 of the Texas Civil Practice and Remedies Code and applicable Texas law.

Defendants deny responsibility or liability for any alleged damages sustained by Plaintiff. However, if Plaintiff sustained any damages, then such damages should be reduced by the amount that Plaintiff could reasonably have mitigated such damages and/or Plaintiff's failure to mitigate damages.

Plaintiff's claims are barred, in whole or in part, by the express or implied terms of the written agreement(s) between the parties.

Plaintiff's claims are barred by reason of Defendants' compliance with applicable loan documents, contracts, mortgage, agreements, statutes, and other provisions of law.

Defendants acted in good faith at all times, and Defendants did not knowingly, intentionally, or maliciously violate any laws.

Plaintiff's claims are barred, in whole or in part, by Plaintiff's lack of actual damages.

Plaintiff's claims are barred in whole or in part by the statute of frauds, parol evidence rule, and merger doctrine.

Plaintiff's claims are barred by unclean hands, laches, waiver, estoppel (in all its forms, including, but not limited to equitable estoppel and/or estoppel by contract), and other applicable concepts of law.

Plaintiff's claims are barred in whole or in part by the doctrines of accord and satisfaction, release and/or ratification.

Plaintiff's claims are barred in whole or in part by the doctrine of offset.

Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

Plaintiff's claims are barred in whole or in part by the doctrine of bona fide error.

Any claim for punitive or exemplary damages is subject to the limitations and constraints of Due Process found in the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 19 of the Texas Constitution.

Plaintiff has failed to state a claim for recovery of attorneys' fees and costs.

For further answer, if any is necessary, Defendants allege that Plaintiff is estopped from asserting the claims made the basis of Plaintiff's live petition pursuant to the doctrines/defenses of equitable estoppel, estoppel by contract, release, ratification, failure to mitigate, statute of frauds, lack of standing and waiver.

Defendants plead such other affirmative defenses which cannot be anticipated at this time, but which may become apparent and applicable during the pendency of this lawsuit, by reason of future discovery and by reason of allegations and answers of other parties. Defendants specifically reserve the right to amend or supplement these affirmative defenses at any time.

#### **SPECIAL EXCEPTIONS**

Defendants submit the following exceptions to Plaintiff's Live Petition in the instant case:

1. Plaintiff's allegations are so general that Defendants do not have fair notice of the claims being made;
2. Plaintiff has failed to state any claim upon which relief can be granted;
3. Plaintiff has plead no viable claim for damages and has stated no claim upon which she could recover damages;
4. Plaintiff's pleadings do not state the facts and elements necessary to support a cause of action; and
5. Plaintiff does not plead a damages amount.

**REQUEST FOR INCREASE OF BOND**

In the event the court extends any injunction prohibiting a non-judicial foreclosure sale of the property and/or any eviction, Defendants move that the court reset the bond amount in this case to a reasonable amount because the amount set is too low.

**REQUESTS FOR MONTHLY PAYMENTS**

Defendants further move that the court require the Plaintiff to make reasonable monthly payments into the registry of the court and that such payment obligation is continued until such time as this case is concluded.

**PRAYER**

Defendants pray the Court, after notice and hearing or trial, enter judgment in favor of US BANK and SNSC, including, but not limited to the costs of court and attorney's fees. US BANK and SNSC further pray that Plaintiff in this suit takes nothing by way of his claims and that all of the Plaintiff's claims are dismissed with prejudice. Defendants further pray that Plaintiff's requests for injunctive relief are all denied. Defendants further pray for such other and further relief as US BANK and SNSC may be entitled to in law or in equity.

Respectfully submitted,

ANDERSON ★ VELA, L.L.P.  
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ATTORNEYS FOR DEFENDANTS

By: /s/ Richard E. Anderson  
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**CERTIFICATE OF SERVICE**

I certify that on this the 23rd day of September, a true copy of the above document has been delivered to the following pursuant to the Texas Rules of Civil Procedure for each party listed below.

John G. Helstowski  
J. GANNON HELSTOWSKI LAW  
FIRM  
13601 Preston Rd., Suite E920  
Dallas, TX 75240

VIA E-FILING SERVICE AND/OR  
VIA E-MAIL: [jgh@jghfirm.com](mailto:jgh@jghfirm.com)

By: /s/ Richard E. Anderson  
RICHARD E. ANDERSON

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Richard Anderson

Bar No. 1209010

randerson@andersonvela.com

Envelope ID: 68553212

Status as of 9/23/2022 11:34 AM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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